SENATE—*Wednesday, March 20, 1991*

(Legislative day of Wednesday, February 6, 1991)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts.

The PRESIDING OFFICER. Today's prayer will be offered by the guest chaplain, Rabbi Yechiel Eckstein, president, International Fellowship of Christians and Jews.

PRAYER

Rabbi Yechiel Eckstein, president, International Fellowship of Christians and Jews, Chicago, IL, offered the following prayer:

Our Father in Heaven, we come before You this day and every day in awe, in gratitude, in praise, in humility, and in prayer. This, indeed, is the day the Lord has made, let us rejoice and be glad in it.

O Lord, instill in our hearts a love for You and for all Your creation. May we be ever mindful that it is from You that we derive our strength, our wisdom, our hope, and our conviction.

May we be inspired by Your Word and reminded of Micah's admonition to act justly, love mercy, and walk humbly with the Lord our God. May we never avert our eyes from the pain and suffering of others.

O Lord, on this and every day, we seek Your guidance and direction. Watch over our leaders—indeed, the men and women in this room.

Let us pray for the peace of Jerusalem as Psalms 122:6 urges us to do, and indeed for peace among all people of all nations. So that, instead of finding swords and weapons we will find only plowshares and pruning forks. We, the people, look to God and You to bring that day of peace about.

In the words of the age-old Jewish prayer, "He who brings peace in the Heavens may He bring peace to us and all the world." God bless you and be with you. 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, March 20, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 15 minutes of debate on the Nickles amendment No. 51, to be equally divided by the Senator from Oklahoma [Mr. NICKLES] and the Senator from Massachusetts [Mr. KENNEDY] with a vote following thereon. The clerk will report the bill.

The legislative clerk read as follows:

A bill (H.R. 1281) making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans' compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Nickles amendment No. 51, to strike section 303, which prohibits the increased use of semiskilled workers on Federal construction projects and barring implementations of revised apprenticeship regulations.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. NICKLES addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma [Mr. NICKLES].

Mr. NICKLES. Mr. President, I yield myself 3 minutes.

The ACTING PRESIDENT pro tempore. The Senator is recognized for 3 minutes.

AMENDMENT NO. 51

Mr. NICKLES. Mr. President, to bring my colleagues up to date, last night I introduced an amendment that would strike section 303 from the bill we have before us, H.R. 1281. This section would prohibit the Department of Labor from implementing the helper regulations.

These are regulations that go all the way back to the Carter administration. They were originally discussed in an options paper by Secretary Marshall in President Carter's administration. They have been supported by subsequent administrations, including both the Reagan and the Bush administration. Secretary Dole came up and implemented these regulations, along with the present Labor Secretary, Lynn Martin.

Mr. President, the language that is in the appropriations bill would say that not one dime can be spent to implement these regulations. In other words, there can be no helper classification for Federal construction projects. The net result of this would be to waste billions of dollars. The Secretary of Labor estimates that next year alone, if these regulations are not allowed to go forward, it would cost an additional $623 million. That is $623 million that would be wasted if we do not adopt the amendment I have proposed today.

Mr. President, more important than the cost to the taxpayer is the fact that we will be denying thousands upon thousands of disadvantaged, unemployed persons from participating in the workplace. I think that makes no sense. I think we want to open up the doors of economic opportunity.

If we do not implement the helper regulations, we will be mandating that contractors pay journeyman wages to semiskilled workers. Many of these jobs are entry-level jobs, they are learning jobs, and they should command a pay scale of $7 or $8 an hour but instead we are going to mandate that they be paid $20 an hour. It does not make economic sense and it is not fair for the worker because we are going to be denying the unemployed person, the opportunity to get the job.

Mr. KENNEDY addressed the Chair.

The PRESIDENT pro tempore. The Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

The PRESIDENT pro tempore. The Senator is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, during the debate yesterday evening on the Nickles amendment, the Senator from Oklahoma made some statements about what will happen if the Department of Labor is prevented from implementing the new helper regulations which reflect a serious misunderstanding of the way the Davis-Bacon Act works.

I am referring particularly to his statements that if the helper regulations are not put into effect, there will be no jobs for semiskilled workers on

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

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Federal construction projects and employers will have to pay all their employees journeyman wages.

I believe he used the example that employers would have to pay workers $22 an hour to sweep floors.

Let me set the record straight, because this is really a gross misstatement of the act's requirements.

The Davis-Bacon Act does not require, and has never required, that every worker on a construction site be paid full journeyman wages. The unskilled and semiskilled work on construction projects covered by Davis-Bacon has always been performed by laborers and by apprentices, who are typically paid at rates much lower than the rates for journeymen craft workers—and certainly not at rates that are anything like $22 an hour.

The provision we are debating would in no way prohibit contractors on Federal construction projects from continuing to employ unskilled or semiskilled workers as laborers and apprentices at below-journeyman wage rates. It would however, prevent employers from being able to force those workers into lower-paid helper classifications with reduced wages and benefits and no opportunity to obtain the training necessary to advance to a higher-paid classification.

Contrary to the assertions of the Senator from Oklahoma, implementation of the new helper regulations would not create new opportunities for entry-level workers to climb the economic ladder. In fact, the opposite is true. By allowing contractors to replace laborers and apprentices with lower-wage helpers, the new helper regulations would in effect kick that ladder down.

For those who seek to learn a skilled trade, the building trades apprenticeship system has been the route by which hundreds of thousands of unskilled entrants to the job market, through a combination of on-the-job training and classroom teaching, have been able to acquire the skills to enable them to become fully qualified journeyman craftsmen and craftswomen able to command a journeyman wage.

The beginning apprentice, like an unskilled or semiskilled helper, is paid just a fraction of the journeyman's wage. But unlike the helper, who is permanently consigned to that low-wage classification, the apprentice enrolled in a certified apprenticeship program knows that as she progresses through the program, her wages will increase along with her skill level, and eventually she will be able to graduate to journeyman status.

So let's not pretend that we would be doing entry-level construction workers a service by undermining the apprenticeship system and replacing existing jobs for apprentices with low-paid helper jobs.

And what about the impact of the new regulations on construction laborers, who struggle to earn a decent living digging trenches, hauling materials, moving equipment, and otherwise helping and assisting skilled journeymen on the jobsite?

Like many other workers on the lowest rungs of the economic ladder, a substantial proportion of these workers are women and minorities. If the new helper regulations are implemented, these are the workers who will either be replaced by lower-paid helpers or forced to accept lower-paid helper jobs.

The Senator from Oklahoma claims that the new regulations would enhance minority employment. But that's not what Judge Harold Greene of the U.S. District Court for the District of Columbia concluded when he examined the proposed helper regulations. To the contrary, it was his conclusion that the expanded use of helpers on Federal construction projects was "likely to have the effect of allowing contractors to replace higher wage minority laborers with lower wage minority helpers."

As Norman Hill, president of the A. Philip Randolph Institute has stated, minority workers are "particularly vulnerable to exploitation such as the Davis-Bacon Act is designed to prohibit." Let's ensure that we keep those protections against exploitation intact.

Mr. President, it is interesting to listen to my friend from Oklahoma talk about these regulations and how the Department of Labor is supporting his proposal when just last year under this Republican administration the Department issued some key findings on the training of America's workers. The Department's report on work-based learning states that, "The one area in which opinions are most consistent is in the support for apprenticeship as a method of training and its expansion to skilled occupations throughout American industry. The supporting rationale is that the apprenticeship concept of structured on-the-job training, combined with classroom instruction, is an ideal model for learning the job-specific skills needed by today's workers."

This is a report the Department of Labor published last year. The findings in this report are also supported by former Labor Secretary Ray Marshall and former Senator Brock in the report of the Commission on the Skills of the American Work Force, which they cochaired, which also cites the apprenticeship system as one of the few models we have in this country for systematic, long-term skills training.

The Senator from Oklahoma claims that all kinds of savings will result from implementation of the new regulations. But Dr. John Dunlop, the most thoughtful, knowledgeable construction labor economist in this country—and a Republican, Mr. President—says this about the methodology used by the Office of Management and Budget in concluding that the Government will save money if workers on Government-funded construction projects are paid less: "There is simply no sound basis for gratuitously assuming that lower wage rates in the construction industry generally mean lower cost to the public."

With all due respect, Mr. President, I think what we ought to be about is not destroying the existing apprenticeship system; what we ought to be doing is perfecting that system; what we ought to be doing is trying to find ways that it can be more effective.

I am amazed that at a time when we are trying to find new ways of forging partnerships such as we find in the apprenticeship system between workers and employers, and new ways at the national level to encourage employers to participate in training programs, that the Department is seeking to undermine this kind of partnership effort. The training programs which are available for unskilled and underskilled workers in construction are just the kinds of programs that are necessary for us to develop in other areas.

So I hope the amendment will not be successful. I reserve the remainder of my time.

Mr. ADAMS. Mr. President, I rise today in strong support of the language contained in H.R. 1281 that would direct the Department of Labor to stop wasting tax dollars in its two pronged attack on the rights of workers in our country. Simply stated, the Labor Department is continuing on with a decade long effort to undermine the prevailing wage standard in the Davis-Bacon law that protects the integrity of wages paid on Federal projects. By proposing to expand the definition of helper, DOL would replace up to 40 percent of the current Davis-Bacon work force with lower-paid, unskilled workers who would have little or no formal training.

This new underclass of workers would be disproportionately represented by women and minorities, working in frequently dangerous jobs with little chance for advancement. Proponents of this erosion of Davis-Bacon argue, as always, that we will save money. There is no secret why: exploiting a work force has always been a short-term means of saving money. But is it the right thing to do? Mr. President, I suggest that it is not. And if this administration is so convinced that amending the Davis-Bacon law serves any legitimate interest, let them send us up a bill. Our committee will give it the full hearing it deserves, and then we can vote on it. The administration knows that Congress is not inclined to begin cutting back on workers' wages on Federal projects. And what they cannot accomplish legisla-

tively, they should not be attempting to do through the regulatory process.

The other side of this attack on workers' rights comes through the Labor Department's effort to destroy State apprenticeship programs. In my State, an excellent apprenticeship program exists under State law, with a council appointed by the Governor with representatives of both labor and management. The comments filed on behalf of the Washington State Department of Labor Director Joe Dear which were included following my remarks last night, are typical of the more than 60,000 comments in opposition to the proposed changes in apprenticeship rules filed with the Department of Labor. Quite bluntly, the citizens of my State would not welcome a change in Federal law that would allow an apprenticeship program from some other State to set up shop in Washington State without obtaining approval from Washington State. And once again, I believe the administration should submit a legislative proposal to Congress, for hearings before the proper committees of legislative jurisdiction if it believes the apprenticeship system should be revamped.

Mr. President, I want to compliment Chairman BYRD for maintaining this restriction within H.R. 1281, particularly since this provision received overwhelming support in the House by a 244-to-173 margin. It is particularly noteworthy that in both bodies, the chairmen of the legislative committees of jurisdiction, Education and Labor in the other body, and Labor and Human Resources here, both support this provision. This language provides Congress with an opportunity to put a stop to the regulatory mischief that has been going on at DOL during much of the past decade. This mission of the U.S. Department of Labor is to protect the interests of the working men and women of this Nation. These proposed regulations would be more appropriate coming from a Department of Management, or a Department of Big Business, rather than from a Department of Labor.

Mr. President, I may sound a bit old fashioned when I remind my colleagues that the American labor movement has paid a great price, and made a great contribution to American society down through the years. For the Federal Government to try to erode that progress by a nickle and dime attack on wage rates and training programs would be a disgrace.

Yes; we do need to develop programs and strategies that will help our Nation's work force compete in the changing global economy in which we live.

And yes, we do need to retrain many of our workers to take those jobs that are coming on line.

But Mr. President, we also need to shackle the rogue elephants that are loose at the U.S. Department of Labor who are trying to rewrite the law without congressional approval. This language will accomplish that objective.

To those who claim we could save money by implementing these changes, I say:

We are spending billions to bail out the savings and loan cesspool, working people are picking up that bill;

We are sending billions of dollars in United States aid to countries from Afghanistan to Zaire and hundreds of points in between; American workers pay for those programs; and

We forgive the foreign debts of countries that join us in battle, or who begin to make democratic changes in their societies; American workers bear the cost of those decisions.

Here today, with this language, we have an opportunity to stand up and be counted for the wage levels paid to American workers. I am happy to join with those of my colleagues who support American workers and their wage levels and training needs. I urge a vote against the amendment offered by the Senator from Oklahoma. Now is the time and this is the opportunity to put the U.S. Department of Labor back on course, protecting the American worker.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Who yields time?

Mr. NICKLES. Mr. President, I yield Senator SYMMS from Idaho 1 minute.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I rise in support of the Nickles amendment.

This amendment would strip the bill of irrelevant legislative language preventing the administration from implementing Davis-Bacon regulations.

It is bad enough that we are poised to pass a so-called dire emergency supplemental domestic appropriations bill which will spend $4.7 billion—all only shortly after we raised gas, beer, and tobacco taxes because we had supposedly cut spending to the bone.

It is even worse that a little noticed paragraph was slipped in that would prevent the Secretary of Labor from executing administrative reforms that, when fully phased in about 3 years from now, will save the Government $600 million a year in construction and repair costs.

After a long process of hearings, review, and rulemaking, the Labor Department has finally promulgated regulations which recognize a separate class of helpers for purposes of determining Davis-Bacon prevailing wages on Federal and federally financed construction projects.

These regulations have been subject to extensive litigation. They have been reworked and retooled over 9 long years. A wide panoply of judges from all segments of the political spectrum have determined conclusively that these helper regulations are consistent with the purposes of the Davis-Bacon Act.

The litigants, unable to obtain satisfaction from the courts, are attempting to do an end-run around the regulatory and judicial process—at a cost of $600 million to the American taxpayer.

Mr. President, the regulations which this act seeks to overturn are quite modest. Helpers can only be used where the practice is not just identifiable, but prevailing—according to a complex formula which will mean that most firms, doing most of the work in a locality, already must be using helpers before the Labor Department allows Federal contractors to employ them as well.

Furthermore, a Federal construction contractor could not employ more than two helpers for every three journeymen. In addition, a helper could not be substituted for a skilled journeyman and, in fact, would have to be under the direct supervision of a journeyman. Finally, the work done by a helper would have to be substantially unskilled or semiskilled in nature, involving tasks such as carrying, holding, preparing a work area, and so forth.

These changes, while modest, would nevertheless save $200 million in the first year and $600 million a year later on.

Mr. President, H.R. 1281 will not be viewed as one of the Senate's prouder achievements. But the Senate can at least avoid adding insult to injury through the adoption of the Nickles amendment.

Mr. President, it is bad enough that we are poised to pass a so-called dire emergency supplemental bill which will spend $4.7 billion right on the heels, I might remind my colleague, on raising the taxes of the working American, on gasoline, on beer, on tobacco, on about anything else Congress can think of just last year, and now we are back here asking to spend more money, but even worse this little-noticed paragraph was slipped in that would prevent the Secretary of Labor from being able to execute administrative reforms which, when fully phased in, would save the Government $600 million in construction repair costs.

Mr. President, it is outrageous how antiworker, anticapitalistic the Congress has grown in these recent years when the rest of the world is asking for opportunities for their people to work and save and invest and own property, and we sit in there and rigidly force Government to intervene between the workers and opportunities, at the same time costing these taxpayers more money.

I ask unanimous consent that I be added as a cosponsor of this very fine amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. NICKLES. I yield the Senator from Vermont 1 minute.

Mr. JEFFORDS. Mr. President, few subjects have generated more controversy over the years than proposed changes to the Davis-Bacon Act, a statute that is now some 60 years old but has been largely unchanged in that time.

I had thought there were three schools of thought on this issue—repeal it, leave it alone or reform it. I count myself in the last category. I support the act, and what I consider to be the fundamental purpose of the act—that the Federal Government should not undercut local wages and working conditions.

The helper regulations have been through 9 years of regulatory and judicial pulling and hauling. What has emerged is absolutely true to the purpose of the act.

If a majority of the workers in private construction are working on jobs with helpers, then the Federal Government can use helpers on its jobs, too.

This is hardly a radical concept, in fact, I think this is the only job classification that must show majority status before it is permitted.

This is a reasonable safeguard. These regulations will permit some contractors to use helpers on Federal projects where helpers represent essentially the majority practice in an area.

That saves money. Workers will be paid helper rates for helper work, rather than the journeyman premium now paid. That is why this rider will cost $2 billion over the next 5 years unless the Nickles amendment is adopted.

I do not know of a single union general contractor in the State of Vermont. So far as I know, all of them use helpers. Yet when it comes time to bid on a Federal job, they are forced to conform their practices to the Federal Government's—not the other way around. This is the exact opposite of what I thought Davis-Bacon was supposed to do.

Today we don't have three schools of thought—we have just two. If you agree that the purpose of Davis-Bacon should be to mirror local wages and working conditions, then you should support this amendment.

If you believe that the taxpayers should pay a yearly premium of $500 million in order to preserve the work rules of the minority of workers in an area, then you should vote against this amendment.

It is that simple.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. KENNEDY. Mr. President, I yield myself 3 additional minutes.

Mr. President, it seems to me that those who want to strike this provision do not understand the importance of apprenticeship training programs. There are over 200,000 Americans participating in apprenticeship programs who are not only getting skills but also getting some educational benefit.

Now, if you are going to undermine these privately funded construction industry programs, where is the Government going to get the money to provide training for construction workers and for other skills?

Since the Department published the proposed new apprenticeship regulations last fall, it has received thousands of negative comments, not just from workers and worker organizations in the construction industry, but also from employers who are committed to work force training and States which are currently playing an important role in carrying out the objectives of the National Apprenticeship Act. The Apprenticeship Council in my own State of Massachusetts has advised the Department that it strongly opposes the proposed regulations because they would prohibit States from establishing minimal apprenticeship standards for programs operated within their jurisdictions.

During her confirmation proceedings, the new Secretary of Labor, Lynn Martin, advised that the Department is attempting to resolve the issues raised by opponents of the new regulations and indicated that she was prepared to work with the Labor and Human Resources Committee to revise the regulations to address those concerns. I appreciate that commitment and I am fully prepared to work with her on this matter.

The provision the Senator from Oklahoma seeks to strike in no way prevents the Secretary from proceeding with efforts to come up with revisions that will achieve the Department's stated goal of expanding the concept of apprenticeship to industries and occupations that do not have an apprenticeship tradition, a goal which I share. It simply ensures that in the meantime, no funds will be expended to implement revisions that would undermine existing, effective apprenticeship programs in the construction industry.

All we are saying is let us preserve the existing regulation and try to find ways to work with the administration. If there are some aspects of the existing regulations that we can improve or strengthen, we will be glad to do it. But why jeopardize existing programs that have been evaluated and reevaluated and each time come up with shining colors.

Mr. President, I hope that the Senate will not accept this amendment, and at the appropriate time I will move for the yeas and nays.

The PRESIDING OFFICER. The Senator from Oklahoma.

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

The PRESIDING OFFICER. The Senator has 2 minutes 50 seconds.

Mr. NICKLES. Mr. President, I wish to clarify something my good friend and colleague, Senator KENNEDY, has alleged, that this would undo the apprenticeship program. That is totally false. As a matter of fact, the language that I am trying to strike would throw out revisions to the apprenticeship regulations that the Department of Labor has been working on with organized labor and business groups that have not even been finalized. They throw out those proposed regulations as well. The language says not 1 dime should be spent on implementing regulations dealing with helpers and dealing with apprenticeship programs.

Again, I tell my friend and colleague that this goes all the way back to even President Carter's Labor Secretary who suggested that we need to make some changes in helpers. We need to allow helpers because that is a common practice throughout private construction industry. Contractors have helper classifications except for when they do business with the Federal Government. They are prevented from having a helper classification or a semiskilled classification when they do business with the Federal Government.

The chairman of the Appropriations Committee has worked hard to try to keep us within our spending caps. If we do not adopt this amendment, we are going to waste $523 million next year and over the next 5 years nearly $3 billion.

Again, I say more importantly, we are going to be denying thousands of people the opportunity to get into construction of Federal buildings. Why should we pass a law which mandates they should be paid $20 an hour? The marketplace will not hire them at that level and they will be denied the opportunity to work.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. My good friend ought to understand that if we prevent the Department of Labor from implementing the proposed revisions to the apprenticeship regulations, we leave intact the existing regulations. This does not eliminate the existing regulations.

Finally, Mr. President, there is, I think, no one in this body who does not have respect for John Dunlop. He has reviewed the claim that savings would result from the new helper regulations and this is what he said.

> While * * * the wage costs may be lower, labor costs may be higher because of the greater cost of supervision. Also increased use of helpers quite frequently leads to lower productivity of workers, or inferior products. * * * There is simply no sound basis for gratuitously assuming that lower wage rates in the construction industry generally mean lower costs to the public. * * *

John Dunlop knows this industry; he has spent a lifetime in it. And he is a Republican commenting on regulations proposed under a Republican administration.

Mr. President, as I said, I hope that the Senator's amendment would be defeated and that we would have the opportunity to work with the administration in the months to come.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has under 2 minutes.

Mr. KENNEDY. I am prepared to yield back the time if the Senator from Oklahoma is ready.

Mr. NICKLES. Mr. President, I yield the Senator from Kansas such time as he desires.

Mr. DOLE. Mr. President, I rise in strong support of the Nickles amendment.

While I would prefer that we were visiting the issue of Davis-Bacon reform in general, the specific matter we are dealing with today is—in this Senator's opinion—of no less significance.

Mr. President, section 303 of the Dire Emergency Supplemental Appropriations Act prohibits the Department of Labor from spending money to administer Davis-Bacon regulations governing the use of helpers or semiskilled workers on Federal construction contracts.

In addition, the language of section 303 enjoins the Department of Labor from promulgating regulations pertaining to revisions to apprenticeship programs in the construction industry.

While I am none-too-happy about freezing up much-needed changes in the regulations dealing with apprenticeship programs, I am particularly concerned about the backhand way in which the so-called Davis-Bacon helper regulations—which became effective just last month—are being obliterated.

Mr. President, let me tell you something about these regulations.

REGULATIONS HAVE BEEN TESTED IN COURTS

First, they were initially issued in 1982 and since that time all challenges to their scope and validity have been fully reviewed in the courts and decided in the department's favor. Indeed, I can't imagine a set of regulations that have been more carefully or more extensively scrutinized.

REGULATIONS SAVE MILLIONS

Second, Mr. President, these helper regulations will save the Federal Government a substantial amount of money in construction labor costs. I have a letter from Secretary of Labor Lynn Martin in which she says that in fiscal year 1992 alone, the savings in labor costs amount to over $620 million. Even for a spend-happy Congress, that's a lot of bucks.

And in this Senator's opinion, if it could be done, that money would be much better spent on more important domestic programs—such as on our veterans programs or education programs—than on subsidizing union wages and creating artificial economies for Federal construction projects.

Indeed, Mr. President, I bet that if you asked just about any American taxpayer whether they would rather spend $600 million of their hard-earned tax dollars next year on paying inflated wages to semiskilled workers on construction projects or would prefer to spend that money on buying more textbooks and computers for their kids to use in school, their answer would be pretty obvious.

But, Congress has this habit of forgetting whose money they are spending and whose interests they are representing when spending that money.

REGULATIONS MAKE GOOD POLICY SENSE

Finally, Mr. President, the helper regulations are modest in scope and make good sense from a policy standpoint.

These regulations address the arcane requirement under Davis-Bacon that workers be paid skilled wages for unskilled work. While it's a sweet deal for the unskilled worker, it's a rotten deal for the skilled workers, the Federal Government, and the American taxpayer.

The helper regulations cut back on this senseless requirement and permit the employment of semiskilled workers at less than a journeylevel wage on Federal construction projects.

In short, what the regulations do is introduce an element of free market competitiveness back into the Federal construction contract process.

I might add, Mr. President, that the helper regulations are also carefully limited in their application to prevent any abuses.

They set no Government-imposed constraints or conditions on construction contractors or construction workers.

The employment of helpers is permitted only when their use is the prevailing practice in an area.

And finally, the regulations place limitations on the ratio of helpers to journeymen.

CONCLUSION

So here we are faced with an appropriations bill that legislates substantive labor policy by obliterating regulations that make a lot of sense. The regulations save the Federal Government a boatload of money and encourage the employment of semiskilled workers who would otherwise be shut out of such jobs on construction projects.

So I hope, Mr. President, that each Member in this Chamber will carefully consider the important policy considerations behind the helper regulations, the painstakingly careful process that led to the effectiveness of the regulations last month, and the serious consequences of eliminating those regulations, and vote in favor of the Nickles amendment to strike the offending language from the supplemental appropriations legislation.

I might add, Mr. President, that as we keep adding to this bill, I can see a veto looming larger and larger and larger. So I do not know how much we want to test the President of the United States—he is pretty testy himself these days—on how far we can push him on how much money we are going to spend and how we are going to continue to load up this particular piece of legislation.

Mr. President, I repeat, I hope we adopt the Nickles amendment.

Mr. HATFIELD. Mr. President, the administration has opposed provisions contained in the dire emergency supplemental appropriations bill addressing the so-called helper regulations of the Department of Labor. The Department has estimated that $500 million per annum of Federal tax dollars would be saved if we reject the House language and permit the expanded use of helpers on Federal construction projects.

This claim that using untrained, low wage helpers to construct our public buildings has been examined by a leading construction industry economist—Dr. John Dunlop—and has been categorically rejected.

As you know, Dr. Dunlop served at the Department of Labor under President Ford. He has served on virtually every public board that has dealt with construction industry costs.

With regard to the cost impact of using helpers in the construction industry, Dr. Dunlop has performed an economic analysis which demonstrates that no tax dollars will be saved by utilizing these classifications. Dr. Dunlop states:

> Its conclusion was reached by use of simplistic formulation which is wanting from an economist's point of view and which I find to be totally insupportable. Its methodology is based on a formula which utterly fails to take into account all of the real economic factors and forces which contribute to costs on a construction project. It appears that the Department takes the current wage rates and subtracts therefrom the savings to be gained by the cheaper rates when non-prevailing helpers replace prevailing laborers and mechanics.* * * (T)he Department multiplies that wage differentiation by the number of helper substitutes and then arrives at some projected mathematical savings. Such an exercise, in fact proves nothing.* * *

Dr. Dunlop goes on to further explain why the claim of tax savings is wrong and fails to take into account the factors which in fact actually add costs if helpers are used. Dr. Dunlop states again:

> Focusing on the cost savings aspect of the helper issue, in the real world helpers are used in a system which requires more supervisors and uses less journeymen than the system that does not use helpers. While in the former, wage costs may be lower, labor costs may be higher because of the greater costs of supervision. Also, increased use of helpers quite frequently leads to lower productivity of workers, or inferior products.
>
> When more supervisors are needed, that will tend to balance off any assumed helper

savings. If "helpers" cannot do the job as quickly as a qualified mechanic, then there may be no cost savings in fact. These and myriad other inquiries suggest that cost savings can only be arrived at after a comparative cost determination on the increased use of helpers, taking into account all relevant factors.* * *

There is simply no sound basis for gratuitously assuming that lower wage rates in the construction industry generally mean lower costs to the public without looking at the total costs of the system used.

Let me conclude with one final point. Dr. Dunlop served in a Republican administration. He chaired the Construction Industry Stabilization Committee in the early 1970's. The purpose of the Stabilization Committee was to control costs in the construction industry. Dr. Dunlop is no friend to runaway spending in this industry. He has presented to us a sound analysis of the impact of this new helper regulation and one that casts serious doubt on the Department's proposition that using untrained helpers will create lower wage costs. In fact, it most likely will create higher labor costs on public construction. This will cost the Federal Government and not save it one penny, contrary to the claims we have heard today.

Mr. AKAKA. Mr. President, I rise in opposition to the amendment offered by the Senator from Oklahoma [Mr. NICKLES] to delete language from H.R. 1281, the dire emergency supplemental appropriations bill for fiscal year 1991, prohibiting the Department of Labor from implementing its new helper or apprenticeship regulations.

Mr. President, both of these regulations would seriously weaken the Davis-Bacon Act and would have a detrimental impact upon thousands of construction workers currently protected by Davis-Bacon. The adverse consequences of these regulations would include: widespread job losses for skilled workers employed on Federal and federally assisted construction projects; the creation of a permanent class of poorly trained, unskilled, and low-paid workers; and the serious disruption of existing apprenticeship programs.

Over the past decade, Congress has repeatedly rejected all efforts to weaken the Davis-Bacon Act on the issue of helper regulations. Thwarted in the legislative arena, the U.S. Department of Labor resorted to the regulatory process to accomplish its objectives on this issue. The Department chose to implement its new regulations despite a pending court challenge and the recommendation of the Senate Appropriations Committee to defer any such action until the conclusion of the appeals process.

In a letter emphasizing the administration's strong opposition to the language contained in section 303 of H.R. 1281, the Secretary of Labor writes that the administration also opposes, and I quote, "legislating substantive labor policy in an appropriations bill." Further, the administration asserts that an appropriations bill is inappropriate as a "vehicle for introducing significant reversals in established governmental policies."

Mr. President, drastic measures require drastic responses. I believe the regulatory process is an inappropriate manner in which to circumvent the legislative process and expressed will of the Congress. The defeat of this amendment will reaffirm the objectives of the Davis-Bacon Act which Congress has repeatedly and consistently supported over the course of the past 55 years.

The same holds true for the proposed changes in apprenticeship regulations finalized by the Labor Department. Hawaii is 1 of 30 States and territories that would see its State apprenticeship councils abolished under the proposed regulations. Additionally, these changes would preempt a State's ability to set program standards higher than minimum Federal levels, render the apprenticeship system unenforceable by abolishing ratio requirements of apprentices to journeymen, and reduce the overall quality and standards of instruction and training established by existing State apprenticeship programs.

Mr. President, current regulations have served us well for many years. I stongly oppose any effort by the administration and the Department of Labor to circumvent congressional jurisdiction and weaken the Davis-Bacon Act.

Mr. CHAFEE. Mr. President, I intend to vote against this amendment to strike language from the dire emergency supplemental legislation. Specifically, the amendment offered by my distinguished colleague from Oklahoma would permit the Department of Labor to begin implementing its final regulatory changes regarding the worker category known as helpers.

For more than a decade I have watched and participated in debates regarding the merits of the Davis-Bacon Act. It is clear to me that for this reform to be successful the Senate Labor Committee must put politics aside and take a long, hard look at the inflationary effects of the Davis-Bacon Act.

Last summer, Senator METZENBAUM and Senator KENNEDY joined me in support of an amendment to the National Affordable Housing Act directing the General Accounting Office to put together a study on the strengths and weaknesses of the Davis-Bacon Act. Regrettably, that provision was dropped during the conference committee with the House of Representatives.

Congress should reexamine the Davis-Bacon Act. To what extent does it prevent many small and minority-owned businesses from bidding on federally funded construction projects? To what degree does it distort the prevaling wage scale in parts of the country? Does the act artificially drive up the cost of building and construction for the Federal Government? These are a few questions that must be definitively and authoritatively answered by an independent, nonpartisan, group before we can agree on the need for Davis-Bacon reform. I urge the Labor Committee to make such an effort a priority for this Congress.

The PRESIDING OFFICER. All time of the Senator from Oklahoma has expired.

The Senator from Massachusetts.

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

The clerk will call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent to speak for 30 seconds.

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

Mr. BYRD. Mr. President.

The year's at the spring
And day's at the morn;
Morning's at seven;
The hillside's dew-pearled;
The lark's on the wing;
The snail's on the thorn:
God's in his heaven—
All's right with the world.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 37, nays 63, as follows:

[Rollcall Vote No. 35 Leg.]

YEAS—37

Bond	Gramm	Nunn
Boren	Grassley	Pressler
Brown	Hatch	Roth
Burns	Helms	Rudman
Coats	Jeffords	Seymour
Cochran	Kassebaum	Simpson
Cohen	Kasten	Smith
Craig	Lott	Symms
Danforth	Lugar	Thurmond
Dole	Mack	Wallop
Domenici	McCain	Warner
Garn	McConnell	
Gorton	Nickles	

NAYS—63

Adams	Exon	Metzenbaum
Akaka	Ford	Mikulski
Baucus	Fowler	Mitchell
Bentsen	Glenn	Moynihan
Biden	Gore	Murkowski
Bingaman	Graham	Packwood
Bradley	Harkin	Pell
Breaux	Hatfield	Pryor
Bryan	Heflin	Reid
Bumpers	Heinz	Riegle
Burdick	Hollings	Robb
Byrd	Inouye	Rockefeller
Chafee	Johnston	Sanford
Conrad	Kennedy	Sarbanes
Cranston	Kerrey	Sasser
D'Amato	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Specter
Dixon	Leahy	Stevens
Dodd	Levin	Wellstone
Durenberger	Lieberman	Wirth

So the amendment (No. 51) was rejected.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the majority leader for his patience and courtesy for our side of the aisle as we were able to obtain all our votes in some extraordinary circumstances. I appreciate that. It was very good of the majority leader to do that.

Mr. MITCHELL. 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. BYRD. 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. BYRD. Mr. President, this is not only the first day of spring, it is also the first spring day.

I hope that Senators will take on some additional exhilaration and energy inasmuch as it is the first spring day and the first day of spring and spring from their offices and spring to the floor and spring from their chairs and call up amendments.

We have today, which is Wednesday. We could finish by 3 o'clock in the afternoon. We could probably have the first conference meeting with the House and the two chairmen of the conference could then indicate what our differences are with the House, differences between the House and the Senate that have to be resolved, and get the respective staffs working on those differences and set a meeting for tomorrow morning. We could have a fruitful conference, hopefully complete the conference and report back to the respective Houses the results, and have those votes in the two Houses and send the legislation on to the President.

The majority leader has indicated if we complete our work on these two supplemental bills and the conferences that the Senate would not be in session on Friday. So I hope that Senators will work to help make that come about.

I will suggest the absence of a quorum. Before I do, may I ask the Chair what the order is as of yesterday following the disposition of the Nickles amendment anent Davis-Bacon?

The PRESIDING OFFICER. Senator NICKLES was authorized to offer an amendment on behalf of Senator DECONCINI with respect to Jordan.

Mr. BYRD. I thank the Chair.

Mr. LEAHY. Mr. President, since the Senator from West Virginia is going to put in a quorum call, if we were just waiting for others—I am sorry. I did not realize there was somebody who was about to bring up an amendment.

Mr. President, I will not seek to have someone yield to me if there is an amendment. I think right now we would probably rather see the bill go forward.

Mr. BYRD. I thank the Senator. I yield the floor.

AMENDMENT NO. 53

(Purpose: To prohibit the obligation or expenditure of certain funds for Jordan)

Mr. NICKLES. Mr. President, I send an amendment to the desk on behalf of myself and Senator DECONCINI and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself and Mr. DECONCINI, proposes an amendment numbered 53.

Mr. NICKLES. 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 56, between lines 13 and 14, insert the following new section:

SEC. 502. PROHIBITION ON CERTAIN ASSISTANCE FOR JORDAN.

(a) PROHIBITION.—Except as otherwise provided in this section, none of the funds appropriated or otherwise made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, may be obligated or expended for assistance for Jordan except pursuant to appropriate congressional notification procedures.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) assistance for refugees; or

(2) assistance to finance the training or studies outside Jordan of students whose course of study or training program began before the date of enactment of this Act.

(c) WAIVER.—Notwithstanding subsection (a), funds appropriated or otherwise made available for fiscal year 1991 to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) may only be obligated or expended for Jordan if the President determines and certifies to the appropriate congressional committees that the Government of Jordan has taken steps to advance the peace process in the Middle East.

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

(1) the term "appropriate congressional committees" means the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives; and

(2) the term "appropriate congressional notification procedures" means—

(A) with respect to the Committees on Appropriations of the House of Representatives and of the Senate, the procedures of section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, and

(B) with respect to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961.

(e) REPEAL.—(1) The ninth proviso of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, is hereby repealed.

(2) Any other provision of law that earmarks economic or military assistance for Jordan shall have no force or effect upon the date of enactment of this Act.

Mr. NICKLES. Mr. President, the amendment which I am offering today is not the same amendment as was originally laid down in the CONGRESSIONAL RECORD, just for the information of my colleagues. The amendment I am offering today on behalf of myself and Senator DECONCINI basically would prohibit military and economic assistance to Jordan that was appropriated in 1991. That is the fiscal year that we are in right now. In 1991 we appropriated $20 million of military aid and $35 million of economic aid.

For the information of my colleagues I will tell you, after talking to the President, he said that he has now suspended that aid, so it has not gone forward and I compliment him for that suspension.

Mr. President, the language that we have before us right now would repeal that assistance unless the President certified to Congress, with respect to economic aid, that Jordan was making a good faith effort and positive contribution toward the peace process in the Middle East. If he made that certification to Congress, then the economic assistance could go forward.

Also, pertaining to the military assistance, the amendment that I have introduced would repeal the military assistance, $20 million that we appropriated last year. It would allow the President the authority though, if he wished to make for some reason—and I personally would hope that he would not—but if he wished to go forward with the $20 million of military aid, he could notify the Congress as he does through the reprogramming process, notify the two appropriate committees in both the House and the Senate, the Appropriations and the Foreign Relations Committees, and that money could go forward as well. As I stated, I hope not. I hope that we do not have any military assistance going forward to Jordan because of their past actions in the Persian Gulf war.

Mr. President, I personally have been offended, I think the Senate has been offended, and I think this country has been offended by the actions that Jordan has taken. We have given Jordan, over the past 40 years, billions of dollars of economic and military assistance. In return, Jordan actively opposed the United States and our coalition partners; they opposed all U.N. resolutions that pertained to Iraq; they provided political and moral support to Saddam Hussein. And I will mention some of the quotes that King Hussein

of Jordan made in relationship to the war and to the United States and our effort. I am offended. I think all Americans have been offended by those comments.

They attacked our motives. They attacked our actions. Basically the King said the United States was destroying the Iraqi people and, of course, we all know that was not the case.

Mr. President, I might mention as well that I and 16 of our colleagues made a recent trip to Saudi Arabia and to Kuwait and also into Iraq. We saw a lot of boxes that contained ammunition that came from Jordan. Jordanian arms were used against American soldiers. And Jordanian rhetoric was used against the alliance.

Mr. President, I think we have to speak out. I think we are obliged to speak out. It is Congress' responsibility to appropriate money. This is a case where we have appropriated some money that I personally wish that we had not. I happen to serve on the Foreign Operations Appropriations Subcommittee that appropriated $55 million for Jordanian assistance. And what did we get in return? We got more than a slap in the face. We got Jordanian assistance to Iraq verbally, morally, and materially. We had opposition from Jordan almost every step of the way in our efforts not only to liberate Kuwait but also to restore the Persian Gulf area to peace and normalcy in the world today.

Mr. LEAHY. Mr. President, I wonder if the Senator might yield for a couple of questions.

The PRESIDING OFFICER. Will the Senator yield?

Mr. NICKLES. I will be happy to yield.

Mr. LEAHY. Mr. President, I agree with the Senator that Jordan committed real fault in siding with Saddam Hussein in the war. I feel, as I believe most Senators do, that Jordan has no claim on our economic or military aid as a result of that. Especially considering past history and the amount of our aid they have received, I think it would be wrong for them to expect now, based on what they have done, that they have some claim on American economic or military aid.

Indeed, as chairman of the Foreign Operations Subcommittee, I will oppose such a claim. I think President Bush has been absolutely right in suspending economic and military aid. I ask the Senator from Oklahoma if my understanding is correct that since February 6, the President has cut off all aid except for humanitarian aid?

Mr. NICKLES. The Senator is correct.

(Mr. KOHL assumed the chair.)

Mr. LEAHY. And, again, I think President Bush is right. I think he has used appropriate and commendable discretion. I commend the President for doing it.

As I understand from talking with the administration, the President has retained the ability to give refugee aid, disaster assistance, and food aid because of the enormous number of refugees that are going into Jordan.

I believe what the administration has done is shown what is basically the humanitarian nature of the United States, that we do not cut off refugees. That is an entirely different situation than economic and military aid. I would assume the Senator from Oklahoma agrees with the President, with me and others that that is an appropriate gesture?

Mr. NICKLES. The Senator is correct. Actually in our amendment we exempt refugee assistance and we do not touch any agriculture or food assistance going into Jordan.

Mr. LEAHY. I also understand the amendment repeals the fiscal year 1990 earmarks?

Mr. NICKLES. The Senator is correct.

Mr. LEAHY. I think that is appropriate, too. Because if we did not repeal those earmarks the irony is, no matter now President Bush felt about this and no matter how the American people felt about Jordan's action, he would still have to send the fiscal 1990 economic and military aid. So I think that is an appropriate thing.

I also understand that the President, if he felt it was necessary to resume U.S. aid should there be a sudden shift in Jordan's policy, he could do that through the normal notification procedure, through the appropriate authorizing and appropriating committees. Is that also correct?

Mr. NICKLES. The Senator is correct.

Mr. LEAHY. This amendment actually has the benefit of giving the President the flexibility and the foreign policy tools that he needs, carrying out policy in a way that I think reflects the views of the vast majority of both Democrats and Republicans in the Congress. I think it is a good amendment. I think it ought to be accepted.

Mr. NICKLES. I thank my friend and colleague from Vermont. I also appreciate his assistance with this amendment, that of his staff and also Senator KASTEN and his staff for their cooperation. We also had, as the Senator I am sure is aware, some cooperation from the State Department trying to craft this.

Mr. President, it is not our intention to handicap or tie the hands of the President in any way whatsoever. We have given the President flexibility in this amendment. It is my desire and intent to cut off any military assistance for Jordan but we have also given the President flexibility, if it is deemed in the interests of the United States, if he thinks Jordan is making a good-faith effort and a positive contribution toward the Middle East peace process, he can come back to Congress and ask for approval from those committees and receive assistance and basically go through the notification process, which is standard. That is on the military side.

The President is also given flexibility on economic assistance. He can certify to Congress that he thinks Jordan is making a positive contribution toward the peace process and go ahead and release the economic assistance. That is $35 million on the economic assistance and $20 million on the military assistance.

Also, so my colleagues will know, the amendment I originally drafted would have banned all military assistance that is in the pipeline. We have several years of military assistance that has not been totally spent. We did not touch that. You have to abrogate contracts. My original amendment would have done that. That was originally my preference. Again we are trying to give some flexibility to the President but also at the same time send a very strong signal that we do not turn around and just keep giving money to governments that turn around and blast the United States day after day, in their home country, in their home region, but also in the United Nations.

King Hussein, and I have met him, is a very personable fellow. He has married a very lovely American. We have had him as a guest of the Senate a few times, in my 11 years in the Senate. He is an articulate spokesman for his country.

Most of us would like to consider ourselves friends of King Hussein. But I think we have to look at the current situation and say, wait a minute, has his remarks, has his voting record, has his stance on the Persian Gulf crisis been deserving of continued American taxpayer generosity; and I say no.

As a matter of fact, the King's statements have been very unhelpful toward solving this problem. They have generated strife and animosity. They generated hatred. Instead of trying to cool the hatred and the passions and the unrest in the Middle East, in many cases the King's statements have done just the opposite.

Mr. President, I have a copy of King Hussein's speech and I will have that printed in the RECORD. But I will just highlight a couple of his comments which bothered this Senator and I would expect would bother all Senators.

I quote one section of it. It says, quoting King Hussein:

> The alternative to a cease-fire is the destruction of Arabs and Muslims—their humiliation, their exploitation, the trampling of their honor, pride, and legitimate hopes, and hatred and strife between the nations.

Talking about the Iraqis:

> To them, while we send our love and our pride as they defend us all and raise the banner that says, "God is great," the banner of

Arabs and Islam, we salute Iraq and its heroic army, its steadfast people, its glorious women, its brave children, and its aged, who are confronting with faith the bombers, the battleship, and tons of explosives.

He goes on, and I will continue reading.

He is talking about the war

It is also aimed at Iraq's right to a life of freedom and dignity and its determination to fulfill its historic, cultural and human role which started in Babylon, Baghdad and Basra, and which contributed to human civilization, scientific progress and culture. * * *

Fire rains down upon the Iraqis. Fire rains down upon Iraq from airplanes, from battleships, from submarines and rockets, destroying mosques, churches, schools, museums, hospitals, powdered milk factories, residential areas, bedouin tents, electricity-generating stations and water networks. These bombings started from the first hours and took the form of a war that aims to destroy all the achievements of Iraq and return it to primative life by using the latest technology of destruction.

Mr. President, I could go on and on. His speech is a 6-page speech. I am not going to repeat it. But I look at the record and I see where the United States taxpayers have given Jordan $3.5 billion over the last 40 years. Militarily, we have given Jordan $1,649,000,000.

What did we get in return for all of our generosity for the last 40 years? We had the King of Jordan saying that we were bombing mosques—that is not true; that we were bombing churches—that is not true; that we are bombing residential areas—that is not true; that we are trying to destroy the Iraqi people—that is not true. Our military went to great lengths to preserve the Iraqi people, to safeguard the residential areas, to safeguard the mosques, to safeguard civilian areas. And they achieved that with remarkable success. I compliment our military for their job, which was extremely well done.

Mr. President, I know my colleague from Arizona is temporarily detained but he wishes to speak on this, as I believe other Senators do as well. I am hopeful that we will have administration support for this amendment.

At one time, I will tell the chairman of the Appropriations Committee, we believed that the State Department would support this language. We now understand that maybe they do not. I am not sure, so I will leave that.

Maybe it is yet to be determined whether the administration will sign off on this language. Again, I will restate this Senator's goal. I am not trying to be critical of the administration in any way. I am trying to speak out as a Member of the Senate and a person on the Appropriations Committee, on the Foreign Operations Subcommittee, to say that we should not continue military assistance to Jordan.

This amendment would repeal that military assistance unless the President determined it was in the best interests of the United States. Then he could submit to the appropriate committees for that spending.

Mr. President, I am aware that other of my colleagues wish to speak on this. I ask unanimous consent to print in the RECORD King Hussein's speech.

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

REMARKS BY KING HUSSEIN OF JORDAN, FEBRUARY 6, 1991

(King Hussein's comments are made through an interpreter.)

King HUSSEIN: You who are concerned for the present as well as the future generations of your nation, I greet every one of you with all affection.

I choose to address you at this very difficult moment, motivated by Arab honor and religious duty. I address you on the eve of the fourth week of this savage and large-scale war which was imposed on brotherly Iraq and which is aimed at Iraq's existence, its role, its progress and its vitality. It is also aimed at Iraq's right to a life of freedom and dignity and its determination to fulfill its historic, cultural and human role which started in Babylon, Baghdad and Basra and which contributed to human civilization, scientific progress and culture.

Iraq, fellow Arabs and Muslims, now pays the price in pure and noble blood of belonging to its nation. Iraq had always hastened without hesitation to make sacrifices in all the battles which the Arabs fought or which were forced upon them in defense of Arab land in Palestine, Syria, Egypt and Jordan. Arab blood was always dear to Iraq. And shouldn't the blood of Iraqi men, women and children—shouldn't the blood of Iraqi men, women and children be dear to us?

How shamed will be the Arabs who let Arab blood be spilt in this unjust war. The world had known cruel wars, but never one like this that is waged against Iraq and the likes of which may never happen again.

The armies of the biggest and most powerful nations have gathered and unleashed their modern and dangerous weapons on the land, in the sea and in the sky. These weapons had originally been arrayed by the present international military alliance against an opposing alliance led by another super power. They are all now arrayed against the Baghdad of Haroun Al Rashid, the Basra of Islamic Studies and Poetry, the Kufa of Ali, may God's peace be upon him, the Holy Najaf, Karbala, Ad Diwaniyeh, Mosul, Kerkou and every Iraqi city and village.

Fire rains down upon the Iraqis. Fire rains down upon Iraq from airplanes, from battleships, from submarines and rockets destroying mosques, churches, schools, museums, hospitals, powdered milk factories, residential areas, bedouin tents, electricity-generating stations and water networks. These bombings started from the first hours and took the form of a war that aims to destroy all the achievements of Iraq and return it to primitive life by using the latest technology of destruction.

The first victims of this war were justice, righteousness and peace. Its first casualties were the aspirations of all humanity since the end of the Second World War, hoping that that war would be the last human tragedy and that man would no longer be killer or victim.

All the hopes of our nation and the world, the world community, were thwarted the day the land of Iraq was turned into the arena of the Third World War.

Brother citizens, brother Arabs, brother Muslims, the irony of this war is that it is waged under the cloak of international legitimacy and in the name of the United Nations, which was created to preserve peace—to preserve peace, security and justice, and to resolve disputes through dialogue, negotiations and diplomacy.

If this is an example of the further role of the United Nations and the new world order, what an ominous future lies before all nations. What international legitimacy will there be to protect the less powerful against the most powerful who seek to subjugate them, humiliate them, kill them and disturb all their rights that were granted by God and protected by charter of the United Nations?

We now realize fully the real reason why we, the Arabs, were deprived of our right to solve our problems and why the United Nations was prevented from fulfilling its role, and why the doors were shut against any sincere political attempt to resolve the Gulf crisis.

It is claimed that every—that every possible—it is claimed that every effort possible was made to solve the crisis during the five months before the war. This is not true. If the effort that was spent in preparing for the war had been devoted to the quest for a peaceful settlement, this disaster would not have taken place.

Moreover, the ongoing war with its destructive outcome is incompatible with the humanitarian objectives of the United Nations resolutions which were adopted to restore peace and security to the Gulf region.

By contrast, the Arab-Israeli conflict remained far from any honest and real attempt to resolve it justly. The Arab Palestinian people and the Arab nation still await the implementation of a single United Nations resolution which rejects Israeli occupation and calls for an end to it.

Twenty-four years have passed since the occupation of the West Bank, Gaza and the Golan Heights, and nine years have passed since the occupation of South Lebanon. But none of our hopes were fulfilled. Nevertheless, we did not despair of the United Nations. The major powers persisted in assuring us that a peaceful solution was possible.

As regards to the Gulf crisis, the Arab parties concerned chose from the beginning to reject any political Arab dialogue with Iraq and to block any attempt that could prevent the internationalization of the crisis and its resolution by directly dealing with all its causes and results.

All the good officers of Jordan and others who are concerned for the future of our nation were aborted. Why? Because the real purpose behind this destructive war, as proven by its scope and as attested—attested to by the declarations of the parties, is to destroy Iraq and rearrange the area in a manner far more dangerous to our nation's present and future than the Sykes-Picot Agreement. This arrangement would put the nation, its aspirations and its resources under direct foreign hegemony and would shred all ties between its parts, thus further weakening and fragmenting it.

The talk about a new world order whose early feature is the destruction of Iraq and the persistence of this talk as the war continues lead us to wonder about the identity of this order and instill in us doubts regarding its nature. The new world order to which we aspire holds all people equal in their right to freedom, progress and prosperity. It deals with their causes, with the same standards

and under the same principles, regardless of any consideration or influence.

The required new order would not mete out injustice to any one nation. It would not discriminate between nations, but draw them together within the framework of mutual respect and fruitful cooperation for the benefit of our planet and all people on it. It must be an order that believes in public freedom and protects private freedoms, respects human rights, and strengthens the principles of democracy. It should not deny the Arab people their right to all this.

The nature of the military alliance against Iraq betrays its near- and long-term objectives. For when Israel supports this alliance, when two countries, one Arab and the other Islamic, both of which have normal political relations with Israel, whose leaders compete for prominence in this alliance and reiterate their desire and enthusiasm for the destruction of Iraq, it becomes easy to realize that this war is a war against all Arabs and Muslims, not only against Iraq.

When Arab and Islamic lands are offered as bases for the allied armies from which to launch attacks to destroy Arab-Muslim Iraq, when Arab money is financing this war with unprecedented generosity unknown to us and our Palestinian brothers while we shoulder our national responsibilities, when this takes place, I say that any Arab or Muslim can realize the magnitude of this crime committed against his religion and his nation.

Proper citizens, from the very beginning, we have shouldered our responsibilities to the Arab nation and Islam as well as towards international peace and security. We have made every effort to fulfill these responsibilities. We are not hurt because our rewards have been successive punishments to our country and people. It has become clear to the world that these punishments are the price which we must pay because we tried to avert the disaster which was planned and premeditated in the dark.

As a new form of punishment, there are now attempts to deprive us of our basic needs, even oil as a new form of punishment and one of the most severe, for no other reason than our principal stand. It is because we are not party to the conflict nor part of the alliance and willing to dance to the tune others play with no will of our own, no right, and no ability to express our free opinion. We would not forsake this right because it is equal in importance to our human right to breathe air that is not yet rationed.

Nevertheless, Jordan's leadership and people will remain firm in their position and belief that the opportunity for peace still exists, recourse to peace remains less costly and would reflect more truly the commitment to principles and values than the continuation of this devastating war.

The voices of millions can be heard in every country, including those of the alliance. The all call for peace and an end to the killing of children, the destruction of homes, and the withholding of medicine from the sick. I know just as you do that against these voices stand political and military leaders, alas with Arabs in their forefront, calling for the continuation of this war. Which voices will win in the end? The voices of reason, peace and justice? Or the voices of war, hatred, and insanity?

We and other brothers who have made a loud call to stop military action and open the way for diplomatic political action to resolve this problem, but the call fell on deaf ears. Many a time before the war had started, we warned against its effects, the deep wounds which it would open and its repercussions which would grow and include human, economic, and ecological tragedies. We warned that war is a measure of last resort launched only after all efforts to avert it have been exhausted. Our calls and warnings were in vain.

Justice will be victorious, God willing, brothers. Our nation will prevail, because, through its victory, humanity will prevail against its enemies. Life will prevail over death. Love among the nations will prevail over hatred. It will become clear to all those who gambled that our nation would be divided like its leaders, that it is a dead nation, they will be proven wrong. Our nation will remain, God willling, a strong, proud, and vibrant nation.

"These, your people, are one people, and I am your God, so worship me." (Interpreter says something in Arabic.)

Let us have fear of God and remember that. If this situation continues, it will only benefit those who covet our lands and resources with Israel at their forefront.

There are already signs that the spoils are being divided—there are already signs that the spoils of—the spoils are being divided. We hear and read every day of plans to control our resources, limit our freedom of decision, strangle our aspirations, and usurp our rights. We cannot imagine that this solution would fulfill the legitimate national rights of the Palestinian people on their national soil.

This is a call from a Hashemite Arab to all honest Arab and Muslim leaders. Let us join our efforts to stop this catastrophe and save the people of Iraq from the fate that is planned for them. Let us save our nation from the plans that are designed for it. Let us bring this war to an end.

The starting point in this—this immediate and serious work to make the alliance accept a cease-fire in preparation for a responsible dialogue between the antagonists, an Iraqi-American dialogue and an Arab-Arab dialogue that resorts to reason and balance international interests—balance interests against international legitimacy, the legitimacy of security, peace, justice, and equality.

By destroying Iraq, this war has exceeded the limits set by the United Nations in its resolutions. This is confirmed by the declarations of the alliance leaders, so where is the United Nations now? The alternative to a cease-fire is the destruction of Arabs and Muslims—their humiliation, their exploitation, the trampling of their honor, pride, and legitimate hopes, and hatred and strife between nations.

We in Jordan will stay the Arabs of all Arabs, the noblest of the noble, the men of all men. We shall always stay united, army and people alert to defend our country. If the fight is forced upon us, we shall be up to it and gain one of God's two favors: victory or martyrdom. Our hearts are full of faith, and we thank God for everything.

From Amman of the Arabs, I send to our people in Palestine our great pride in them, in their steadfastness, in their resilience against their suffering, where a whole nation is under house arrest, without work, without a source of earning, without medicine. But it is a nation that believes in God and stands fast by the Akhsa Mosque and the Church of the Holy Sepulchre.

As for our people in Iraq, what words can describe the great courage and pride, the tenancy—sorry, the tenacity and the ability to face 28 allied countries, 28 armies, headed by the largest, most powerful, and best-armed army of the world? To them, while we send our love and our pride as they defend us all and raise the banner that says, "God is great," the banner of Arabs and Islam, we salute Iraq and its heroic army, its steadfast people, its glorious women, its brave children, and its aged, who are confronting with faith the bombers, the battleships, and tons of explosives.

We send a special salute to this—His Holiness Pope John Paul II for his prayers and continuous calls for peace in the Middle East, and to all people and international figures after—who decry war and call for peace. A salute of pride to all our Arab and Western brothers on the five continents who came out from the first—the first moments of war to make a stand for life and peace against death, destruction, and aggression.

I pay a special debt of thanks to all those who search for truth and who work to spread it, because they respect and care for truth, to all the newsmen, academicians, and politicians who live among us and do their duty in honesty and professionalism.

"Also, the conferrings together are devoid of good except such—except such as enjoin charity or the promotion of public welfare or the public peace, and on him who strives after these, seeking the gratification of God, shall we soon bestow a great reward," from the Koran, make up—(interrupted by announcer)—

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

Mr. BYRD. Mr. President, will the Senator withhold that suggestion?

Mr. NICKLES. Certainly.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order.

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

RENEGOTIATING THEIR PLEDGE

Mr. BYRD. Mr. President, it has come to my attention that even as we are considering the supplemental appropriations bills for the cost of Operations Desert Shield/Desert Storm, reports are emerging suggesting that Germany may ask to renegotiate its pledge of $6.6 billion because that government believes the cost of the war will be less than the total pledge to the United States.

I tried to make it clear in my statement yesterday—and I will emphasize it again now—that the $42.6 billion that we are appropriating in H.R. 1282 does not nearly cover the cost of this war. As I said yesterday, these numbers do not show the hundreds of billions of dollars that the United States has spent maintaining a military establishment capable—capable—of acting as our Military Establishment did act to protect the interests of the free world. Nor do these numbers explain that building and maintaining that military capability has diverted billions of scarce dollars away from vital domestic needs, such as education, infrastructure, and health care.

Beyond the hidden cost of the war, these appropriations bills do not even fully cover the incremental cost of the war. The Department of Defense has not yet calculated the cost of combat.

And although H.R. 1282 attempts to cover some of those costs, it may be months before we have a final figure. There will also be additional costs associated with our withdrawal from the region, costs that are still only rough estimates and will undoubtedly add to the total. If we end up maintaining a long-term presence in the area—I hope we will not do so—the costs will go still higher.

We are not out of the woods yet. A formal cease-fire has not been achieved. We have no assurance that there may not be a reignition, even though it may be small, of the conflagration.

I cannot understand how Germany, a nation that we have defended with hundreds of thousands of United States troops for the last 45 years, could consider reneging on its promise of support to the United States or that it could consider asking that its commitment be renegotiated. Germany, which relies virtually 100 percent on imported oil had far more at risk in the Persian Gulf than the United States had at risk. Yet, now that we have made the sacrifices, we hear reports that they want to renegotiate even their small commitment.

Reports indicate that this effort is being initiated by the opposition party in Germany. I hope that the German Government understands that breaking their promise would be a very unwise decision for the future of United States-German relations, and I hope Chancellor Kohl will not bow to that political pressure. It does not look very good for the German Government to be indicating that it wishes to renegotiate the commitment that it has made. We have worked very hard to structure the $15 billion in the appropriations in such a way as to make it the last resort for the Defense Department.

Mr. CHAFEE. Mr. President, I wonder if the distinguished chairman might yield for a question on that subject?

Mr. BYRD. Yes.

Mr. CHAFEE. I understand you are expressing dismay at some of the reports that have come out of Germany that they might wish to, in effect, renege on the commitments they have made.

Mr. BYRD. Yes. These are reports. I cannot vouch for them.

Mr. CHAFEE. I think it is fair to point out, as I understand it, that these statements were not made by the Government of Germany. These statements were made, as I understand it, by a member of a minority party that is not in the government. Am I correct in that?

Mr. BYRD. I am not sure.

Mr. CHAFEE. That is my understanding. The Secretary of State yesterday addressed that point when it was raised, when he met with a group of us. That very question was asked, and he strongly stated that those statements that have come out of Germany are from a minority party and in no way represent the position of the Government.

So I think it is fair to point that out—and I know the distinguished chairman was not suggesting this is from the government—I think it is not Chancellor Kohl or his government that is making these statements.

Mr. BYRD. I do not think it is Chancellor Kohl. I am glad the distinguished Senator has put upon the record his understanding of the sources, and I hope that he is correct. I just feel that it is good to sound the alarm, as I sounded the alarm on yesterday, and I am glad to see someone is hearing this small voice from the hills of West Virginia.

Mr. CHAFEE. Mr. President, if I might ask the distinguished chairman, first of all, whatever the voice is, it is not a small one and, second, I think he is absolutely correct, and he speaks for all of us in the Senate when he says that we want these commitments observed, whether they are from Japan or Germany or from wherever.

The only reason I interrupted, if I might say, was merely to put the record straight, and the chairman himself pointed out that it was not from the government. There is a lot of difference; in other words, we can get some statements that emerge from A, B, or C in the U.S. Senate or wherever it might be, and it is not necessarily the position of the Government of the United States.

Mr. BYRD. I thank the distinguished Senator.

Mr. President, even though, as I said, it is not Chancellor Kohl, I am disturbed that these commitments are proving to be so slow in their fulfillment, almost across the board, or across the board, as I indicated on the chart yesterday. We are talking about commitments that are supposed to be paid by March 31, and March 31 is not very far off.

So I am rattling the cage a little bit perhaps, but I think it is for a good cause. I want the allies to know that just because the shooting war, hopefully, is over, that this should be no cause for them to feel that their commitments need not be paid.

If our Government were to renegotiate the commitment that has been made by the Germans—and, by the way, Germany is one of my favorite countries, let me say that. And the German people are one of my favorite people, not that that makes any difference here. But if that pledge were to be renegotiated, other contributors would be close behind, and that $15 billion would be gone in the blink of an eye, $15 billion that the American taxpayers are paying through this legislation. As costs continue to accumulate, the United States would end up paying far more than the $15 billion and would end up carrying the bulk of the immediate financial burden, as well as the bulk of the long-term costs.

This would be unacceptable and I hope that the administration will continue to press our allies for prompt payment of the entire amount of their pledges.

So my comments, Mr. President, are not only for the benefit hopefully of the Germans and the other countries that have made these commitments, but also I hope it will not go unnoticed in the halls and corridors of the administration downtown. It is good that the administration might realize that the elected representatives of the people on the Hill are behind them, pushing them, trying to give them strength in their persistence in having the commitments fulfilled.

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS

The Senate continued with the consideration of the bill.

Mr. SIMON addressed the Chair.

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

Mr. SIMON. I will be very brief, I say to my colleague from Rhode Island.

I came over really wanting to take a look at the Nickles-DeConcini amendment, having read a summary that indicated there was very little flexibility. In fact, the Senator does offer flexibility. He says that if the President determines and certifies to the appropriate congressional committees that the Government of Jordan is taking steps to advance the peace process in the Middle East, then aid can continue. He also permits refugee assistance or training for people. So it does seem to me this is not a rigid amendment; it is one that sends a message that I think should be sent.

I came over here thinking I was going to oppose the amendment, I say to my colleague from Oklahoma, but I think it is a good amendment and I am pleased to join in supporting it.

Mr. NICKLES. Mr. President, I wish to thank my colleagues. I will tell the Senator from Illinois our original amendment was more stringent. It did not give the President any amount of flexibility.

After talking to the President and to the Secretary of State, who said, "Give us as much flexibility as possible; do not tie our hands; this is a volatile area," I agreed with them. That is the reason we have added the flexibility both on the economic side and on the reprogramming possibility on the military assistance side.

I appreciate the willingness of my colleague to support this amendment.

Mr. SIMON. I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to address the amendment offered by the distinguished Senator from Oklahoma, for whom I have great respect.

First of all, let us just lay the groundwork. All of us share the dismay at the anti-American and the pro-Iraqi statements made by King Hussein of Jordan. That is a given. All of us were deeply disappointed that an old and trusted friend with whom we have had close relationships over so many, many years, namely King Hussein, should turn his back on our country. So I can understand the frustration Senators feel over the conduct of both the King and his country in so openly embracing Saddam Hussein during the recent conflict.

Also, I think we have to recognize that King Hussein has his problems. This does not justify his actions, but I think we might as well recognize the situation he faces in a country that has 60 percent Palestinians in it, with a population that overwhelmingly supported what Saddam Hussein was doing because of his stated objective, false though it was, that he was out to liberate Palestine and provide a homeland for Palestinians. That clearly was not his principal objective. He did not go into Kuwait to liberate Palestine or Palestinians. He went in to seize a helpless country. But, nonetheless, that was what he was saying publicly.

Now the fighting is over and we have to look toward how we can win the peace, and who so successfully guided us through the intricate diplomatic minefield that existed in trying to put the coalition together? It was the President of the United States. To its credit, Congress stayed out of it. We did not try to micromanage what the President was doing when he was making contact with a person that most of us despised, namely the President of Syria.

The President of the United States went to Syria. He went to Egypt. He negotiated with an extraordinary combination of nations to form a coalition that was so successful. Now that it is over, on this appropriations bill we find the Senate getting back into the act, doing just what the President asked us not to do in that magnificent speech he gave to the joint session about 2½ weeks ago.

In that speech the President said, please, please, Members of the House, Members of the Senate, do not micromanage our efforts. Do not put restraints here and there. We will report to you. We will tell you what we are trying to do. And, indeed, the President has.

I see those who have had more time here than I. For instance, the distinguished chairman of the Appropriations Committee I think would agree with me that never has there been such complete briefings and effort to keep the Congress, and namely the Senate, with which we are more familiar, posted and apprised of what we were trying to do in the Persian Gulf. Could I say that fairly, I ask the distinguished chairman of the Appropriations Committee?

Mr. BYRD. Mr. President, if the Senator will yield, I am no longer the majority leader, no longer the minority leader of the Senate. I cannot answer that question really authoritatively. But, as I understand it, our leadership was kept fairly well abreast of the goings on. But only the majority leader and minority leader and others who were in those conditions can really answer that question.

Mr. CHAFEE. Mr. President, in the period I have been here, we have had nothing compared to meeting with the Chairman of the Joint Chiefs, General Powell, meeting with the Secretary of Defense; when the Secretary of State was available, which was not often, because he was so tied up, he also kept us apprised. Now that we have won the victory, once again there is an attempt for, regrettably, this Senate to insert itself.

Those who sponsor the amendment will say, well, it is not that bad; as far as the economic assistance, it really is not that painful. All the President has to do is to submit a reprogramming, and it comes back to the respective committees. If the respective committees do not deny it, the President can go ahead.

Mr. President, I do not know why we have to do this. I think one of our distinguished Members said yesterday one of the reasons we won the war was Congress stayed out of it. Well, that may be an exaggeration, but it stresses a point.

That is, let us not get into trying to micromanage the affairs of this country. The President of the United States has said, and so has his Secretary of State, that he is going to devote full effort to try to solve this seemingly intractable problem in the Middle East, to try to do something to get a permanent peace.

The issue here is not who is more angered with the conduct of King Hussein and Jordan. The issue is "How best can we foster a permanent peace in the Middle East?"

Secretaries of State and administration after administration have broken their necks on trying to solve that problem. Our President has said he is going to do it; he is going to try. He does not promise that he is going to succeed, but he is going to try. What more can we ask for? All he says is, "Give me the tools so I can do the job."

If this amendment should be approved, we are restricting the tools that the President can work with. He has to work. Whom has he to work with? He has to work with Syria, Egypt; he has to work with Israel and Jordan; he has to work with all of those countries out there.

To do that, let us have some confidence in him and his officials, those who are in his administration, such as our distinguished Secretary of State. They have a proven track record of success. What I way is let us give them a chance. Let us not restrict him; no matter whether those who support this amendment say it is not that, the administration is opposed to it.

The administration will send up a letter later today, as soon as the President, who is currently busy right at this particular moment greeting foreign dignitaries—they will send up a letter saying the President is against this amendment. So I hope that my colleagues will back off from this.

If we vote against it, it does not mean we approve of what King Hussein did. Of course, we do not. It does not mean we approve of what his country did. Of course, we do not. We have to move ahead. The best way is to have confidence in our President, who guided us so successfully through this intricate diplomatic situation and brought us to the home port safely.

I thank the Chair.

Mr. SPECTER addressed the Chair.

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

Mr. SPECTER. Mr. President, I had come to the floor this morning to oppose the amendment of the distinguished Senator from Oklahoma [Mr. NICKLES] because of my view that we do not have a sufficient record, sufficient factual materials, at this time to restrict foreign aid to Jordan.

I say that because we have not yet had an opportunity to determine what will happen if the government of King Hussein of Jordan is undermined. It may well be that the government we know is the lesser of two evils. We simply do not know.

I share the concern that I think is almost unanimous, if not unanimous, in this body, of great disappointment in the position Jordan took relative to the gulf war. It seems to this Senator incomprehensible that King Hussein and Jordan would side with Saddam Hussein and Iraq.

The first instinct is to say to Jordan, "We are not going to continue to provide financial aid in any respect." The concerns which arise after that first instinctive reaction is what will happen if U.S. aid is not given? Will it destabilize King Hussein's government? Will it cause someone to come into power in Jordan who will be more antithetical to United States interests than is King Hussein?

These are questions to which this Senator does not know the answers at this moment. I agree with what the distinguished Senator from Rhode Island has said about not putting restraints on the hands of the President,

who is in a better position to evaluate these questions.

Yesterday at the Republican caucus, we heard informally from Secretary of State Baker who has done an outstanding job. Secretary Baker's request was to leave the administration unfettered for the moment.

I respectfully disagree with my distinguished colleague from Rhode Island when he characterizes this amendment as micromanagement. I do not think it is. The Congress of the United States has the responsibility to decide the issues of foreign aid.

I have served for 11 years now on the Appropriations Subcommittee on Foreign Operations. Each year we hold extensive hearings to determine whether we ought to give foreign aid to a wide variety of countries. I do not consider that micromanagement. I consider that a very important role of the U.S. Senate.

Anybody who has open house town meetings in the United States, certainly in Pennsylvania, knows how unpopular foreign aid is. We vote for foreign aid because it is in the national self-interest of the United States to do so; it is not a humanitarian gift. It is not feeding starving people somewhere. We do that because it is in our national self-interest. That is a congressional determination after advice from the executive branch. Of course, the President has to sign the bill. So I think this is a very important congressional function to examine carefully the provision of aid.

Even after talking to my colleague from Oklahoma, I am not quite sure where this amendment ends up, frankly. It is probable that the President of the United States has the authority now to withhold foreign aid to Jordan if the President decides to do so. We have seen the executive branch withhold many expenditures which have been approved by Congress in legislation, and signed by the President.

If they do not want to spend the money for the V-22 Osprey, they do not spend it. If they do not want to spend the money for the service life extension program of aircraft carriers at the Philadelphia Navy Yard, they do not spend the money. There is a constant congressional-executive battle, or at least tension over what money is going to be spent.

The distinguished Senator from Oklahoma has modified his amendment to give the President discretion to spend this money if the President concludes that Jordan has been helping the peace process. It may be that the President does not want to make that kind of a statement. He may want to hold up the foreign aid without making a statement that Jordan has been helpful or not helpful in the peace process.

Maybe there ought to be a restriction that at least the President has to find that Jordan has been helpful in the peace process to try to put some pressure on Jordan. It is not easy in the Senate Chamber to figure out what is going on in Jordan. Aside from the concern which I have expressed about who King Hussein's replacement might be, I would like to know more about the specific pressures that King Hussein was under in the course of the past several months. It has been reported in the press that King Hussein has written to the President.

I do know that for many years, King Hussein has been a regular visitor at the U.S. Senate, has addressed large groups of Senators and has responded to our questions.

Many of us, including this Senator, have had occasion to visit King Hussein in Amman, and have admired the work which he has done in the past, at least until the gulf war.

But where I come out on this amendment, Mr. President, is with an unwillingness as of this moment to second-guess what the President and the Secretary of State want to do right now. I want to know more about the status of internal events and affairs in Jordan, as to what is likely to happen there.

But I do say this: I cannot see any reason to give Jordan military aid under any circumstances. Economic aid may be of help in maintaining a stable Jordan, which may be in the best interests of the United States. Not so military aid.

If military aid were separated from economic aid, my response to this amendment might be entirely different.

I remember that in a Saturday morning news conference which King Hussein had during the course of the gulf war, he was threatening Israel not to send airplanes over Jordanian airspace in retaliation for the Scud missile attacks coming into Tel Aviv and other parts of Israel. At the same time, however, missiles were being fired by Iraq over Jordanian airspace.

It may be that King Hussein could not intercept those missiles, and it may be that King Hussein could not say to Iraq, "Stop it," for fear of retaliation.

But he certainly could have at least protested in some way to acknowledge the impropriety of Iraq sending missiles over Jordanian air space. Or, at least have the common decency to say that if Iraq is going to violate Jordan's air space, then so could Israel. I listened to that news conference in wonderment as to what King Hussein was doing and why he was doing it.

Military aid to Jordan, to this Senator, is inexplicable at this time, unless that aid is going to be designed to stop an insurrection within Jordan. Even if that is the purpose, I have great reservations about it. If military aid is sent to arm King Hussein and Jordan so they can take a course, as they did in this past gulf war, contrary to United States interests, then I do not think it is a wise course to follow. So my instinct, Mr. President, is not to do anything now that is going to impede Executive decisions, until this Congress knows a good deal more about this subject to be in a position to exercise our judgment based on a knowledge as to what the consequences would be in terms of destabilizing Jordan, and what the effect might be if King Hussein is not in power.

There have been some comments on another subject, which I would like to address briefly. That is on the subject of payments by other nations for the gulf war. We had extensive hearings in the Appropriations Committee several weeks ago on this subject and, at that time, this Senator expressed dissatisfaction with the fact that only $53.5 billion had been pledged by other countries to pay for the war, and that such a small sum of money had been actually collected. At that time, there was a footnote on the Executive papers as to the $9 billion commitment by Japan, which had not yet been approved by the Diet of Japan.

It is my view, Mr. President, that the United States has not done enough to collect in advance the pledges from Saudi Arabia, from Kuwait, and from the other Gulf States when we have saved those countries. It has been hard to comprehend why it was necessary for Secretary of Defense Cheney to spend 14 hours persuading the king of Saudi Arabia that the United States ought to be able to go there and defend Saudi Arabia. So it is understandable if we could not get cash on the barrelhead to pay the costs in advance, that we went ahead and defended Saudi Arabia and liberated Kuwait, even without having the cash in hand. But that would have been the preferable course. When Kuwait responded that Kuwait could not sell securities and pay cash to the United States because it would depress the market, there was an easy answer to that. We will take an assignment of their securities, and we will hold them. That would be cash in hand for the United States.

When you look at how much cash the United States received in hand from Saudi Arabia and from Kuwait, it is just not sufficient. We are dealing with two countries there where the oil reserves are in enormous figures. Kuwait is reputed to have 100 billion barrels of oil reserve. Saudi Arabia's figures are much in excess of that. The United States sacrificed life and limb. Why should we have to give dollars as well? Those countries ought to be paying for the cost of the war, as well as the other Gulf States, such as Oman and Bahrain.

There is the issue of reparations from Iraq, which ought not to be overlooked, Mr. President. There was tremendous cost to the United States and its coalition partners, not to mention the cost

to Israel, which was attacked in the atrocious fashion, with Scuds going into civilian populations without any military purpose.

In addition, there is the issue of what Japan is doing. I think their commitment at the present time is insufficient. As well, I think the German commitment is insufficient. When there are rumblings coming out of Germany that they are not going to honor their commitment, that is the predecessor of something more formal coming.

I think the comments made on the Senate floor do have a significant impact on the governments who hear what we Senators are saying, and there has been talk about trade sanctions against Japan, if they do not come forward, and there are concerns expressed as to what Germany is doing. Those other governments, and the Governments of Saudi Arabia and Kuwait, hear our expressions on this floor, as will King Hussein. King Hussein will be listening to what Senator NICKLES and Senator CHAFEE and the rest of us have to say, evaluating where this body is going to be at some point in the future.

I want to register, as loudly and as clearly as I can, my dissatisfaction with what the Gulf States, including Kuwait and Saudi Arabia, and Germany and Japan are doing by way of bearing the cost of the gulf war so that our own executive branch will know that Senators, and this Senator especially, are going to weigh very carefully the intensity with which we collect pledges of financial contributions to the war effort.

I thank the Chair and yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I want to briefly state what this debate is about and what it is not about. The issue before us is not who is most angered with King Hussein and the conduct of Jordan. The issue is: How best can we foster a permanent peace in the Middle East? That is the subject before us. We are all upset with King Hussein and the conduct of Jordan. That is a given. But now what can we do to foster a permanent peace in that area?

As I mentioned before, we all applauded when the President spoke to us. This is what he said when he spoke to us on March 6: "It is time to put an end to micromanagement of foreign and security assistance programs, micromanagement that humiliates our friends and allies and hamstrings our diplomacy." That is what the President of the United States said, and that is exactly what this amendment does today, Mr. President.

A little bit of review of what we are talking about, as far as the aid. The aid has been approved. Economic and military assistance aid has been approved. It is in the pipeline. But the President has put a hold on it. He has put a hold on the economic aid, and he has put a hold on the military aid. What he is saying is, do not interfere with his capability to release that aid, both economic and military assistance, should he feel it is necessary in order to advance a permanent peace in the area.

I do not think we ought to argue with that, and I do not think we have reason to argue with it. He, as I said, has undertaken this extremely difficult task, to try to forge a permanent peace out there, and he needs every tool we can give him.

So, Mr. President, I hope we will not hamstring our President and do just what he pleaded with us, if you will, not to do, to undertake micromanagement, which humiliates our friends and allies and hamstrings our diplomacy. So I hope this amendment will not prevail.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I think we all agree that the position King Hussein took, vis-a-vis Iraq, was wrong, against the general interests of the community and the area, and that it was a result of misjudgment, perhaps, on his part, or maybe good judgment that if he did not take that position, he would be thrown out by the majority of his subjects or citizens, who are Palestinians.

If he is thrown out would we be better off? I do not think we would. I think we would be better off with King Hussein there. We ought to look at his record of more than 30 years, which has been a pretty good record and a record of pretty steady friendship with the United States. We should think of all the times that we in this Chamber have hurled accolades at him and praised him over the years.

It reminds me a little bit of what Al Smith used to say. He said let us look at the record. The record on balance is, I think, pretty good. We have to judge here in the Senate what, on balance, would be best for our country and best for peace in the Middle East.

I think in moving to that conclusion we ought to weigh the past, and the history, as well as the present.

I am also reminded of the phrase of Jeane Kirkpatrick where she once, "Warned against policies that make you feel good but do not do good."

To my mind the policy advocated by this amendment would make us feel great but would not do much good. So viewing the whole thing on balance I am inclined to agree that we should honor the President's request and not agree to this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. NICKLES. 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. SYMMS. 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. SYMMS. Mr. President, I ask unanimous consent to speak as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Idaho is recognized.

Mr. SYMMS. I thank the Chair.

(The remarks of Mr. SYMMS pertaining to the introduction of S. 697 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER: The Senator from Idaho is recognized.

Mr. CRAIG. I thank the Chair.

(The remarks of Mr. CRAIG pertaining to the introduction of S. 698 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The amendment of the Senator from Oklahoma with respect to Jordan is the pending amendment.

(Mr. AKAKA assumed the chair.)

Mr. DOLE. Mr. President, I want to speak not so much to the amendment, because I want to commend the Senator from Oklahoma for trying to resolve the problem that we face, but to speak for the President of the United States. I would like to at this point read a letter from President Bush. This letter is not signed. He had to rush out to greet Lech Walesa, but it will be signed. It is addressed to this Senator. I will read the letter.

I was heartened by your comments yesterday that now is not the time for Congress to micromanage the Administration's efforts to conduct post-war diplomacy in the Middle East, and specifically not the time to tie our hands on aid to Jordan.

As I emphasized yesterday, the Administration strongly opposes legislation which would prohibit U.S. assistance to Jordan. Like members of Congress, the Administration has been deeply disappointed by Jordan's support for Iraq during the recent crisis. We have made our concerns very clear to the Government of Jordan, and have suspended all aid while completing a review of our security assistance programs.

Nevertheless, we need to retain maximum flexibility in the historic task of helping to build a more secure and more peaceful Middle East on the basis of the international coalition's defeat of Iraqi aggression. Jordanian stability remains important to the region and to U.S. interests—and indeed to Israel's interests—and Jordan could play a significant role in post-war diplomacy, especially in the Arab-Israeli peace process.

We must not let our disappointment with Jordan's behavior during the Gulf crisis unnecessarily constrain our post-war diplomacy. We must try to focus on the possibilities for the future, not the disappointments of the past. The challenges in the path of se-

curing the peace are enormous, but so are the opportunities.

Mr. President, I cannot think of anyone who has not praised President Bush for his excellent leadership in holding together the coalition, in successfully completing the gulf crisis, in being decisive and being victorious. Some have said the reason he was so victorious is that Congress did not have time to get into it. The war was over before we could have a hearing or before we could pass some amendment, before we could tie the President's hands or tie General Schwarzkopf's hands, or tie somebody's else's hands. That may or may not be the case. I doubt it.

But the point is this: President Bush, I believe, has conducted himself quite well. Now we are engaged in this very sensitive, very tedious peace process. The Secretary of State has just returned from visiting, I believe, eight countries in 9 days. The President has been off visiting with other members of the coalition in Canada and Bermuda and some other place, Martinique.

What the President would like to do is have some flexibility. This is not a vote in my view against King Hussein. It is a vote against President Bush. If we do not like President Bush's leadership, if we think he has been unsuccessful or has not provided leadership in the gulf crisis, then we ought to tie his hands. There is no aid going to Jordan. Every one of us is disappointed with King Hussein, and I think everyone has spoken out that he should not get anything. I have. He is not getting anything.

I do not quarrel with those who want to make certain it would be very difficult for Jordan to receive any benefits. But this administration is not trying to make it easier for King Hussein or that country.

Let us face it. Jordan has a lot of problems, a lot of poor people and a lot of suffering people. We are very disappointed in what King Hussein said. We understand some of the political pressures he had. He was sort of in a no-win position. He rode the wrong horse. But, that race is over. We won. He lost.

Now in the postwar, the most difficult part has begun. I believe you could ask any of the allies who were disgusted with King Hussein—whether it is Saudi Arabia, or Kuwait, or Egypt, or the United States—and they would all say that, well, as bad as it was, and as much as we disliked what he said and what he did, that he is important in the peace process.

Now there ought to be some way to come together with the administration. I know the Senator from Oklahoma has tried. The administration declined to support what appeared to be a fairly reasonable compromise, because I believe the President sees this as an effort to micromanage his efforts for peace.

Now, if the peace process drags on 6 or 8 months, I can almost see some of my colleagues standing here who might vote for this today blaming President Bush for the slow pace of the peace process. We cannot have it both ways. We tried that on the gulf crisis.

I would just make a plea for the President of the United States. If he does something that we dislike, we can stop it very quickly. We can cut if off. We can terminate it. But let us at least let him get into the process without tying his hands.

I hope that my colleagues on both sides of the aisle would understand that President Bush is serious about peace. He is probably going to break a little china in the process in the Middle East. Not everybody is going to like what he does or what he says, including King Hussein of Jordan.

But if we are going to start trying to micromanage this country, what about other countries in the Mideast? What about the Palestinians? Maybe we ought to have something in there about them, or something about Israel, or something about Saudi Arabia, or something about Egypt that we do not like or disagree with.

So I hope that, particularly on this side of the aisle, we would see this as a vote to support President Bush. We have all proclaimed his brilliance and still do every day.

This letter is from the President, not from the Secretary of State. Let me double check that. He has not signed it yet, but he will. It is from the President of the United States. This is his request.

So I hope that we could withdraw the amendment. I have indicated to the President I will do the best I can to prevail. We may prevail. Because I think we want to show King Hussein that we are serious, and so does the administration.

How do we best demonstrate that? I met with the Ambassador to the United States from Jordan a couple of weeks ago. I told him he had a lot of work to do in the Congress. He better start making house calls, better start seeing Members in both parties, because we did not like what we saw or what we read that King Hussein had said, or the Crown Prince for that matter.

In my view I think there has been an effort to do that. I am not here advocating aid to Jordan. I am only advocating give President Bush a little time, a week, 2 weeks, 30 days. The war has not been over 2 weeks and we are already tying the President's hands. We cannot wait.

It seems to me that he has made a reasonable request. If he starts getting out of line, if the President of the United States starts funding military aid to Jordan—I assume most people would not object to humanitarian aid—then I think we can appropriately respond.

Mr. President, I hope this amendment could be defeated, or deleted, or withdrawn, or however you dispose of it. I would also add—and I know the distinguished chairman of the Appropriations Committee has done a great deal of work on this legislation. I am not threatening anything. I know there is a letter coming up here—oh, it is here. It is here. And I will go into it later. But this is just another burden on this bill.

My view was the administration was going to go along but I am now advised that the administration expressed strong reservations to many provisions that had been added to the bill.

Among our objections were such issues as: the prospect of sequester; the failure to support the recently-enacted approach to housing policy; the prohibition of helper rules for Federal construction projects; the unconstitutional formulation of the DC payment; the limitation of the ability to proceed with the Enterprise For The Americas initiative; the requirement of unnecessary and inefficient defense expenditures——

These are all discussed in the administration's statement of policy.

I would just say, this is a letter from Richard Darman, Director of the Office of Management and Budget. He said:

Unfortunately, the improvements we have been seeking have not yet been achieved. But worse, an objectionable dairy amendment has been adopted by the Senate; an ill-advised amendment of Jordan is pending at this moment, and there is evident interest in Congressional micro-management of foreign policy. May I respectfully note that there should be no doubt: The accumulation of undesirable provisions very seriously risks causing the President's senior advisers to recommend veto.

That is not a threat because I know the distinguished executive director of OMB works very closely with the chairman of this committee and with the ranking Republican, Senator HATFIELD. But I would suggest this is just one more, as I indicated, burden we are adding to this bill that many of us would like to complete before the recess, the so-called Easter recess, begins.

So, Mr. President, again I urge my colleagues to support President Bush. This is an opportunity for some who failed in the past to support him today. This is part of the gulf policy. This is an extension of the gulf policy which has been very successful.

To my colleagues on this side of the aisle, again I commend them for trying to raise the objections. It may not make any difference what the President says. But my view is, it should.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise today to join the Senator from Oklahoma [Mr. NICKLES] in offering an amendment to cut the aid to Jordan for fiscal year 1991 in the dire emergency supplemental.

The distinguished Republican leader has pointed out that micromanagement seems to be always used when we attempt to do something that the administration does not want. Imagine if we had micromanaged a little bit more in some of our aid and assistance to Iraq? I think we failed, quite frankly, in not doing more micromanaging, if you want to call it that, but in standing up to that country. We all paid a price for that.

So it seems to me the argument that any restrictions that we put on in any legislation that does not just suit the administration is thrown up as something improper, that you are going against the President, who has been very successful and he has received those accolades, and correctly so, from the Congress and from the American people—and I applaud him. But it does not mean that he is always right, or is the Secretary of State, to continue aid to Jordan under the circumstances that I will go into in a moment which seems a bit shortsighted and, to me, not in the best interests of peace in the Middle East or in the best interests of the United States.

This amendment is simple, Mr. President. It prohibits all aid from being obligated or expended for Jordan. Instead, this assistance would be available to countries which have supported the United States and the coalition policies in that area. The amendment does allow provisions of emergency refugee assistance and does not affect food donations under Public Law 480.

The Agency for International Development, known as AID, estimates the United States plans to obligate $66.15 million in economic support funds and $22.8 million in foreign military financing in international military education and training funds for Jordan in fiscal year 1991.

I wonder how many people realize those kinds of dollars: $88 million in funds to Jordan. The ESF level is as high as it is because it includes $31.15 million of carryover funds from 1990. It is this assistance which would be affected by the amendment offered by the Senator from Oklahoma, and this Senator.

A recent AID document on assistance to Jordan states that:

> Despite Jordan's halting implementation of United Nations Security Council sanctions during the Persian Gulf crisis, the primary U.S. goal remains to help sustain a stable, moderate government committed to peaceful solutions of regional issues.

By openly embracing Saddam Hussein, a man who committed unspeakable atrocities against the people of Kuwait and his own people, King Hussein of Jordan showed the world that he is not interested in "a peaceful solution."

As my colleagues well now, during the 7 long, difficult months of the gulf conflict, King Hussein of Jordan tried to have it both ways. He pretended that he was adhering to the United Nations embargo prohibiting goods from entering Iraq so he would no longer anger the international coalition gathered against Saddam. He also placated Saddam by shipping oil into Iraq—that is undisputed—so that Saddam could maintain his war machine against other nations that caused no aggravation to him or aggression against his own people.

The end result is that King Hussein achieved neither of his goals. He violated the economic embargo against Iraq and he backed a loser. He also lost respect in the eyes of many nations around the world.

Violating the embargo is significant in and of itself. Under the Lautenberg amendment, the amendment of the Senator from New Jersey, to the foreign operations appropriations bill, adopted by this body last fall, no assistance may be provided to any country which is found to have violated the economic embargo.

The State Department has yet to officially state that Jordan violated that embargo. It has yet to terminate the assistance which was planned for Jordan this year.

It was only after King Hussein's violently anti-American, anti-coalition, pro-Saddam Hussein speech on February 6, that the State Department was finally prodded into reviewing aid to Jordan.

It has been more than 5 weeks since that speech in which the King claimed that the coalition was attempting to establish foreign hegemony in the Middle East. The truth is that we are bringing home nearly 5,000 American soldiers every day.

Clearly, we have no desire to establish domination over any country in the Middle East. Yet the State Department refuses to terminate that assistance.

The argument is made that you want to give flexibility to the administration. The flexibility we are asking to be given to the administration is that they can give this $20 million to the King for his army whenever some peace is made. So we are handing it over, saying go ahead and deal with it, offer it out as a carrot to the King. I think that is wrong.

King Hussein's comments were more than just heated rhetoric. He criticized the "savage and large-scale war against brotherly Iraq." He stated that the international coalition's "true aim behind this devastating war * * * is to devastate Iraq * * * to destroy all achievements of Iraq and return it to primitive life."

This is not someone who happens to criticize U.S. foreign policy who is a citizen of the United States. This is the head of state of one of the countries that supposedly supports the effort against Saddam Hussein.

He called it a war "against all Arabs and all Moslems and not against Iraq alone."

The King knows better. This was not against all Arabs. This was a number of Arab nations and people joining in stopping naked aggression.

Hussein tried to link the Israeli-Palestinian issue to the gulf war when he stated that:

> The Palestinian Arab people and their nation wait for the implementation of one of the U.N. resolutions that reject the Israeli occupation and demand its termination.

He went on later in his speech to warn that:

> If matters stay on their current course, the only beneficiary will be those who covet our land and wealth, chief of whom is Israel.

Israel was not even a party to this conflict. It stood by and took hit after hit from Scud missiles—39 of them—from the Iraqi military and showed outstanding restraint in withholding any retaliation. It was not part of the coalition against Hussein, and yet the King of Jordan says this is an Israeli issue. There is no linkage here. In a statement on the floor on March 12, I rejected King Hussein's attempt to do the same. Finally, the King lamented that "there are now attempts to deprive us of our basic needs—even oil—as a new form of punishment, and one of the most severe, for no other reason than our principled stand."

And if this were not enough, Jordan's "principled stand" may also have included shipping arms to Iraq. We all witnessed CNN. I was just at the gulf, and there is ample evidence to lead one to believe that the ammunition recovered by our forces very likely came from Jordan. It is printed on the boxes. We saw it. We cannot tell for certain whether or not it came before the embargo or after, but there is a lot of it there.

I think CNN's film footage of ammunition and weapons found inside Iraqi bunkers with markings indicating that they were from Jordan is very clear evidence of what this country was doing in support of Saddam Hussein.

The possibility that Jordan, a nation to which we have provided military assistance for years, may have shipped weapons to a country at war with our own is reason enough for the termination of any aid to Jordan. Our brave men and women were fighting and dying and prepared to die in the desert while "a friend" was supplying military lethal assistance to the enemy.

I do not think the American public wants our Government to even have the capability of contributing money to the military of Jordan without coming here to the Congress and debating it and seeing what kind of change that country might really make.

Jordan claims the weapons were provided to Iraq during the Iran-Iraq war. We must uncover the truth about the situation. In the meantime, however,

Jordan has lost any rights, in my opinion, to have foreign assistance from the United States.

Also, Jordan's technicians reportedly helped train Iraqi soldiers to use United States-made Hawk missile batteries which we had sold to Kuwait and which Iraq had captured. This is another issue for another day: the proliferation of the sophisticated technical weapons that this Nation and other nations have continued to sell to Arab countries and then they turn around and use them against us. These weapons also could have been used against American forces.

The United States has had a long history of involvement with Jordan. Let me state I fully understand the difficult position in which King Hussein found himself during the war. When wars come, nobody is comfortable. There have been times when we felt that King Hussein could have played a pivotal role in the Israeli-Palestinian issue. After all, the vast majority of the Jordanian population is Palestinians. Many of its people demonstrated in support of Saddam and cheered as Iraq Scud missiles fell on civilian populations in Israel and Saudi Arabia.

But there comes a time when we must review old alliances in the bright of day, in a new day, in the day we are in now. For instance, in 1989, Jordan voted against the United States on 12 out of 16 key votes in the United Nations. We let that go. Egypt, however, voted with the United States twice as many times, and Turkey voted twice as many times as did Egypt. So we knew who our friends were, and, unfortunately, they were not Jordan.

The war in the Persian Gulf has brought us to a new day. This time of crisis has clarified who are truly friends who want peace, who are prepared to stand up to aggressors like Iraq. Sadly, Jordan is not among those nations.

For us to continue, even economic aid, except for emergency aid, but certainly military aid, is really out of sort and out of principle with what this Nation has done in the Middle East. We have saved a country. Having just been there, the people are grateful to the United States and they thank the Congress of the United States, as well as the people and President Bush and, of course, the military personnel, for standing and using that power and the willpower to extract the Iraqi military from Kuwait. Yet, we are here asking not to speak up, not to prohibit the transfer of military aid to Jordan.

It is hard to believe this is even debated. The President's caution of micromanaging is always the argument, it seems like. Maybe the American people do not want their tax dollars now to go to a nation that supplied aid and assistance and spoke out forcefully in support of Iraq and Saddam Hussein.

I want to thank the chairman of the Appropriations Committee for allowing me to have a little time this morning. I know he was pressed for time—and I was in some hearings—and he put in some quorum calls. I am most grateful that he could make that arrangement.

I understand, Mr. President, that Senator NICKLES does want to speak briefly before we go to a vote.

Mr. BYRD. Has the Senator yielded the floor?

Mr. DECONCINI. I yield the floor.

Mr. BYRD. I thank the distinguished Senator. I had been well aware of his need to be at another location on the Hill and naturally an important hearing.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, we have had now an hour and a half debate on this amendment, good debate, and we do have to get on with action on this bill if we want to get to conference today and have any hope whatsoever. So I am going to ask unanimous consent that there be 10 minutes for debate to be equally divided between Mr. DECONCINI and the minority leader or his designee, at the conclusion of which a vote occur on or in relation to the amendment.

Mr. DECONCINI. Mr. President, reserving the right to object. I have not heard from Senator NICKLES. Maybe the Republican leader has.

The PRESIDING OFFICER. Is there an objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. BYRD. I thank all Senators.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, will the President yield me 1 minute?

Mr. DECONCINI. I will be glad to yield.

Mr. LEAHY. Mr. President, I am concerned about the letter that came up in the last few minutes from Mr. Darman with a veto threat on the appropriations because of this Jordan amendment. It complains that this is congressional interference in foreign aid. I understand the thinking that goes into people like Boyden Gray and others who engineer such a letter, but I hope they are paying attention to what has happened. I hope they understand what this amendment is. A lot of work went into it last night to give the President of the United States the flexibility the letter says he wants, and I support that flexibility. But they have to understand we are not going to approve $15 billion in foreign aid every year as a lump sum with no strings attached whatsoever.

We could never pass such a bill. The American people would not allow us to pass such a bill. There always will be some restrictions on who gets our aid and how it can be used. We have few of them in this Jordan amendment. But I can tell you right now, the American people do not expect us to just send our money to Jordan without putting some statement of how the American people, the American taxpayers, want their money spent.

That is what this amendment does. It allows the President to send our economic and military aid, if he wants, after the normal notification. It has no restrictions on humanitarian or food aid. But it makes very clear our displeasure in the actions of Jordan.

Mr. President, I would also note that some have incorrectly said we appropriated military aid to Jordan last fall. We did not. The President used his authority to allocate $20 million in military aid in the annual foreign aid allocation report. We received that report on January 26, 10 days after the gulf war started—and he provided $20 million in military aid to Jordan. Congress did not do it.

So, I think this is a good amendment. It is a lot better than it started out. It gives the President a great deal of flexibility, and I think the Senate ought to support the amendment.

I am one of the few here who has argued to give the President more flexibility on foreign aid. In fact, I argued giving him a contingency fund in the last foreign aid bill, and we would have had that if his own administration had not forgotten to provide for it in the budget summit agreement. So I am in favor of that. But this amendment is a good one, and it gives the President flexibility.

Now, maybe lawyers somewhere, in crossing the T's and dotting the I's, not having to be dealing with the realities of the world, think it is not enough flexibility. The fact is it is considerably more than the actions of Jordan would merit. It reflects a lot more faith in President Bush than it does in Jordan, and only because of that is this flexibility going through.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. I just reiterate, as far as I know, Jordan is not getting any aid now. I am not certain they will get any aid. I am suggesting that we ought to let the President make that decision. He has done a pretty good job without Congress in the past 30 to 60 days. I can play back a lot of the statements of my colleagues who supported President Bush.

I think there has been a good-faith effort to try to work out some language. But the President does not like it. He does not want to be hamstrung. He does not want to be micromanaged. He would like to have at least 30 days' grace after the successful conclusion of the war that many fought him on.

I think the American people support President Bush. If we micromanaged

the gulf like we are trying to micromanage the postwar, we would not have deployed one person to the gulf by now.

Here comes Congress trying to get in after the fact. My view is we tried, we tried to work it out. I thought it was a reasonable effort. I commend all parties on both sides.

But the President of the United States says: Do not do it to me. He is not giving any aid to Jordan. He is just as disappointed in King Hussein as everybody here. But as I said, you ask any one of our allies: Do you think King Hussein is going to be a player in the peace process, if you are going to have peace in the Middle East, they say yes. They do not like it either. They are disappointed.

But the President of the United States is dealing with heads of state, and if he does something on military aid or economic aid to Jordan we do not like, we will cut it off in a minute; no doubt about it. I am just saying it is probably not going to get many votes; right now the President of the United States is supported by 90 percent of the people, and probably about 20 percent of the Congress, on this vote, which says a lot for people and not much for Congress.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, just so there will not be confusion on this, there is aid going to Jordan today, and the amendment by Senator NICKLES and Senator DECONCINI allows the aid to continue to go to Jordan. It is aid supported by the administration. It is humanitarian aid.

I completely concur—in fact I think the President should take note on this—that the President's handling of the question of aid to Jordan is absolutely right. That is why I opposed the earlier proposal to cut off all aid and tie his hands. That is why I support this, which gives him the flexibility.

But just so everybody will understand, there is aid going to Jordan today, humanitarian aid. I support that. The President has held back economic and military aid, and I certainly support him on that.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. How much time does the Senator from Arizona and the Senator from Oklahoma have remaining?

The PRESIDING OFFICER. One minute and 50 seconds.

Mr. DECONCINI. I yield whatever time the Senator from Oklahoma will use. It really is his time.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I thank my friend and colleague from Arizona, and also I appreciate his remarks.

Mr. President, I want to be very clear. My original amendment would strike all aid, including all that is in the pipeline. We were actually striking about $300 million in military and economic assistance to Jordan. The administration indicated some opposition to that. So we reframed our amendment not to affect aid that is already in the pipeline; we will just do it for the aid in 1991. The President's advisers asked for some flexibility; and not to tie the President's hands.

I happen to be a very stong supporter of George Bush. I think he has done an outstanding job in his conduct of Persian Gulf affairs, as well as in foreign policy, as well as in domestic policy. I think he has done an outstanding job.

I also happen to be a member of the Foreign Operations Subcommittee that appropriates money. We appropriated money last year, $20 million for Jordan military aid. I think that was a mistake. I became very convinced that it was a mistake a few days ago when I was in Iraq and I saw boxes containing weapons that came from Jordan. I thought, why in the world are we giving Jordan military aid? So I became convinced we needed to stop it.

Many have said, well, do not tie the President's hands. I do not believe we have. We have given the President discretion on both economic and military assistance. On economic, he can come back to Congress and basically, if he just says Jordan is making positive steps to advance the peace process, release the economic assistance. We have given him flexibility. So if he wants to give economic assistance, he can do so if Jordan is helping to make contributions in the peace process.

Mr. President, I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NICKLES. Mr. President, we have also given the President—I will tell my colleagues, I did not want to do that, but I also say I respect the President, I respect his advisers. They said, give us some discretion on military aid—$20 million in 1990 in military aid. They said, give us some flexibility on that, as you have in economic.

So what we put in was language, which at one time was what we thought was agreed upon, that would give the President discretion on military aid. He can give Jordan the $20 million. He does have to go through the congressional notification process. They have done that for years, and it has been several years since they have been denied the reprogramming.

So I think we have given him flexibility, both on military and economic. We have not tied the President's hands. That is certainly not this Senator's intention nor desire. But we also eliminated the earmark, and that is something the President wants us to do. He wants us to eliminate the earmark so we do not have to spend the economic military economic money if the President desires not to.

It is important for us to eliminate the earmark. If we do not, he is obliged to spend this money. I think we have helped in that regard. I think it is a good amendment. I urge my colleagues to adopt it.

Mr. DURENBERGER. Mr. President, Jordan's role in the gulf war has clearly provoked a great deal of sentiment, even resentment. Jordan's initial neutrality in the crisis caused considerable disappointment and dismay, much of which I shared. The move toward outward support for Iraq aroused even greater concern.

I am particularly disappointed by Jordan's alignment with Iraq. For all King Hussein's best intentions to foster a peaceful solution to the crisis, I do not believe the position adopted by Jordan was especially helpful in bringing about such a solution. The King made the wrong decision, and I am sorry that he did.

Mr. President, notwithstanding this disappointment, I rise to oppose the amendment offered by my good friend from Oklahoma. President Bush has already suspended the aid, and the administration has made this country's opposition to Jordan's policies very clear to King Hussein. The administration has already sent the signal to Jordan.

It does not appear to this Senator that additional congressional action on this matter is required or warranted. In fact, it could well be very detrimental to our long-term interests. The President requires more flexibility, not less. He needs cooperation, not confrontation.

In recent decades, Jordan has played a key role in the Middle East, and I expect that that will continue in the future. Jordan has the potential to play a very constructive and supportive role in the search for Middle East peace. Ostracizing Jordan with punitive measures of this sort can only hinder the peace process.

It creates fissures where we need bridges. It creates resentment where we need good will and cooperation.

It is essential that we balance all factors—past, current, and future—when considering our future policy and aid structure for Jordan. U.S. interests are best served by maintaining a long-term perspective on how to achieve our objectives and safeguard our interests.

Cutting off aid to Jordan in this manner may satisfy the immediate desire to punish Jordan—and let there be no doubt that this is a punitive measure—but we must take the long-term view.

Does cutting off Jordan promote a peaceful settlement to Middle East regional conflicts? Does it increase the administration's flexibility to pursue evolving developments in a very dynamic environment? Does cutting off

Jordan foster a positive relationship with a key actor in a vitally important region?

Mr. President, the answer to each of these questions is obviously "no." I urge my colleagues to consider the longer-term perspective. I urge my colleagues to resist the temptation to take punitive actions because we're angry. That is not the way to make public policy.

Mr. President, I will vote against this measure, and I urge my colleagues to do the same. I yield the floor.

Mr. LAUTENBERG. Mr. President, I will vote in favor of this amendment.

This amendment is in response to the Government of Jordan's behavior during the gulf conflict. It is an expression of our deep disappointment with King Hussein's support for Saddam Hussein. It is also an expression of our hope that King Hussein will play a more constructive role in the region in the coming months and will play a positive role in the peace process.

King Hussein provided support and comfort to Saddam Hussein during the war and criticized the United States effort. In a passionate speech in Amman, Jordan on February 6, King Hussein accused the Allied coalition of exceeding the limits set by the United Nations resolution and of trying to destroy Iraq. President Bush characterized the King's condemnation of the United States-led war effort to oust Iraq from Kuwait as support of Saddam Hussein.

King Hussein's speech essentially supported Saddam Hussein's efforts to inflame Arab public opinion. It was aimed at splitting the Arab coalition supporting the United States.

Mr. President, this amendment is in line with a provision I sponsored to the fiscal year 1991 Foreign Aid Appropriations Act which bars military and economic aid to any country in violation of the U.N. Security Council sanctions. According to section 586(d) of the fiscal year 1991 Foreign Aid Appropriations Act, aid cannot be provided to a country that violates the U.N. sanctions unless the President certifies to Congress that the aid: First, is in the national interest; second, will directly benefit needy people in the country; or third, will be used to provide humanitarian assistance to refugees in that country.

Secretary Baker stated to the House Foreign Affairs Committee on February 6 that King Hussein of Jordan was violating the embargo by importing Iraqi oil. Referring to the oil imports, Secretary Baker said,

It is our view that * * * the delivery of this oil does violate the U.N. prohibition * * * does violate the sanctions embargo.* * *

Under this amendment, funding that was set aside for military assistance for Jordan in fiscal year 1991 but which has not yet been spent would no longer be available. The administration could submit a reprogramming request to the Appropriations and Foreign Relations and Foreign Affairs Committees for the military funding for Jordan to be available again. So, it provides the administration with flexibility in dealing with Jordan, but also lets King Hussein know of our disappointment in his position during the gulf war.

Economic aid that was appropriated for this year but has not yet been spent would no longer be available to Jordan unless the President certifies to Congress that the Government of Jordan has taken steps to advance the Middle East peace process. Perhaps this will increase the incentive for Jordan to take steps toward the recognition of Israel.

The amendment covers only funds appropriated in fiscal year 1991. It does not speak to the administration's request for fiscal year 1992.

There are a few exemptions under the amendment. Assistance for refugees in Jordan would still be available. So would educational assistance for Jordanian students studying overseas.

Mr. President, this amendment upholds U.S. law and the U.N. sanctions. It provides the administration with flexibility. It is a sign of our disappointment that the Government of Jordan sided with Saddam Hussein. It also includes provisions to encourage King Hussein to participate constructively in the peace process.

Mr. SIMPSON. Mr. President, I would like to add my perspective on this issue. No one should doubt that King Hussein and Jordan took some very deeply disappointing actions during the gulf war, and in the months leading up to it. Jordan was admittedly in a very difficult position, but that does not justify or excuse the lack of support for the international coalition, the United Nations, or the rule of law.

The President has adequately expressed the dismay and disgust of the American people and Congress in suspending the aid authorized for Jordan for this year. That action was entirely appropriate, and I fully support it.

However, now we have a case of Congress trying to put its finger firmly into the pie. The President has handled this entire crisis with the utmost skill, demonstrating to all of us his understanding and mastery of diplomacy. No one can doubt the effectiveness of his actions.

The President must continue to have the flexibility to deal with the issue of aid to Jordan in the full context of the search for peace in the Middle East. Jordan is a part of the larger picture, and Congress must not lock the President into policies that hamper his ability to respond appropriately to changing circumstances in the region.

King Hussein does face his own difficult domestic situation. I do not condone the actions he has taken, but one factor which the President must take into account is what might happen if his Government were to be brought down. Likewise, King Hussein is likely to be an important factor in the search for peace in the region.

The President must not be hindered in his ability to act responsibly and flexibly, as he has so clearly demonstrated he will do.

Mr. DOLE. Mr. President, I will move to table the amendment in just a moment. I agree with the Senator from Vermont there is humanitarian aid. There is no question about that. Economic and military, none of that is going to Jordan.

Again, I do not quarrel with my colleagues, also, who are really frustrated with King Hussein. I think I said on one of the talk shows that he should not get any aid. He is not getting any aid except for humanitarian aid. I get it from good authority the Red Cross may put some aid into Jordan. They have some problems. So there will be humanitarian aid to the people.

But again, notwithstanding all that, I think there are diligent efforts, sincere efforts on both sides to reconcile this.

The letter I received was from President Bush, not somebody else in the bureaucracy; not even anybody at the State Department. It was from the President, the President of the United States, who I think has the support of 85 or 90 percent of the American people for what he has done and what he is doing. I believe we ought to at least get half the Senate to support him. If we do not, this will just be another reason to veto this bill.

As I indicated, the letter that I have just received, which I will have made a part of the RECORD at this point, is from the Director of the Office of Management and Budget, Mr. Darman.

I move to table the amendment and ask for the yeas and nays.

Mr. PRESIDING OFFICER. Is there a sufficient second?

Mr. DOLE. I yield back any remaining time.

Mr. PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to speak for 30 seconds.

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

AMENDMENTS NUMBERED 54, 55, AND 56

Mr. BYRD. Mr. President, I have a number of amendments to the VA–HUD supplemental. All of them have been cleared on both sides, and they have no budgetary impact.

First, three technical drafting changes to HUD provisions in the committee-approved bill; and

Second, two amendments that make technical corrections to last year's housing authorization bill:

One would clarify Congress' intent to continue the Supplemental Assistance for Facilities to Assist the Homeless [SAFAH] Program in fiscal 1991.

The other clarifies the effective date for new regulations governing mortgage servicing transfer rights.

I ask unanimous consent that the amendments be considered, agreed to en bloc, and that the motion to reconsider be laid on the table.

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

The amendments (numbered 54, 55, and 56) considered and agreed to en bloc are as follows:

AMENDMENT NO. 54

Technical corrections to VA-HUD chapter of title II on page 39, strike lines 9 thru 13, and insert the following:

Funds appropriated under this head in Public Law 101-507, 104 Stat. 1362, and all unobligated balances of prior year appropriations under such head, shall be made available for the revised Congregate Housing Services Program under section 802 of the Cranston-Gonzalez National Affordable Housing Act and shall remain available until expended.

On page 41, line 8, strike "said" and insert "such"

On page 41, strike lines 13 thru 22, and insert:

"Section 17(f) of the United States Housing Act of 1937 (42 U.S.C. 1437o(f), as amended by Public Law 101-507 (104 Stat. 1369) is further amended by striking 'or City of West Hollywood, California' and by inserting at the end thereof, the following new sentence: 'This subsection shall also not apply to requirements relating to rents imposed on a structure by the City of West Hollywood, California.'. Section 17(f) as amended by the immediate foregoing amendment shall apply retroactively to any structure assisted with section 17 rental rehabilitation funds in the city of West Hollywood, California."

AMENDMENT NO. 55

(Purpose: To repeal a transition rule)

At the appropriate place, insert the following:

SEC. . ADMINISTRATIVE PROVISION.

Section 837 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11403 note) is amended by striking subsection (c).

AMENDMENT NO. 56

At the end of Title III add the following new section:

SEC. . (a) Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsection:

"(j) TRANSITION.—

"(1) ORIGINATOR LIABILITY.—A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

"(2) SERVICER LIABILITY.—A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

"(3) REGULATIONS AND EFFECTIVE DATE.—The Secretary shall, by regulations that shall take effect not later than August 21, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).".

(b) Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by striking "section 8 or 9" and inserting "section 6, 8, or 9".

AMENDMENT NO. 53

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kansas to lay on the table the amendment of the Senator from Oklahoma. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The PRESIDING OFFICER (Mr. BRYAN). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 43, nays 57, as follows:

[Rollcall Vote No. 36 Leg.]

YEAS—43

Bingaman	Garn	Pell
Bond	Gore	Robb
Burns	Gorton	Roth
Byrd	Hatch	Rudman
Chafee	Hatfield	Sanford
Cochran	Heflin	Simpson
Cohen	Heinz	Specter
Craig	Jeffords	Stevens
Cranston	Kassebaum	Symms
Danforth	Kerrey	Thurmond
Dole	Lugar	Wallop
Domenici	McConnell	Warner
Durenberger	Mitchell	Wirth
Exon	Nunn	
Fowler	Packwood	

NAYS—57

Adams	Ford	Mack
Akaka	Glenn	McCain
Baucus	Graham	Metzenbaum
Bentsen	Gramm	Mikulski
Biden	Grassley	Moynihan
Boren	Harkin	Murkowski
Bradley	Helms	Nickles
Breaux	Hollings	Pressler
Brown	Inouye	Pryor
Bryan	Johnston	Reid
Bumpers	Kasten	Riegle
Burdick	Kennedy	Rockefeller
Coats	Kerry	Sarbanes
Conrad	Kohl	Sasser
D'Amato	Lautenberg	Seymour
Daschle	Leahy	Shelby
DeConcini	Levin	Simon
Dixon	Lieberman	Smith
Dodd	Lott	Wellstone

So, the motion to lay on the table was rejected.

The PRESIDING OFFICER. The Chair will inform Senators that all time for debate has expired.

The underlying question, the amendment itself, is now the pending question. The yeas and nays have not been ordered.

The question is on agreeing to the amendment.

The amendment (No. 53) was agreed to.

Mr. DECONCINI. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia [Mr. BYRD] has the floor.

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

Mr. GRAHAM has an amendment which I understand is acceptable on both sides of the aisle, and it should take very brief time for the Senate to act on it.

There are other amendments: An amendment by Mr. COATS, an amendment by Mr. HELMS, an amendment by Mr. BOND, an amendment by Mr. LEAHY, and an amendment by Mr. DOMENICI.

I hope that we can have a volunteer who will be willing to rise in his place now and indicate that he would be ready to call up an amendment following Mr. GRAHAM'S amendment.

May I inquire from Senators who are listening as to whether or not they are willing to call up their amendments. May I ask my friend, Mr. HELMS, would he be ready to go? Or Mr. LEAHY, or Mr. BAUCUS?

Mr. President, I have not gotten any responses from Senators as to their willingness to call up amendments following Mr. GRAHAM. I hope that, while his amendment is pending, we can generate some interest in calling up amendments.

I yield the floor.

AMENDMENT NO. 57

Mr. GRAHAM. Mr. President, on behalf of myself, Mr. LAUTENBERG, Mr. MCCAIN, Mr. KASTEN, Mr. DECONCINI, and Mr. LEVIN, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM], for himself, Mr. LAUTENBERG, Mr. MCCAIN, Mr. KASTEN, Mr. DECONCINI, and Mr. LEVIN, proposes an amendment numbered 57.

Mr. GRAHAM. 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:

The successful conclusion of the war in the Persian Gulf provides an opportunity to begin building a lasting peace in the Mideast;

A crucial element of peace in this unstable region is the willingness of Arab states to negotiate with Israel, recognizing her right to live in peace;

The United States should continue to urge Arab states to negotiate peace with the State of Israel;

One of those Arab states, Syria, continues to undermine goodwill and peace in the region by depriving the 4,000 Jews living in Syria the right to emigrate;

Syrian Jews continue to live in a climate of fear and insecurity, still denied fundamental civil and human rights;

A Jew living in Syria, in order to travel, must leave a large sum of money and members of his immediate family as insurance for his return;

Jews suspected of having traveled "illegally" or even of planning to do so have been arrested, interrogated, and subjected to lengthy imprisonment;

Syrian President Hafez Assad continues to deny the basic right of free emigration, a

violation of the Universal Declaration of Human Rights to which Syria is a signatory: Now, therefore, be it

The sense of the Senate, that the Senate

(1) Condemns the Government of Syria for continuing the denial of the basic human right of free emigration;

(2) Calls upon the government of Syria—

(A) To allow all Syrian Jews to emigrate freely,

(B) To release from prison Jews suspected of having traveled illegally or of planning to do so;

(3) Urges the administration to continue to make known to Syrian authorities the important role that human rights in the Jewish community, especially the right to emigrate, will play in determining future policy toward Syria.

Mr. GRAHAM. Mr. President, I offer this amendment in the form of a sense-of-the-Senate resolution. It calls upon the Government of Syria to allow all Syrian Jews to emigrate freely, to release from prison Jews suspected of having traveled illegally or planning to do so, urges the administration to continue to make known to Syrian authorities the important role human rights will play in our future negotiations for peace in the Middle East.

Mr. President, the successful end of the Persian Gulf crisis marks a new beginning in our efforts to bring peace to the Mideast.

The United States played the decisive role in winning the war. We must now play the decisive role in winning the peace.

We must take full advantage of our diplomatic opportunities. First, we should urge the Arab States to make peace with Israel. Israel is ready. But it takes two to negotiate.

Mr. President, I am concerned with the apparent impetus to place other issues—issues such as relations with the Palestinian Liberation Organization, the future of the role of Palestinians within Israel—to place these issues in a priority ahead of pursuing a whole array of binational negotiations on longstanding issues between Israel and Arab States.

Mr. President, we should encourage Arab States to begin at least taking confidence-building steps that will signal their commitment to peace.

Syria will be a key player in the process. In the confidence building category, we should urge the Syrians to finally resolve the issue of Jewish emigration.

Mr. President, I am introducing a resolution that calls on Syria to do just that.

Syria continues to deny the basic human right of emigration to Syria's 4,000 Jews. This constitutes a direct violation of the Universal Declaration of Human Rights to which Syria is a signatory.

Jews suspected of having traveled illegally or even of planning to do so have been arrested, interrogated, and subjected to lengthy imprisonment.

The Syrian secret police—the Mukhabarat—engages in 24-hour-a-day surveillance of the Jewish quarter and keeps a file on every Jewish person. The Mukhabarat monitors all contacts between Jews and foreigners. Mail is read and phone conversations are wiretapped.

As a means of reducing the financial liquidity of all Syrian Jews, and thereby, their mobility, Mukhabarat approval is required for the purchase and sale of property by Jews in Syria.

The religious and lay leaders of the Jewish communities must report regularly to the Mukhabarat.

Mr. President, we must convince the Syrians that we are deadly serious about this basic human rights violation, and we must continue to urge the administration to make known to Syrian authorities the important role that human rights in the Jewish community, especially the right to emigrate, will play in determining future policy toward Syria.

I urge my colleagues to send this important message by supporting this resolution.

Mr. SIMON. Mr. President, I ask unanimous consent that I be listed as a cosponsor.

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

Mr. SIMON. Mr. President, I have had the opportunity to visit the Jewish ghetto in Damascus—and that is what it is, it is like the ghettos were 200 years ago in other cities around the world. It is an unbelievable situation. I think any pressure we can put on Syria to adopt a more enlightened policy is a constructive thing.

Let me add one other thing where the President pro tempore may differ with me. But we have just gone through the process again where you are begging people for amendments. In the House, if you do not have any amendments, you move immediately to final passage. I am not suggesting that we can adopt precisely that but if, after an interim period of maybe 15 or 30 minutes, we do not have amendments prepared, then it seems to me, unless there is unanimous consent to the contrary, we ought to move to final passage. We waste just an incredible amount of time around here in quorum calls. We will be in a quorum call from 2 to 4 in the afternoon or something and then we will be in session tonight passing a bill. I think a modification of the House rule is a desirable thing.

I sympathize with the immediacy the President pro tempore is faced with. I know Senator BYRD likes these very distinctive Senate rules and probably disagrees with me on that. But Senator BYRD retains the right to be wrong once in a while.

The PRESIDING OFFICER. The Senator from West Virginia [Mr. BYRD] is recognized.

Mr. BYRD. Mr. President, the distinguished Senator from Illinois is overly charitable. The Senator from West Virginia is often wrong, but not about the Senate rules.

Mr. President, the two sides are ready to accept the amendment by Mr. GRAHAM.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 57) was agreed to.

Mr. GRAHAM. Thank you, Mr. President.

Mr. BYRD. Mr. President, patience is a virtue. I suppose that is about the only virtue I have. But the motion that the Senator has suggested, the distinguished Senator from Illinois has suggested, is an appealing one on its surface, and I am tempted to move to third reading just to demonstrate how unwise that motion would be right at this point.

I am not saying that there might not come a time that I would move to third reading. I think the last time we moved to third reading was on a motion of mine several years ago when I moved to third reading and I think that was the first time in many, many years that that motion had ever been made here in the Senate.

But if I were to move to third reading, for example, right now, I would catch 10 Senators away from the Hill. They have gone down to the White House and they will not be back until 20 minutes after 1.

So, I have to consider the situation in which our colleagues are currently found. So if I were to move now to go to third reading, those Senators would miss a vote or they would be called back to the Hill. There are situations in which Senators are unavoidably delayed in getting to the floor.

I do not think the Senate rules are our problem, basically. The problem here is the campaign financing situation in which Senators have to be kept away from the Senate—and also it would hold true with the House—kept away from the Senate, from their committee work, from the floor work, from being with their families, but they have to engage in the mad money chasing all around the country to raise funds in order to stay in public service.

That is not the worst part of it. We are in hock to these special interest groups. We are slaves to some of the lobbying groups. I do not have to name names, but I could. There are certain lobbying groups in this country that wield an influence over this Senate greatly out of proportion to the numbers that they represent. That is the problem with the Senate.

I will be happy to yield.

Mr. SIMON. If the Senator will yield, I agree with him completely on the campaign finance reform. We are corroding our system with the present

process, and I applaud the Senator's leadership.

Let me just add, in this so-called Keating 5, if we would vote capital punishment for all five but do nothing to change the system, we will have done absolutely nothing for the public.

So I agree with the Senator completely on that. I would differ, with all due respect, on the matter. I think the Senate rules could be modified, and we could improve the situation around here. So I would differ with my distinguished friend from West Virginia on that.

Mr. BYRD. Mr. President, all things—not all things, but I suppose most things could be improved. I do not think we could improve on the Bible. I do not think we could improve on Shakespeare.

Incidentally, since we apparently have a little time right now—I will not take up the time of the Senate except to say that the rules have been tried and tested. And when one starts to change the rules here he must remember that he is going against a great deal of trial and experience. And it takes two-thirds to shut off a filibuster on an amendment to the Senate rules. It does not take two-thirds to amend the rules but it takes two-thirds to shut off a filibuster on amending the rules. And there will always be a filibuster on a change of the Senate rules unless there is unanimous consent to change a certain rule. And that is not very easily gotten.

Perhaps there will not always be a filibuster on changing the Senate rules, but certainly everybody gets into the act. If there were a change of the Senate rules brought to the floor, unless there is unanimity that only that rule will be changed, and only in that fashion, and that there be no other amendments, everybody gets into the act and that is where any changes in the rules will run on the rocks.

But I thank the distinguished Senator. He makes many contributions to this body. He is a very wise Senator. Occasionally he may be wrong. In this one instance I think he is in error.

Mr. President, I wonder if Senators on the other side of the aisle will call up their amendments. I do not believe there are any other amendments on this side, other than that of Mr. LEAHY.

I see on the list here, only these Senators remaining, and perhaps some of them may not call up their amendments: Senator COATS, Senator HELMS—an amendment or a point of order—Senator BOND, Senator LEAHY, Senator DOMENICI. So there are five Senators whose names are on the list, indicating that they might wish to call up amendments.

Mr. HATFIELD. If the Senator would yield, I think Senator SEYMOUR from California is expected to offer an amendment this morning.

Mr. BYRD. Then there is an amendment I did not know about last night, by Mr. SEYMOUR of California. So one additional amendment did crawl out of the woodwork.

Mr. HATFIELD. Perhaps we could go to third reading if the Senators do not indicate an interest in coming to the floor to offer their amendments. It seems as though we waited a reasonable time yesterday for some Senators to arrive. I suggest we go to third reading, Mr. President.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go to third reading.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Yes, there is an objection. I can hear it.

Mr. HATFIELD. Reserving the right to object. I did not expect the chairman would take me up so quickly. If the Senator would withhold that request?

Mr. BYRD. I withhold.

Mr. HATFIELD. We would like to have a few moments just to make one last desperate effort to invite our colleagues to the floor. But I certainly would not object within a reasonable period of time from now.

Mr. BYRD. I withhold the request for the moment.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HATFIELD. If the chairman will yield——

Mr. BYRD. Yes.

Mr. HATFIELD. Mr. SEYMOUR has heard us and said he will not be offering his amendment, so we can cross that one off. I hope if others are watching from their offices, if they would let us know if they plan to offer their amendments? At least give us a little notice for courtesy's sake as well as to expedite the bill, to hear from those who have indicated previously that they want to offer amendments.

Mr. BYRD. Yes, very well.

Mr. President, while awaiting the arrival of a Senator on the floor, there have been a good many things said, and quite appropriately, in applauding our troops and our military leaders, and I want to add my compliments to those that have been so well expressed.

I am a great believer in miracles. Every time I see an individual I think to myself, there goes a miracle. So many billions of things could have happened to prevent that person from having been born a normal human being.

I heard someone say recently—though I did not read it—but I heard that General Schwarzkopf had made some reference to the outcome of the war, or to the brilliance and swiftness with which it was ended, as being miraculous. I am not sure at all that General Schwarzkopf said it, but at least having heard this, I shall use it as a launching pad to make a few comments.

May I say that if any Senator will come to the floor with an amendment, I will sit down. Meanwhile, I shall use a little time.

Mr. President, it was not a miracle, what we saw occur in the Persian Gulf war; we saw that the enemy was rendered blind because of the brilliant strategy on the part of our generals and our military leaders met with the approval of the Commander in Chief, President Bush.

The air war, which was conducted for, give or take a few days, 40 days, blinded the enemy. Hussein could not get his planes up, he had no way of knowing where the allied troops were massing, where they were going, what their movements were.

So General Schwarzkopf—I will refer to him—blinded the enemy. He put out the enemy's eyes. Hussein could not see. Hussein knew not from where to expect an attack.

That reminds me of Hannibal. Hannibal lost an eye early in his campaign in Italy. But the sense in which I am saying now that he was blind, is in a different sense. Hannibal had waged very successful campaigns. He had never been defeated.

He won the Battle of Trebia in 218; he won the Battle of Lake Trasimene in 217; he won the Battle of Cannae in 216. And up to that time, and perhaps even for all time, at the battle of Cannae, he inflicted upon Roman troops the greatest defeat they had ever suffered—certainly up to that time. The Romans got to the point where they would not fight him. Fabius Maximus was elected dictator by the Roman Senate and he decided to follow a strategy of avoiding battle with Hannibal. Hannibal had been destroying so many Roman legions. Fabius Maximus decided just to follow along in sight of Hannibal's forces and observe Hannibal's movements, but never to engage him; but to keep him always apprehensive of an attack. Fabius, in this way, would not allow Hannibal to disengage his troops or to let them forage around the countryside because of fear that they would be attacked by the Romans.

In this way, he caused Hannibal to gradually lose strength because of attrition and the inability to resupply his troops.

Hannibal's brother, Hasdrubal, came across the Alps from Spain in the year 208. Hasdrubal knew that Hannibal was in southern Italy. Hannibal knew that Hasdrubal was somewhere in Italy, but he did not know just where. Hasdrubal sent a message to Hannibal. Hannibal was in Bruttium, which is in the southern part of Italy, or in Apulia. Hasdrubal sent a message telling Hannibal to meet up with him, Hasdrubal, in Umbria, in central Italy.

At that time, the two Roman consuls were Marcus Livius and Caius Claudius Nero; not the Emperor Nero, but a consul. As consul, he was general of an

army composed of at least two legions. Nero was facing off Hannibal, tying him up in the south. If the two brothers, Hannibal and Hasdrubal, could bring their forces together, they would pose a serious threat to Rome and carry the day for the Carthaginian cause.

Hasdrubal sent the message by six couriers. The six horsemen made their way without event until they got into southern Italy. But the message was intercepted and it fell into Nero's hands, so that Nero knew where Hasdrubal expected to meet up with Hannibal.

Nero not only knew of the proposed rendezvous where Hasdrubal was hoping to join his brother, Nero also knew that Hannibal did not know the whereabouts of Hasdrubal or his suggestion as to the meeting place at Narnia in Umbria. Nero moved quickly, beginning a forced march at night and taking with him the equivalent of a legion—6,000 infantry and 1,000 horsemen. He marched 7 days, averaging 30 miles a day, and hooked up with Livius, the other Roman consul, who was camped in front of Hasdrubal.

Hasdrubal suddenly learned that there was an additional consul in Livius' camp, as that morning, Hasdrubal's men had heard two trumpets, which indicated that it was not just the trumpet of one consul, Livius, but that there was also another consul's army on the field. Hasdrubal, in panic, prepared for an immediate retreat. At the battle which took place near the Metauro River, referred to as the Battle of the Metaurus, one of the decisive battles of the world, Hasdrubal was defeated and killed, both sides suffering many casualties.

Nero, once the battle was over, moved quickly back to the south and resumed command of the 30,000 legionnaires he had left there facing Hannibal.

The point I am making is, that Hannibal was blind in that he did not know that Nero had intercepted the message, he did not know where Hasdrubal was at that point in time, and he did not even know that Nero had left 30,000 of his men facing him, Hannibal, and gone northward over 200 miles to hook up with Livius, the other Roman general, and that Hasdrubal's army had been destroyed.

The first indication that Hannibal had that a battle had occurred was when the Roman cavalry spurred up to the Carthaginian's outposts at night and threw a dark object toward the Carthaginian sentries. When it was brought to Hannibal in his tent, he looked at it and said, "I see there the fate of Carthage." It was the head of his brother, Hasdrubal.

The point I am making here is that Hannibal was blind as to what was going on. That was also the case with Saddam Hussein and his army.

Mr. President, much has been written and said about U.S. technology, and it has been awesome. I am sure that we all were greatly impressed with the high technology weapons that were used by U.S. forces in the Persian Gulf. Again, I am saying this was not really something that was miraculous. As part of their strategy, the Allied generals simply decided that they would bomb and bomb and bomb before launching their ground attack. That was the brilliant strategy that we saw come to play. They outflanked Hussein's forces because he was blind, and they used their smart weapons. They outflanked Hussein just as the Black Prince, son of Edward III, outflanked the French at the battle of Poitiers in 1356. There the French greatly outnumbered the English, but when suddenly the English horsemen appeared behind the French lines, the French panicked and fled the field, leaving their king to be captured.

The Battle of Crecy occurred in 1346 A.D. There again the French greatly outnumbered the English and the Black Prince, son of King Edward III, was the hero again. On that occasion we saw the high technology weapons of that day when the English used their longbows against the French armored knights and their crossbows. Crossbows had to be stretched on a rack, but the English longbows could be, I will use the word, "fired" at a much faster rate. A longbow could let fly a barrage of arrows at the rate of five or six a minute, much faster than could the Genoese who had been hired by the French to shoot the arrows on crossbows. The French nobility at that time did not regard the longbow as a gentleman's weapon, so they hired the Genoese crossbow men. As I have said, the English longbows would shoot arrows farther and faster, and so, with 3,000 archers, the English shot their arrows, according to one chronicler, with such force and quickness that it was like a snowstorm. The French were devastated.

Anyhow, that was the high technology of the English, at the Battle of Crecy, in 1346. It was a replay at the battle of Agincourt in 1415. The English massacred the French.

It is well, I think, to reflect upon history as we deal with the events of our own time. History never begins a new chapter, only historians do. We can take a leaf out of the book of history, and perhaps to our own benefit, as we did and as the allies did in the Persian Gulf, with their high technology, with their flanking movements, and with their air power, which blinded the enemy.

I see Mr. HELMS is present and is prepared to offer an amendment or make a point of order.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS] is recognized.

POINT OF ORDER, PAGE 30, LINES 1 THROUGH 5

Mr. HELMS. Mr. President, on page 30, lines 1 through 5, I raise the point of order that this is legislation on an appropriations bill. I am prepared to discuss it at great length, but there is no point in taking up the time of the Senate.

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, before the Chair rules, I ask unanimous consent that the situation with respect to the point of order that has been raised by the distinguished Senator from North Carolina, Mr. HELMS, remain in status quo for the time being until other Senators who might be interested in opposing the point of order, or using whatever rights are available to them, may come to the floor.

In the meantime, I think the Senate could make some progress on an amendment which Mr. BOND apparently is going to offer.

So I ask unanimous consent that the present parliamentary situation remain in status quo; Mr. HELMS has a right to be protected; those who may be opposed to his point of view have rights to be protected, and that Mr. BOND now be recognized to call up an amendment.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request propounded by the Senator from West Virginia? Without objection, it is so ordered.

Mr. BYRD. I thank all Senators. Senator BOND is prepared now to call up his amendment. I will continue to protect the rights of Senators on this side, and the rights of Mr. HELMS.

This will enable the Senate to at least make a little progress. Otherwise, I would have to take the floor and, rather than see the time wasted, talk about the history of the Roman empire, or the history of Persia, or the history of the Punic wars, or American history, or even the history of the Senate.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 58

(Purpose: To provide adequate funds for the administration's targeted infant mortality initiative)

Mr. BOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 58.

Mr. BOND. 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 28, line 12,

Strike "$25,000,000: *Provided*" and insert in lieu thereof the following: "$57,400,000, *Provided*, That no less than 95 percent of such funds shall be used for expanding patient services, and Provided further,".

Mr. BOND. Mr. President, the infant mortality rate in this country is a disgrace. Among industrialized nations we rank 24th, behind Japan, behind Sweden, behind Finland, behind Switzerland, behind Singapore, Hong Kong, and France, behind East Germany, behind Northern Ireland, Belgium, and Italy. It is a deplorable situation that we must work to correct.

My amendment would provide an additional $32.4 million to fight infant mortality in this country, by funding a new and innovative targeted infant mortality initiative. I believe we need the additional $32.4 million for the program, which would have the effect of restoring funds that have already been redirected for Healthy Start. This means that the MCH block grant, community health centers, and Healthy Start would be funded in fiscal year 1991.

Mr. President, the President has made fighting infant mortality a national priority, and the administration is beginning a program to target areas that have been hardest hit by this terrible plague. However, in its hurry to begin the initiative immediately, the administration did not look far enough to find the necessary funds. This is a terrible problem, because the programs they chose to raid for funds are the maternal and child health block grant and the community health centers.

I am very pleased that the appropriations committee included startup funds of $25 million for the infant mortality initiative, and I commend my good friends, Senator HARKIN and Senator SPECTER, for their efforts in securing those funds.

Having a targeted program to fight infant mortality makes sense. These areas that have been hardest hit by the infant mortality disaster in this country deserve priority attention. We will be using these funds for these hardest hit communities for innovative ways to lower infant death rates, including early prenatal care, deterring teenage pregnancies, and increasing access to drug and alcohol programs. The goal of the program is to slash infant mortality rates by half in these communities—and the lessons learned can then be transferred to other communities.

Every child deserves a healthy start in life, but some children should not benefit at the expense of others. Slashing support for community health centers' and the maternal and child health block grant that funds programs which are on the front lines of care for poor pregnant women and their children, would leave thousands of mothers in Missouri and across the country without much-needed prenatal care.

It is so important that funds not be taken from other programs that already fight infant mortality—that we do not pit one city's babies against another city's babies, or rural babies against other rural and city babies.

In St. Louis at the Grace Hill Neighborhood Health Center, this redirecting of funds is putting their infant care program in jeopardy. It is just unthinkable that we would sit by and let this happen.

The Nation's 550 community health centers only mission is to provide health care in medically underserved areas—these are the areas hardest hit by high poverty and high infant death rates. The bulk of the maternal and child health block grant money helps poor mothers and their babies as well as programs for crippled children, childhood immunizations, health screenings and other vitally important programs.

Mr. President, in order to give a few minutes for any Senators to come forward, I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRYAN. 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. BRYAN. Mr. President, prior to the distinguished Senator from Missouri offering his amendment, the Senate was being treated to one of those tour de forces of our distinguished President pro tempore, as he was outlining a series of events involving the Punic War between Rome and Carthage.

A question occurred to me as he was talking about Hannibal and Hasdrubal, and I asked him if he might share with us the role that Hamilcar Barca performed during this period of the Punic Wars. If I might inquire of the distinguished President pro tempore, if he might enlighten the Senate further on that aspect of this interesting period of history.

Mr. BYRD. Mr. President, I am delighted that the Senator from Nevada apparently is well ensconced in the history of the Punic Wars. He has inquired about Hamilcar Barca.

Hamilcar Barca a Carthaginian general, was the father of Hannibal. The first Punic War occurred between the years 264 B.C. and 241 B.C. As a result of the first Punic War, Carthage lost Sicily, but Hamilcar Barca was able to keep the Romans tied down for several years in Sicily before the war finally ended.

After the end of that war, Hamilcar, as I recall, was given a command that led him to what was then—later if not then—Mauritania and other parts of the northern African Continent. Hamilcar decided to advance Carthage's interest in the western Mediterranean, and he saw that, in Spain and the Balearic islands, Carthage could experience a rejuvenation of its power, which it was losing in the eastern Mediterranean, with Sardinia and Corsica, and as I have already mentioned Sicily.

Spain supplied the silver to Carthage with which Carthage was able to employ its mercenaries. Carthaginians were traders and they had very important business interests, and for quite a while they, through their navy, were able to rule the eastern Mediterranean. But with the losses of the first Punic War, Hamilcar felt that Carthage's future lay in the western Mediterranean. So he went to Spain, and with him he took his son-in-law, who was also named Hasdrubal, and young Hannibal. And there is a legend that Hamilcar had sworn Hannibal to be eternally the enemy of Rome.

In any event, Hamilcar went to Spain, and after a few years there he drowned, at which time his son-in-law Hasdrubal took over the command of the Carthaginian forces. Hasdrubal was subsequently murdered, at which time Hannibal, who had grown to be 20 years of age or 21 or thereabouts, took over the command. Hannibal feeling that the best defense was a good offense decided to go across the Alps into Italy and carry the war into the heart of Italy.

So he made that trip across the Alps—the authorities do not agree as to what particular pass Hannibal took when he crossed the Alps, but he took with him a sizable number of elephants and many horses. He left the Rhone River with about 46,000 men and he lost about 20,000 of these men in crossing the Alps. He was attacked by the tribes of barbarians, and many of his elephants, horses and men fell off the high and slippery cliffs. One cannot help but be impressed with the courage of this man who crossed the Alps in that day under such difficulties as confronted him. His brother Hasdrubal crossed the Alps 10 years later in about 208 and made the crossing relatively without

problems. Apparently, he picked a different time of the year and perhaps a different pass.

Mr. BRYAN. I thank the President pro tempore for responding to the inquiry.

I note several of our colleagues appear to be seeking recognition, so I will yield the floor.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I thank him for his interest in history as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first, I thank the distinguished chairman of the Appropriations Committee, the President pro tempore, for yielding and also express to him my appreciation for his discussion on some of these very, very interesting historical incidents. I think that all of us benefit from these historic accounts that the distinguished senior Senator from West Virginia gives and to me it is of great interest, whether he is talking about Hannibal crossing the Alps—did I hear a discussion previously of Crecy and perhaps a mention of Agincourt?

Mr. BYRD. Yes.

Mr. CHAFEE. So I begin to think when was Agincourt?

Mr. BYRD. 1415.

Mr. CHAFEE. I was going to say 1415. Now I must say I did run and look in the encyclopedia to check on that, but I am right.

Then, of course, the distinguished Senator sometimes discusses the history of the Senate and those Senators who had such an active role here in many years past and we all have that compilation, that book the distinguished chairman produced, and it is in my library and I am delighted to have it. I appreciate it.

Mr. BYRD. I thank the Senator.

Mr. CHAFEE. Mr. President, what I would like to do early this afternoon is address the amendment by the distinguished Senator from Missouri, which is the pending business before us.

I just want to briefly say that the matter of infant mortality in the United States of America, I think, is a national shame. We rank 19th of all the nations of the world in infant mortality rates. Actually, we ran 20th. There are 19 countries in the world that have lower infant mortality rates than we have in the United States of America. Here are the statistics: For every 1,000 babies born in America today, live born, 10 will die.

For black babies, the outlook is even more grim. For every 1,000 black babies born alive in our country today, 18 will die, nearly twice the national average.

So when you figure what the national average is, obviously, that includes this high number of blacks. So the white infant mortality rate is way lower. If we combine it all, the average is 10, and the average of the blacks is 18. So it probably works out something like a black infant born in the United States probably has three times as great a chance of dying in infancy than a white child does. A black baby born right here in the capital of this Nation, Washington, DC is more likely to die in infancy than if that baby were born in Hungary, Poland, or Cuba.

Mr. President, this is unacceptable. I was pleased, as many of my colleagues were, to see that the President's budget includes a proposal to address this critical situation. Under the budget presented by the administration, $171 million is targeted to reduce infant mortality in 10 cities that the administration selected, 10 cities with very high incidences of infant mortality. Certainly, these cities need that.

However, what concerned me about the administration proposal was that it was going to be financed—and this is a well-intentioned proposal—by taking money from one of the most effective health maintenance organizations we have in the United States today which are the community and the migrant health centers and also some of the money was going to come from the maternal and child health block grant. That is unfortunate because both of these programs provide needed services to low-income patients, many of whom are women of child-bearing age and to their children. In my State, I think there is no more effective organization to care for the low-income individuals in our State than the community health centers of which we have 14.

In effect, the proposal of the administration would provide critical services to these 10 cities, very important, but it would take those moneys from these other areas. And so this is counterproductive.

The supplemental which we have before us, the measure we have before us, today provides $125 million for the infant mortality programs without taking money from the community health centers, or the maternity and child health block grant. Senator BOND's amendment would increase that amount. The underlying bill provides $25 million. Senator BOND would add another $32½ million so that the administration's proposal would be fully funded in the first year. In other words, the effort to fight infant mortality in these 10 cities.

The Bond amendment provides increased funding for the targeted cities without reprogramming the money from the community health centers or from the maternal and child health block grant.

I believe we have to do everything possible to fully fund the President's initiative, so it is my hope our colleagues will support Senator BOND's amendment. But we should not do so at the expense of other equally critical programs which are strained. So I hope the conference committee will include language in its report that would prohibit reprogramming of already limited funds from the community health centers and from the maternal and child health block grant.

These are my thoughts on this subject. I do not know what the distinguished Senator from Missouri plans to do now with this, but I commend him for his efforts. And even if, for example, he should withdraw it because of the financial problems—I am not sure how he proposes to proceed—he has made an oustanding contribution in calling attention to this matter and stressing that we just cannot rob Peter to pay Paul. We cannot take the funds from these very worthwhile programs, namely the community health centers and the maternal and child health block grant in order to fund these other areas.

I thank the Chair.

Mr. BOND. Mr. President, I thank my good friend and distinguished colleague from Rhode Island. I want to join with him in commending the administration and particularly Secretary Louis Sullivan for his initiative in pursuing this mortality reduction initiative.

As Senator CHAFEE has so eloquently outlined, infant mortality is an unacceptable tragedy in the United States.

I also want to say that my distinguished colleague from Rhode Island has played a very key role in the education effort to help many of us on this side of the aisle understand the wide and diverse issues and questions that come under the rubric of assuring adequate health care delivery.

Senator CHAFEE has long been a champion of health care. He has pointed out the vitally important role that community health centers provide. His leadership on this issue is one which has meant a great deal to me and was influential in my pursuing this effort to ensure that the community health center funds are not cut.

I think it might be helpful for my colleagues to understand why I am offering this amendment here today and perhaps this will explain the significance of what we are actually accomplishing with this amendment.

A few months back, we learned of a problem that a community health center in St. Louis—Grace Hill Neighborhood Health Center—was having recruiting an obstetrician for that center. This center only had two of its obstetrician positions filled, but of these two, one was leaving having been lured away by the high salary these physicians can command in the private sector.

Now, this obstetrician who had been lured away from Grace Hill by the lucrative salary of a private practice was a public health service physician so his salary was paid for by the Public Health Service directly—he was not paid from Grace Hill's payroll. This is an important point because Grace Hill

didn't have the funds in its community health center grant to pay the salary and malpractice insurance of that obstetrician.

Now, when this obstetrician left, this left this health center with only one of its three obstetricians positions filled. This one obstetrician, Dr. Turner was left to care for 2,200 individual patients. Well, the story doesn't end there. This obstetrician was also a public health service physician, so her salary and malpractice insurance costs were also paid by the public health service and not by Grace Hill. The reason why this is significant is because her commitment with the public health service was ending, so if Grace Hill wanted to keep her, they would need an increase in their community health center grant for her salary and malpractice insurance costs as well.

If that was not enough to put Grace Hill in a tenuous position, add in the fact that, Dr. Turner was pregnant and due in December. The center knew that it would take the most of a year to recruit a new obstetrician to fill the slot vacated by the one who went to private practice and now they were faced with not having any obstetricians while Dr. Turner was caring for her own child.

Fortunately, the Bureau of Health Care Delivery and Assistance at HHS—the department that administers the community health center grant money—recognized that this was a serious problem and approved an increase in Grace Hill's grant to fund the two new obstetricians that would now need to be paid for from Grace Hill's payroll—this was an increase in their grant of roughly $400,000 to $500,000.

Here is where Healthy Start comes in. At the of February, just 3 weeks ago, when funds from the community health centers were frozen at fiscal year 1990 levels so that the administration could redirect the CHC funds for Healthy Start—the community health centers, including Grace Hill received a letter from HHS indicating that,

> The Healthy Start initiative has an immediate impact on your upcoming fiscal year 1991 funding award. * * * As a consequence, the community health centers * * * may only receive funds for the maintenance of current service levels.

This meant that Grace Hill would not get the $400,000 to $500,000 needed to keep Dr. Turner and recruit a second obstetrician to fill the empty slot.

Mr. President, I ask unanimous consent that a copy of a letter from Marilyn H. Gaston of the Bureau of Health Care Delivery and Assistance be printed in the RECORD.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES, BUREAU OF HEALTH CARE DELIVERY AND ASSISTANCE,
Rockville, MD, February 25, 1991.

DEAR EXECUTIVE DIRECTOR: Although steady progress has been made over the last 10 years in improving infant health in the United States, some cities and communities continue to have exceptionally high infant mortality rates. For that reason, the Department has begun a new targeted initiative directed specifically at some of the places most seriously affected. The Healthy Start initiative will direct resources, beginning this Fiscal Year, to about 10 of these communities.

The intent of the Healthy Start initiative is, in partnership with community residents and state and local governments, to bring about a swift and dramatic reduction in infant mortality rates. The initiative will improve access to early comprehensive prenatal care by building an aggressive program of outreach and case management and provide services tailored to the risk-specific needs of community residents.

The Healthy Start initiative has an immediate impact on your upcoming FY 1991 funding award. A total of $57 million is planned for the Healthy Start initiative in fiscal year 1991, with a proposed $171 million in fiscal year 1992. The source for $23.7 million of the fiscal year 1991 total is the appropriation administered by the Bureau of Health Care Delivery and Assistance.

As a consequence, those Community Health Centers (CHCs) and State Primary Care Associations with budget start dates beginning March 1, 1991 and through the remainder of the fiscal year may only receive funds for the maintenance of current service levels. The targeted maintenance level for your health center for FY 1991 should have already been provided to you by your regional project officer.

The $23.7 million reserved for the new initiative will be awarded in the approximately 10 communities selected for Healthy Start, with funds to be awarded separately later this year. Further guidance to CHCs regarding the availability of these targeted funds, the program's description, and review criteria is now under development and will be distributed to eligible health centers and organizations as soon as possible.

If you have questions regarding the contents of this letter, please contact your regional project officer or Mr. Richard Bohrer of my staff at (301) 443-2260.

Sincerely yours,
MARILYN H. GASTON, M.D.,
Director.

Mr. BOND. Mr. President, this was a most unfortunate situation and probably an unintending consequence of the funding for Healthy Start, but for Grace Hill and for other community health centers and the people they serve who are in similar situations it is a tragedy.

It is very clear that robbing Peter to pay Paul is not working. It is also very clear that we, as a nation, must do something about our terrible infant mortality rate. Our inner cities and rural areas are plagued by infant death. In a country like ours, there's no reason for it. We need to invest our resources in programs that give children an opportunity to start life healthy. It is time the curse of infant mortality was lifted.

Mr. KENNEDY. Mr. President, today we must address an issue of growing importance in our Nation—reduction of the tragedy of infant mortality. Too many newborn children are dying needlessly, and many others begin life with long-term physical and developmental disabilities for lack of early, comprehensive prenatal care. The costs, in human and economic terms, grow yearly in suffering and lost productivity. It is a national disgrace that this country ranks 19th among the countries of the world in overall infant mortality, falling to 30th place for our nonwhite children. We can do better, and we must.

Infant mortality is a national tragedy, affecting families in cities and counties across the land. Our response must be similar in scope, addressing the problem at its roots, and providing every child a healthy beginning and the chance to grow up well and strong. We know what works—early and comprehensive prenatal care markedly reduces the incidence of early deaths and disabilities. Redoubling our commitment to make such care available to all women and their infants is a critical step in reducing the burden borne by the young and vulnerable.

The administration has introduced a targeted initiative to reduce infant mortality in selected cities and rural areas, proposing to redirect funds from community health centers and maternal child health programs for this purpose in fiscal years 1991 and 1992. The intended goal of this initiative deserves high marks. But it is an incomplete plan for addressing this national problem, and it would exacerbate the crisis of infant mortality by reducing the ability of local health care networks to provide accessible prenatal care to all women and their infants. The answer to reducing infant mortality does not lie in shifting resources from one area of need to another, but through strengthening the ability of all communities to prevent tragic deaths.

Community health centers and maternal and child health programs have a strong history of providing health care and support services to pregnant women and children, many of whom have no other source of care. Community health centers, located in underserved areas with high infant mortality rates, have demonstrably reduced rates of infant deaths among those they serve.

Congress recently recognized the importance of this provider network, expanding the National Health Service Corps to increase staffing, and providing ongoing support of MCH programs and community health centers. Further efforts to reduce infant mortality must build upon these networks of service, not weaken them through budgetary maneuvers.

The Appropriations Committee has taken concrete steps on this supplemental appropriations bill to protect the current year funding for community health centers and maternal child health programs. These are essential programs which are already providing

prenatal and infant health care to women and children, and our front line defense in the effort to reduce infant mortality. Startup funds have also been appropriated for the administration's targeted initiative for selected areas. Only through coordination and strengthening of our current prenatal health care delivery system can we achieve great gains in all areas of the country. I applaud the Appropriations Committee for taking this action required to eliminate a potential crisis in critically needed ongoing programs.

I hope that the administration will work the Congress to reduce the scourge of infant mortality by increasing access to cost-effective health care, nutrition, and social services for all pregnant women and their children. We must invest in strategies that we know can work, and make them widely available. If we are serious about reducing infant mortality, we will not pit communities against one another in competition for dollars that are all too few. I have introduced legislation that will strengthen our Nation's capacity to address the causes of infant mortality nationwide—by increasing the availability of prenatal health care with outreach to women who are at high risk, providing more substance abuse prevention and treatment services, and ensuring that young children can receive the primary health care and immunizations essential to their health. The opportunity to make substantial gains in reducing infant mortality lies before us, and I look forward to working with the administration to make these goals a reality. Our commitment to all children must remain steady, whatever their place of birth, to ensure their healthy future.

Mr. President, I ask unanimous consent that a letter from the Children's Defense Fund and a letter from the National Association of Community Health Centers be printed in the RECORD.

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

CHILDREN'S DEFENSE FUND,
Washington, DC, March 12, 1991.

Re S. 493, The Maternal and Early Childhood Health Care Act of 1991.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: We want to offer our enthusiastic support for S. 493, the Maternal and Early Childhood Health Care Act of 1991—another example of your strong commitment to improving the health of our nation's children. The Act recognizes the profound need to increase our nation's investment in effective and cost-effective maternal and child health programs.

The Act will expand the Community and Migrant Health Centers programs' capacity to serve pregnant women and children at risk by authorizing additional funds for a new Comprehensive Perinatal Care Programs in places where obstetrical and pediatric care is minimal or nonexistent; an expansion of services for young children up to age 3; and the development of some 40 new community and migrant health centers.

The Community and Migrant Health Centers are a highly effective but seriously underfunded federal program. Located in the most improverished and isolated inner city and rural communities in the U.S., health centers have for 25 years provided high quality comprehensive health care to millions of poor and minority persons. Nearly 600 health centers, operating in more than 2,000 sites throughout the country, serve nearly 6 million low-income patients each year. More than one-third of all health center patients are younger than 14, and 28 percent are women of childbearing age. In 1988, one in 8 births to low-income women in the U.S. was to a health center patient. That year centers cared for 12 percent of all low-income pregnant women and delivered more than 30 percent of all babies born to women younger than 15.

Health centers are often identified as one of the greatest achievements in improving health care for poor Americans. They have been shown to reduce infant mortality, increase immunization rates, improve child health, and increase access to care. However, recent funding increases for the Community and Migrant Health Centers have not kept pace with inflation. For FY 1991, funding for the Community and Migrant Health Centers grew by less than $25 million, to $530 million: $478 million for community health centers, and $52 million for migrant health centers. These increases are so small that the program still will be able to serve only about 20 percent of all people living in communities with health care shortages. Over the next decade the nation will need an additional 2,500 clinics to meet health care needs in all underserved communities.

We also are pleased that the Act will expand and increase immunization opportunities for young children. This expansion is essential if the U.S. is to achieve the Public Health Service Year 2000 Goal of having ninety percent of two-year olds and 95 percent of school-age children complete the basic series of immunizations for measles, mumps, rubella, polio, diphtheria, pertussis, tetanus, and meningitis.

Recent outbreaks of measles underscore that millions of children have lost access to the most basic health care. In the late 1970s measles eradication seemed within reach. By 1983 the United States had brought the number of cases down to an all-time low of 1,500. Five years later, following a significant decline in the proportion of children immunized, a measles epidemic struck communities across the nation, hitting hardest in some of the nation's largest cities. In 1990 the number of reported cases swelled to 25,000. Preliminary figures for 1990 show that 40 children died from measles—the greatest number of measles-related deaths since 1971. About 17,000 cases of measles occurred among preschool-age children and could have been prevented through timely vaccinations.

The Act will increase access to immunizations and thereby reduce vaccine-preventable diseases by establishing an innovative and cost-effective vaccine bulk purchase system. Your bill also will assure a more adequate vaccine supply for communities with centers by providing the Centers for Disease Control with the needed resources to purchase and distribute vaccines to health centers in the same manner as vaccines are purchased and distributed to state health departments. This system will assure that community health centers receive vaccine sufficient to immunize all their pediatric patients at the lowest possible cost to the federal government. We have noted that S. 493 places a fixed limit on the funding authority of the Centers for Disease Control program, a change from the current language authorizing "such sums" as necessary. My staff has discussed this issue with your staff, and your staff has agreed that this program is worthy of continued uncapped funding authority, and that a substitute provision will be offered.

Finally, we are extremely pleased to see that the Act will expand access to substance abuse programs for pregnant women by providing prevention and treatment services at community and migrant health centers and other primary care sites. Recent surveys have documented that pregnant women in need of substance abuse treatment often have nowhere to turn. Obstacles to care are particularly acute for the low-income and uninsured women served by health centers.

The Maternal and Early Childhood Health Care Act of 1991 represents a preventive investment in our next generation that is so essential to assure our nation's future. My staff and I look forward to working with you toward its enactment.

Sincerely yours,

MARIAN WRIGHT EDELMAN.

NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS, INC.,
Washington, DC, Mar. 14, 1991.

Hon. EDWARD KENNEDY,
Chairman, Senate Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: Our Association wholeheartedly endorses the Comprehensive Perinatal and Early Childhood Health Care Act, S. 493. We urge members of the Senate to pass it and provide full appropriations for its components. This Bill will reduce infant mortality and improve the health status of high-risk, low-income women and children throughout the country by enabling community and migrant health centers to substantially enhance their capacity to provide perinatal and early childhood care. If the new efforts authorized in S. 493 were fully funded by Congress in fiscal year 1992, we estimate that enhanced perinatal services would be provided to some 70,000 additional high-risk pregnant women and infants, and comprehensive early childhood health services would be made available to 200,000 additional young children. In addition, the one million preschool children served by health centers would be assured of the availability of all necessary immunizations; and services would be provided to pregnant women who are addicted to alcohol and other drugs.

Health centers currently serve over three million low-income women and children, representing over 60% of their total patients. Two-thirds of health centers patients have incomes below poverty, between 60 and 70% are minority, and half are medically uninsured. With special supplemental perinatal care funding appropriated by Congress for health centers in the last several years, centers have provided care for more than 10 percent of all low-income pregnant women in the U.S. who give birth, care for one-third of all adolescent women under age 15 who give birth, achieved measurable reductions in low birthweight deliveries and postneonatal mortality, and improved the scope and quality of care for more than 250,000 pregnant women and infants. Yet, the unmet need remains tremendous. This special funding has been insufficient to expand the perinatal care pro-

gram to a balance of 250 health centers, in both urban and rural areas. Furthermore, health centers in some communities are the primary providers of EPSDT, childhood immunization services, and other early childhood services. This Bill will enhance the capacity of all centers throughout the country to extend a broader scope of care to more children up to age three, to link more effectively with state programs for disabled children, and most importantly, to prevent childhood disability.

We also are painfully aware that there are many medically underserved communities with high need that even today do not have health centers. Therefore, we applaud the Bill's provision to enable the establishment of twenty new health centers in areas of greatest need, which will undoubtedly be areas of high infant mortality as well.

The Bill's provisions for inclusion of migrant and community health centers and homeless health care programs in the vaccine bulk purchase programs of states and health departments will enable more centers to extend immunizations to more children with greater cost-effectiveness than current arrangements allow. While some of this coordination is occurring already, this provision formalizes and strengthens this essential relationship between two important federally supported programs. Additionally, the substance abuse prevention and reduction provisions of the Bill will enable closer linkages between primary health care programs and substance abuse prevention and treatment services for low-income and pregnant women. This is a major need if we are to be more effective in reducing infant mortality and ensuring positive birth outcomes.

Health center base federal grant funding has experienced significant erosion over the last decade, when adjusted for increased patient care costs, and yet health centers today serve nearly one million more low-income, medically underserved people than they did in 1981. In light of this, the Administration's recent Healthy Start proposal, which would further strain the capacity of health centers to continue serving low-income women and children has been disappointing indeed.

On the other hand, your bill will enable centers to extend and broaden the scope of perinatal and early childhood services to more high-risk women and children in many communities, throughout the country, and it will also enable the initiation of health centers in twenty more currently underserved communities. This will be a major step towards even greater reductions in low birthweight babies and infant mortality; and towards healthier low-income women and children who are better able to pursue the American dream.

Senator, we deeply appreciate your leadership in designing legislation to extend health care to the poor and your consistent support for Community Health Centers.

Sincerely,

TOM VAN COVERDEN,
Executive Director.

Mr. HEINZ. Mr. President, I rise today in support of Senator BOND's amendment that provides additional funding for the President's Healthy Start initiative to address the critical issue of infant mortality. The infant mortality rate in this country is a tragic problem. Infants born in the United States have a better chance of survival if they are born in almost any other industrialized nation in the world. Directing additional Federal resources into local programs that reduce infant mortality is a must if we're serious about saving these babies.

The administration's fiscal year 1992 budget proposes "Healthy Start," a targeted infant mortality initiative to reduce infant mortality through improved health and social services in 10 cities with very high mortality rates. However, to fund this 10-city program the President proposes to cut more than $23 million from the community and migrant health centers and $34 million from the title V Maternal and Child Health [MCH] Block Grant. The administration's proposal would cut off the blanket on one end and simply sew it on the other.

Mr. President, Philadelphia's infant mortality rate is appalling. It is 50 percent higher than the national average. We know most of these babies die because they are born too small. Tragically we know there are more low birthweight babies born every day. We can only reverse this trend through early prenatal care. Every day we wait we jeopardize the lives of millions of unborn children.

Philadelphia is responding to the challenge of providing better and more comprehensive care to mothers and babies. However, the President's ill-advised plan proposes a potentially damaging funding mechanism for Philadelphia and other cities across the country. Slashing funds from the Maternal and Child Health Block Grant would mean eliminating prenatal care, specialized services to children with chronic illnesses or disabilities, and many other ongoing, direct health services for women and their infants. The $50 million that the administration wants to take from community health centers in the next 2 years would provide services for 250,000 patients, three-quarters of whom are women of childbearing age and children.

Solving the problems of the lack of prenatal care, substance abuse, and infant mortality will not come cheap, but diverting millions of dollars from effective, critical maternal and child health programs is a mistake.

The dire emergency supplemental bill provides $25 million for Healthy Start. Senator BOND's amendment will provide an additional $32.4 million to the program that provide the necessary resources to implement the initiative while protecting the funding of the community health centers and the Maternal and Child Health Block Grant. I urge my colleagues to join me in support of this important amendment.

Mr. BOND. Mr. President, I have taken to heart our chairman's wise admonition, "Don't rock the boat." He offered that advice when the junior Senator from Washington and I joined the committee. We understand the difficulties this amendment would cause given the committee's 302(b) allocations as well as the overall budget cap.

Thus I am willing to withdraw my amendment if I can get an assurance from the chairman of the Labor/HHS Subcommittee, the Senator from Iowa, that he will do everything to ensure that the conference report language will include a strong statement of the committee's position that funds not be reprogrammed or redirected in any fashion from the community health centers or from the Maternal and Child Health Block Grant or other programs that fight infant mortality. The administration is already withholding funds from the community health centers and we must make sure that those funds are restored immediately.

I would also like the assurance of my distinguished colleague from Iowa that the fight against infant mortality and the fight for the community health centers will not end here—that we can and will do better for these programs in fiscal year 1992.

Mr. HARKIN. Mr. President, I want to assure my colleague Senator BOND that the committee and I as chairman of the subcommittee strongly support the Maternal and Child Health Block Grant and the Community Health Center Program. These are two proven programs that deserve our full support.

The committee also strongly supports an expanded infant mortality initiative and that is why we have included $25 million in the bill for this purpose. We also would like to have included more for this purpose but could not find an offset to finance it.

We will make every effort in conference to have the Senate report language restated denying and prohibiting any reprogramming away from the MCH Block Grant Program or the CHC Program. I am concerned that the administration has created reserves in these two programs in anticipation of such a reprogramming and now that it has been made clear that such a reprogramming will be denied, the Department is directed to release these reserves without delay.

Mr. KENNEDY. Mr. President, I am pleased that the Appropriations Committee has taken clear action to ensure that fiscal year 1991 funds appropriated for Community Health Centers and the Maternal and Child Health Block Grant will not be diminished in any way. As chairman of the committee which authorizes the Community Health Centers, I am a strong supporter of the critical contributions these centers make to reduce infant mortality in medically underserved areas, where access to prenatal health care is limited. Community health centers have demonstrably reduced rates of infant deaths among those they serve. Efforts to reduce infant mortality must build upon these networks of service, not weakening them through a redirection of resources. I thank the chairman for

his commitment to safeguarding the funding base for these essential Community Health Center and Maternal and Child Health Programs, and anticipate ongoing support from the Appropriations Committee to ensure no such reprogramming shall take place.

Mr. BREAUX. Mr. President, the administration's fiscal year 1992 budget proposal includes a 10-city initiative to target infant mortality. Unfortunately, this Healthy Start initiative is to be funded with money that has already been appropriated for the 1991 operations of community health centers and maternal and child health block grants.

I could not agree more with the President that we need to address the infant mortality crisis in this, the richest of Nations on Earth. Fourteen million women of childbearing age and 12 million children lack adequate health insurance coverage. Some of the big cities and remote rural counties in this country have infant mortality rates higher than those of Third World countries. Overall, the United States ranks 19th in the world in infant mortality rate.

It is my understanding that, under the President's proposal, my State of Louisiana, which ranks 43 in infant mortality among the 50 States and the District of Columbia, will lose $327,510 from the Community Health Centers Program and $845,782 from the Maternal and Child Health Care Block Grant Program. These programs have existed for years and are providing badly needed services that are not otherwise available in parts of Louisiana.

No city in Louisiana is likely to be among the 10 cities or regions that benefit from the Healthy Start intitiative. I favor a targeting program like Healthy Start, whether or not Louisiana gets any money out of it. I do not support funding this initiative if it means taking services away from children and infants who badly need them. In this country, the most advanced, productive and civilized Nation on Earth, we should not tolerate an infant death rate among the worst of all of the developed nations.

Mr. DANFORTH. Mr. President, I rise today to support both the substance and the intent of the amendment of my friend and colleague from Missouri, Senator BOND. In his 1992 budget, the President showed great concern about an issue which is of central importance to the health and welfare of this Nation: The health of our children. In particular, he proposed increased funding to prevent infant mortality.

The budget increases Federal support for infant mortality prevention activities by $676 million Governmentwide. I have no dispute with that increase. I think it is necessary. It is unfortunate that the United States, which spends more on health care than any other nation in the world, ranks 24th in infant mortality in the world. Fighting infant mortality must become a national priority.

The proposal that concerns me is the Healthy Start initiative, which targets $171 million to the 10 areas with the highest rates of infant mortality. I have no dispute with the targeting of funds to those most in need. I believe that this proposal should be fully funded. Yet, I have serious reservations about the administration's plan to fund this initiative. I believe that the mechanism chosen is unwise and counterproductive. In 1991, the administration proposes to take $24 million from the funds that have already been appropriated for community health centers. The administration also proposes to take $34 million from the funds already appropriated for State maternal and child health block grants.

Why are we going to take funds from programs which are on the front lines fighting infant mortality? This proposal envisions taking money from Missouri's health centers to fund health centers elsewhere. One of the major reasons that none of Missouri's cities and towns fall in the bottom 10 in the country in combating infant mortality is because of our health centers. These health centers do a tremendous job in offering prenatal care to those in need. They provide primary and preventive care, not gold-plated care, and they do so in a cost-effective manner.

The administration's proposal to take funds from those already committed to community health centers across the country will have a devastating impact on their ability to provide services. If the proposal is implemented as planned, Swope Parkway Health Center in Kansas City, which provides comprehensive care for the underprivileged of that city, will lose $250,000. The Grace Hill Neighborhood Health Center in St. Louis will not be able to hire two obstetricians that it has been seeking for years. It needs an increase in funds in order to attract these physicians, and without them, hundreds of women will be deprived prenatal care.

This proposal does not just hit Missouri's cities. It also hits our rural areas. Northwest Health Services in Mound City, MO, will lose $50,000. This is money relied upon by these centers. If you cannot rely on funds already appropriated from Congress, what can you rely on? I strongly oppose taking funds from those already appropriated for community health centers and for the maternal and child health block grant. They are relying on these funds in Missouri and in all of the other areas that do not fall into the bottom 10 in the country.

For all of these reasons, I support Senator BOND's thoughtful and timely amendment. He would add $32 million to the $25 million already included in this appropriations bill to fund the first year of the Healthy Start initiative. This initiative should be fully funded. It represents the President's commitment to the health of our children. But, I will not support this initiative if it is paid for at the expense of those community health centers in Missouri struggling to respond to the health needs of the poorest citizens of our State.

INFANT MORTALITY FUNDS

Mr. BRADLEY. Mr. President, I would like to thank Senator HARKIN for lending very valuable support to expand programs which combat infant mortality. His action recognizes the value of the maternal and child health block grants, as well as community health centers in providing dependable health care to a most vulnerable, yet extremely valuable, segment of this great Nation—pregnant women and children.

All of us who are concerned about children realize that more still remains to be done to remove barriers to health care which compromise our future generations. But, most importantly, common sense tells us that to take two steps back in order to take one step forward is not progress. We cannot strengthen programs in some targeted communities by compromising programs in other communities.

The $25 million to support Secretary Sullivan's program request will not cure the problem, but it will go a long way toward providing additional help to those communities whose infants are not surviving at rates often twice that of the appalling national average of 10 deaths per every 1,000 live births. We should focus on these communities while maintaining and expanding national networks which have been a major contributor in the decreased infant mortality rate from its high in 1960 of 26 to the present level of 10 reached—and stagnant—in the decade of the eighties. This supplemental funding obviates the need to reallocate funds from current appropriations for maternal and child health block grants or community health centers.

The United States remains 21st among the nations of the world in infant mortality. Maternal and infant mortality are preventable. Each infant death represents an estimated $380,000 in lost productivity. This should not be tolerated. This will not be tolerated. I will continue to work to provide all children with the healthy beginning so essential to their future and ours and I thank Senator HARKIN for his invaluable support for these programs. Without his leadership we would not be where we are today.

Mr. HARKIN. I thank the Senator for his kind words. I know we both want to do all we can to reduce infant mortality in this country.

Mr. RIEGLE. Mr. President, I rise today to express my concern with the

President's proposal for combating infant mortality. The United States continues to have one of the worst infant mortality rates—ranking 24th among industrialized countries.

Overall, the United States has far to go but some regions face even greater problems. In Michigan, although the infant mortality rate of almost 11 deaths per live births is consistent with the national average, Detroit's rate is close to 20, almost twice the rate of the Nation. And Genesee County has a rate of close to 18.

Mr. President, our children are simply not getting the care they need and deserve. Michigan had the unfortunate distinction of being listed in the Children's Defense Fund's study listing the top 10 cities with the highest rate of infant mortality. Two cities in my home State of Michigan are listed with the highest rate of infant mortality. Detroit is rated second and my home city of Flint is rated 10th. Michigan is the only State in the Union to have two cities in the top 10. This is a deplorable situation that we must correct, but we cannot do this at the expense of other programs whose overall goal is to promote the health of mothers, infants, and children.

I applaud the President in bringing this tragedy to the forefront of his domestic agenda by creating the Healthy Start program. The program has the immediate goal of reducing infant mortality rates by 50 percent in targeted areas. Unfortunately the administration's approach to funding this program is shortsighted. The program will target the 10 worst areas—urban and rural—with the highest rate of infant deaths. To get this program started, the Senate Appropriations Committee included startup funds of $25 million for the infant mortality initiative in the Dire Emergency Supplemental bill. Sadly, this amount falls short of the amount needed to adequately fund the program. Instead of adding more money to the program the administration is redirecting funds away from community health centers and the maternal and child health services [MCH] block grant—two programs which should not be weakened but strengthened. In effect, we are robbing Peter to pay Paul—and this is a mistake.

Mr. President, I and many of my colleagues have long taken the lead in combating this problem through the maternal and child health block grant and community health centers. Just last year Congress appropriated close to $600 million and $500 million, respectively, for these programs. I chair the Finance Subcommittee on Health for Families and the Uninsured which has jurisdiction over the MCH block grant. These programs have made an enormous contribution by reducing infant mortality, and providing prenatal, obstetric, and pediatric care to millions of low-income families.

This juggling of much needed funds to combat infant mortality underscores the fact that this country needs a national strategy for reforming our health care system. It is a national tragedy that 1 in 5 children, over 12 million, are without a penny of health insurance. In Michigan alone, there are 300,000 children without health insurance. Forty-one percent of our uninsured children, or 5 million, live in families with incomes below the Federal poverty level. Medicaid is an inadequate safety net for low-income children below poverty level.

A more efficient, better designed health care delivery system could provide care to all Americans without utilizing significant additional national resources. I, along with several of my colleagues, have been working to develop a bipartisan plan to provide access to affordable health care for all Americans and control rising health care costs.

Diverse groups, representing all sectors of society, including business, labor, health care professionals, insurers, State/local governments and advocates are all asking for reform of the health care system. Our goal is to develop a proposal to provide universal access to health care and control costs but we need some leadership from the White House. I am convinced that if the administration would lend its genuine concern to the overall issue of access we would not be debating this most tragic problem.

Mr. BOND. Mr. President, I am very pleased that we will protect the community health centers and make fighting infant mortality in our cities and in our rural areas a No. 1 priority.

I would certainly prefer that additional funds be found to start up the President's initiative—but if these dollars cannot be found, community health centers must be protected.

Our inner cities and rural areas are plagued by infant death. In a country like ours, there is no reason for it. We need to invest our resources in programs that give children an opportunity to start life healthy. It is time the curse of infant mortality was lifted.

I thank the Senator from Iowa.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

Mr. BOND. Mr. President, I yield the floor and I thank our distinguished chairman.

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

The PRESIDING OFFICER (Mr. KERREY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I understand Mr. GRASSLEY, the distinguished Senator from Iowa, is wanting to speak on an unrelated matter. I ask unanimous consent that the pending matter before the Senate, which I believe is a point of order that has been made by the distinguished senior Senator from North Carolina [Mr. HELMS], am I correct?

The PRESIDING OFFICER. The Senator is correct. That is the pending business.

Mr. BYRD. I thank the Chair. I ask unanimous consent that, in regard to that matter, it remain in status quo, which does not prejudice the rights of Mr. HELMS, nor does it prejudice the rights of other Senators who may wish to use their rights on that point of order. I ask unanimous consent that matter remain in status quo until after Mr. GRASSLEY has completed his statement.

I also understand Mr. COATS is on his way to the floor to call up an amendment. I hope that is true.

I ask unanimous consent that that matter remain in status quo for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Iowa is recognized.

THE CRIME VICTIMS' RESTITUTION ACT OF 1991

Mr. GRASSLEY. Mr. President, at this time, I want to speak about the Crime Victims' Restitution Act of 1991.

I want to commend my colleague from Oklahoma, Senator NICKLES, for the dedicated leadership he has provided on the issue of victims' rights.

His perseverance has succeeded in keeping this issue before the Senate, the Congress, and the entire Nation.

We all recall that last summer and fall the Senate considered so-called crime control legislation.

During the debate on this legislation, the Senate was allowed to consider a limited number of amendments.

Of all the amendments allowed to come before the Senate, Senator NICKLES and I offered the only amendment that directly addressed the rights of victims in the Federal criminal justice system.

The Victims Rights and Restitution Act was approved by the Senate; a similar amendment was also approved by the House.

A good portion of the amendment became a part of what eventually was agreed to by a House-Senate conference committee, approved by both Houses of Congress, and eventually signed into law.

However, the conference committee could not come to an agreement on several major provisions of the amendment. Consequently, these were not in-

cluded in the final version of the crime bill.

The Crime Victims' Restitution Act of 1991 attempts to remedy one of the conference committee's omissions.

The Crime Victims' Restitution Act of 1991 mandates the payment of restitution to victims of crime, when a defendant is tried in Federal court.

Currently, Federal courts have the option to require restitution as part of a criminal sentence. However, it is only right and just that victims be repaid the financial losses suffered during a crime.

Under the act, restitution orders made by Federal judges will be for the full amount of a victims' financial loss. Once an order for restitution is entered, the court will determine the method of payment, taking into account the financial situation and obligations of the offender.

Furthermore, the Crime Victims' Restitution Act of 1991 allows Federal courts to consider the entire course of an offender's criminal conduct when ordering restitution.

This will allow a victim to recover financial losses due to criminal conduct by the offender against him or her, even though the offender may have entered into a plea bargain for a lesser offense.

Mr. President, after victims suffer from unprovoked physical assaults or worse, they still face a very difficult—even hostile—struggle through the maze that is the American criminal justice system in this last decade of the 20th century.

And, that system is centered around providing protection for criminal offenders, not to the victims of their heinous behavior.

No one who supports the rights of victims suggests that criminal defendants should not be accorded the full panoply of constitutional rights.

But, the American criminal justice system, despite the small victories over the last few decades for victims of crime, still virtually ignores victims. This treatment is the result of the traditions of our Anglo-American criminal jurisprudence.

The theory underlying this tradition is that justice is best served when the adversarial process is contested between the criminal dependent and the State, rather than the defendant and the victim.

Again, no one who believes in victims' rights supports taking the law into their own hands. The tradition of requiring that the State prosecute criminal conduct must be upheld if we are to live in and maintain a civilized society.

As many are all too aware, even some of the rights that are enumerated in the first 10 amendments to our Constitution—the Bill of Rights—have been, over the last 200 years, woven into an intricate web of insulation for criminal suspects, all in the name of upholding the rights of individuals.

Over the last three decades—aided and abetted by an all-too-compliant Supreme Court—the rights of criminal defendants have been vastly extended by limiting a police officer's power to question suspects without defense attorneys present, or to seize evidence without warrants.

And, within the last 4 years, the Court has twice rejected informing juries—during the sentencing phase of a capital crime—about a murder victim's background, and how the murder affected the victim's family.

Unfortunately, my provision to allow for a victim impact statement during the sentencing phase in Federal capital cases was dropped in the final version of last year's crime bill that is now law.

I will have more to say to my colleagues about that specific provision at a later date.

The question of punishment is another great concern to victims. These days it seems that a wrongdoer seldom receives a sentence that is either swift or sure.

Reliable statistics indicate that the police are able to solve only 1 in 5 major crimes.

When a criminal suspect is apprehended, it can take more than a year in some urban criminal court systems to dispose of the case.

During the pendency of a criminal case, the defendant who is free on bond has a 1 in 6 chance of being arrested for committing a new crime.

This probably means that a criminal defendant has a 5 out of 6 chance of not being caught committing another crime while he is free on bond.

Meanwhile, the disposition of up to 9 out of 10 cases in some jurisdictions involves plea bargains that reduce the charges against the defendant.

Ultimately, of the cases that are prosecuted, only 1 case in 6 leads to the offender having to serve time in a prison.

The final injustice is that, in most criminal justice systems—even if given a prison sentence—a convicted criminal will never serve the full amount of time of his or her sentence.

Rather, because of the size of many local and State prison facilities—and because of the rulings of many Federal judges, who feel the need to be administrators, or who presume to know what are and what are not cruel and unusual prison living conditions, or who just generally believe that they know what is best for all of us—an offender is released early and allowed to prey upon society once again.

One more threat to potential victims of crime is that some of the country's most vicious criminals are juveniles. And, unfortunately, the Department of Justice reports that nearly half the juveniles picked up for violent offenses are put on probation or released outright.

And even if a juvenile is imprisoned, he or she usually does not stay behind bars beyond the age of 17.

The current assault against the country by those engaged in the trafficking and use of illegal drugs often involves the use of young people by drug dealers; in this way, the juveniles can do the pushers' dirty work because it is well known on the street that young offenders will not do serious time.

Consequently, it is the victims of crime who—along with the rest of the country generally—especially feel a sense of frustration and bitterness toward the country's rate of crime.

Over the years, victims have organized and they have had some successes—both with legislation and with the criminal justice system.

However, many law enforcement officials believe that it is too time consuming and too cumbersome to involve the victim in such proceedings as a criminal's pretrial release or sentencing.

But I believe that victims do have rights.

I have tried, in some small measure, to advance the cause of victims. The main reason for my interest is not to increase the harshness of penalties—although penalties should be increased where need be; nor has my interest been to obtain money for victims—although monetary awards can be beneficial and should be made in some instances.

My interest stems from what crime victims have told me: They want to be involved in the criminal justice system.

I agree with them.

The Crime Victims' Restitution Act of 1991 is another avenue that allows victims to be involved; it takes another step toward restoring balance to the scales of justice by allowing victims of crime to be full participants in the Nation's criminal justice system.

I urge my colleagues to support this very important legislation.

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS

The Senate continued with the consideration of the bill.

Mr. COATS. Mr. President, I shortly will be offering an amendment to the legislation before us. I want to inquire procedurally to make sure this is the appropriate place and time to do that. As I understand it, we have set aside Senator HELMS' point of order, and I assume that I can go ahead and offer the amendment now.

The PRESIDING OFFICER. The Senator is correct.

Mr. COATS. Mr. President, the amendment that I will be sending to the desk shortly will strike language in section 203, which requires that the air-

craft carrier U.S.S. *Kennedy* undergo a service life extension program in the Philadelphia Naval Shipyard. I am offering this for a number of reasons which I will detail in a moment.

As many Members of this body know, I have introduced in the last session, and plan to again bring up in this session, the Legislative Line-Item Veto Act. Senator MCCAIN and I have worked on that for the past couple of years. We had a couple of votes on it in the last session. We came close but did not receive a majority in passing what I think is a very important structural change in the way we do our business.

It seems that almost on a monthly basis the public is apprised of pork barrel spending, spending that is attached to other appropriations bills that appropriate money for projects that have not gone through the regular process. They either have not been the subject of committee hearings or, even if they were, were not the subject of debate and vote on those particular items before this body.

They are attached to, as I said, otherwise popular bills that are designed to be expeditiously moved through the process and often it is only later in reviewing some of these several hundred page bills that we discover that little items have been tucked here and there, that fund specific projects in specific areas for purposes that are often questionable. But whether they are questionable or not, those items have not had to stand the light of legislative debate and a vote by this body.

Regularly, publications throughout the country publish lists of what most of our constituents say is outrageous spending: How did this happen? Why did they happen? Why are we spending the money in this fashion? The legislative line-item veto is a method by which the executive branch, the President, could say back to Congress I did not request this; I do not need this; we do not think this is an appropriate way to spend the taxpayers' dollars; and I am sending a rescission back to you.

The President can do this under current statutory law, but that rescission does not become effective unless Congress takes affirmative action on the rescission.

Of course, what has happened over the years is that these rescissions are referred to the very committee that appropriated the money in the first place, and they never come back. Under current procedure, that rescission does not take effect unless Congress specifically supports the rescission that the President has sent back to us.

Over the past dozen years or so, less than 10 percent, in most years less than 5 percent, of those rescissions have been approved by the Congress. I think the statistic is that over the last 13 years, $35 billion that the President has sent back to this body have not been accepted by the Congress.

What the legislative line-item veto would do is turn that process upside down. It would say that when the President sends a rescission back to Congress, that rescission takes effect unless specifically overturned by a vote of this body within a certain time period.

As Senator MCCAIN and I and others have discussed the legislative line-item veto, it was suggested to us on a number of occasions that rather than give the President this power which some thought was excessive—I think it frankly just balances the scales a little bit better and provides an appropriate check and balance—we ought to look at the appropriations when they come before this body and raise objections and questions. So that is what I am doing today.

Looking through the bill before us, one could raise dozens of objections to specific spending items attached to this bill that have nothing to do with Desert Storm, have nothing to do with providing benefits for those who participated in Desert Storm and, arguably, have nothing to do with an urgent, dire need to fund money at this particular time and in fact are items that are not requested by the administration and in many cases are items that even the department receiving the funds does not want; they do not want to spend it for that specific purpose.

Rather than offer a blanket amendment or an amendment which goes through and picks off each one of those and suggests this did not come through the appropriate authorization process, I have looked at a particular item contained in this legislation, which is relevant to one of the committees on which I sit, the Senate Armed Services Committee. This particular item of spending directs the expenditure of a particular amount of funds for the service life extension of the aircraft carrier U.S.S. *Kennedy*. It not only directs that those funds be spent but it directs that work to be performed will be performed at a particular location. It is distinct in terms of the supplemental items included in this bill under the defense title in that this proposal has not been authorized by the Armed Services Committee and has not been subject to the light of debate, discussion, and a vote, distinct from the other two items in that particular section of the bill which directs the appropriation of money, some of which I agree with, some of which I do not, but at least those items have been debated, are voted on, authorized, and appropriated.

Now the administration or the Department of Defense may not need those items or want those items, but whether we agree with them or not they have at least been subjected to the debate, discussion, and will of the majority of this body.

In this particular instance, this item which I seek to strike with the amendment which I will send to the desk shortly does not do that. It simply slips in an item so that we will not have the opportunity to debate and vote on it, so we will not have the opportunity to examine it, ask the questions about whether or not it is needed.

As I said, this amendment will strike language in section 203 which requires the Service Life Extension Program, or SLEP, be conducted on the U.S.S. *Kennedy* at the Philadelphia Naval Shipyard.

There are several reasons why I think it is important to support this amendment to strike the language and oppose this particular proposal; first of all, is the cost. The Service Life Extension Program is estimated to cost up to $1 billion, some estimates have put it at more than that, at a time of severe budgetary constraint, and at a time when the Department of Defense is facing an extraordinarily limited budget in terms of its mission for the next several years with significant reductions.

We are taking away a very important piece of spending available to the Department relative to their needs. The SLEP program is something that the U.S. Navy does not want. I talked with both Admiral Kelso and Secretary Garrett and the indications from both of them are very clear. They do not want to put the *Kennedy* under a Service Life Extension Program.

It is scheduled for an overhaul in future years. That overhaul is expected to cost around $500 million. So immediately we have a differential of $500 million that we are taking away from the discretion of the Navy to spend. We are designating it here to be spent in a way they do not want to spend it, and in a place they do not want it spent.

The *Kennedy* is the newest of the conventional carriers. It does not need a Service Life Extension Program, even though it is 23 years old. It is in very good condition relative to other conventional carriers, and the Navy believes it does not need the type of work that a Service Life Extension Program would entail. They feel that an overhaul will accomplish virtually all of the needed repairs and upgrades at half the cost.

They estimate that the overhaul will provide a satisfactory condition for this carrier for up to the next 10 years and perhaps even longer. So the first reason is that the cost is significant: $500 million.

Second, as I earlier said, the reason for bringing this up is that the funds have not been authorized. There is another example—many have been raised today—of authorizing under an appropriations bill.

The Senate Armed Services Committee was not involved in this decision. The ability to make major policy decisions on an appropriations bill shel-

tered from public scrutiny and congressional debate has gotten out of hand. We all know that. That is the reason for the legislative line-item veto. While I am not offering that here today, I am using this as an example to point out why we need it, or at least why we need to go through these appropriations bills and designate those items which are not authorized by committees.

Third, maybe one of the most important reasons why we need to carefully consider this is the fact that we are being asked today to approve legislation which is designed to shield one particular military installation from review by the Base Closure Commission.

We all know how difficult it is to close bases. Yet we also all know that if we are going to ask the Department of Defense to be more efficient with taxpayers' dollars, we have to give them the latitude in closing bases that they do not need.

I have no way of knowing whether or not the next Base Closing Commission under the rules which this body established last year will designate the Philadelphia Naval Shipyard for closing. I think that will get fair consideration under our rules and under the guidelines that we have imposed on the Base Closing Commission.

But the point is that this language in section 203 is designed to circumvent that process because—I will read it. It says:

None of the funds available to the Department of Defense may be used for advanced procurement of material and other efforts associated with the industrial availability of the U.S.S. *Kennedy* other than the Service Life Extension Program for the U.S.S. *Kennedy* at the Philadelphia Naval Shipyard.

I commend my colleagues from Pennsylvania for their clever drafting of this language. It clearly is a situation where they are, if this is adopted, able to circumvent a possible future decision by the Base Closing Commission to close a particular facility. Because if we have appropriated funds and designated that those funds can only be used at a particular location, then it will be impossible to conduct that work at that location if the base is closed.

So we are hamstringing the Base Closing Commission by designating a certain facility off limits before the Commission even makes their decision. The precedent that would be set here—I am sure it is suddenly dawning on my colleagues as it is dawning on this Senator that this is an ingenious way of protecting each of our facilities in each of our States, because all we need to do is slip some language into the appropriate appropriations bill specifying that a certain amount of funds will be spent for a certain production, or work on a certain piece of equipment at a particular location and, therefore, that location will be exempt from the actions of the Base Closing Commission.

Each one of us can run down here, depending on how many military installations we have in our State, with some language that will allow us to circumvent the decisions of the Base Closing Commission. It is very clever. As I said, I commend the ingenuity of my colleagues for finding this loophole.

I suggest if we do that we are undermining the process that we have set in place. That is very difficult. It is difficult for each of us to accept because it affects installations in our State, but we all know it needs to be done. We cannot have it both ways. We cannot tell the Department of Defense to be more efficient in expending taxpayers' dollars but do not touch my base.

Mr. President, I think it is also important to note that this provision is not accepted by the Navy, that the SLEP Program, or the Service Life Extension Program, is designed as a way to maintain a 15-carrier force that the Navy does not want and that this Congress has agreed we do not need, or at least cannot afford for the future. If we change that decision, that is fine. But the SLEP program was introduced as a way of extending the life of certain pieces of military equipment—in this case aircraft carriers—so that we would not have to build a new carrier but we could extend the life of old carriers.

That is a worthwhile objective. But the point is that in last year's budget DOD authorization we made the very tough decision that we are going to go from 15 to 12 carriers. On the basis of Desert Storm we may come back this year and decide to modify that. I do not know what the Senate Armed Services Committee is going to do or what DOD will recommend. That is not the point.

The point is there is a process established in this body by which we make these decisions. A proposal is sent by this committee, the committee debates it, and they meet with the Commanders in Chiefs and the Secretaries.

We meet with the executive branch and discuss and debate among ourselves what we think our force posture should be for the future, and we make those decisions, and they may come back and reinstate a 15-carrier program, for all I know. If that is the case, we may want to use the Service Life Extension Program to take existing carriers and extend their lives. But that is a decision that will be, and should be, made by the appropriate authorizing committee. It should not be made on an urgent dire supplemental spending bill which circumvents that process.

So we are really dealing with two things here: No. 1, whether or not the SLEP program is necessary, and right now the Department of the Navy says it is not, and it does not want it. I think even more important, what we are dealing with here is a situation where Members are attempting to carve out a special niche for their particular military installation and circumvent the base-closing procedures.

AMENDMENT NO. 59

(Purpose: To eliminate or reduce certain appropriations)

Mr. COATS. Mr. President, I send to the desk this amendment and ask for its immediate consideration.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, reserving the right to object, I want to try to get a handle on what is going on here.

Mr. HELMS. Mr. President, may I clarify the situation?

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. The Senator from Indiana is simply offering an amendment, and the regular order would be that we go back to point of order. I think the Senator ought to have the right.

Mr. President, I ask unanimous consent that he be permitted to offer his amendment.

The PRESIDING OFFICER. Is there objection to the Senator from Indiana offering his amendment under the unanimous-consent request of the Senator from North Carolina?

If not, without objection, it is so ordered. The Senator may offer his amendment.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. COATS], for himself, Mr. HELMS, Mr. SMITH, and Mr. MCCAIN, proposes an amendment numbered 59.

On page 22, strike lines 8 through 13.

AMENDMENT NO. 60

(Purpose: To restore previous law)

Mr. HELMS. Mr. President, 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 North Carolina [Mr. HELMS] proposes an amendment numbered 60.

In lieu of the language proposed to be stricken by amendment No. 59, insert the following:

"The language on page 30, lines 1-5 are null, void, and of no effect."

Mr. HELMS. Mr. President, I call for the regular order.

The PRESIDING OFFICER. Now the regular order is the point of order raised by Senator HELMS.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I understand the Senator from North Carolina raised a point of order against language on page 30, line 25, and that that

language constitutes legislation on the appropriations bill; is that correct?

The PRESIDING OFFICER. The point of order is against the committee amendment.

Mr. HARKIN. Mr. President, I question the germaneness.

The PRESIDING OFFICER. The question before the Senate is, Is the amendment germane?

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 60, nays 40, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—60

Adams	Exon	Lieberman
Akaka	Ford	Metzenbaum
Baucus	Fowler	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Graham	Nunn
Boren	Harkin	Pell
Bradley	Hatfield	Pryor
Breaux	Heflin	Reid
Bryan	Hollings	Riegle
Bumpers	Inouye	Robb
Burdick	Jeffords	Rockefeller
Byrd	Johnston	Sanford
Chafee	Kennedy	Sarbanes
Conrad	Kerrey	Sasser
Cranston	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Specter
Dixon	Leahy	Wellstone
Dodd	Levin	Wirth

NAYS—40

Bond	Gramm	Packwood
Brown	Grassley	Pressler
Burns	Hatch	Roth
Coats	Heinz	Rudman
Cochran	Helms	Seymour
Cohen	Kassebaum	Simpson
Craig	Kasten	Smith
D'Amato	Lott	Stevens
Danforth	Lugar	Symms
Dole	Mack	Thurmond
Domenici	McCain	Wallop
Durenberger	McConnell	Warner
Garn	Murkowski	
Gorton	Nickles	

The PRESIDING OFFICER. On this vote on germaneness, the yeas are 60, the nays are 40; so the point of order falls, and the amendment is germane.

Mr. HELMS. Mr. President, in a moment I am going to suggest the absence of a quorum. I hope Senators have a nice weekend, because we will talk about this for a while.

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. BYRD. 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. BYRD. Mr. President, this matter will only take a minute, I hope, and then I will put the quorum back in.

Mr. President, I ask unanimous consent the pending amendments may be temporarily set aside.

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

AMENDMENT NO. 61

(Purpose: To add an administrative provision)

Mr. BYRD. Mr. President, 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 West Virginia [Mr. BYRD] proposes an amendment numbered 61.

Mr. BYRD. 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 30, between lines 7 and 8, insert the following:

SENATE ADMINISTRATIVE PROVISION

SEC. 502. (a) Upon the written request of the Majority or Minority Leader of the Senate, the Secretary of the Senate shall transfer during any fiscal year, from the appropriations account appropriated under the headings "Salaries, Officers and Employees" and "Offices of the Majority and Minority Leaders", such amount as either Leader shall specify to the appropriations account, within the contingent fund of the Senate, "Miscellaneous Items".

(b) The Majority and Minority Leaders of the Senate are each authorized to incur such expenses as may be necessary or appropriate. Expenses incurred by either such leader shall be paid from the amount transferred pursuant subsection (a) of this section by such leader and upon vouchers approved by such leader.

(c) The Secretary of the Senate is authorized to advance such sums as may be necessary to defray expenses incurred in carrying out this section.

Mr. BYRD. Mr. President, this amendment does not contain any new funding. It is an administrative provision which will enable the Offices of the Majority and Minority Leaders to transfer money from their salary account to an administrative expense account to be used for official purposes. It is consistent with the action which has been taken by the Senate Rules Committee for Members' individual Senate clerk-hire accounts.

Mr. President, this amendment has been agreed to on both sides.

I ask the amendment be considered, agreed to, and the motion to reconsider laid on the table.

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

The amendment (No. 61) was agreed to.

Mr. BYRD. 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. BYRD. 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. BYRD. Mr. President, I just want to call to the attention of my colleagues that as far as I know, there are only four amendments that remain. So we have made a little progress since last evening: A Coats amendment—of course there will be five amendments—no, four amendments. The amendment by Mr. COATS, and the second-degree amendment by Mr. HELMS, and the amendment by Mr. DOMENICI, and a possible amendment by Mr. LEAHY.

So it sounds like we are closer to the goal line than we really are. I hope that Senators will be prepared to act—they are always prepared to act responsibly, but I would hope they would be willing to act soon on these amendments. I think the House may go out before much longer, in which case it will be tomorrow morning before the House can meet and appoint conferees. I just urge my colleagues to let us get on with the action on the bill.

I wonder if the Senate is going to appear to be unable to act with some fair degree of expedition on the two most important supplemental appropriations bills, one making appropriations for Desert Shield-Desert Storm, the other one being dire emergency supplemental. I want the Senate to act as quickly as possible on this bill so we get to conference and hopefully resolve our differences with the House.

I gave Mr. HELMS my promise that he would be protected while he is back in the cloakroom making some calls. I see my friend from Illinois wishing to address the Chair. May I ask unanimous consent that upon the completion of the statement of the Senator from Illinois, assuming that the Chair recognizes him, that there be an automatic quorum, if I am not on the floor to put in a quorum, or would the Senator put in a quorum?

Mr. DIXON. I would be delighted to do that, I say to the President pro tempore.

The PRESIDING OFFICER. The Senator from Illinois.

JIM JOHNSON'S SPEECH TO FANNIE MAE EMPLOYEES

Mr. DIXON. Mr. President, I thank my dear friend, the distinguished senior Senator from West Virginia, for his kind accommodation.

Mr. President, in Congress sometimes we witness change and sometimes we help cause it. Sometimes change occurs dramatically, and other times subtly. Sometimes change occurs by force; sometimes change occurs by evolution.

And although change may occur with fanfare, it more frequently happens quietly, without much notice.

The United States of America has just won a war—dramatically, by force, and with fanfare. As our soldiers return home, to joyful families and appreciative neighbors. We turn our Nation's attention homeward as well. We turn from foreign affairs to domestic policy, from the peace we have achieved abroad, to the domestic tranquility which we seek at home.

By coincidence, or fate, on the final day of the gulf war, the Senate Banking Subcommittee which I chair held a hearing on Fannie Mae and Freddie Mac, the two giants of our housing finance system. The Subcommittee on Consumer and Regulatory Affairs explored concerns over whether these secondary mortgage market institutions contribute to redlining. We asked whether their policies or procedures make it tougher for working families in low- and moderate-income communities, and particularly minority neighborhoods, to get home mortgage loans.

Two weeks after the hearing and 6 weeks into his tenure, the new Chairman of Fannie Mae, Jim Johnson, has initiated change. Last Thursday, he gave a speech to all Fannie Mae employees about their new commitment to delivering on affordable housing and overcoming redlining. The changes he outlined are real and significant. And, I believe that they will hasten the otherwise slow and subtle changes in Community Reinvestment Act lending; they will advance the evolution to fair lending and fair housing in this country; and, they should not go by without notice.

Mr. President, I ask unanimous consent that a copy of Jim Johnson's speech be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DIXON. Mr. President, at our subcommittee hearing we asked not just about the volume of loan commitments for affordable housing but about loans actually purchased by Fannie Mae. Johnson's speech pledges $10 billion in commitments for affordable housing—$10 billion for low- and moderate-income home buyers and multifamily housing—within just over 2 years and that those commitments will be delivered by a date certain.

At our subcommittee hearing witneses testified that the underwriting guidelines of Fannie Mae and Freddie Mac—although formally neutral and officially flexible—are perceived to be designed for white, middle-class suburban housing. Johnson's speech commits resources for teaching banks how to do community reinvestment lending and for additional outreach to minorities. Further, Fannie Mae will adapt products to inner city neighborhoods and will monitor its progress by reviewing Home Mortgage Disclosure Act and census data regarding underserved communities.

These are meaningful steps forward.

At the hearing, I commented that when it comes to redlining and mortgage discrimination, everyone seems to point a finger at someone else. The regulatory agencies, Fannie Mae, Freddie Mac, private mortgage insurance companies, lenders, realtors, community groups, each point at one another. Mr. President, I asked the witnesses to point their fingers at ourselves, to think about what each of us can do to eliminate redlining and unfair biases against moderate-income Americans in our financial markets.

Leland Brendsel, Chairman of Freddie Mac, responded with the best study of redlining, mortgage discrimination, and the secondary market that I have seen. He showed courage and leadership in commissioning that study and in distributing its findings. And I congratulated him.

This Nation is made great by her diversity, her intelligence, her ambitions, and her sense of justice. Jim Johnson, days ago, made an intelligent and ambitious commitment—by one of the most powerful corporations in America—to serve the diversity of our Nation's housing needs and to assure the fairness of our mortgage finance system.

Today, I salute his leadership. Today, I challenge others active in our housing and financial markets to step up to a higher level of responsibility. Tomorrow, I will watch for their follow-through.

The war on discrimination in lending has not yet been won. The battle has been engaged. Some triumphs have been achieved. But our mission will not be accomplished until working families, of whatever race or modest means, can get mortgages no matter where they choose to live; until whites and blacks have the same access to home mortgage credit; until, for all Americans, Martin Luther King's dream includes home ownership, the "American Dream."

EXHIBIT 1

TRANSCRIPT OF REMARKS DELIVERED BY JAMES A. JOHNSON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, FANNIE MAE, TO FANNIE MAE EMPLOYEE MEETINGS ON MARCH 14, 1991

Today Fannie Mae is launching a new program to open doors to affordable housing. Our focus is on young families and senior citizens; the homeless and those who can't afford to rent; people who have special housing needs in rural areas and in urban areas; and those who cannot afford to live near where they work.

Our new commitment to low- and moderate-income housing programs, to special housing, needs, is very large and it's very carefully circumscribed in time. We are committing today that, by the middle of 1993, we will do $10 billion of commitments for these special programs and, most importantly, by December of 1994, we will have deliveries of $10 billion for these special programs.

This is a new level of involvement for Fannie Mae. It's a new level of commitment by management and by everyone in this room, and everybody listening to me who works for Fannie Mae around the country. I decided to make this announcement at employee meetings rather than somewhere outside of Fannie Mae for two very simple reasons: 1) none of this will be possible without Fannie Mae's complete and total commitment and, 2) the success in the end depends on you, the employees. You've done some very big things before.

In 1980, we has no Mortgage-Backed Securities program—no program. Today, we have $300 billion of Mortgage-Backed Securities in place.

In 1980, we did a survey of our 1,400 lender-customers and asked them about their level of customer satisfaction with Fannie Mae. Seventy-eight percent of them said they were fully satisfied. So you all have established that you know how to work with the people we need to work with in order for us to have a business.

Over the last decade you have gotten together in the asset and liability group, the finance group, the operations and systems group, and largely taken the interest-rate risk out of our business. We now, except in very extreme cases of interest rates going up and down—four or five hundred basis points—are able to go forward with our program with little effect on our earnings from changes in interest rates.

And beyond that, the employees of Fannie Mae have shown they care, whether it's the March for the Homeless, or other volunteer activities, or our commitment to the students of Woodson High School, this has been an outstanding group of people who have gone well beyond their own concerns to care about others. We have now over 200 students at Woodson who have become part of the Fannie Mae family. We have over 135 people in Washington who are working as mentors with those students to make sure that they have the opportunity to get support for college, to have a chance that they otherwise wouldn't have.

Finally, I want to thank all of those of you who have worked since 1987 in our Office of Low- and Moderate-Income Housing Initiatives, headed by Marty Levine. It's only because of that effort that we are able to do what we are doing today. If we didn't have the programs Marty has launched, if David Maxwell hadn't believed in 1987 that we have to re-engrave on the mind of everybody in Fannie Mae our public mission, then we wouldn't be able to pick a number of $10 billion and be confident that we can meet it.

The needs we are trying to address are very great indeed.

(1) Four or five renters in America, even with a 10 percent downpayment, cannot afford to buy a starter home.

(2) Minority families throughout the country do not have the same access to the housing finance system as other Americans.

(3) There is a real shortage in rental housing. Between 1974 and 1988, there was a 24 percent decline in apartments that rented for $300 a month or less. At the same time, there was a 56 percent increase in those living in poverty who rented.

(4) Last year there were two million Americans who were homeless. The average daily number of homeless was 700,000. Among them were 100,000 children.

(5) One of every seven elderly Americans lives in poverty. Some of those are "house rich and cash poor." Our hope is that through some of our programs we can deal with their special needs.

(6) In rural areas, there are 500,000 more low-income rural families than there are affordable housing units for them to live in.

(7) All across the country, particularly in large metropolitan areas, increasingly nurses, teachers, fire fighters, police officers and others are unable to live near where they work.

Since I have been here at Fannie Mae, I am often asked on Capitol Hill, and elsewhere, whether we are doing enough for low-income housing at Fannie Mae. The answer to that question is: "No, we are not." That's the reason for this program. We are going to do more.

We have a great deal to contribute. We raised very large amounts of money at relatively low cost. We have 1,400 lender-customers across the country who we worked with and have a good relationship with. We have underwritten 12 million mortgages at Fannie Mae.

Beyond that, we are gaining new understanding and experience through the work we have done with special housing initiatives since 1987. We have many new partners in many parts of the country who have experience and a depth of understanding of housing needs which we, over time I hope, can match here at Fannie Mae. We have great people and we have a strong commitment both on the part of the company and the part of our people.

There are four principles that will guide everything we do in the programs I am announcing today.

(1) We are not the Federal government, we are not in a position to offer the missing—all-important in many cases—missing element of subsidy.

(2) We are a private, profit-making company.

(3) We are a financial partner, we are not a solo provider of housing. We are in the wholesale business. What we do best is replicate and set national approaches all over this country where people can come forward and say, "Yes, the new Fannie Mae program is something I can use." And we can do it on a national scale.

(4) We care about credit. It serves absolutely no purpose for us to put people in homes they can't afford or put renters in apartments they can't afford.

So throughout this entire effort, we are going to be very conscious of playing the role that Fannie Mae uniquely can play. We can't do everything, but we can do a lot.

Let me run through the seven initiatives that are part of our announcement today.

First is an effort to make it possible for more people to have the downpayment necessary for affordable housing. That is the "3/2 Option." We will initiate an effort which will allow people all over the country to come forward with 3 percent of the cost of the house and allow the other 2 percent to come from a non-profit source, a government source, a family source, but to be combined in a way that goes beyond what we have done on a large scale before.

Second, we are committing ourselves between now and the end of 1992 to an additional $1.5 billion of mortgage revenue bonds, with $700 million of specialized securities as part of that program.

Third, we are announcing an additional $150 million commitment of low-income housing tax credit investments that we hope, with the leverage that we have been able to achieve, can generate another $400 million for low-income renters.

Fourth, we will soon announce a new employer-assisted housing program. For Fannie Mae employees, when you come to work tomorrow there will be an announcement of Fannie Mae's employer-assisted housing program. That program at Fannie Mae will be characterized by a forgivable loan which will help people get into houses. Around the country, employers increasingly are faced with the fear of labor shortages in many high skill areas and with the need to attract and retain workers. We are going to reach out not only to public employers, but to private employers, and say to them that we are prepared to work with them on products that are designed to meet their objectives of attracting and retaining employees.

Fifth, in the preservation area, we are waiting, as others are, for HUD to come forward with the regulations for that program. But let me say that we are going to do everything we can to provide a financing element that can make the difference for many non-profit groups in owning existing projects. We are prepared to work with non-profit groups to help them get into a position where they can be the kind of owners they want to be.

Sixth, in the area of the elderly, we are working to expand our programs. We will speed up our demonstration effort on home equity conversion mortgages for the elderly. We are sponsoring a series of conferences with AARP all around the country to further assess housing needs for seniors.

Seven, in rural areas, we are working with the federal government and others to be much more active in providing a secondary market in rural America where it's needed.

Another important dimension of our plan has to do with outreach and education. We cannot succeed unless everybody in the system knows that we are prepared to be their partner; that we are prepared to come forward and try to adapt our programs and our commitment to the particular needs that they have.

The most important element of our outreach will be to minorities around the country. We believe that everyone in the system can do a better job in making the mortgage finance system accessible to minorities. In the past quarter, we assigned additional people in each of our regional offices to work with lenders on their CRA requirements and to adapt our products for reaching out more effectively into the minority community. We will focus on the Home Mortgage Disclosure Act data as it comes out and the census data to make sure that we are doing everything we can do. And let me make a commitment that Fannie Mae will do everything within its power to eliminate discrimination in the mortgage finance system wherever it may exist. And we'll work with everyone concerned to achieve that end.

I would specifically like to compliment Senator Dixon and Senator Bond for their work in this area and for keeping the focus where it belongs, on all of us coming together to be more effective.

As part of our outreach program, in the next 50 days we will meet with all 50 state housing finance agencies. We will work with each of them to try to adapt our products to what they are doing and try to shape our effort in a way that we can combine with their efforts for maximum impact.

In addition to these efforts, there will be information materials, counseling, and other activities which will extend our reach to more and more people to help them own homes and rent homes that are within their reach.

Let me say in conclusion, this is a very ambitious program. It's not going to be easy. We have already made mistakes and we will make more mistakes. Hopefully, we can make fewer mistakes by listening more closely to all of you who have joined us here this morning. It's going to require our entire organization to move to a higher level of performance. But there is a permanent commitment here and a permanent new dimension to our involvement. We won't just measure our contribution in volume, in dollars, and in return. What we are saying here is that Fannie Mae should be judged on our contribution to meeting unmet housing needs. That's the important commitment, contribution, and obligation for all of us.

I met with some reporters earlier this morning and was asked: "How many people in Fannie Mae will be involved in this? "And the answer is: there will be 2,512—everyone of us, at every level, in every office, every day. Hopefully, it's that level of commitment that will make the difference. So thank you again, for all you have done. Let me say that I look forward to working with all of you on this important challenge.

Mr. DIXON. Mr. President, may I say to my friend, the President pro tempore, I am prepared to suggest the absence of a quorum. I do, Mr. President, suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS

The Senate continued with the consideration of the bill.

AMENDMENT NO. 60

Mr. HELMS. Mr. President, as is so often the case, when a procedural vote occurs in the Senate, Senators come up to these two tables—I cannot speak for that table, but I know about this table, which is the Republican table—and they say "What is this all about?" You try to explain the procedural situation, and it is sort of like explaining the plan of salvation; you have to start from the beginning.

Let me do the best I can to explain what happened and what the issue was when the vote was taken. And then I will have a few comments.

First of all, the administration is totally opposed to the four lines on page 30 of this bill that constitute legislation on an appropriations bill and which would, if this bill should become law as is written presently, cost the taxpayers $5 million a year minimum for the next 4 years. The provision in this bill will result in $5 million of taxpayers' money going to a private organization which ultimately wants to decide who may teach and who may not

teach. This is a private organization controlled by a labor union, a labor union that has already demonstrated its intractability. I was told today about one case—and I think the Senator from Mississippi was present—where a teacher, was it in Iowa?

Mr. COCHRAN. Minnesota.

Mr. HELMS. Minnesota. A teacher in Minnesota was declared Teacher of the Year in Minnesota and the school board gave her a pink slip because she was not a member of the union. She got both of them at the same time.

Now, here is what is afoot, Mr. President. You have groups in this country that say this person may teach because they belong to our union—they do not call it a union, but that is what it is—and they say other people may not teach because they do not belong to our union.

Mr. President, here is what the administration said about the National Board for Professional Teaching Standards. "The supplemental"—meaning this legislation before us now, the underlying bill—"would eliminate the requirement that there must be authorizing legislation before a grant of $4.9 million is made to the National Board for Professional Teaching Standards. If this is done, there would be no opportunity for Congress and the administration to consider the form which authorizing legislation should take. In addition, this grant would be noncompetitive; the Government could not select from among the most qualified bidders."

Mr. President, for the past three appropriations bills, an attempt has been made to bypass the authorization process on this issue. As all Senators know, I am sure, in order to spend the taxpayers' money, the procedures of this Senate require that the expenditure of funds first be authorized and then appropriated, but for the past 3 years there has been no authorization for the spending of this money.

So these Senators who favor this turkey, they slip in and say let us take out the words "if authorized" from a previous appropriations bill. I am going to explain the effect of taking out those two words in just a minute.

Mr. President, the last vote was a perfect outrage. It was entirely political. Not one Democrat voted with what the Chair was going to have to rule on my point of order. There was no question about it. The distinguished Parliamentarian, who was sitting earlier this morning, assured me that he was going to uphold my point of order. So, under Senate rules, the only thing that can be done by people who do not want the Senate rules to apply is to raise the defense of germaneness, and then the Chair has no alternative but to submit the question to the Senate. The vote went right down the party lines except for four defectors on our side. But I never anticipate getting their votes on anything anyhow. I like them, but I am telling a fact of how some voted, as I think they should, and it is perfectly OK. They were elected and selected. I do not question that.

Now, then, there is also a bit of political aggrandizement going on. That is what is behind it. And I understand that too.

Mr. President, the National Board for Professional Teaching Standards, which is at issue here, has supporters who have failed for the last 3 years to get authorization for making this noncompetitive grant of $5 million. In other words, they say give us the money and shut up. You are not going to have anything to do with it. That is what they are saying to the taxpayers.

Now, the reason they cannot get an authorization, as I think I made fairly clear at the outset, is due to the opposition of so many, especially the Department of Education and the administration. So, noting their lack of success, the proponents of this $5 million a year—and you can bet it is going to grow and grow in the outyears—decided to circumvent the process by including in this appropriations bill words that reach back into a previous appropriations bill and delete the requirement that this program must be authorized before any of the money may be spent.

The proponents of this $5 million expenditure are seeking now—and they pretty well have succeeded—not only to subvert the rules of the Senate by legislating on an appropriations bill, but also to circumvent Congress' customary process by granting this private national board $5 million without a proper authorization for the expenditure.

Mr. President, it is particularly disturbing that several of the distinguished Senators, whom I admire very much and who are my friends, who have been most persuasive in the past about this business of legislating on appropriations bills voted to declare germane a provision of the bill that is clearly not germane.

So what they have done in one fell swoop is destroy any argument they may have in the future about legislation on appropriations bills. I am going to advise Senators on my side that the rule against legislating on appropriations bills is out the window. It was thrown out the window this very afternoon by the very Senators who, in the past, have been its strongest proponents.

Mr. President, let me say again for the purpose of emphasis, there is no authorization for appropriating any funds to the National Board for Professional Teaching Standards to research a national teacher certification program. None, zilch.

Senators who voted on this matter should know that this National Board is a 64-member board set up—unilaterally—by a foundation that is totally private. Yet this private group comes to Washington with their hands out. There is nothing novel about that. Just about everybody comes to Washington with their hands out. But this foundation is a liberal so-called education think-tank. The National Board's bylaws ensure that two-thirds of its members will always be public school teachers. Of course, most teachers now belong to one or the other, sometimes more than one, of the teachers' unions.

But, Mr. President, what is particularly upsetting about this provision is that the Appropriations Committee stated clearly in writing in its report last year that it could not and would not fund President Bush's $25 million Alternative Teacher Certification Program because—and get this—no "authorizing legislation has been enacted into law."

My point is that the Appropriations Committee—and every member on the committee is a friend of mine, particularly, the chairman, who was born in North Carolina, by the way—should have been consistent. If it could not appropriate money last year to fund the President's teacher certification program because there was no authorization, how could the committee this year in good conscience turn around and attempt to appropriate funds for another teacher certification proposal that is also unauthorized?

Nobody can say that the National Board for Professional Teaching Standards is noncontroversial. The Senator from Connecticut [Mr. DODD] has already introduced legislation seeking a total authorization of $25 million for the National Board over 4 years even though there was strong opposition from the Secretary of Education, Mr. Cavazos, and President Bush last year. As I said before, and I say again, the Department of Education and the President still oppose it.

Let me tell you why I am opposed to this National Board for Professional Teaching Standards. Oh, what a grand and glorious name they gave themselves. It reminds me of the fellow back in North Carolina whose daddy was a preacher. He named his son Amazing G. Jones. Everybody called him "Amazing."

Mr. President, I did not expect from the outset that I would win on this issue, because if I learned anything in grammar school and middle school and high school, it was to count. But I feel and have felt obliged to call this issue to the Senate's attention and to explain my opposition to granting millions of dollars of the taxpayers' money to this National Board for Professional Teaching Standards with no accountability whatsoever for how the money will be spent.

It may be and probably is true that a majority in this body is content to allow a union-dominated national

board to set the standards for the public teaching profession. That is what will result if this board has its way because, as I have said earlier, the board's bylaws require that two-thirds of the board will always be teachers who will go along with the union agenda.

So, while the National Board claims publicly that the standards will be voluntary, the teachers' unions themselves—and, yes, I am talking about the National Education Association [NEA]—they are absolutely unabashed about declaring their intent to have the States adopt this National Board's future standards as de facto State licensing standards for teachers.

I am, of course, concerned that the overwhelming influence of organizations like the NEA on the National Board will inhibit the board from promulgating truly rigorous and meaningful standards, particularly in the light of the teachers' unions' steadfast opposition to repeated attempts by the States to implement objective written competency tests for teachers.

Mr. President, let me say parenthetically that all of us are proud of our children and grandchildren. My older daughter was one of those born to be a teacher. She wanted to be a teacher from the time she was 4 or 5 years old. That is all she wanted to play when she was a child. She wanted to pretend that she was a teacher. She is now a school principal. So often she looks at all of these people who are interested not in teaching, not in education, not in children, but only in their own agenda, and Jane Helms Knox says, repeatedly, "What about the children?"

The NEA, for example, has almost 2 million members, and the American Federation of Teachers has 677,476 members at last count. If these two teachers' unions would just kick in $10 per member they would have more than the $25 million this private board is seeking. But, no, this board does not want to cough up its own money; they want to use the taxpayers' money to set up a national teacher certification system, and to heck with the States and what they want. Here we go again.

This, of course, is in direct contravention of the wishes of the President of the United States and the Department of Education. The last time I checked, they were supposed to have something to do with the policies of this country and not just delegate that responsibility to some self-appointed experts.

So the Board's argument has a problem. Its proponents contend on the one hand that they are out to improve education in this country, and the news media dutifully reports that. But what the news media does not report—and I will bet they do not report it this time—is that this board is controlled by the liberal teachers' unions. In fact, the heads of the two major national teachers' unions were original members of the National Board for Professional Teaching Standards.

Let me go further than that. The National Education Association—and you always see the parentheses in the paper—(NEA)—even makes its support of the National Board contingent on the commitment that certification standards will be set by a national board composed of a majority of practicing public school teachers. Of course, the vast majority of them belong to one or the other of the two teachers' unions. Some of them belong to both.

Mr. President, you can see why the NEA insists on such a requirement. They want control. And like Jane Knox says so often: What about the children?

Consequently, there will be no question that the efforts of this National Board for Professional Teaching Standards will dutifully serve to further the agenda of the unions.

They will deny it, but you just watch. Like a ship passing in the night, we will go on to something else, and down the line, we will look back and say, gee whiz, why did Congress permit that.

Thank the Lord the President of the United States is going to veto this turkey, this whole bill, not simply for this, but for other provisions that have a slight odor as well.

Mr. President, the bottom line is that the unions' control over this board will enable the unions to use the taxpayers' money not to professionalize teachers, but to improve and strengthen union control over who does and does not teach in America.

Now, going back to the teacher from Minnesota. How many more times will we have a teacher on the same day receive the award of "Teacher of the Year" and a pink slip saying "You do not qualify under our terms to teach"?

I can go into this business of retired people who are very well educated and qualified, who really want to participate in the teaching process. They are all over the country. To these people the National Board for Professional Teaching Standards will say: "No, you do not meet our specifications."

The overriding purpose behind the National Board is control.

Mr. President, as I pointed out last year, and I say again, the purposes of the Board are in direct contradiction of the education agenda of the President of the United States. He was elected President. This National Board was not. No Senator who voted today was elected President.

Let me tell you what President Bush has as his goal for education. I do not always agree with this President or any other President. But George Bush is right on target when he states that his goal is to open the Nation's school system to free market concepts of competition in order to revitalize the education establishment in this country.

President Bush is exactly right. The basis of our free enterprise system is that competition and freedom—not government-sanctioned monopolies—produce excellence.

It is interesting that that message got through to a lot of places in this world in the last year or two, like the Kremlin, for example. Lech Walesa is here today, and he will tell you that the people of Poland understand it; the people of Czechoslovakia and Hungary and Romania understand it. But we are going the other way in the good old USA.

The President's bill last year included an alternative certification initiative to allow individuals possessing either the knowlege or the experience needed in the schools—for example, retired doctors, lawyers, and professors—to teach in the public schools, even though they may not have teaching degrees.

Mr. President, there are so many hundreds of thousands of these competent and capable citizens around this country, and they have much to contribute, so much to offer to the educational system and our children. The National Board for Professional Teaching Standards, however, says, "No, we want to close the ranks of the teaching profession by excluding individuals who do not have formal training in so-called educational theory or ivory tower "teaching methodology," even when such individuals are experts in the subject matter to be taught.

No, Mr. President, this National Board wants to focus on a teacher's knowledge of the latest fads in the fields of child development and psychology, not on a teacher's knowledge of the subject matter they are supposed to be conveying to their students.

Mr. President, even though the Board is seeking and making an open grab for the taxpayers' money, the Board is adamant, galvanized, that the taxpayers will have no say whatsoever in either the Board's composition or in its policy decisions. "Oh, no; we know best." Where have we heard that before?

This National Board wants to be the sole source for setting the standards by which teachers shall be judged on the national and local levels, and to heck with the States, let alone the local community. The Board's underlying premise is that only the teachers and their unions should decide who may and who may not teach in America.

In case anyone should feel that I am suggesting that union control of the teaching profession will be an overnight result of giving the National Board this money, I am not saying that. But, giving the Board the money will be an enormous step in that direction.

Again, Mr. President, it is one of those ships passing in the night, and

when it has gone over the horizon and everybody has forgotten about what the Senate proposed to do this afternoon, then the controls will evolve. The so-called "voluntary" standards will become mandatory, and the test will ultimately be administered to every teacher proposing to enter the teaching profession, not just to those who volunteer to take it as is currently proposed.

No, the unions will first try to get the individual States to adopt the Board's national standards—which the unions will dictate—as mandatory State licensing standards. If that does not work, the unions will be back demanding that Congress impose the national standards on the States.

Mr. President, my hope—and I really did not have any hope insofar as this pending piece of underlying legislation was concerned—was that Senators would take the first step toward restoring the Nation's education system to sanity by supporting my amendment to prevent the National Board for Professional Teaching Standards from getting this $5 million. I reiterate, it is a private entity controlled by people who know what the word "control" means.

Furthermore, to say that this appropriation is a dire emergency—how to put it—George Burns would find this thing laughable, and he could probably make a good joke out of it because it is a joke sitting there waiting to be told.

Mr. President, this provision should be deleted. Authorization legislation should be required, as this Senate has always insisted, at least until the President of the United States and the Secretary of Education can make their recommendations concerning the form that any such authorization should take.

But if the President does not veto this bill—and I have talked to enough people downtown to feel fairly confident that he will veto it—I believe that the requirement that the money be authorized should be retained in this appropriation bill.

Mr. President, in conclusion I want to read the text of the committee amendment on page 30 of the bill.

I wanted lines 1 through 5 stricken from the bill, because that language is definitely legislation on an appropriation bill, and the Parliamentarian advised the Presiding Officer that that was the case. Here is the way this pending piece of legislation reads:

> In the appropriation language under this heading in the Department of Education Appropriations Act of 1991, delete the words "if authorized" and the words "if such a grant is specifically authorized in law."

Mr. President, we should have upheld the Senate's procedures and rules on the point of order I raised earlier. We did not. It was a party-line vote. And, of course, I figured that would happen when I set out. But I could not keep silent in the face of what I regard to be an affront to the taxpayers and to the mothers and fathers of schoolchildren and the schoolchildren themselves.

I may have more to say about this issue. But, inasmuch as my understanding is that this bill is going to be vetoed anyhow, I am going to yield the floor, because I hope I have explained the problem. If I have not, and anybody wants to ask me a question, I will be glad to answer it.

Mr. President, thank you very much. I yield the floor.

Mr. PELL. Mr. President, I rise in support of the provision in the committee-approved bill that would release $5 million in already-approved funds to support the important work of the National Board for Professional Teaching Standards.

The authorizing legislation for the Board was included, as my colleagues will recall, in the President's education initiative passed by the Senate in February of last year. It was also included in the omnibus education bill approved by the House in the closing hours of the session last October. Unfortunately, that legislation failed to pass the Senate.

As chairman of the Education Subcommittee, my hope is that the necessary authorization language will be included as a part of the higher education reauthorization. We have already begun hearings, which we expect to conclude late this spring. Our tentative timetable is to have legislation ready for subcommittee, full committee and eventually floor action sometime this fall.

In the meantime, it would be unfortunate, indeed, if funds approved to support the Board were to lapse. I have long advocated support for the Board's efforts to develop a national program of board certification for classroom teachers. Board certification would thus be similar to the existing practice of board certification for physicians, a practice I believe most of us would agree is most important. To my mind, this process of Board certification would add a strong dose of professionalism to teaching, which today is one of the most undervalued professions in our country.

I would urge my colleagues, therefore, to oppose the amendment before us and to support the legislation as it was approved by the Appropriations Committee.

Mr. GRASSLEY. Mr. President, here we go again. This issue must be a cat with nine lives because it never dies. I never cease to be amazed at where the National Board of Professional Teaching Standards appears in legislation. I had thought that, due to the actions of the Senator from Wyoming in the last days of the previous Congress, those objections which I supported, that this issue was justifiably killed.

Now it has come up in the dire emergency supplemental appropriations bill. Mr. President, how can Congress possibly call the National Board of Professional Teaching Practices a dire emergency? This Board is privately funded. It is comfortably supported by the Carnegie Foundation.

Congress cannot justify funding for the National Board in a Federal emergency funding bill.

Since teachers and the instruction they render is the very heart of education, it is my conviction that regulation, certification, and evaluation of teachers should remain under control of local and State governments. The purposes and objectives of the National Board of Professional Teaching Standards impugn local control of education.

I am firmly committed to the tradition of educational excellence long held by our country. I am also committed to the goal of restoring greatness to our educational systems in other parts of the country which have faltered. But I am not about to support allowing Washington ivory tower academics and consultants to tell Iowa teachers how to teach.

Iowa has the best teachers and the best education system in this great land. I will not sit idly by while some Washington politicians try to undue Iowa's success.

Iowa has the best teachers and educational achievements of any State. Iowa and I am proud of the Iowa teachers who make those achievements possible. Their dedication to teaching young people is evident.

Mr. President, the accomplishments of Iowa students cannot be attributed to acts of Congress. Local education leaders in Iowa should be credited with identifying the needs in their schools. They have taken steps to attain excellence.

Students and teachers in Iowa provide an excellent example of the success of local and State control of elementary and secondary education. Local governments are more aware of the specific educational needs than the Federal Government ever could be. Additionally, local governments are more accessible to people in their local school districts than is the Federal Government. Therefore, licensure and certification of teachers should be left to the State and local government.

Despite the stated intent of the Education Committee that this Board would not infringe on the rights and responsibilities of States to license teachers, the teacher standards board would establish national standards for teachers.

This leads our schools and our teachers in precisely the wrong direction. It should not be the business of the Federal Government to tell schools and teachers "what makes a good teacher."

State licensure has been the domain of State governments for good reason. Those same reasons hold true for this so-called voluntary certification. State

licensure would be rendered almost meaningless in the face of the national certification. Any teacher who wanted to be anything would be compelled to seek the national certification—regardless of the rigors of State licensure—regardless of the professional standards those teachers set for themselves—regardless of the local or State recognition a teacher may have received already.

Proponents of Federal involvement of the teacher standards board hope that teachers who obtain this national certification will be able to command higher salaries. However, not all schools have sufficient financial resources available to compete for these teachers. Yet these schools, perhaps even more than those which are able to pay higher salaries, need high quality teachers. The concerns of how low-income school districts would attract high quality teachers have not been addressed.

The National Board for Professional Teaching Standards does not belong in the dire emergency supplemental appropriations bill and the Federal Government does not belong in the National Board for Professional Teaching Standards.

Mr. DODD. Mr. President, as you know, the issue of funding for the National Board for Professional Teaching Standards is not new to us. We have debated whether to provide the Board Federal funds on two previous occasions—on September 21, 1989, and again on February 6 and 7 of last year. The Senator from North Carolina has moved to strike and modify appropriations and authorizing language over the last 2 years and has lost each time.

I find myself in the awkward position of being the author of the bill to authorize Federal funding for the National Board, but uncomfortable with this process. In the last Congress we worked out carefully balanced authorizing language that passed overwhelmingly as part of the President's Educational Excellence Act by a vote of 92 to 8. However, in the lateness of the last session a few Senators chose to block its final passage.

That is why the Appropriations Committees in the House and Senate have chosen to pursue this unusual procedure before us today. I will support the provision because I believe it is vital to move this effort forward. But I would hope for quick action to adopt the authorizing language to strengthen our intentions for the use of the Federal dollars by the Board.

The National Board is doing important work. It intends to match any Federal funds it receives—dollar for dollar—to research and develop state-of-the-art methods of teacher assessment. Once the methods of teacher assessment have been established, the National Board will offer teachers an oportunity to sit for a voluntary national certification that would distinguish them as top in their field of teaching. Certification by the Board will in no way replace State licensing. It will, however, provide teachers the opportunity to have additional credentials much like doctors who chose to become certified by the National Medical Board.

The potential benefits to be derived from the Board's work are great. First, the recognition and esteem with which the profession is held will rise. Teachers who might otherwise have chosen to leave the profession, may remain if the additional credential improves their career opportunities within the teaching profession. Higher professional recognition may attract more of our brightest and best students into teaching and also improve the quality of education in the schools.

While these benefits will take time to accrue, the efforts of the Board are a very important part of the process to bring about educational improvement. And, the Board is committed to forging ahead with the research to be able to launch their first certificates in 1993. A modest Federal commitment to the efforts of the Board would be a worthwhile and important investment in our Nation's teachers and schools. For this reason, I urge my colleagues to join me in fighting any amendments offered to strike the language in the supplemental pertaining to the National Board.

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

Mr. SPECTER addressed the Chair.

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

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The legislative clerk resumed the call of the roll.

Mr. DOMENICI. 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. DOMENICI. Mr. President, I have been trying since last night, when we discussed an amendment that the Senator from New Mexico might offer, to see if I could work something out that would be more accommodating and I have been unable to do that. So, with the distinguished chairman of the Appropriations Committee on the floor, let me suggest what I would like to do, now that I have the floor. I do not want to yield it here to anyone for a moment.

I have an amendment that I want to send to the desk. I believe it is in order to the Helms amendment. I want to do this because I want a vote on the Domenici amendment to the farm price support amendment that has been adopted by the Senate, 60 votes to 40.

I have no illusions that sooner or later, even if I submit the amendment and if my amendment were to pass—which I hope it will—that that still leaves the Senator from Vermont [Mr. LEAHY] with plenty of opportunities to do whatever he would like on this bill. Maybe my amendment, even if it were adopted, might not last when we finally vote on the underlying Helms amendment. But I would rather not delay, knowing that the chairman wants to go to conference. The debate on my amendment is not going to take very long. It might pass and it might not. I do not need over 10 or 15 minutes.

So with that, let me ask the distinguished chairman who is on the floor. In order to discuss this with the Senator from Vermont [Mr. LEAHY] I have the amendment ready. It is exactly the same amendment I was going to offer yesterday, except it is in the form where it would fit in the bill as it stands now. With the concurrence of the Senate, and I ask consent to do so, I would like to yield 15 minutes to Senator SPECTER from Pennsylvania for purposes of arguing on a matter that has, heretofore, been discussed but is pending, without losing my right to the floor so we can discuss with Senator LEAHY whether or not he has any other approaches that might be more accommodating to him and perhaps to the Senate.

I ask unanimous consent that I be permitted to yield the floor, as I have just stated, without losing my right, to the distinguished junior Senator from Pennsylvania.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Chair recognizes the Senator from Pennsylvania [Mr. SPECTER].

AMENDMENT NO. 59

Mr. SPECTER. Mr. President, a number of us have been waiting on the Senate floor for a protracted period of time to work out a procedural morass with the initiation of proceedings on the amendment by the distinguished Senator from Indiana [Mr. COATS], and the second-degree amendment by Senator HELMS, and then an amendment by Senator DOMENICI to Senator HELMS' amendment.

I return now to respond to the argument made by the distinguished Senator from Indiana [Mr. COATS] who offered the original amendment which sought to strike from the supplemental appropriations this language, section 203, which provides that "None of the funds available for Department of De-

fense may be used for advanced procurement of materiel or other efforts associated with the industrial availability of the U.S.S. *Kennedy*, other than the Service Life Extension Program for the U.S.S. *Kennedy* at the Philadelphia Navy Yard."

Senator COATS has sought to strike that language in order to allow the Navy to proceed with a complex overhaul instead of the Service Life Extension Program.

This is important for a number of reasons. One is that it would curtail the availability of a 14-carrier fleet down to 12 carriers which, I will argue, I think with very substantial weight, would be injurious to the national defense. And a corollary of the reduction from 14 carriers to 12 carriers is the probable closure of the Philadelphia Naval Yard.

My argument is that the Service Life Extension Program is indispensable for the national defense of the United States, and I take a very close look at this issue as a Pennsylvania Senator who is concerned with what happens to the Philadelphia Navy Yard.

Mr. BYRD. May we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The aisles will be cleared. The Senator from Pennsylvania has the floor.

Mr. SPECTER. I thank the distinguished chairman of the Appropriations Committee.

As I was saying, the basic intention here is to preserve national defense, but there is an obvious corollary of an important installation for my State. I emphasize that the underpinning of this argument is one of national defense, but I set that parameter.

Mr. President, the defense needs of the United States require at a minimum 14 carriers. This was illustrated in the gulf war where there were six carriers deployed to give the United States indispensable air superiority which led to our victory there. Five of those carriers were conventional carriers like those which have their lives extended under the select program at the Philadelphia Navy Yard, and three of those carriers were, in fact, from the Navy yard.

I make the basic intention, Mr. President, about the indispensable necessity at least for a 14-carrier fleet based on testimony by the experts from the Navy Department.

The distinguished Secretary of the Navy, H. Lawrence Garrett, responded to an editorial in the New York Times with a letter to the editor dated October 1, 1990. I ask unanimous consent this be printed in the RECORD at the conclusion of my presentation.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Mr. President, the central point of this letter which is of importance is a statement by the Secretary of the Navy that it is necessary to have at least 18 carriers in order to have 6 which are deployed so that in a period of strain we could get along with 14 carriers and have 6 deployed for a period of time, but there is no doubt that if we were to reduce the number to 12 that only 4 carriers would be deployable.

Last year, in Senate hearings before the Department of Defense Appropriations Subcommittee, there was an extended discussion about how many carriers were needed. The testimony presented by the Navy Department was that they would like to have 22 carriers. If we have fewer than 15, it is imprudent and I asked Admiral Nyquist the questions about what would the risk be if we reduced from 15 to 14 and then to 12? I read extracts from Admiral Nyquist's testimony from page 225 of part 4 and ask unanimous consent that the full response be printed in the RECORD, but at this point read only a selected portion because of limitation of time.

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

Admiral NYQUIST. Yes, sir; and we all are working to that end, Senator. And we will provide that as best we can for the record at this point in that process.

[The information follows:]

The differences between these numbers represent how much risk we are willing to accept, which deployment commitments are met and for what duration, and how contingencies might affect OPTEMPO/PERSTEMPO guidelines.

The difference between 22 and 15 is what would be required in a Global War with the Soviet Union and what we consider to be a prudent carrier force level to meet everyday world-wide deployment commitments and crisis response.

Fifteen is a prudent aircraft carrier force level. What is it that we can't do with one fewer carrier? The difference lies in crisis response, both in timeliness and numbers. We can still meet our forward deployment commitments with 14, but during a crisis we might have to respond with less carrier coverage than desired.

For example, following the Israeli capture of Sheik Obeid and the murder of LCOL Higgins in August 1989, naval forces responded quickly, backing up the President's diplomatic initiatives. In the Mediterranean, the CORAL SEA battle group weighed anchor early from Alexandria, Egypt, and was ready to launch air strikes within twelve hours after receiving orders. The battleship IOWA departed Marseilles, France, steaming east toward Lebanon with a Marine Amphibious Ready Group. Commander Sixth Fleet, embarked in his flagship, the cruiser BELKNAP, took charge as force commander and headed to waters off Lebanon, canceling a port visit to the Soviet Union. As a contingency against Iran, the AMERICA battle group sailed from Singapore to the Arabian Sea. The carriers RANGER, steaming in the South China Sea, and FORRESTAL, operating off Norfolk, prepared for surge contingency operations. The full range of retaliatory response, from "visible on the horizon" presence to carrier air strikes, naval gunfire support and amphibious landings, offered by these naval forces effectively prevented further bloodshed, stabilized the situation, and strengthened the President's diplomatic hand. Any reduction in carrier force level represents some degree of additional risk and could limit the decision makers options during crisis (e.g., a delay in responding to a crisis or lack of a carrier battle group substitute in another theater).

Our current deployable aircraft carrier force level (14) ensures that we can fulfill peacetime presence requirements while retaining some flexibility to surge to meet contingencies or respond to crisis outside our traditional deployment operating areas. With 14 aircraft carriers, we can maintain a continuous presence of one carrier battle group in the Mediterranean, one in the Western Pacific and have the capability to maintain a continuous presence in the Indian Ocean, while still retaining the capability to respond to a crisis. This force level of 14 takes into account training and readiness requirements, transit times, maintenance requirements, and the need to maintain a quality of life. (OPTEMPO/PERSTEMPO) for our personnel.

A carrier force level of 12 would limit our presence in the Indian Ocean for six months out of the year. Commitments in the Mediterranean and Western Pacific would not be affected. Should a crisis develop, we would have less flexibility in responding and would have to gap other commitments. Depending on the threat and duration of the crisis, we would have fewer carriers for a carrier battle force (two or more carriers) to engage in sea control or power projection. A force of less than 12 aircraft carrier battle groups lacks the necessary depth to adequately provide surge capability for sustained high-tempo crisis response.

To respond to a sustained crisis in the Indian Ocean (requiring two aircraft carrier battle groups) similar to that experienced in the 1980's, without breaking current OPTEMPO/PERSTEMPO guidelines, or gapping our presence in another theater, would require a force of twenty-one carriers.

Any further reduction in the number of aircraft carriers and withdrawal of forward deployed carrier battle groups would reduce our ability to deter crisis situations from developing, and could increase the likelihood of combat. With fewer carriers, our forces are more likely to be out of position to respond in a timely manner during contingencies and to influence events ashore.

Mr. SPECTER. Admiral Nyquist provided this answer for the record:

Fifteen is a prudent aircraft carrier force level. What is it that we can't do with one fewer carrier? The difference lies in crisis response, both in timeliness and numbers. We can still meet our forward deployment commitments with 14, but during a crisis, we might have to respond with less carrier coverage than desired.

Continuing further, the answer states:

The full range of retaliatory response, from "visible on the horizon" presence to carrier air strikes, naval gunfire support and amphibious landings, offered by these naval forces effectively prevented further bloodshed, stabilized the situation, and strengthened the President's diplomatic hand.

In a reference to what happened following the capture of Sheik Obeid and the murder of Lieutenant Colonel Hig-

gins in 1989 precipitating a crisis in the Mideast. Admiral Nyquist's answer further specifies:

A force of less than 12 aircraft carrier battle groups lacks the necessary depth to adequately provide surge capability for sustained high-tempo crisis response.

Mr. President, the other factor which is very much activated with fewer than 14 carriers would be the extreme burden put upon the naval forces. Here I turn to the testimony of Secretary Garrett, which appears at page 363 in testimony before the Defense Appropriations Subcommittee on part 3 where Secretary Garrett refers to the difficulties of sending sailors to sea with fewer than 13 deployable aircraft carriers where they were deployed for in excess of 8 months.

Secretary Garrett testified of the need to maintain a minimum level of 14 deployable carrier battle groups, and having less than 14, you have a situation where the personnel worked 81 hours on average per week and if, as Secretary Garrett puts it "If we lose people, they start working 90 to 100 hours and start getting unsafe."

The Secretary goes on to point out how the Navy is then confronted with a situation where personnel of the Navy is lost.

Mr. President, the thrust of this testimony which has only been summarized but which has been amplified at some substantial length from last year was the indispensable prerequisite that there be at least 14 aircraft carriers and that the prudent number was really 15 but that the Navy might get along on 14.

The Navy has come forward this year with a request because of budget constraints for 12, and it is plain from the experiences as to what has happened in the intervening year, Mr. President, that in the light of the gulf war, where we had 6 carriers in the region at one time, certainly the needs of the United States for national defense are no less in 1991 than they were in 1990, and that in fact the needs are really more extensive than they were in 1990.

The contribution of the Philadelphia Navy Yard, Mr. President, has been really extraordinary for national defense. During the course of the gulf war, when there were six aircraft carriers deployed, five of them being conventional—and the reason that the conventional carriers were deployed is because they are better adapted for that kind of service because the nuclear carriers operate better in deeper water—three of the five conventional carriers had their service life extended at the Navy yard, the U.S.S. *Independence*, *Forrestal*, and *Saratoga*.

Mr. President, the Philadelphia Navy Yard has established a record of being the most cost effective where manday rates there are at the rate of $338.85, which is $50.74 less expensive than the closest competitor, which is the Charleston Navy Yard, and $173.88 less expensive than the most costly yard, which is Mare Island.

When the distinguished Senator from Indiana was advancing his arguments earlier today, Mr. President, he stated five reasons why he sought to strike the language which would compel the Service Life Extension Program from being carried out on the *Kennedy*, saying that the SLEP cost more than a complex overhaul, but the fact is that a SLEP cost $850 million and extends the life of the carrier by 15 to 20 years, whereas a complex overhaul, which costs a minimum of $500 million, extends the life of the carrier for only 5 years. So with the service life expectancy it is obviously much more cost effective than the complex overhaul.

The distinguished Senator from Indiana said that the Navy does not want the SLEP Program. But the fact is that the Navy requested the SLEP Program when it submitted its budget last year.

The third contention advanced by Senator COATS was that the *Kennedy* does not need a SLEP and can survive on a complex overhaul for another 10 years. But that is contrary to fact because there is a need to replace the boilers, the internal electrical systems, hydraulics, and a complex overhaul only repairs existing systems and does not replace used parts.

I ask unanimous consent at this point, Mr. President, that at the conclusion of my statement a fuller description of the difference between a complex overhaul and a SLEP be included in the RECORD.

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

(See exhibit 2.)

Mr. SPECTER. The fourth argument advanced by Senator COATS was that the SLEP Program is designed to preserve the Navy Yard, and on that contention he may well be correct as a matter of national defense priority because the Philadelphia Navy Yard is the only yard which is capable of performing these service life extension programs.

His fifth point was that the SLEP money is not authorized, which is factually inaccurate because the SLEP Program was authorized at the Philadelphia Navy Yard for $113 million by the Armed Services Committee and ratified and adopted by the full Senate.

It is true that last year the House added $409 million on the appropriation line which was accepted by the conference committee and is the law of the land. But the language of the appropriations bill does not call for the expenditure of the $409 million.

The language of the appropriations bill precludes spending any money on the complex overhaul. So that in fact the Navy would be required to go ahead with the SLEP Program for which $113 million has been authorized and $113 million has been appropriated, with the addendum, of course, that more than $113 million has been appropriated. But there is no question about the authorization and appropriation of the full sum of money which is in issue here.

I think it is regrettable, Mr. President, that this motion to strike has been offered on this bill. The Appropriations Committee, on which I serve, adopted these amendments unanimously, requiring that the Navy not proceed with the complex overhaul because the decision of the Senate, like the decision of the Congress last year, was that a complex overhaul simply does not make any sense if you are going to spend $500 million for a 5-year extension or $100 million a year. It makes a great deal more sense to spend $850 million and get an extension of some 15 to 20 years so that the cost of each additional year is less than half of what it is for the complex overhaul.

The experience in the gulf war makes it plain that the national security interests of our country require a minimum of 14 carriers. Of course, there is an underlying concern and an underlying issue here that with the 14 carriers the Service Life Extension Program of the Philadelphia Navy Yard has to be maintained. It may well be—and this is an argument for another day—that the Philadelphia Navy Yard may be retained whether or not the SLEP Program is maintained. There are other very important uses for the Philadelphia Navy Yard.

But national defense requires a 14 carrier fleet and a 14 carrier fleet requires the Philadelphia Navy Yard. Focusing on the narrower issue here today, this language ought to be retained, and the SLEP Program on the *Kennedy* ought to go forward.

I thank the Chair and yield the floor.

EXHIBIT 1

DON'T CALL 14 CARRIERS AN EXTRAVAGANCE

To the Editor:

In "Is the Peace Dividend Being Engulfed?" (editorial, Sept. 19), you do readers a disservice with the suggestion that if only four United States aircraft carriers were sent to meet the Persian Gulf crisis, the other 10 must be "an extravagance." You imply that carriers are like snow shovels—you need only one, and then only when it snows.

The President's ability to maintain a responsive and sustained carrier presence in potential trouble spots around the world depends on having a fleet that can support a continuous cycle of maintenance, training and deployment.

At any one time, roughly one-third of the Navy's carriers are fully combat-ready and forward deployed. Another third are in a standdown and maintenance period that follows each deployment. The remainder are training a new team of personnel and exercising hardware—in port and at sea—in preparation for the next six-month deployment.

In a crisis, that cycle can be compressed; but, in the long term, alternatives to a three-cycle simply do not work. To keep the carriers at home until a crisis breaks out is to undermine their ability to be on station,

ready to project force within hours of a call from the White House. To keep the carriers continuously at sea for longer periods is to impose an intolerable and debilitating burden of fatigue on men and matériel.

The national interest and treaty obligations of the United States still require deployment of aircraft carriers in numerous key parts of the world. Until that changes (and it doesn't seem likely to very soon) 14 carriers are anything but "an extravagance."

H. LAWRENCE GARRETT 3D,
Secretary of the Navy.

WASHINGTON, *September 24, 1990.*

EXHIBIT 2

SLEP VS. COH

In SLEP, an aircraft carrier is gutted and renovated, a process tantamount to creating a new carrier. SLEP thus extends the service life of aircraft carriers by at least 50 percent. In COH, only regular maintenance is performed, so that the carrier continues to deteriorate in service. COHs are performed about every 5 to 7 years, until service life ends.

In SLEP, ship systems are replaced in order to extend the carrier's life. in COH, ship systems are repaired to maintain their operations until the next COH. After SLEP, as if the carrier were new, COHs are performed to maintain the carrier until its service life ends.

SLEP VS. COMPLEX OVERHAUL

SLEP grew out of an investigation initiated by the Navy to determine alternatives to new construction for maintaining carrier forces through the 21st century. The goal was to extend the service life of the fossil fueled carriers by at least 15 years, ensuring their reliability for effective combat operations with only routine maintenance required through the extended service life. This goal is achievable through execution of an availability stressing long deferred structural and auxiliary system repairs along with replacement of those equipments and systems for which logistics support is no longer available.

SLEP is SCN funded and is scheduled around the normal Complex Overhaul cycle. It includes both repairs that would normally be accomplished during the COH as well as those SHIPALTS normally programmed as a result of the Fleet Modernization Program (FMP). In addition, emphasis is placed on those repairs and SHIPALTS required to extend the service life. The increased scope of repairs include the long deferred structural repairs to the basic hull, power generation, main propulsion and auxiliary systems. The basic support systems are also upgraded to meet present and future weapons systems requirements. This includes Air Conditioning, cooling systems, electrical distribution as well as habitability required to maintain a quality of life on the ship.

Additional emphasis is placed on Aircraft Launch and Recovery systems such as upgraded Arresting Gears, Rotary Retract Engines and Catapults. This results in reduced stress on the propulsion plant.

INSURV trials are completed prior to the completion of SLEP as well as six months after SLEP and has proven SLEP to be a sound, cost effective program.

A study of the work package on SLEP has concluded that a series of shorter availabilities is not a substitute in that the OPNAV objectives could not be met. This is due to the increased scope of work and the fact that SLEP attempts to fully restore the ship's construction baseline to ensure post SLEP readiness for combat operations.

Mr. HEINZ addressed the Chair.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me say to my friend, the senior Senator from Pennsylvania, under a consent arrangement, I yielded 15 minutes to Senator SPECTER without losing my right to the floor. I do not want to lose that right, nor do I want to overburden the Senate with yielding of my time, trying to get myself recognized thereafter. If the Senator desires to speak, I am wondering whether it would be accommodating to the Senator to let the Senator from New Mexico proceed with his amendment, at which time in due course the Senator would be able to address the Senate.

Mr. HEINZ. Mr. President, I say to my friend from New Mexico——

Mr. DOMENICI. Mr. President, I yield to the Senator without yielding my right to the floor.

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

Mr. DOMENICI. I do not know that I need ask for consent.

Mr. HEINZ. I am inquiring something of the Senator from New Mexico.

The PRESIDING OFFICER. The Senator may certainly yield for a question.

Mr. HEINZ. Will the Senator yield for a question?

Mr. DOMENICI. I yield for a question.

Mr. HEINZ. Mr. President, I want to inquire whether the Senator is aware that the amendment on which Senator SPECTER spoke, and on which I desire to speak, is the pending business of the Senate and whether he also knows that at 4:30, Senator SPECTER and I have a meeting with Secretary Cheney on this subject and whether he would be willing to once again—assuming the other Senators would let him do so—yield 7 minutes to the Senator from Pennsylvania, given that I have to participate in the meeting at 4:30.

Mr. DOMENICI. Mr. President, I will shortly yield.

AMENDMENT NO. 62 TO AMENDMENT NO. 60

Mr. DOMENICI. Mr. President, I sent 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 New Mexico [Mr. DOMENICI] proposes an amendment numbered 62 to amendment No. 60.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Several Senators addressed the Chair.

Mr. BYRD. Objection.

The PRESIDING OFFICER. The Senator from West Virginia has objected. Objection is heard.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair asks for regular order.

The assistant legislative clerk read as follows:

In lieu of the language prepared to be inserted, insert the following:

"The language on Page 30, Lines 1-5 are null, void, and of no effect.

"SEC. 103. FOOD AND MILK PRICES.

"The Secretary shall not implement subsections 101 (a) and (b) of amendment No. 43, modified and agreed to by the Senate on March 19, 1991, if the Secretary determines that implementation of those provisions will reduce by at least 50,000 the estimated average monthly participation in, or reduce significantly the benefits received per participant under, the Special Supplemental Food Program for Women Infants and Children established pursuant to section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"SEC. 104. CEREAL PRICES.

"The Secretary shall not expend, in fiscal year 1991, in excess of $425,000,000 in the aggregate amount of funds and/or commodities to carry out an export enhancement program if the Secretary determines that the expenditure of those funds and/or commodities will reduce by at least 50,000 the estimated average monthly participation in, or reduce significantly the benefits received per participant under, the Special Supplemental Food Program for Women Infants and Children established pursuant to Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).".

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I move to table the Helms amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there sufficient second? There is not a sufficient second.

Mr. LEAHY. 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. BYRD. 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. BYRD. Mr. President, I ask unanimous consent that Mr. DOMENICI may speak for 10 minutes, that he may read his horoscope to the Senate. Perhaps that will wear off a little of the tension.

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

Mr. DOMENICI. I assume that means that I really have to read this. Last night we had a little discussion about the rules. This morning I wondered what my fight was going to be today after having heard the chairman of the Appropriations Committee, the master of the rules.

As I think about it, it was all in good faith; we were acting in good faith, I hope. But it says in my horoscope today: "Rules bend in your favor." I just saw that when I barely offered my amendment and somebody offered to

table it, which meant I will not even get to talk. "Rules bend in your favor." It says "Take charge of your own destiny. Moon in your sign—wear shades of blue, indigo, purple. Stress universal appeal"—I might say I have been trying that very diligently—"wide range of interests."

Then it says "Aries plays key role."

Does the Senator from Vermont have a horoscope?

Mr. LEAHY. Yes.

[Laughter.]

Mr. LEAHY. Mr. President, on the same unanimous consent, if the Senator will yield to me from that time.

Mr. DOMENICI. Not out of my time.

Mr. LEAHY. If I could have 4 minutes.

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

Mr. LEAHY. The Senator from New Mexico says under his horoscope, "Aries plays key role." I am an Aries.

[Laughter.]

Mr. LEAHY. Let me say what it says there. It says under Aries: "Minor crisis erupts, boomerangs in your favor. Focus on deadline, pressure, responsibility * * *." "Relationship tense but durable."

I would say to my good friend and fellow Italian-American, it says "Professional appraisal reveals product worth plenty" and then adds—this is hard to read, but it says "The Leahy dairy amendment will survive."

[Laughter.]

Mr. DOMENICI. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 8 minutes and 39 seconds.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. If the motion to table is agreed to, does the Domenici amendment fail?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. Frankly, let me say to the Senate——

Mr. BYRD. Mr. President, will the Senator yield for 1 minute?

I ask unanimous consent to proceed for 1 minute and that it not be charged against the Senator.

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

Mr. BYRD. The Senator read his horoscope in which he referred to the Moon.

Mr. DOMENICI. The Moon.

Mr. BYRD. The Moon. Perhaps if Nicias had not been so superstitious, during the Battle of Syracuse, in the year 413 B.C., when the Moon went into a total eclipse, he ultimately with his fellow Athenian, General Demosthenes—not Demosthenes the orator, but Demosthenes the general—would not have paid with their lives.

I just suggest that we not become overly superstitious or dependent on our horoscope, especially when it talks about the Moon.

Mr. DOMENICI. Mr. President, I might say that I am overwhelmed. In fact, I have a difficult time remembering my children's birthdays, much less such history. I am glad I am in the Senator's presence, nontheless.

Mr. President, Senators should now know that the motion to table the underlying amendment is going to—if you vote to table—table an amendment that I believe you do not want tabled.

Let me say what it is. I have titled it, as if it were a bill, because I think it explains it very well. It is called the "Fairness for Low-Income Consumers Amendment." That is what my amendment achieves: fairness for low-income consumers.

The most important low-income consumers that are hurt by the previously adopted subsidy for the dairy farmers are those who are participants in the Women, Infants, and Children [WIC] Nutrition Program.

I do not accuse anybody of hurting anybody. But, it is very simple, for those who wonder if people are really hurt.

What happens is that the price of milk is forced up, so the dairy farmers do not get hurt financially. When we push the price of milk up, the price of the Women, Infants, and Children Nutrition Program also increases as it is significantly based upon the price of milk. By the amendment that we have already adopted, you are going to take up to 112,000 WIC participants off the rolls. In a March 19 memorandum, the Congressional Research Service suggests that they believe it will reduce WIC participants by 112,000.

I ask unanimous consent that this be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, March 19, 1991.

To Hon. Richard G. Lugar. Attention: Dave Johnson and Randy Green.

From Jean Yavis Jones, Specialist in Social Legislation, Education and Public Welfare Division, and Geoffrey Becker, Specialist in Agricultural Policy, Environment and Natural Resources Policy Division.

Subject Estimated Effect on WIC Program Costs and Participation of Formula Price Increase for Fluid Milk as Proposed Under S. 671.

This responds to your request for information on the effect that the change in the basic formula price for computing Class I milk prices under milk marketing orders proposed by S. 671 might have on the special supplemental food program for women, infants, and children (WIC). As we have discussed, these estimates are based on assumptions outlined in this memorandum and should be used with caution.

S. 671 would provide that ". . .the basic formula price used for the purpose of computing the price of Class I milk under milk marketing orders may not be less than the basic formula price determined for the month of August 1990. . . ." This price would be effective from the first day of the first month after enactment until December 31, 1991.[1]

The basic formula price (also known as the "M-W price") last August was $13.09 per hundredweight (cwt., or 100 pounds). Thus, this would be the basic formula price used for computing milk prices for farmers under S. 671. The January 1991 price was $10.16 per cwt.; therefore, the proposed formula price would have yielded an increase of $2.93 per cwt. above the January level for fluid milk, a rise of 28.8 percent.

If the M-W price remained at $10.16 and milk processors and distributors passed the entire $2.93 increase on to consumers, a gallon of milk would cost an additional 25.2 cents at the supermarket.[2] (Each cwt. of milk equals 11.63 gallons; therefore, each $1 increase at the farm level would be equivalent to an 8.6-cent-per-gallon increase at the retail level.) Whether the full $2.93 increase would be passed on to consumers is problematical. Supporters of the bill might argue that, because retail dairy prices have not fallen along with farm prices over the past year, the marketing chain has the capacity to absorb the M-W increase. Opportunity may counter that average retail fluid milk prices are in fact declining, and that retail prices tend to rise more readily after a farm price increase than they drop after a farm price decrease—making it more likely that fluid prices would climb if the bill were enacted.

The U.S. Bureau of Labor Statistics (BLS) reported that in January 1991, the national average retail price of a half-gallon of whole milk was nearly $1.38; lowfat milk was just over $1.32. Assuming the M-W price increase cited above were carried forward by processors and retailers to consumers, this means that the changes proposed by S. 671 would have increased charges to consumers to about $1.51 per half-gallon for whole milk and about $1.45 for lowfat milk, or about 13 cents more for each half-gallon of milk.

The WIC program provides a monthly food package consisting of specified food products to low-income mothers, infants, and children who are determined to be at nutritional risk; milk is among the foods that must be contained in packages for mothers and children. In most cases, food benefits are issued to recipients by way of vouchers that allow them to purchase specific types and amounts of foods at retail food stores. In some cases a State or locality may purchase the food and distribute it directly to recipients; this is less common than the use of vouchers. The volume and value of food packages differs by the type of recipients. For example, children receive a package that differs from that of infants, and mothers who are pregnant or breastfeeding receive a different package than nonnursing mothers. Federal regulations specify a maximum amount of specified types of foods that may be paid for by Federal funds. States may provide less than the maximum amount, or recipients may redeem fewer items than are allowed by the vouchers.

According a 1988 study of the WIC program by the U.S. Department of Agriculture

[1] Under Federal marketing orders (which set minimum farm prices for about 70 percent of all U.S. milk), the Class I price is the minimum farm price that processors must pay for Grade A milk consumed in fluid form. This Class I price is determined by adding a "fluid differential"—which varies by region—to the basic formula price.

[2] The M-W price declined again in February, to $10.04 per cwt., potentially widening the spread between the August 1990 price and the M-W price if the bill were enacted this spring.

(USDA), the average monthly volume of milk or milk products used by a participating pregnant or breastfeeding mother was 26 quarts; for a postpartum, nonnursing mother or a child aged 1 to 5, the average quantity of milk or milk products in a food package was 21 quarts.[3] These fluid milk levels are slightly lower than the maximum amounts allowed by USDA regulations: 28 quarts for pregnant or breastfeeding women, 24 quarts of milk for nonnursing mothers and children aged 1 to 5. Milk products may be offered in the form of equivalent quantities of cheese and nonfat dry or evaporated milk, although fluid milk is the most common item.

Milk products constitute a substantial portion of the WIC food package for participating mothers and children. Consequently, increases in fluid milk prices, if passed on to consumers, increase the cost of providing the WIC food package. Because program funds are limited by appropriations, WIC program operators may adjust for cost increases either by reducing the number of participants served by the program,[4] or by reducing the quantity of foods included in each WIC food package. In general, given the choice, program operators prefer to reduce the caseload rather than the food package since the food packages are based on nutritional needs of program recipients. By and large, program operators try to reduce caseload by attrition rather than by cutting off participating recipients. The extent to which this is possible depends upon the amount of available funds and existing caseload and food costs.

Pursuant to your request, we have provided estimates of the impact that an increase in milk prices might have on the average monthly cost of WIC program benefits. To calculate this, we have had to make a number of assumptions. Data do not exist for FY 1991 distinguishing between pregnant and nursing mothers and nonnursing mothers, and since the quantity of fluid milk in food packages differs between these groups, we had to estimate the numbers of such recipients for FY 1991. This was done by assuming that the proportion of these types of program recipients in FY 1991 would be the same as was reported in the USDA 1988 *Study of WIC Participant and Program Characteristics*. We applied the 1988 study proportions (15.8 percent pregnant and nursing mothers; 5.5 percent postpartum nonnursing mothers, and 47.4 percent children aged 1–5) to the average monthly number of recipients projected by the USDA to be served for FY 1991. Because there are no more recent data than the 1988 study on the quantities of milk or milk products included in food packages, we also had to assume that the same amounts would be included in food packages for mothers and children in FY 1991 (infants receive formula rather than fluid milk and there was no way to estimate how much milk might have been used in this product). Using these updated estimates of participation and milk consumption, we have calculated the cost of milk products contained in each WIC package based on January 1991 BLS retail prices for a half-gallon of milk (showing both whole and lowfat milk prices). To this, we have compared the prices that might have existed in January 1991 if the full impact of the farm price increases proposed by S. 671 had been passed on to consumers through retail price increases.

This methodology has some limitations. First, as has been previously mentioned, we do not know that processors and distributors would pass on the price increase they are charged by farmers. Therefore, we do not know if retail prices would rise as much as projected. Second, we do not know that the proportions of recipients in each of the relevant categories, or the quantities of milk products in their food packages has remained the same since 1988. Additionally, some of the milk products in a food package may consist of cheese or nonfat dry or evaporated milk. Moreover, in those cases where the WIC agency purchases food for recipients rather than providing recipients with a voucher for purchases at retail stores, the price of the product would be wholesale, rather than retail. No data are available on the amount of fluid milk acquired through wholesale versus retail purchases, thus no distinction can be made in the estimates. For these reasons, the average monthly cost of fluid milk shown by these estimates may be overstated. However, we know that the vast majority of WIC foods are provided through voucher redemptions in retail stores. Moreover, cheese price increases in recent years make it unlikely that this product constituted a substantial amount of the milk product in WIC packages. Additionally, we have not counted whatever fluid milk may be used in infant formula for WIC infant packages. This would somewhat understate the estimates, although there are no data upon which to judge the degree.

Column 1 of table 1 shows the categories of food package recipients receiving fluid milk (or milk products) as part of their monthly food package. Column 2 shows the average estimated monthly number of WIC participants (and food packages) for relevant categories of recipients for FY 1991. Column 3 provides the average monthly amount of milk and milk products estimated to be provided in each relevant recipient's food package in 1988. Column 4 estimates the cost of the milk products contained in each package for both whole and lowfat milk based on January 1991 BLS retail prices for a half gallon of fluid milk. Column 5 estimates the cost of the milk products contained in each WIC package if milk processors and distributors passed on to consumers the full increase in prices to farmers required by S. 671. Column 6 shows the increased per package cost based on the difference between the actual January 1991 retail price of the milk included in a package and the projected January 1991 retail price based on estimates of retail price increases shown under column 5.

TABLE 1.—ESTIMATED WIC FOOD PACKAGE MILK PRODUCT COSTS UNDER CURRENT LAW FOR JANUARY 1991 AND PROJECTED FOR JANUARY 1991 UNDER S. 671

Category	Average monthly estimated participation[1] (fiscal year 1991)	Average amount, milk/milk products[2] in WIC package	Jan. 1, 1991, retail price of milk in WIC package[3]	Estimated monthly price of milk in WIC package[4] (S. 671)	Price increase per month of milk in WIC package
Pregnant and nursing mothers	742,600	26 quarts (13 half-gallons).	$17.94 (whole) $17.16 (lowfat).	$19.63 (whole) $18.85 (lowfat).	+$1.69
Nonnursing mothers	258,500	21 quarts (10.5 half-gallons).	$14.49 (whole) $13.86 (lowfat).	$15.86 (whole) $15.23 (lowfat).	+1.37
Children aged 1–5	2,227,800	21 quarts (10.5 half-gallons).	$14.49 (whole) $13.86 (lowfat).	$51.86 (whole) $15.23 (lowfat).	+1.37

[1] Assumes that the proportion of pregnant and nursing mothers and nonnursing mothers participating in the program in FY 1991 will be the same as was the case in 1988.
[2] Assumes fluid milk costs. May include some cheese, nonfat dry and evaporated milk.
[3] Assumes retail prices of $1.38 per half-gallon for whole milk or $1.32 per half-gallon for lowfat milk.
[4] Assumes retail price of $1.51 per half-gallon of whole milk and $1.45 per half-gallon of lowfat milk.

TABLE 2.—ESTIMATED TOTAL MONTHLY INCREASE IN WIC FOOD PACKAGE COSTS BASED ON PROJECTED INCREASES IN RETAIL PRICE OF MILK

Category	Average monthly estimated number of food packages[1]	Average monthly increase in cost of milk in WIC package (est.)[2]	Total average monthly increase in WIC cost (est.)[3]
Pregnant and nursing mothers	742,600	+$1.69	+$1,254,994
Nonnursing mothers	258,500	+1.37	+354,145
Children aged 1 to 5	2,227,800	+1.37	+3,052,086
Total	3,228,900	NA	+4,661,225

[1] Based on estimated participants.

[2] Cost increase is higher for packages provided to pregnant and nursing mothers because greater quantities of milk are included in these packages than in those for nonnursing mothers and children.

[3] Calculated by multiplying the number of food packages by the increased retail price.

Table 2 translates the estimates in table 1 to a total monthly estimated cost increase for WIC program food packages assuming the projected increase in retail prices indicated by table 1. This table shows that the monthly average total cost of WIC food packages would have increased by a total $4.66 million under S. 671 in January 1991 *if*: (1) the proportion of WIC recipients in the relevant categories stayed essentially the same and the quantities of milk products in their food packages remained unchanged between FY 1988 and FY 1991; (2) retail prices were charged for all milk products in the WIC package, and (3) milk processors and distributors passed along to consumers the full price increase for fluid milk charged by farmers.

The USDA projects that in FY 1991 the average monthly cost of serving a WIC recipient will be $41.41. This includes both food and administrative costs. If the average monthly cost of WIC food packages were to increase by the $4.66 million estimated above, and if WIC operators were to absorb this cost increase by cutting caseload, more than 112,500 fewer participants would be served by the program in an average month.

[3] U.S. Dept. of Agriculture. Food and Nutrition Service. Office of Analysis and Evaluation. *Study of WIC Participant and Program Characteristics, 1988*. Final Report, v. I: Summary of Findings, Apr. 10, 1990. The volumes shown reflect all milk products that might be in a WIC package; they do not differentiate between fluid milk, cheese, nonfat dry or evaporated milk.

[4] A USDA study of WIC eligibles indicated that in FY 1984 the program served about 40 percent of those eligible. Since then, both funding for the program and participation have increased. Although no more recent data are available on the nutritional status of the income eligible population, most experts agree that the program now serves over 50 percent of all eligibles and reaches almost all eligible infants.

Mr. DOMENICI. Mr. President, those who are proponents of the new dairy price support measure will acknowledge, if I understand it, that the price of liquid milk is going to go up. I assume that is the milk as it leaves the dairy farmer. But they suggest it is not going to hurt the consumer, because the middle man is going to absorb the increase.

Well, I do not believe that. That is why I am here. I do not believe the middle man, the one that purifies the milk and puts it in cartons and retails it, or those who make the ice cream, will assimilate that 28-percent price increase from this new dairy price support.

I believe the WIC Program is going to get hurt. This amendment says that if the Secretary of Agriculture finds that if 50,000 WIC participants or more are going to be eliminated from the rolls because of the increase in dairy costs—because we are going to help our dairy farmers by raising the price—then he cancels this new Dairy Program, and it is null and void.

There are some who would say, Senator DOMENICI, you are not being fair, because there is another provision, the so-called Grain Export Program, that might raise the price of grains. So that everyone will know that I am fair, I have included both programs in my amendment.

The second part of the amendment states that if the Export Enhancement Program, which we have increased in this underlying bill, causes 50,000 or more WIC participants to lose their benefits because it raises the price of commodities, that program is canceled, too. I think that is imminently fair.

In its essence, if you vote to table the underlying amendment, you have essentially said that the amendment which I have just offered, the fairness for low-income consumers amendment, is dead. All I wanted was an opportunity to present this. All I wanted was an opportunity to have a vote. I think I am going to get a vote, but it will be very circuitous.

It is a tabling amendment of the underlying Helms amendment. You are not going to have a chance to vote on the Domenici consumer fairness amendment. I wish you would have, and I suggest you ought not vote to table it, because we will have a real opportunity to debate it and perhaps adopt it, or perhaps work out something with those who think to the contrary.

Mr. LEAHY. Will the Senator yield?

Mr. DOMENICI. How much time do I have?

The PRESIDING OFFICER. Three minutes, twenty seconds.

Mr. DOMENICI. I yield for a question.

Mr. LEAHY. Mr. President, is it the intention of the Senator from New Mexico to wipe out the dairy provision passed by a 60-to-40 vote yesterday, or is it his intention to protect the WIC Program?

Mr. DOMENICI. Well, let me say, Mr. President, frankly, I do not believe we should have dramatically increased the Dairy Program.

I believe that, sooner or later, the dairy industry in the United States is going to have to come to its senses. What we have done through congressional action is continue to raise the prices supports until the price of milk is so high that everybody is in the business. There is overproduction everywhere, and everybody is making money.

Then we produce too much milk, the price drops, and they begin to go out of business. I do not want anybody to go out of business, but that happens to thousands of people every day in the United States. And now somebody comes along and says: Let us raise it back up, and it is not going to cost anybody anything. It will. The consumer will pay. I picked out a nice little group of consumers that we are trying to take care of under the WIC Program.

So, honestly, I say to my friend, I want the amendment that the Senator gave to the Senate and which the Senate adopted 60 to 40, to be tested. If it, in fact, hurts the WIC Program the way I think it will, then I want it canceled.

On the other hand, I do not like any amendment that is going to be a "jimmy-up amendment"—one in which we are going to pay a portion of WIC costs out of the dairy farmers by setting money aside, and sending it over to the States every month so the WIC Program does not get hurt.

If that is what my friend from Vermont intends to offer, I do not like that program.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico retains the floor.

Mr. LEAHY. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield. Mr. President, how much time do I have?

The PRESIDING OFFICER. Forty-seven seconds.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be recognized for 2 mintues.

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

Mr. LEAHY. Mr. President, to begin with, in the 1985 farm bill, the dairy price support was around $13.10 a hundredweight. The Senator from New Mexico speaks of raising these price supports.

In the 1990 farm bill the price support for milk was dropped to $10.10. The Leahy-Jeffords dairy amendment does nothing that increases this support price of milk or the cost to the taxpayers.

I will yield to no one in this body in my support of WIC. In the 17 years that I have been on the Senate Agriculture Committee I have been the lead sponsor or a cosponsor of every WIC bill that has passed this Congress. Nothing is going to take people off a WIC Program with my vote.

The distinguished Senator from Vermont [Mr. JEFFORDS] and I have an amendment. If that is what we want to do, this amendment could be adopted by this body. This amendment guarantees that nobody would go off the WIC Program. It says that if the cost of fluid milk were to increase the cost of the WIC Program, sums equal to such costs would have to be paid to the WIC Program. So if the Senator from New Mexico wants to protect people on WIC, we can do it. In fact, if he wants to really do something of significance for WIC, he should consider making WIC an entitlement program and take the huge amounts of money that will be saved from medicaid to pay for it.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have 47 seconds remaining; is that correct?

The PRESIDING OFFICER. Forty seconds.

Mr. DOMENICI. Mr. President, I ask unanimous consent I be yielded an additional minute.

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

Mr. DOMENICI. Mr. President, I did not say that the distinguished Senator from Vermont was anything but the staunchest advocate for the WIC Program. What I have found, however, is that in the American economy things are tied together. They do not just operate in a vacuum.

So in an urgent supplemental that was supposed to deal with the aftermath of the war, we have an amendment to enhance export of grains to make that a better program. That is not the amendment of the distinguished Senator from Vermont. Somebody else put it in the appropriation bill. Then the Senator from Vermont comes in and, because the dairy farmers are hurting—and we all know that, anybody that has a telephone and is in the Senate knows that. They are calling up saying, if we do not do this, they are going to have to sell their dairy cows.

Frankly, neither of these belong on this bill. What I have done here is say, let us leave them both on, but, if they really hurt the WIC Program, let us take them both out. We said to the Secretary of Agriculture if either of those programs are that expensive, not to the Treasury but to the consumers of this country, then render them null and void. That is all I want to do.

I would like a vote. I am not sure I will get one, but I have had my say, and I truly believe however it comes

out, the horoscope was right both as to me and as to my friend from Vermont.

Mr. BRADLEY. Mr. President, I rise as cosponsor of the amendment offered by the Senator from New Mexico to ensure that pregnant women, infants, and young children are not the victims of changes adopted yesterday to the milk price support program. This amendment would repeal these modifications if over 50,000 people are forced out of the WIC Program as a result of an increase in milk prices that may result from these changes.

Mr. President, the amendment the Senate adopted yesterday as offered by the Senators from Vermont significantly changed the dairy price support program. it is unlikely that this change will go unnoticed by consumers or by the Government program that buys milk for needy children.

The Leahy-Jeffords amendment raised the price paid for fluid milk by roughly 30 percent. When asked why this increase would not trigger an immediate and proportional increase in consumer prices, the sponsors pointed at price gouging by the middleman. According to the sponsors, consumer prices didn't fall when the price paid to farmers dropped last summer, so consumer prices would not go up now, when the price paid to farmers goes up again.

Mr. President, we do not have any idea what actually will happen to milk prices. There have not been hearings on this proposal. As far as I know, there is no serious economic analysis of the amendment's implications. Retailers and growers have contacted me to indicate they expect milk prices to raise $0.40 per gallon. The bill's sponsors say they would not increase at all. Whom do you believe? I would suggest that the burden of proof is on those who would content that normal economic laws somehow would not apply to this milk price increase. The Senate's action yesterday was based on wishful thinking. If we were wrong, if the sponsors of the bill were wrong, the poor of this country will not only pay more for a product fundamental to a healthy diet, but poor infants will have to be dropped from the WIC Program because its limited funding cannot cover a milk price increase for all its current beneficiaries.

Mr. President, if milk prices increase by the 40 cents or more that some project, as many as 75,000 to 100,000 pregnant women, infants, and young children will have to be dropped from participation in the WIC funding Program. Others contend that there will be no increase in consumer milk prices and the WIC Program will not have to drop anyone. If they are correct, this amendment will have no effect. This amendment is an insurance policy for pregnant women, infants and children dependent on WIC in case they are not correct. If they are wrong, if prices do rise, and if the price increases force WIC to cut off more than 50,000 participants, the dairy modifications adopted yesterday will be repealed and children's health and nutrition will be protected.

Mr. DOLE. Mr. President, I rise in support of the amendment offered by the distinguished ranking member of the Senate Budget Committee. As someone with the longstanding interest and involvement in the Federal nutrition effort, I share his concern about the impact on the WIC Program of the amendment offered earlier by the Senator from Vermont.

The Congressional Research Service estimates that 112,500 fewer women, infants, and children would be served each month by the program under the dairy provisions authored by the Senator from Vermont.

WIC has a proven track record. Study after study has demonstrated the impressive health and nutritional benefits it provides to the women, infants, and children who participate in it. They are among the most vulnerable members of our population, and we should protect them against a measure that could have such a negative effect on their health and nutritional status.

I therefore urge my colleagues to support the amendment offered by the distinguished ranking member of the Senate Budget Committee.

Mr. CHAFEE. Mr. President, I am joining my friend from New Mexico in his effort to ensure that the all-important Special Supplemental Feeding Program for Women, Infants, and Children—or WIC—is not inadvertently caused considerable harm by the Leahy dairy amendment that was approved yesterday by the Senate. Hence, I am voting against the motion to table the Helms, and therefore, Domenici amendment.

First of all, I would like to say that I am sorry to see two well-intentioned efforts—one meant to help dairy farmers now under fiscal pressure, and one meant to preserve important nutrition funding for mothers and children—at loggerheads with one another. There are dairy farmers in my State, and I am concerned about their ability to maintain their farms. Likewise, the WIC Program is extremely important to my State, and I am concerned about making sure the program can reach eligible persons. But I think we acted too hastily on the Leahy amendment.

I did not support the dairy amendment. While it seemed simple on its face, its impact is far from clear. Indeed, should it exacerbate surpluses and reduce demand, it could hurt not only dairy processors and consumers, but also the very dairy farmers that it is intended to help. We simply do not know if the Leahy amendment will help or hurt dairy farmers.

However, one thing that is far clearer is the negative impact that a milk price increase would have on both dairy processors and consumers. That is where the WIC Program comes in, and I would like to focus on this aspect.

Under the dairy amendment approved yesterday, it is very likely that the retail price of milk would go up. It is not unanimous, but that is the conclusion of USDA, dairy processors, and consumer groups. That means consumers—particularly those of low income—would pay more for milk. That also means additional costs for those nutrition programs, such as WIC, that include milk as a basic component of their food package.

As my colleagues know, the WIC Program provides food vouchers to low-income pregnant women, women with infants, and children under 5 who are at risk of serious nutritional deficiencies. As my colleagues also know, WIC is easily one of our best and most cost-effective programs. For every $1 invested in WIC, we save about $3 in long-term health care costs. And with WIC, we reach children at the critical early stages of development.

We recognize the benefits of WIC, and that is why every year when Senator DECONCINI and I spearhead the drive for increased WIC funding, we get an overwhelming, bipartisan response from our colleagues. Last year 82 of us wrote to the Appropriations Committee asking for an increase in WIC moneys, and I am pleased and grateful that the committee did just that.

One more recent event: Five corporate chief executive officers appeared before a House committee to strongly support WIC. They called WIC the health care equivalent of a triple-A rated investment and endorsed full funding for WIC.

I mention this background on WIC because I want to emphasize the overwhelming success of, and support for, the WIC Program.

Milk is an integral part of the WIC food package. According to USDA's Food and Nutrition Service, fluid milk accounts for over 23 percent of WIC food package costs. Indeed, WIC participants consume over 150 million gallons of milk every year. Thus, it should come as no surprise that USDA has noted that "the impact of any significant rise in dairy prices on the WIC Program would be very significant and detrimental."

So the widely-expected increase in the retail price of milk from the dairy amendment would hit WIC hard. A recent analysis by USDA estimates that a milk price increase of 10 cents per gallon would cost the WIC Program $15 million in the next fiscal year. According to USDA, a 10-cent increase would reduce the monthly food packages by 400,000—that means 35,000 fewer women, infants, and children would be served each month.

Keep in mind that a 10-cent increase is a conservative estimate. Should the increase be 25 cents, which many feel is more likely, we could be looking at a loss in WIC participation of anywhere from 40,000 to 100,000 women and children.

Other nutrition programs could also be affected. The USDA analysis showed that Food Stamps, and the School Lunch and Breakfast Programs, would also bear heavy costs from a 10-cent milk price increase: about $95 million for next year.

Food package increases should not be taken lightly. Last year, rises in food prices due to unexpected inflation had a significant negative impact on State WIC Programs. Many States—including my own—had no choice but to drop participants. My point is: Increases in food prices are real threats to State WIC programs.

To those who would argue that these figures are only estimates, and that milk prices would not necessarily go up under the dairy amendment, I would say then let us make sure that that is so. Let us not hastily pass a major change in dairy policy that may or may not help the intended beneficiary—dairy farmers—but almost certainly will have a significant impact upon other groups. Let us let the bill be studied by the committees. And until we are certain that the amendment: First, will help dairy farmers in the long term; and second, won't hurt dairy processors, consumers, and nutrition programs, we should not go forward.

That is why I strongly support and have cosponsored the amendment by Senator DOMENICI. I recognize that the Senate agreed to the dairy amendment yesterday by a clear margin. But the Senate should also ensure that its quick action does not decimate one of the best programs we have ever had: WIC. This amendment will safeguard the WIC Program, and I urge my colleagues to support it.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. DOMENICI. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. DOMENICI and Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The question is on the motion to table.

The Senator from New Mexico.

Mr. HARKIN addressed the Chair.

Mr. DOMENICI. Is the pending question the motion to table?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. 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. BYRD. 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. BYRD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The motion to table is the pending business.

Mr. BYRD. Mr. President, I hope that we can get action on this motion quickly. I ask unanimous consent to proceed for 2 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. Mr. President, we have pretty much taken our time on this bill, almost to the point of taking it unduly. I wonder if Senators understand that in this bill is $150 million for State unemployment insurance operations. I have seen pictures in the press and I have seen on television, waiting lines, individuals who have had to wait 3 or 4 months to fill out their applications and receive their unemployment insurance. I wonder what they may think as they see the Senate piddling along as it has done on this bill.

Senators are entitled to talk, entitled to offer amendments, but I cannot understand why we have to sit here with no action taking place, nobody talking, just sitting out quorum calls.

I hope that we can encourage the people out there, who are waiting in those lines, to believe that the Senate is really taking action and that there is going to soon be an appropriations bill passed that will allow the States to employ the necessary staff, States that need additional funds for the remainder of the year, to hire the staff required to avoid these unnecessary delays that have occurred in the payment of unemployment benefits to an increasing number of unemployed people. The economic and workload forecasts for the Unemployment Insurance Program have been consistently low, and the committee has been concerned that the administration's request is once again too low to adequately fund State administrative costs.

Therefore, in the Senate Appropriations Committee, we added $50 million over and above what the administration requested. And we prevailed on the President, through the Office of Management and Budget, to declare this as an emergency. We all agree that it is an emergency. The administration agrees it is an emergency, and yet we cannot get the bill passed here in the Senate.

If Senators were talking, if they were voting, it would be a different thing. But the Senators are not even on the floor. I see the two managers on the floor; Senator SASSER is on the floor; we have a Senator in the Chair; the Senator from North Dakota; and the Senator from Iowa. Why cannot the Senators come out and vote?

Mr. HATFIELD. Will the Senator yield?

Mr. BYRD. Yes, I yield.

Mr. HATFIELD. I certainly associate myself with the remarks of the chairman of the Appropriations Committee. I am really bothered, bothered badly. I would like to ask the Senator, since he is the historian of the Senate—when I came to the Senate, we were always concerned about protecting the rights of Senators. But there were some responsibilities assumed by the Senators to exercise their rights in due course and within the convenience of the institution. I have a growing sense that we have lost the sense of the institution here in the Senate, that it is all now 100 majority leaders, 100 agendas, and there is no time when the institution should be working its will. It is all now the right of the individual Senator.

Is there a point at which the rights of the individual Senators have to be melded to the benefit and the progression of the institution?

I ask that question because I remember Senator Russell—I was privileged to serve for 2 years when he was here in the Senate. He fought every single civil rights bill. He made no effort to say anything other than, that is my position and this is what I represent. But when a cloture motion was laid down, Senator Russell got up and he said, now the Senate must work its will. And the Senate institution moved because the individual Senator had had his day, he had his rights protected. He had exercised all of his rights of speech and motions and amendments and everything. But, once that cloture motion was laid down, that was it.

Then there was a certain Senator who came here who developed the postcloture filibuster. From that point, I felt a shift of the whole Senate character, because every side of an issue could use that as any one individual could use that kind of approach postcloture.

But here we have for an hour and a half, I say to my leader, this morning an hour and a half the Senator from West Virginia and I sat here, we waited, we pleaded through the television and we sent our staffs to the telephones to call the individual Senators who had indicated they had an amendment, and they would not show up. We have gone through this whole exercise this afternoon, as we did yesterday. And when I suggested this morning that we move to a third reading within a reasonable period of time, the chairman of the Appropriations Committee asked immediate unanimous consent to go to third reading.

And I said I did not expect him to take me up so quickly on my thought. Because we had to protect, again, the interests of the individual Senators.

But there must be some limitations on how far we protect the rights of individual Senators and do the business of the country through the institution of the Senate.

Will the Senator comment?

Mr. BYRD. I absolutely agree with the Senator. Senators do have rights and I try to recognize them and realize they have rights. We often speak of Senators' rights but Senators do have responsibilities. They have responsibilities to the Senate itself as an institution. So often we see Senators who seem to subordinate the welfare and the well-being of the institution—and the country, as a matter of fact—to their own egos. I think that the Senate has lost its soul.

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

The PRESIDING OFFICER (Mr. ROBB). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from North Carolina. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 38 Leg.]

YEAS—61

Adams	Ford	Metzenbaum
Akaka	Fowler	Mikulski
Baucus	Glenn	Mitchell
Bentsen	Gore	Moynihan
Biden	Graham	Nunn
Bingaman	Harkin	Pell
Boren	Heflin	Pryor
Bradley	Heinz	Reid
Breaux	Hollings	Riegle
Bryan	Inouye	Robb
Bumpers	Jeffords	Rockefeller
Burdick	Johnston	Sanford
Byrd	Kasten	Sarbanes
Cochran	Kennedy	Sasser
Conrad	Kerrey	Shelby
Cranston	Kerry	Simon
Daschle	Kohl	Specter
DeConcini	Lautenberg	Wellstone
Dixon	Leahy	Wirth
Dodd	Levin	
Exon	Lieberman	

NAYS—39

Bond	Gorton	Nickles
Brown	Gramm	Packwood
Burns	Grassley	Pressler
Chafee	Hatch	Roth
Coats	Hatfield	Rudman
Cohen	Helms	Seymour
Craig	Kassebaum	Simpson
D'Amato	Lott	Smith
Danforth	Lugar	Stevens
Dole	Mack	Symms
Domenici	McCain	Thurmond
Durenberger	McConnell	Wallop
Garn	Murkowski	Warner

So the motion to lay on the table amendment No. 60 was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the President pro tempore.

Mr. BYRD. Mr. President, if I may have the attention of the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, as far as I can tell, there is only one amendment, possibly two—perhaps I should say likely two—amendments remaining. Pending is the Coats amendment, on which there has been some debate already. I wonder if we can get a time agreement on the Coats amendment.

Mr. LEAHY. Mr. President, may we have order. I am having a little trouble hearing the distinguished chairman and I am standing a foot and a half from him.

The PRESIDING OFFICER. The Senate will be in order.

Mr. COATS. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD. Yes, I yield.

Mr. COATS. I would be very happy to enter into a time agreement. As far as I know, there is only one other Senator who wishes to speak, and he is willing to accept a very limited amount of time. I think I need no more than about 3 or 4 minutes to summarize, and I would be ready to vote. I do not know what the opposition needs.

Mr. SPECTER. Mr. President, on our side we have five Senators who wish to speak. We have my colleague from Pennsylvania, Senator HEINZ; we have Senator BIDEN, who is on his feet; we have Senator LAUTENBERG, who is in the Chamber; and also Senator BRADLEY.

How much time does the Senator from Pennsylvania need?

Mr. HEINZ. Mr. President, I will not consume more than 10 minutes.

Mr. SPECTER. The Senator from Delaware?

Mr. BIDEN. Mr. President, I will not need more than 5 minutes.

Mr. SPECTER. The Senator from New Jersey, Mr. BRADLEY? two minutes. We are up to 18 minutes. I would say 25 minutes on our side.

Mr. BYRD. Mr. President, I ask unanimous consent that the time on the pending amendment be limited to 25 minutes for the opponents and——

Mr. COATS. Why not do 25 minutes a side? I expect we would yield back.

Now I realize there are three or four Senators, who see the opposition is going to mount a defense, who want to speak. So if we could do it equally on both sides with the understanding we would attempt to be brief and yield back whatever we do not use, I would be happy to do that.

Mr. SPECTER addressed the Chair.

Mr. BYRD. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. SPECTER. Will the Senator yield for a question?

Mr. BYRD. Yes.

Mr. SPECTER. My question is will the Senator add an additional 5 minutes to the Senator from New Jersey, who does want to speak?

Mr. BYRD. I understood the Senator counted 18 minutes.

Mr. SPECTER. I had not gotten my time and Senator LAUTENBERG. So I think we need 30 minutes at this point.

Mr. BYRD. Thirty minutes.

Mr. COATS. Why not do 30 minutes a side then?

Mr. BYRD. All right, 30 minutes a side. There are some Senators who have some engagements this evening. This Senator does not have, but he does have to prepare for a conference tomorrow. We have to get busy in the morning because it is too late now to have a conference with the House today because they are out. They would not be able to appoint conferees today. But I hope we can bring this to a conclusion.

Thirty minutes a side?

Mr. SPECTER. That would be acceptable, Mr. President.

Mr. BYRD. Mr. President, I ask unanimous consent there be 1 hour on the amendment, to be equally divided between Mr. SPECTER, et al., and Mr. COATS on that side, and that at the conclusion of that time there be a vote on or in relation to the amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The time will be equally divided.

Mr. BYRD. Mr. President, I ask unanimous consent that there be no amendments to the language proposed to be stricken.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that upon the disposition of this amendment, there will only be one amendment remaining, that amendment by Mr. LEAHY. I know of no other amendments. I make that request.

The PRESIDING OFFICER. Is there objection?

Mr. HEINZ. Reserving the right to object, will the distinguished majority leader withhold so I may check?

Mr. BYRD. I withhold the last request, which had to do with Mr. LEAHY's amendment.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HEINZ. Mr. President, will the Senator from Pennsylvania yield?

Mr. SPECTER. I yield 10 minutes to my distinguished colleague from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. HEINZ].

AMENDMENT NO. 50

Mr. HEINZ. Mr. President, earlier today the Senator from New Mexico apparently read his horoscope indicating the rules were going to bend in his favor. Thanks to his copy of the Washington Post, I came across my horoscope today. I am a Libra, barely. It

says that: "Many will be drawn to you, fascinated by voice, charm, and sense of drama."

Well, I note that nobody erupted here in the Chamber. It goes on to say that: "Scenario highlights discovery, adventure, and unique relationship based on clash of ideas."

Regarding clash of ideas, "Gemini, Virgo, Sagittarius in picture." I do not know what Senators SPECTER, BRADLEY, and BIDEN will be, but chances are they will be one of those.

I hope that horoscope is true, because the Senators that I have just mentioned and I are very strongly opposed to the amendment of the Senator from Indiana. One of the reasons that we are opposed is that if the amendment of the Senator from Indiana were to carry, it would virtually preclude the Congress, as well as the Nation, from revisiting the issue of whether 12 carriers is enough for the U.S. Navy.

It would preclude that because the decision, in effect, to end the SLEP Program, for all intents and purposes, immediately would deprive the Navy of the ability to extend the lives of several other conventional carriers which we would need were we to go above the 12 carriers that are currently projected by the Navy to meet their needs.

In discussions only a moment ago with Secretary Cheney, the Secretary indicated to us that because of the way carriers operate, basically one on station, one in port, and one either on the way or coming back, you can operate effectively only four carrier task groups. Yet the number of critical spots that our military must cover have now been expanded to five, that fifth spot being the Arabian Sea, the Persian Gulf, and the Red Sea, where up until recently we had as many as six carriers operating.

As a result, Secretary Cheney admitted that he would have to rob Peter to pay Paul in order to cover those four areas. What he described to us is a scenario where one carrier has to shuttle back and forth between the Arabian Sea and the Mediterranean, where there is traditionally, due to our commitment to NATO, a carrier on station at all times.

Mr. President, clearly the Secretary of Defense is a good soldier. He is trying to make his forces fit changing circumstances. But in this case, I believe that the reduction in the force of carriers down to 12 carriers, which would in effect be mandated and prejudged by the amendment of the Senator from Indiana, would be a grave mistake.

A second issue that is involved here is that not only would the amendment of the Senator from Indiana preclude our having the additional carriers or carrier, depending on whether you went to 13 or 14, but it would also preclude our ability to visit the issue of whether nuclear carriers, which are essentially all that we have built since commissioned in 1968, are indeed the most cost-effective kind of defense that we can buy.

It turns out, after some research, that the Navy did on several occasions do cost-effective research on nuclear carriers. And in every single study from 1963 to the present, oddly enough, it was determined that nuclear carriers, while very good, are not cost effective as conventional carriers. The main rationale had been for them is that nuclear carriers do not have to refuel, and the conventional carriers do, and that they have this range. But as study after study pointed out, the fact of the matter is that the way you lose a carrier is to send it out without its task group, without its support ships, without its Aegis cruisers, without its screening destroyers, because a carrier must be part of a task group of conventionally fueled vessels in order to be properly defended against both air and marine and submarine threats.

So it would be, in my judgment, a great mistake for us to be forced to choose between conventional carriers and nuclear carriers. That would be one of the other effects of the amendment of the Senator from Indiana, and I think as a result we would be forced to make some decisions, and maybe we should make those decisions anyway, about what is the most cost-effective bang for the buck in the Navy.

Third, and quite directly to the amendment of the Senator from Indiana, he talks about how you can get 10 years of life out of a complex overhaul; and how that, therefore, makes it a very desirable and cost-effective alternative to the service life extension programs that the Philadelphia Naval Yard has carried out on the *Forrestal*, the *Saratoga*, the *Independence*, and other carriers, and hopes to carry out, of course, on the carrier that we are discussing here.

Mr. President, it is a fact that a complex overhaul gets you, at most, 5 years additional life out of a conventional carrier. Even more important, it does not provide the systems upgrade, the up-to-date electronics, fire control, and other interdiction systems that you need and ought to have on any carrier.

So that complex overhaul sounds like it might be a good deal if it were 10 years, and if you did not pay any attention to what you got. But it gets you less than one-third of the life, and it gets you a good deal less than one-half of the capability, not including the life, and not including the fact that to get 15 years additional life out of a complex overhaul, you would have to drive out the carrier three times instead of only once for a service life extension program.

A service life extension program takes 26 months for a complex overhaul. You would have to have a carrier out of commission for about 5 or 6 out of its 15 years.

Finally, Mr. President, there is the issue of the cost efficiency at which the work on the service life extension program is done at the Philadelphia Naval Yard. It is a fact that by every significant rating the Navy makes and can bestow on any of its eight yards in terms of the man-day rate, in terms of the productive ratio, in terms of the net operating result, the Philadelphia Naval Yard is either first best or second best out of eight in every single one of those categories, and indeed it is one of only two yards that returned a profit to the Navy in the last 2 years.

Mr. President, I urge our colleagues to defeat the Coats amendment, to defeat it because it precludes some very necessary flexibility that we may be called upon to utilize in making decisions about the number of carriers.

It prejudges whether the fleet should be all nuclear, instead of a mix of conventional and nuclear. I point out that we never sent a nuclear carrier into the Persian Gulf, for reasons that I assume had something to do with the fact that we did not want a nuclear carrier in a small body of water to hit a nuclear carrier or have a nuclear carrier hit by an Exocet missile. It is simply not the case that a complex overhaul is more cost effective, by any stretch of the imagination, to the program, and, to boot, the chances are that work might be taken away from one of the most, if not the most, efficient yard in the entire United States.

For all those reasons, I urge my colleagues to please read my horoscope and do the best to respect what it says.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. Senator LAUTENBERG is recognized.

Mr. LAUTENBERG. Mr. President, I do not think I will need 5 minutes.

First, I want to compliment Senator SPECTER for his work on behalf of the Philadelphia Naval Yard. I joined with him in the full committee markup to add the provision that now, suddenly, the Senator from Indiana would like to strike. The provision is fairly simple. It tells the Navy to spend the money that we have already appropriated. It says, follow the law, spend the funds Congress has previously provided for the Service Life Extension Program of the U.S.S. *Kennedy*. To strike the provision now would be penny-wise and pound-foolish. The SLEP Program is a money saver over the long term. The provision in the bill would require the Navy to do simply what was proposed, and that is to spend the money Congress approved for the revitalization of the SLEP Program of the U.S.S. *Kennedy* at the Philadelphia Naval Shipyard, which is, by the way, the most

productive and efficient public yard in the United States, by the Navy's own yardstick for measurement. The Navy supported SLEP of the U.S.S. *Kennedy* last year, and now, to save money in the short term, suddenly the Navy has reversed the field.

The fiscal year 1991 Defense Appropriations Act provided $405 million for the U.S.S. *Kennedy* SLEP advance procurement, 1991-92, with the expectation that the year would begin in fiscal year 1993. The amendment we added in the full committee markup would simply make sure that the Navy moves forward. SLEP is designed to extend the 30-year service life of nonnuclear aircraft carriers by at least 15 years. The alternative would be to overhaul the ship, which would extend the ship's life by only 5 years. On an annualized basis, it would cost over 30 percent more. Moreover, as the amendment proposed, SLEP takes the ship out of commission for even a longer period of time.

The Philadelphia Naval Yard completed the service life extension of the U.S.S. *Saratoga*, the vessel that had a very important role to play in the completed gulf war, and it will soon complete work on the U.S.S. *Kitty Hawk*, and has begun the SLEP Program of the U.S.S. *Constellation* with a completion date of fiscal 1993. It ought to be permitted to begin the program on the U.S.S. *Kennedy*, as well.

Mr. President, a similar provision on the SLEP Program was included in the House-approved version of the dire emergency supplemental.

I urge my colleagues to support these provisions as part of the Senate version of this legislation. It ought to be considered in view of the most recent experience that we had in the Persian Gulf. Thank goodness that we had the aircraft carriers performing as they did in the beginning parts of that war. It made the ground combat effort so much easier and reduced the number of casualties. There is not anybody arguing against the value of the aircraft carriers. In this case, we have a chance to buy a very important advancement at a very reasonable price, and I urge my colleagues to support the striking of the proposal by the Senator from Indiana.

Mr. SPECTER. Mr. President, I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. Mr. President, I have been here a long time, and it seems I keep fighting the battle of the Philadelphia Naval Yard. The first big battle was with one of the great Senators in this body, Senator John Stennis, and it was about where the SLEP Program should be located. At the time, the State of Virginia, the State of the Presiding Officer, was the single biggest competitor for the program.

Here we are again. What are the arguments? Well, my friend from Indiana makes a persuasive argument. One of his first argument is, hey, the Defense Department does not want this, why are we going to shove it down their throat? He was more articulate than that, but that is the essence of one of his arguments. It is an interesting argument. But I would like to point out that my friend from Indiana is very, very interested in the V-22 Osprey, and one of these days he is going to be here on the floor telling us why we should have that program and how critical it is to our national security. I happen to agree, but the Pentagon does not want it. I assume we can discount his first argument that the Pentagon does not want it, therefore, why should we take it; because, if we accept that argument, then, as we say in the law, he would be estopped from making the argument about the V-22 later. I would not want to do that to him.

Let us go to the second argument. The Senator from Indiana makes the argument that cutting funds for the Service Life Extension Program in Philadelphia is going to save money. But I think he is really being too clever by half. This amendment may save some money now, but it will not save any in the long run. I know we hear that all the time. We hear "this amendment will cost money now and it will save us money down the road." But it is a fact. Currently the Philadelphia Navy Shipyard overhauls aircraft carriers in the SLEP Program, and the carrier is completely gutted. We get virtually a new carrier built, all for less than $1 billion. That sounds astounding, but it is a great deal less than the cost of a new carrier. We extend the carrier service life by 15 years, saving us money at a time when, although we are not increasing the number of aircraft carriers, we have demonstrated how critically important they are to our Armed Forces. Compare the cost of the SLEP Program, of overhauling the existing carrier, to the cost of a brand new carrier. The new one will cost about $3.2 billion. In other words, the SLEP Program gets us one-half the service life of a new carrier at one-third the cost.

The other point I want to make—and there are many to make, and I know my time is running out—is that it is awfully hard to start one of these programs up again. It is a big deal. There is a lot of infrastructure. I do not have to tell the Senator from the State of Virginia, the Presiding Officer, where they do shipbuilding themselves, that if you do not keep the infrastructure in place, and you turn around and think you need it, you are required to exert a great deal of effort and money to get yourself back up to speed.

This is an outfit that has done the job well. No one that I am aware of has made any credible argument to suggest that the assignment that has been given to the Philadelphia Naval Shipyard has not been performed with great efficacy and at costs that were reasonable.

Mr. President, I see the Presiding Officer reaching for the mallet there to tell me my time is about up.

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

Mr. BIDEN. I ask unanimous consent for 20 additional seconds.

Mr. SPECTER. I yield 20 additional seconds.

The PRESIDING OFFICER. The Senator is recognized for an additional 20 seconds.

Mr. BIDEN. Mr. President, this is a valuable program for our national security. I hope my colleagues will join me in opposing the amendment by the Senator from Indiana.

I thank the Chair and I thank my colleagues from Pennsylvania.

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

Who yields time?

Mr. COATS. Mr. President, I have been told that there may be other Senators who want to speak, but they are not here. I am prepared, after yielding myself some time in closing, to yield back whatever time I have. So I guess I will inquire of the Senator from Pennsylvania, if he has additional speakers or wishes time, this will be the time to use it. I will close and we will go to a vote and let Senators get underway.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I am advised that Senator BRADLEY will be on the floor shortly, actually at 6:10. So, we would want to reserve some time for him. I think that we can utilize some time effectively at this point. There was some additional argument and perhaps some discussion between the distinguished Senator from Indiana and myself.

The amendment offered by the distinguished Senator from Indiana seeks to strike the language from the appropriations bill which precludes the Navy from spending money on a comprehensive overhaul. That is because the Navy has requested that there be a Service Life Extension Program in their budget submission for fiscal year 1991. I refer now to page 208 of the proceedings before the Department of Defense Appropriations Subcommittee for fiscal year 1991.

That money was later authorized by the Armed Services Committee and the appropriation has been made for more than that, but at least for the $113 million. My question to the distinguished Senator from Indiana is: In light of the action of the Congress on legislation signed by the President, why should the Department of Defense be permitted to ignore the law of the land and have a comprehensive overhaul?

Mr. COATS. In response to the Senator, it is my understanding that while the Department of Defense at one time was prepared to enter into a Service

Life Extension, commit the *Kennedy* to a Service Life Extension Program, subsequent to that decisions were made, for budgetary reasons, to reduce the number of carriers from 15 to 13—actually 15 to 12 but one of those is a training carrier.

As a result of budgetary pressures on the Department of Defense, and the Department of the Navy, a decision was made that the U.S.S. *Kennedy*, being the newest of the conventional carriers, could have its life extended through an overhaul program which would cost approximately $500 million rather than through a SLEP Program that would cost approximately a billion. I spoke this morning to Secretary Garrett of the Navy who indicated that they can accomplish everything they need to do to extend the life of the U.S.S. *Kennedy* through an overhaul at $500 million and achieve a savings of roughly $500 million and meet the requirements of the authorizations and appropriated amounts that they received for fiscal year anticipated budgets for the 5-year budget plan which we enacted just last year.

Mr. SPECTER. The question I have asked goes to the authority of the Navy and the Department of Defense to make the change on their own after they have come to the Congress and made a request for a Service Life Extension Program. Congress has authorized that. Congress has appropriated the money for that.

Would it therefore be the appropriate practice for the Department of Defense to come back to the Congress and say we want to change the approach, we want to have a deferral, and see if the Congress is going to go along with that?

Mr. COATS. If the Senator will yield for a response to that question, I think that would be entirely appropriate. In fact the very point, the purpose of my amendment is to say that there is a recognized established procedure by which the Department of Defense should come to Congress and request revisions in terms of its plans to meet the security needs of this country.

Mr. SPECTER. But it should not be——

Mr. COATS. If I could finish the answer to the Senator's question. But section 203 which has been placed into this dire emergency supplemental would preclude the Navy from doing the very thing the Senator asked them to do because it takes it out of the authorizing process and it mandates that the Navy have no discretion in the matter. It says they must not spend any funds other than for Service Life Extension Program and that the work must be performed at the Philadelphia Naval Shipyard.

That totally takes away their ability to come before the Armed Services Committee and ask for a revision of plans or a revisit to the question, and it may be that the Armed Services Committee would take the request and reject their request and say no, we think it is more appropriate for this work to be done under a SLEP Program.

Mr. SPECTER. But has such a request been made by the Department of Defense?

Mr. COATS. The Senator is precluding the ability to do that and the Department of Defense—if the Senator will yield for me to respond—the Department of Defense, that is, indicated that is exactly what they would like to do.

Mr. SPECTER. Mr. President, the fallacy with the argument by the distinguished Senator from Indiana is that the Department of Defense has had plenty of time to ask for a deferral or to come to Congress to make some change in the law of the land. But they have not chosen to do so. And it is not a substitute for a telephone conversation between the Secretary of the Navy and the distinguished Senator from Indiana to effectuate that change.

We hear through the back-door rumor that the Navy is going to proceed with the comprehensive overhaul, and that is contrary to the law of the land.

The law of the land is established by an act of Congress, then signed by the President. Congress did not pick this SLEP out of the air; the Congress responded to a specific request by the Department of Defense. That request has been authorized, that request has been appropriated, and the Congress is now saying to the Navy we are tired of dealing with rumor; we want you to follow the law. The Navy has planned—we know it through the rumor mill—to have a comprehensive overhaul and we are simply not going to tolerate the Department of Defense's ignoring the law of the land and going to a comprehensive overhaul.

That is why this language is present and that is why the motion by the Senator from Indiana is premature and inappropriate and wrong. If the Department of the Navy had sent forward a deferral or a formal request to make a change in the law of the United States of America, then it might be appropriate to have this motion to strike.

But I think that the Members of the Congress are really sick and tired of having the laws ignored by the executive branch where the President, the chief executive officer of this country, has signed the bill. That is why a unanimous Appropriations Committee said, perhaps as a matter of principle as much as a matter of concern on the substance here, we are simply not going to allow the Navy to ignore the law. Therefore, they cannot spend the money the way they choose to unilaterally. They have to follow law.

Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator controls 2 minutes and 5 seconds. Who yields time?

Mr. COATS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for such time as he may use.

Mr. COATS. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 10 minutes.

Mr. COATS. Mr. President, it might be appropriate that I respond at this particular point to some of the statements that have been made both by the Senator from Pennsylvania and the Senator from Delaware. The Senator from Pennsylvania indicates that somehow we are attempting to overturn the established law of the land which mandates that the Navy perform a certain type of overhaul, in this case a service life extension, to one of its aircraft carriers.

It is true that decisions have previously been made in the previous Congress relative to what the Navy should do with the carrier *Kennedy*. It is also true, however, and also the law of the land, that, subsequent to that decision, the Navy has been ordered by this Congress to reduce the number of aircraft carriers it has from 15 to 12.

Mr. SPECTER. Will the Senator yield?

Mr. COATS. I will be happy to yield to the Senator as soon as I finish my statement here.

It is also true that it is the law of the land that the funds available to the Navy to meet its commitments have been drastically reduced. Admiral Kelso this morning addressed the Armed Services Committee and presented a chart showing a drastic reduction in the funds available to the Navy for procurement, for operations and maintenance, for performing all of its functions.

The reality that we face is that we are reducing substantially the amount of funds available for the Department of Defense to perform its functions. So it is only natural that they would come forward with proposals in which they can meet the commitments to secure our national defense with the amount of funds that Congress has provided them. And if they can find ways to meet those commitments by spending less money than what Congress has previously ordered them to do, then that is what we should be encouraging them to do.

So the Navy in this particular instance is simply saying we can meet those commitments and those requirements by spending about a half-billion dollars less than what we previously thought we would have to do, and this is the proposal we would like to bring before Congress.

But again the central point of this amendment that we are dealing with is not whether or not the *Kennedy* should be SLEP'd, or overhauled, nor whether it should be done in Philadelphia or somewhere else. The central point of this amendment is that there is an established process which we ought to go through to make these decisions, that this debate ought to be held where Members can come and debate the merits or demerits of the Navy proposal, and that the authorizing committee can change the decision as to whether or not it is appropriate. The Appropriations Committee then can meet its commitments in providing the necessary funding.

But what we are objecting to here in this particular procedure is the idea of making the decision without debate, making the decision without the Navy having the ability to make a request, making a decision by slipping it into a piece of legislation entitled dire emergency supplemental for the purpose of funding Desert Storm and a few other things that we are saying is so important and so dire and such an emergency that it has to be done in this particular legislation.

This would not even have seen the light of day had this Senator from Indiana not offered this particular amendment. So I am really not even debating the merits or demerits of this particular proposal. I am simply saying this is the wrong way to go about it.

That is why Senator MCCAIN and I have offered the line-item veto, because this happens on every appropriations bill that comes before this body. All kinds of little goodies for our particular area are put in spending programs that have not been debated, have not had an up-or-down vote, have not gone through authorizing committees, but because, for one reason or another, they are attached to these bills knowing that the President needs to sign these very, very quickly, they are labeled emergency dire supplemental appropriations and suddenly we are making decisions affecting the security of this Nation by attaching something in here that completely ties the hands of the very people we are giving the authority to carry out there particular mission.

Now, when Senator MCCAIN and I went down here arguing the line-item veto, the appropriators came down and said, "This is not right. We should not give this authority to the executive branch. If you have a complaint with the way things are being done, come down here when the appropriations bills are on the floor and raise the issue."

So that is what we are doing. And I think it points out the fact that this is a bill, like every other appropriations bill, chock full of things that have not gone through the authorizing committee, that would not be debated, that do not receive a vote, and Members are not held accountable for. They are attached as riders to appropriations bills. And later the public says, "Well, why didn't you debate it? How come you did not have a vote on it? Why is it in there?"

So for all those and other reasons which I will detail a little bit in my closing argument, this amendment from the Senator from Indiana is offered.

I know that my colleague is waiting to ask a question and I would be glad to yield for that purpose.

Mr. SPECTER. I thank my colleague for yielding for a question.

The question has two parts. Is it not true that $113 million has been authorized by the Armed Services Committee, adopted by the Senate, with that authorization still standing? Is it not also true that the fiscal year 1991 budget comprehends the reduction to be 25 percent over the first of the 5 years, so that the reduction has already been taken into account by the Department of Defense in requesting the authorization for a Service Life Extension Program for the *Kennedy*?

I repeat, is it not true, factually, conclusively, absolutely that there is an authorization in existence for $113 million for SLEP?

Mr. COATS. It is my understanding there was an authorization for $113 million. It is also my understanding that, given the budget constraints the Navy and the Department of Defense is now under, they would like to accomplish the purpose for which they need to overhaul the *Kennedy* at a rate much less than that. And of course the $113 million would not begin to perform the SLEP which is estimated to cost $1 billion.

Mr. SPECTER. My second question: after noting that $113 million would at least begin it, is it not true that fiscal year 1991 has the cuts for the Department of Defense budget and within those cuts 25 percent over 5 years, fiscal year 1991 being the first year, acknowledging those cuts, the Department of Defense had asked for the SLEP to start with $113 million, which is authorized?

Mr. COATS. Well, that is also true, if I could respond to the Senator, but the point is that the Senator is saying, as soon as $1 of expenditures is authorized and appropriated on a project, no matter how much it costs and no matter what happens to the budget for the department subsequent to that authorization, that no request for changes can be made and that we will simply deny any ability of the Department of Navy or Department of Defense, or other agency, to ever revise their request, change their opinion, try to adjust to new budget realities.

Mr. President, I wonder if I could inquire how much of my 10 minutes is remaining?

The PRESIDING OFFICER (Mr. BREAUX). Thirty seconds.

Mr. SPECTER. If the Senator would yield for a final part of the question, is it not true that when you assert that the number of carriers has been reduced to 12, the fact of the matter has been a request by the Department of Defense and that reduction has not yet been accepted by the Congress?

Mr. COATS. My understanding is that was authorized in last year's Armed Services authorization.

Mr. SPECTER. I would suggest to the Senator that he is not correct. Last year, the Navy—and I would offer the hearings—14 was the number, and the request for 12 has come in now and it has not been acted on by the authorizers or the appropriators.

Mr. COATS. In response to the Senator, whether the number is 15 or 12 or 20 is really irrelevant to this particular amendment because the point of this amendment is that the decision is being made outside the process by which the decision ought to be made and it precludes the Department of the Navy from coming back and making any change in their initial request to respond to the budget realities that we have imposed upon them by the 5-year budget plan adopted by this Congress in the last session.

Mr. President, unless the Senator from Pennsylvania desires to use some time, I will yield 5 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized for 5 minutes.

Mr. MCCAIN. Mr. President, in response to the previous question which my friend from Indiana answered very well, let me add the fact that the Secretary of Defense and the Secretary of the Navy have testified consistently that, due to budget constraints, we will be in a 12-carrier battle group Navy. There are many of us who are very, very unhappy about that. Our danger, in all candor, given the budget problems we are facing, is going down to 10, as many in this body have advocated, and many members of the Armed Services Committee have advocated.

So I think our problem is not going down to 12, in all candor. Our problem is maintain it at 12, given the budget constraints we are facing, if we are indeed going to face the significant budget reductions, which I have, so far, seen no effort to be changed.

I have mixed emotions about this issue, in all candor, because I do not think there is a stronger advocate of a maritime strategy than this Senator. I feel very strongly the carrier is the backbone of a maritime strategy, I feel it is our best way to project power, and I feel it is going to be very badly needed in the future.

I have great affection for the *John F. Kennedy*. But let me say at this time of significant budget constraints, it is ap-

parent to me that we are not fighting to keep the *John F. Kennedy* in commission for a number of years, but what seems to be the goal of this amendment is to keep a shipyard in business. Let us face it. Let us look what we are here for.

I would like to see this shipyard and every other shipyard stay in business and every military base in America, including those in my State, stay open. But it is not going to happen because we cannot maintain that infrastructure with a dramatically reduced budget. So let us understand at least to some degree what we are talking about here is not the *John F. Kennedy* but the Philadelphia Naval Shipyard which is a honorable and outstanding shipyard, which has done outstanding work for many, many years, but, unfortunately, has fallen victim to budget reductions.

Let us talk about a SLEP versus an overhaul. Can we really afford—not only a $500 million differential in costs, which is a difference between the overhaul and a SLEP—but I think we should also remember that if this carrier is SLEP'd, it will still require additional overhauls in the future.

In other words, it is not just $500 million, it may be as much as a $2 billion differential. Because if this carrier is SLEP'd, every 5 years or so it will require an additional overhaul of around $400 to $500 million.

I think it is important to recognize that the Secretary of Defense and the Secretary of the Navy, whom we have charged with the responsibilities, have not only not supported this amendment but they strongly oppose it. They have not had the opportunity to appear before this body because this issue did not come before the Senate Armed Services Committee which is the appropriate forum for this kind of very significant action. Certainly, if we are looking at it in terms of cost, approximately, as I say, a $500 million differential or, given the costs of overhaul, closer to $2 billion.

I repeat, I would love to see a 15-carrier battle group. I think I can draw a scenario to this body, and a convincing one, that we need 15-carrier battle groups. But I think the stark reality is that is not possible. Then we have to make some tough choices and the Navy and the Department of Defense made these tough choices and they came up with the result, which was the *John F. Kennedy* would be overhauled rather than SLEP'd.

This amendment that we are seeing also, I think—and I must say in all due respect to the dedication of my colleagues who have brought up this issue—is another testament to going around the process. This should not be in a dire emergency supplemental appropriations bill.

Where is the dire emergency, except to keep the Naval Shipyard open? That is the only dire emergency that I see here. And in the minds of many it is a dire emergency, I am sure; to the residents of the city of Philadelphia and the surrounding area, New Jersey. I have also seen their representatives weigh in, as well as our friends from Delaware. It is very important to them. But the fact is there is no dire emergency here in a global or national or defense context.

I think the *John F. Kennedy* is a fine aircraft carrier. I think it is vital to this Nation's defense. And I would do everything in my power, under the constraints of the budget, to see that we have a large Navy of which the *John F. Kennedy* will remain a part well into the next century.

At this particular time, this particular amendment, in all candor, is not appropriate because of, simply, the decisions made by the Defense Department in partnership with the Senate Armed Services Committee and the Congress.

I yield.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. I yield 1 minute as requested to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. BRADLEY. Mr. President, the SLEP Program is a cost-effective program. It has long been viewed as such. The choice before us today is an attempt to deny the fact that the SLEP Program is cost effective.

In its place they will put something called complex overhaul. But look at the numbers. With the SLEP Program you get a 15-year overhaul that costs $825 million. With the complex overhaul, you get 5 years for about $500 million. It will cost $1.5 billion over 15 years.

So what you might say is the message that is being sent by the amendment from the distinguished Senator from Indiana is, "you can pay me now or you can pay me more later." I believe the SLEP Program is effective and the payments should be made now and not in 5-year segments, at almost 80-percent increase in cost to the taxpayer.

But an interesting thing is the Navy wants to close the Philadelphia Naval Shipyard. If they do, this is a great amendment to try to do that. Because if you knock out the SLEP Program, you then can slip in and justify closing it because the SLEP Program is gone. That is why this amendment should be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, may I inquire how much time remains?

The PRESIDING OFFICER. The Senator from Indiana controls 13 minutes, 16 seconds. The Senator from Pennsylvania controls 25 seconds.

Mr. COATS. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

Mr. COATS. Mr. President, the argument here is not whether or not the SLEP Program is an effective program or whether overhaul is a better program. In some instances, overhaul can save the taxpayers a lot of money and that is all that is needed. In other instances, SLEP is perfectly appropriate and ought to be employed in order to extend the service life of a particular piece of equipment, in this case an aircraft carrier. That is not what this argument is about at all.

This argument also is not about whether or not we ought to have 15 aircraft carriers or 12 aircraft carriers. This Senator from Indiana has a record of supporting national defense that is second to none in this Congress. I, like the Senator from Arizona, wish we were not in a budgetary situation where we had to reduce our national defense.

This amendment by the Senator from Indiana to remove this section has nothing to do with whether or not we should have 12 or 15 carriers. Nor does it preclude, as the junior Senator from Pennsylvania said, any ability to determine whether nuclear carriers are cost effective. I think we are moving toward a total force of nuclear carriers and probably at some point in the future we should.

This argument is not about that at all. This argument is about whether or not this is the proper procedure with which to make these discussions. If it is, then there is no need to have a Senate Armed Services Committee because whatever decisions are made, whatever evaluations are made, are irrelevant, if, through the appropriations process, those can be overturned or those decisions can be made moot.

Let me just counter one more thing. The Senator from Delaware indicated that if we simply rubber stamped everything that the Department of Defense does not want, then we are jeopardizing the ability of Congress to make those decisions and, in fact, he suggested, of course, this Senator from Indiana is a supporter of the V-22 and the Navy does not want that and the Department of Defense does not want that and, therefore, there seems to be some inconsistency here. That is not the case at all.

There are three programs outlined in this particular section under Department of Defense for spending. One is the V-22, which I support, but it has gone through the authorization process; and even though the Department of Defense does not want it, it has been debated, it has been voted on, and it has been authorized, and so providing funds for that is appropriate because it

has been subjected to the proper debate in authorization.

There is another program in here to continue the remanufacture of the F-14. That is the program this Senator voted against. This is an area where I agreed with the Department of Defense. But I lost. But I am certainly willing to accept the result because, again, it went through the appropriations authorization process and there was a vote. I happened to come out on the short end on that one.

This particular section is something that has not gone through the process and it does one extremely important thing that I do not think we in this body should allow: It not only directs the type of expenditure, it directs where the expenditure must be made.

Mr. President, if we allow this to happen, there is going to be a rush to this floor led by this Senator to use this process to totally circumvent the base closing process. Every Senator is going to want to come down here and say not only are we going to mandate the Department of Defense spend a certain amount of money, but we are going to mandate where they have to spend it. So if anybody has a base or a shipyard or a program they think might be in jeopardy because the Base Closing Commission might come along and recommend closing it, a very simple way of circumventing that is to simply direct that appropriated funds must be spent only at that particular place.

As this section says, these funds can only be spent at the Philadelphia Naval Shipyard.

The Senator from Delaware said we ought to be concerned about the budget, what is most cost effective. I do not think the most cost effective program is to mandate where those funds are to be spent. We ought to have an evaluation of where the taxpayer can get the best return for his or her dollar.

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

Mr. COATS. I yield myself 5 minutes.

Mr. SPECTER. Will the Senator yield for a question?

Mr. COATS. As soon as I finish my thought, I will be more than happy to yield to the Senator for a question.

Mr. President, I am deeply concerned that we have found a very clever way to circumvent what the decisions of the Base Closing Commission are going to be.

There are rumors floating around Indiana that Grissom Air Force Base, which is a base that houses KC-31 tankers, may be on the hit list. In fact, we have a meeting this afternoon with a number of officials from Indiana, as well as the Department of Defense, over that very concern.

There is some concern that, in the future, the needs of Grissom Air Force Base may not survive the recommendation of the Base Closing Commission.

It occurs to me if this is the process we are going to use, when the next urgent supplemental or appropriations bill comes along, I might be able to slip a little piece of language in there that requires the Department of Defense, whether they want to or not, to retrofit or upgrade those KC-135's. If I am clever enough, I will add that retrofit can only take place at Grissom Air Force Base in Indiana and, knowing what their schedule is, that retrofit will have to take place at a time after the base closing commission makes its recommendation.

I suggest as soon as the cat is out of the bag here, every Senator of the U.S. Senate is going to be down here or banging on the door of the Appropriations Committee attempting to add language to supplemental appropriations or other appropriations bills which lock in their particular facility or installation. No doubt about it.

This amendment by the Senator from Indiana has nothing to do with SLEP, has nothing to do with how many task force carriers we are going to have, has nothing to do with anything other than the fact that it points out two very important things:

No. 1, we are through this process tying the hands of the Department of Defense in terms of whether or not they can close a particular facility, where they have to do the work, and what work they have to do.

Second, we are going outside the process that has been established for where these decisions ought to be made. We are getting outside of the authorization process, the decisions will not be made on a rational basis and the Navy will be precluded from making any changes in previous years' requests and the authorizing committees will be precluded from making any changes relative to what work should be done and where it should be done.

Finally, we will have found a way to totally circumvent the process of the Base Closing Commission. We might as well fold that thing up before it even starts because we have now found a very clever way to circumvent it.

Mr. President, I know the Senator from Pennsylvania seeks to ask a question. If I can yield briefly for that question.

Mr. SPECTER. I thank my colleague. Mr. President, when the distinguished Senator from Indiana was responding to the question by the distinguished Senator from Delaware on V-22, and the Senator from Indiana made the principal thrust of his argument that this procedure undercuts the authority of the Armed Services Committee, and then the Senator from Indiana says he thinks the V-22 Program is proper and the language of this appropriations bill is proper, where the Appropriations Committee—this is the focus of the question—the Appropriations Committee has ordered the Department of Defense to spend money within 60 days of a V-22 and the Department of Defense has said it does not want to, just as the Senator from Indiana asserts the Department of Defense does not want to spend money for the SLEP Program, is not the authority of the Armed Services Committee being undercut precisely the same on the V-22 as on SLEP Program, and would not the force of the arguments of the Senator from Indiana require striking the V-22 Program as well?

Mr. COATS. In response to the Senator, in one sense the debate here today has made the point this Senator is trying to make relative to line-item veto, and that is these decisions ought to see the light of day. All of these, I think, ought to be initiated in the appropriate authorizing committee.

We do have a procedure whereby Members, through the Appropriations Committee or on this floor through amendment, can bring up an amendment to deal with a particular procurement program or particular appropriation. It is entirely appropriate to debate that, to debate the merits and demerits of a particular proposal, and take a vote up or down and live by the request.

We may not always agree with what the request of the Department of Defense is.

This has now seen the light of day and Members will vote on this and we are doing it on the merits rather than attaching it to a dire emergency supplemental which is never discussed, debated, and goes outside the regular process.

The PRESIDING OFFICER. The Senator has 2 minutes and 15 seconds remaining.

Mr. COATS. I yield 1 minute to the Senator from Arizona.

Mr. McCAIN. Mr. President, I would just like to, first of all, congratulate my friends from Pennsylvania for their hard work and dedication in behalf of the people of Philadelphia and the Philadelphia Naval Shipyard.

The question here is neither their ability, their hard work, nor the efficiency of their shipyard.

I applaud both of my friends from Pennsylvania in this effort. I also would like to applaud my friend from Indiana because sooner or later—and I am sorry this particular part of this bill has to be the primary target—we have to get these kinds of spending under control.

We have to have these issues debated by the Senate and, indeed, by the whole Congress. We need to get the kind of spending under control which has faced us with an incredible deficit which we have to overcome. The only way, in my view, we can overcome it is by doing away with these kinds of appropriations bills and giving the President the line-item veto.

I thank my colleague from Indiana.

The PRESIDING OFFICER. Who yields time?

Mr. COATS. Mr. President, I yield myself the remainder of the time.

Mr. President, in conclusion, let me also state that I have no objection whatsoever to the Senators from Pennsylvania and Delaware, and wherever else they may want to come from to defend a particular military installation. That is exactly what they should be doing and what this Senator would be doing relative to installations in his State.

As I said, that is not the issue. The issue is whether we will follow the process and procedures which this very body established in terms of how we make these decisions.

I suggest that if we pass legislation which totally removes decisions from the process that has been established whereby we make these decisions, then we are going to continue, whether it is military expenditures or appropriations for any of 1,000 other programs, the practice that the public finds so offensive, and that is not holding debate on issues.

Mr. President, I assume my time has expired.

The PRESIDING OFFICER. The time of the Senator from Indiana has expired. The Senator from Pennsylvania has 45 seconds remaining.

Mr. SPECTER. Mr. President, I think the argument here has shown conclusively that this should not be stricken. The language about the Philadelphia Naval Shipyard is only surplusage, because SLEP can only be done at the Philadelphia Navy Shipyard.

I think, in the final comments by the distinguished Senator from Indiana, he has, in effect, conceded the point when he talks about procedure. The procedure should govern. The law established by Congress and signed by the President is to have this SLEP. It has been authorized. When he says the V-22 was proper on what the Appropriations Committee has done here, the SLEP is exactly the same. It has been authorized and appropriated. The President has signed it to go forward.

Mr. COATS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. All time has expired.

Mr. SPECTER. Mr. President, I move to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, I move to table the Coats amendment.

The PRESIDING OFFICER. There has been a motion to table. The question is on agreeing to the motion to table.

Mr. BUMPERS addressed the Chair.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays are requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will please call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 44, nays 56, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—44

Adams	Garn	Lieberman
Akaka	Harkin	Mikulski
Baucus	Hatch	Moynihan
Biden	Hatfield	Murkowski
Bond	Heinz	Packwood
Bradley	Inouye	Pressler
Byrd	Jeffords	Pryor
Chafee	Johnston	Reid
Cranston	Kassebaum	Rockefeller
D'Amato	Kasten	Rudman
DeConcini	Kennedy	Sarbanes
Dodd	Kerry	Simpson
Dole	Lautenberg	Specter
Domenici	Leahy	Stevens
Ford	Levin	

NAYS—56

Bentsen	Fowler	Nickles
Bingaman	Glenn	Nunn
Boren	Gore	Pell
Breaux	Gorton	Riegle
Brown	Graham	Robb
Bryan	Gramm	Roth
Bumpers	Grassley	Sanford
Burdick	Heflin	Sasser
Burns	Helms	Seymour
Coats	Hollings	Shelby
Cochran	Kerrey	Simon
Cohen	Kohl	Smith
Conrad	Lott	Symms
Craig	Lugar	Thurmond
Danforth	Mack	Wallop
Daschle	McCain	Warner
Dixon	McConnell	Wellstone
Durenberger	Metzenbaum	Wirth
Exon	Mitchell	

So the motion to table the amendment (No. 59) was rejected.

Mr. COATS. Mr. President, 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.

The PRESIDING OFFICER. The Chair observes that the yeas and nays have been ordered on the underlying amendment.

Mr. COATS. I move to vitiate the order for the yeas and nays.

The PRESIDING OFFICER. Is there objection?

Without objection, the motion to vitiate the yeas and nays is agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 59) was agreed to.

Mr. COATS. I move to reconsider the vote.

Mr. ROBB. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 63

Mr. LEAHY. Mr. President I send an amendment to the desk on behalf of myself and Mr. JEFFORDS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mr. JEFFORDS, proposes an amendment numbered 63.

Mr. LEAHY. 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:

At the end of Title I, add the following:

SEC. 103. MAINTENANCE OF NUTRITION PROGRAMS.

(a) MAINTENANCE OF BENEFITS.—In order to ensure that benefits under the Special Supplemental Food Program for Women, Infants, and Children established pursuant to section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) (hereafter referred to in this section as the "WIC" program) are not significantly reduced as a result of the implementation of section 101(a) of this Act, the Secretary of Agriculture shall distribute as soon as possible at the beginning of the second, third, and fourth quarters of 1991 a portion of the funds described in section 101(a)(2)(A) of this Act to each State agency overseeing the WIC program, as needed to prevent any decline in the average monthly participation in the WIC program as determined in subsection (b) caused as a result of the implementation of section 101(a).

(b) DETERMINATION.—Any determination under subsection (a) by the Secretary of Agriculture of a decline in the average monthly participation in the WIC program as a result of the implementation of section 101(a) of this Act shall—

(1) be based upon any difference between the estimated average monthly participation in the WIC program (as set forth in the Budget of the United States Government for fiscal year 1992 submitted by the President of the United States to the Congress of the United States) and monthly participation levels in such program for each of the last three quarters of 1991 (as estimated by the Secretary of Agriculture on a quarterly basis) that is caused by an increase in the seasonally adjusted cost of fluid milk during the last three quarters of 1991 (as measured by the Retail Price Index for Urban Consumers of Whole Milk issued by the Bureau of Labor Statistics) that is greater than—

(A) for the second quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.00925;

(B) for the third quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.0185;

(C) for the fourth quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.02775; and

(2) be made on the record.

(c) DELAY IN DISTRIBUTION OF FUNDS.—The Secretary shall not delay the distribution of funds to producers of milk under section 101(a) of this Act due to provisions of this section.

(d) FINAL ADJUSTMENTS.—If actual monthly participation levels in the WIC program (determined in accordance with subsection (b)(1)) are different from the Secretary's estimate in subsection (b)(1), the Secretary shall make adjustments, based on actual monthly participation levels, in the distribution of funds under this section or under section 101(a) of this Act to carry out the purposes of

subsection (a) of this section and to maintain dairy income under section 101(a) of this Act.

Mr. LEAHY. Mr. President, yesterday, the Senate debated and passed an amendment offered by Senator JEFFORDS and myself that provides emergency assistance to our Nation's dairy farmers.

Some questioned the impact of the amendment on the poor and hungry.

Others questioned its impact on WIC—the Women, Infants, and Children Program.

The debate reminded me of how often a handful of us have stood in this Chamber arguing for full funding of WIC and how often our calls have been ignored.

WIC serves children at some of the most critical times of their lives. It feeds mothers when they are pregnant or breastfeeding. And it feeds children during their important, early development years.

WIC is a proven success story. A 1990 USDA study showed that for every WIC dollar spent on a pregnant woman, between $2.84 and $3.90 was saved in infant Medicaid during the first 60 days after birth.

And, according to the Surgeon General, the average medical cost of a low birthweight baby can exceed $39,000. The average cost of the WIC package is $30 a month.

At retail stores, WIC participants exchange special vouchers for infant formula. The recipients pay nothing; the State reimburses the store for the full retail cost of the formula. The infant formula manufacturers then rebate a portion of the retail price to the State.

To help States get higher rebates from formula companies, I proposed legislation in 1987, which Congress passed, allowing States to obtain higher rebates from infant formula companies through competitive bidding procedures.

Because less than half the States participated, a 1989 law that I sponsored made the competitive bidding procedure mandatory for all States.

By 1991, the average rebate climbed to $1.36 per can. USDA estimates that these two laws have generated $600 million in rebates, allowing WIC to serve 950,000 additional recipients at no extra cost to taxpayers.

Mr. President, as I said before, yesterday, we approved an emergency dairy amendment by a vote of 60 to 40.

Today, the claim is made that the emergency dairy amendment, by raising the price paid by processors for fluid milk, would result in the loss of more than 100,000 participants in the WIC Program or a 30-percent decline in WIC Program benefits.

These numbers are very hard to believe and are not supported by the facts.

The total WIC food benefits request in the President's fiscal year 1992 budget is almost $2 billion. A 30-percent decline in WIC benefits would be approximately $600 million. To support this figure, the price of milk would have to jump by $4 per gallon, $4 per gallon. It should go without saying that the emergency dairy amendment will not raise the price of fluid milk used in the WIC Program by $4 per gallon. This claim should not even need to be addressed on the floor of the Senate.

But that is the argument we are faced with today.

I must repeat what I said yesterday. I do not believe that, as a result of the dairy emergency amendment, there will be substantial or significant changes in WIC benefit levels or WIC Program participation.

But in order to reassure Senator DOMENICI and the other concerned Senators, I am offering today an amendment that will hold WIC Program participants harmless if there are any effects on the WIC Program as a result of the changes in class I prices as a result of the dairy emergency amendment. Dairy farmers will reimburse the WIC Program if there are additional costs to WIC as a result of the emergency dairy amendment.

Senators in this Chamber should be relieved to know that the amendment offered today by Senator DOMENICI would have allowed up to 50,000 WIC participants to leave the program before granting any relief. The amendment I offer now will be of benefit to all WIC participants if it is needed.

Again, I must repeat, the amendment addresses all valid concerns about the WIC consequences of the dairy emergency amendment.

Finally, I want to make clear that the authority provided by this amendment cannot be used to prevent or delay the implementation of the emergency dairy program under section 101.

Mr. President, there was some question yesterday of how the amendment propounded by Senator JEFFORDS, myself and others, which passed 60 to 40, might have affected the WIC Program.

I have tried to assure members that there has not been one piece of WIC legislation that has passed the U.S. Senate in the last 17 years that has not had my name on it. I yield to nobody in this Chamber in my support of WIC. There is some tremendous support of WIC in this Chamber. We want to make absolutely sure, if there are further profits of the dairy farmers, that it does not affect the cost of WIC recipients, by making sure that, under appropriate appropriations, the cost of the WIC Program went up, the profits of the dairy farmers would have to be taken on the formula shown in the amendment to pay for the difference and thus keep people on WIC, not take people off, but guarantee that they stay on. That is the gist of the amendment.

Mr. JEFFORDS. Mr. President, as a strong, longtime supporter of WIC, I am very gratified by the tremendous support the WIC Program is receiving. I hope this support is equally strong during the budget and appropriation processes.

I applaud Senator LEAHY's amendment and support it, as do the Nation's dairy farmers. As I said during the debate yesterday, nobody is going to suceed by trying to pit dairy farmers against consumers. Ironically, dairy farmers themselves are being WIC eligible every day.

Those who are new to WIC Program may assume it is nothing but milk. This is not true. WIC dollars pay for doctors and nurses, eggs and orange juice, cereal and infant formula. Perhaps 15 percent of WIC dollars go to fluid milk.

More to the point, I do not think the amendment adopted yesterday will put any pressure on those dollars. The middleman has increased his price spread 40 cents over the past few months. Any and all of the farm price increases contemplated by our actions can be absorbed in that spread.

But let us use our opponents numbers. They claim a 16-percent price increase will result. What is 16 percent of the 15 percent of WIC costs attributable to fluid milk? Less than 2.5 percent. That, not 30 percent is the outside impact our opponents can claim.

So they are off by a factor of 10. So they assume the middlemen keep their fat price spread. So they assume a passthrough of all costs. Pretty poor assumptions. But—we will put money where their mouths are. We will put an insurance policy in place to make sure no WIC participants will suffer.

People who truly care for WIC will support this amendment. People who want to use WIC as a political football will not.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DOMENICI. Mr. President, in the end, I believe that the chairman of the Agriculture Committee has put to the Senate an amendment that at least indicates what the Senator from New Mexico said about the new dairy program and its potential harm to low-income consumers, and it has some merit.

This amendment which is offered is an effort to let the dairy program reimburse the States for any moneys they might lose and thus to keep the WIC entitlement at its current level.

While I support the idea, and clearly this is better than nothing and I will not oppose it, I doubt very much in the end whether it will do the job because I think it is too cumbersome. I am not at all sure that the way the money will be sent down to the States from the dairy program is going to work.

Nonetheless, I think it is better than where we were yesterday. Let me suggest, however, that it also in my opinion is a clear vindication of another issue. If that dairy amendment has significant impact on the WIC recipients of this country, I guarantee you it is going to have significant impact to all consumers because consumers across America use dairy products, milk, and all the same nutritional items that are in WIC. So what we did with the adoption of the dairy program is to dramatically increase the cost to all consumers of dairy products.

In this amendment we are going to try in a way, albeit less than successful in my opinion, to hold the WIC Program harmless. If if works, if that dairy program becomes law, and I hope it does not, but if it does this will be an effort to see that the lowest-income consumers do not get hurt. What about the rest? All in the name of helping the dairy program.

I thank the Chair and yield the floor.

Mr. LEAHY. Mr. President, I ask unanimous consent that Mr. KOHL be added as a sponsor of the amendment.

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

Mr. KOHL. Mr. President, yesterday the Senate adopted, on a 60 to 40 vote, an amendment offered by Senator LEAHY, Senator JEFFORDS, Senator KASTEN, and myself to provide emergency price relief to dairy farmers. And I want to thank all of my colleagues who supported us in our efforts to keep thousands of dairy farmers from facing bankruptcy this year.

After yesterday's vote, the Senator from New Mexico [Mr. DOMENICI] voiced concerns about the possible impact of the amendment on participation rates and benefit levels under the WIC Program.

Let me respond. First, I am—as I know the other sponsors of yesterday's amendment are—very willing to take whatever precautions necessary to ensure that WIC participation rates do not suffer as a result of our amendment. We did not include such precautions in yesterday's amendment because we do not believe that it will cause significant changes in WIC benefit levels or program participation.

But we are certainly willing to do so, and we have prepared an amendment that will hold the WIC Program harmless. It ensures that funds collected under our amendment will be used as needed to prevent a decline in WIC Program participation rates caused by any increase in retail milk prices.

Mr. President, our amendment will adequately protect the WIC Program from any possible impact of the emergency dairy legislation adopted yesterday. And I urge colleagues to support it.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I say for the record that I am somewhat troubled with this amendment. I understand that its purpose is to protect the WIC Program, which I support, but the reason that it concerns me is that the amendment could have the effect of providing additional funds for the WIC Program. The WIC Program is a discretionary account funded by appropriations legislation. The amendment offered appears to make mandatory funding changes in this discretionary program.

Because of this concern I will say to the Senator from Vermont that I will agree, and I have conferred with Senator HATFIELD and he associates himself with my remarks, to accept the amendment with the understanding that we are accepting it in order to complete action on the bill and take the bill to conference. But it is also my intention not to use this bill as a method for taking away the discretionary nature of the WIC Program.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is agreeing to the amendment.

The amendment (No. 63) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, while waiting momentarily, I ask unanimous consent that upon the passage of the bill the Senate request a conference with the House of Representatives on the disagreeing votes, that the Senate insist on its amendments, and that the Chair be authorized to appoint the conferees on the part of the Senate.

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

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. BYRD. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. CHAFEE. I wonder if during the conference I might proceed for a few minutes?

Mr. BYRD. I yield to the distinguished Senator 2 minutes.

Mr. CHAFEE. Mr. President, I am a staunch supporter of the WIC program and indeed join every year with the senior Senator from Arizona to push for increases in the WIC funding.

I do not object to the amendment by the Senator from Vermont. However, I do have some concerns about it. Frankly, I regret that we have started down this path at all.

It seems to me that what we have done is approve a dairy price increase for fluid milk. Then, realizing that an increase will almost certainly hurt nutrition programs such as WIC, we are now in the process of adding a very complicated provision to offset any additional costs to the WIC Program.

It seems to me to be needlessly complicated and indeed to be starting down a new, untried policy path.

Some of the problems:

First, this amendment would safeguard WIC, or at least it is intended to, but it leaves the dairy processors and the consumers out in the cold. They still have to pay for the price increase.

Second, with regard to the WIC offset, this sets up a complicated chain of aid: the Government raises prices, that helps dairy farmers, they in turn must subsidize WIC participants.

All this subsidizing—a circle of subsidies—gets extremely complicated, and it is not good policy.

Third, at least with regard to the class 1 milk prices, all this is temporary. All this fuss is for an 8-month change in prices.

In sum, I hope that the conference committee will review these dairy/WIC amendments carefully.

Frankly, all this might have been avoided had this bill been studied in committee, and studied thoroughly. Then we might have been able to evaluate the bill with better information about its impact.

AID TO TURKEY

Mr. INOUYE. Mr. President, I would like to express my continued support for the traditional 10-to-7 ratio of United States military aid to Turkey and Greece. In recent years, this tradition has been embodied in specific earmarkings of military assistance in the foreign assistance appropriations bill.

The bill we are about to pass, H.R. 1281, contains an additional $200 million in aid to Turkey to offset losses due to the Persian Gulf crisis. I wish to make it clear, however, that the provision of this assistance is an exception and does not alter the principle of maintaining the 10-to-7 ratio in annual appropriations.

The principle of the 10-to-7 ratio remains intact and continues to be, in the minds of a great many Senators, the best means for the maintenance of a just American foreign policy toward the Eastern Mediterranean region.

PEACE IN THE MIDDLE EAST

Mr. JEFFORDS. Mr. President, this Nation has just emerged from 6 months of crisis and conflict in the Middle East. Yet I am afraid that some our policies for peace may be sowing the seeds for another war.

Several times during the past decade we have had to send U.S. military forces to the region or lend U.S. military protection to Arab nations. While we were successful in driving Saddam Hussein out of Kuwait, Americans do not want to have to commit lives and

resources to a similar battle in the near future. Yet, if we do not seize this short moment of opportunity to advance the cause of peace, chances are great that we will have to send the U.S. military back to the Middle East in the coming decade.

We have seen how Saddam Hussein placed the highest priority upon development of his military, to the detriment of all other aspects of social development. He amassed the fourth largest army in the world and kept it actively involved in waging war for most of the decade. When the 8-year war with Iran ended, he turned his army upon Kuwait. But Saddam didn't develop this army in a vacuum. He was assisted by arms sales and technological assistance from the developed world, including our allies in Operation Desert Storm—France and Germany—and even the United States. Preoccupation with the outcome of the Iran-Iraq war and eagerness to find a market for our goods blinded us and our allies to the true nature of Saddam's rule and ambitions. Over the last 6 months we have paid dearly for that lack of attention.

We must now learn from our past mistakes. There is general international agreement that no military assistance should be provided to Iraq as long as Saddam remains in power. Yet, the rush to rearm the region is in full swing. On February 28, the day after the cease-fire was announced, the administration informed Congress that it plans to go forward with a sale to Egypt of $1.6 billion in new weapons, including 46 F-16 aircraft. Egypt was a dependable ally, both militarily and politically, throughout the gulf conflict and deserves U.S. support for that stand. Last fall, I supported the forgiveness of $6.7 billion in debt incurred from the purchase of military equipment from the United States in prior years. There was general agreement that the poor condition of the Egyptian economy makes it highly unlikely that Egypt would be able to repay this debt in the foreseeable future. So why are we encouraging Egypt to get even further in debt with this new military purchase? How does an Egyptian arms buildup affect the balance in the region?

It has now come to light that the administration is considering selling almost $20 billion in new arms to Turkey and a variety of Arab nations. The argument is being made that if we are to pull our military out of Saudi Arabia and Kuwait, we must beef up the military capabilities of our allies. But I do not buy that. Our role should not be that of permanent policeman of the gulf, nor should we take it upon ourselves to address the military inequities of the region. Both these jobs would best be handled by the United Nations. The causes of instability in the Middle East are many, diverse and ongoing. Simply arming the region today so that we can pull out tomorrow will sow the seeds for another crisis within the decade. The nations of the region would be much better off putting their resources into social and economic development instead of increased military capabilities. And conflicts in the region are best addressed by greater emphasis upon a U.N. role, rather than larger armies and more weapons.

While the administration's request for $650 million for Israel in compensation for military costs incurred during the gulf conflict is different from direct military sales, it could fuel the same fires of militarization. Many of the Arab nations feel intimidated by Israel's military superiority. While Israel considers the total size of Arab armies arrayed against it, the Arab nations tend to compare themselves individually to Israeli military preparedness. The Israeli Government has indicated its willingness to discuss restrictions on arms sales, and we ought to pursue that interest. It is critical that we consider the political and military impact of all arms sales and strive toward greater regional stability.

Israel's fortitude and patience in enduring repeated Iraqi Scud missile attacks without retaliating are very commendable. This, combined with the quick and effective United States response to the threat to Israel have considerably strengthened the United States-Israeli relationship over the past few months. The improved tenor of this relationship is an important condition for any progress toward peace in the region. We should capitalize upon our improved relationship with Israel and our better standing in the Arab community to advance the peace process.

Mr. President, many nations in the Persian Gulf are suffering from the high cost of the war. Beyond the devastation of Kuwait, Saudi Arabia has sustained direct damage and considerable military cost. Turkey is struggling to cope with the sudden losss of a major portion of its foreign trade. Many Arab nations have taken direct and indirect losses because of their participation in the embargo of Iraq. Six gulf nations have also committed troops to the allied effort. Most of these nations are not receiving compensation for these contributions and costs, and a few have pledged additional funds to the Defense Cooperation Account in the U.S. Treasury. We continue to exert considerable pressure on all our allies to follow through on their pledges. Military compensation for only one ally seems to me to make the case for burdensharing more difficult.

Progress toward peace in the Middle East will definitely be slow and grueling. We must be sure that all other aspects of U.S. policy are supportive of this goal. I believe that further arming of the powder keg that is the Middle East is detrimental to that goal. It would be shortsighted of us to get swept up in the short-term political and financial benefit of such sales and ignore their impact upon overall trends in the region and the long-term prospects for peace.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Mr. KERREY. Mr. President, the 1990 farm bill includes a provision authored by the Senator from Arkansas [Mr. PRYOR] and this Senator that directs the Secretary of Agriculture to establish a separate, independent appeals process within USDA's Agricultural Stabilization and Conservation Service.

This independent appeals structure was enacted in response to concerns raised by farmers across the country who believe that the same ASCS people were acting as judge and jury in making final determinations regarding farmers' compliance with our farm programs.

Unfortunately, Mr. President, our efforts to create a separate appeals division at ASCS have been stymied by USDA's determination that a provision in the fiscal year 1991 agriculture appropriations act allows the Department to ignore the farm bill mandate to establish an independent appeals division.

In making its decision, USDA is relying on section 640 of the fiscal year 1991 Agriculture Appropriations Act, which reads as follows:

> None of the funds in the Act may be used to establish any new office, organization or center for which funds have not been provided in advance in Appropriations Acts, except that the Department may carry out planning activities.

Mr. President, as a member of both the Appropriations and Agriculture Committees, I believe that USDA's position on this matter is just plain wrong, for the following reason.

ASCS already has an appeals staff that includes hearing officers, clerks, and so on. Thus we are not asking USDA to create something out of nothing. We are merely asking them to restructure their appeals staff in such way that the system provides farmers an independent and fair means to appeal adverse Farm Program rulings. Congress regularly appropriates money for the existing appeals staff, and we are merely telling USDA to reorganize the appeals staff as a separate structure.

At this time, Mr. President, I would like to ask the senior Senator from North Dakota, the chairman of the Appropriations Subcommittee on Agricutlure, Rural Development and Related Agencies, if he agrees that nothing in the current year's agriculture appropriations act allows USDA to ignore the mandate included

in the farm bill to establish a separate ASCS appeals division.

Mr. BURDICK. Mr. President, I have reviewed the provisions cited by the Senator from Nebraska. I agree that the language included in the fiscal 1991 Agriculture Appropriations Act does not allow the Department of Agriculture to ignore the provision of the 1990 farm bill requiring USDA to establish a separate ASCS appeals division.

The farm bill provision cited by the Senator mandates the restructuring of existing agency resources and personnel, and thus does not violate the prohibition included in this year's agriculture appropriations act that precludes the creation of any new office at USDA not supported by an advance appropriation.

Mr. KERREY. I thank the chairman for his interpretation and I urge the Department of Agriculture to adhere to the mandate from Congress.

Mr. BUMPERS. I thank Senator KERREY and Senator BURDICK for raising this important issue and for clarification that section 640 of the fiscal year 1991 agriculture appropriations act should not be interpreted as prohibiting the implementation of the ASCS appeals process as outlined in the 1990 farm bill.

A few years ago, farmers in Arkansas were caught in a nightmare of inaction by the existing ASCS appeals process and although most of the farmers were eventually exonerated, the lengthy delays forced many farmers out of business. The lesson of that example, and others, led me to applaud the work of Senator KERREY and my colleague from Arkansas, Senator PRYOR, for language in the 1990 farm bill to establish an ASCS appeals process that will remove most of the obstacles that farmers have had in obtaining a speedy and procedurally correct means to address any grievance or complaint they may have with an action by ASCS.

During recent hearings before the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies, I submitted questions to ASCS to determine their intent to implement this program. Although I have not received a formal response to my questions, all indications are that the answer will be no. In fact, a number of farm periodicals have already reported that ASCS plans not to put the new appeals process in place.

Mr. President, I believe that a failure of ASCS to provide this Nation's farmers with the appeals process as outlined in the 1990 farm bill will be seen as a breach of faith by farmers who looked to this new process as a necessary tool to deal with a very large and complicated Federal agency.

Mr. BURDICK. I thank the Senator from Arkansas for his remarks and agree that farmers need an appropriate forum for fair and equitable review of agency actions. As I have stated, the provision of the 1990 farm bill to develop this new procedure should not be read as to apply to section 640 of the fiscal year 1991 agriculture appropriations act. As the Senator points out, the farm bill requires the program be developed and is not so much the creation of a new office as it is the reformation of an existing practice.

Mr. BUMPERS. I thank the chairman and the Senator from Nebraska for their statements and I join with Senator KERREY in urging the Department of Agriculture to adhere to the congressional mandate.

UNEMPLOYMENT INSURANCE ADMINISTRATIVE EXPENSES CONTINGENCY RESERVE FUND

Mr. RIEGLE. Mr. President, I would like to commend the Committee on Appropriations on its effort to include in the supplemental appropriations bill before us additional funding for the administrative expenses of the Unemployment Insurance Program. Due to the recession, unemployment claims have increased far beyond the level anticipated when the fiscal year 1991 appropriations bill was being drafted. Several weeks ago, I initiated a letter, signed by 11 of my colleagues, calling on the committee to provide as much as twice the $100 million which the President had requested. We asked for this higher amount because the state agencies which administer the program believe they may need as much as $200 million to provide benefits on a timely basis to people in need.

Congress has a habit of underfunding the administrative expenses for the Unemployment Program. Supplemental appropriations for unemployment insurance administrative expenses have been required in 10 of the past 18 years. It is difficult to predict the future course of the economy. So it really should not be surprising that the Appropriations Committee have difficulty estimating accurately the amount of administrative funding that will be needed over the course of the year.

For this reason, I and my 11 colleagues asked the committee to consider legislating a contingency reserve fund, to be drawn upon in the event the committees' projections are wrong. I remind Senators that the Unemployment Insurance Program more than pays for its own administrative expenses; last year the administrative account of the UI trust fund generated a surplus of about $1 billion. These revenues are being used to hide the size of the overall fiscal deficit while unemployed people are forced to wait between 4 and 6 weeks before receiving their unemployment checks. This is unacceptable.

So while I was pleased that the committee appropriated $150 million, and the White House has agreed to designate this as emergency funding—indeed I wrote to the President last month to ask him to do just that—I am concerned that the $150 million is on the low range of what the states project their needs to be. Unemployment insurance is the first line of defense in our society's safety net. The Unemployment Insurance Program is not the place to scrimp or cut corners. Companies and workers finance this program directly; the least the Federal Government can do is ensure that the program delivers the benefits when they are needed. During a recession, an unemployment check is sometimes the only thing that stands between a person and foreclosure or even hunger.

For this reason, I continue to believe strongly that Congress should include in this supplemental appropriations bill a contingency reserve fund. The language I propose would provide an additional $30 million in fiscal year 1991 for every 100,000 person increase in the average weekly insured unemployment level—including a pro rata amount for any increment less than 100,000—above the 3.345 million level assumed in the President's fiscal year 1992 budget request. The moneys would be appropriated from the employment security administration account of the unemployment trust fund.

This is similar to the way the Social Security system provides for adequate administrative expenses. I would submit that there is an even greater need for a contingency fund in the UI Program, since it is much harder to predict the number of unemployed persons a year in advance than it is to predict the number of Social Security beneficiaries. The former is a function of the notoriously unpredictable business cycle; the latter is primarily a function of demographics.

It has been my intention to offer an amendment to the supplemental appropriation bill establishing such a contingency reserve; however, it is my understanding that the distinguished chairman of the Appropriations Committee, Senator BYRD, and the distinguished chairman of the Subcommittee on Labor, Health and Human Services and Education, Senator HARKIN, have agreed to pursue this proposal and address it in the fiscal year 1992 appropriations bill. On the basis of these assurances from the distinguished Senators I will withhold my amendment at this time.

Mr. HARKIN. I would like to thank the Senator for his courtesy in this matter. He and his colleagues have identified a legitimate problem area and put forward an interesting and promising proposal. As he knows, in our review of this proposal, we have had favorable consultations with the Congressional Budget Office with respect to how such a contingency reserve fund would be scored as part of the budget. I regret, however, that the administration's lack of support for this provision could slow down the supplemental appropriation bill. Nevertheless, I want to assure the Senator from

Michigan that I intend to pursue this proposal and will attempt to address it in the context of the fiscal year 1992 appropriations bill.

Mr. BYRD. Let me just say that I share the Senator from Michigan's concern about the need to provide for fully adequate administrative funding for the Unemployment Insurance Program. As the Senator knows, I negotiated extensively with OMB to get funding for unemployment insurance declared an emergency. According to the latest data from the Labor Department, a supplemental of $150 million will fully reimburse States for all anticipated costs of processing unemployment claims from April 1, 1991, through the end of fiscal year 1991.

I also want to thank him for his courtesy in withholding his amendment in order to expedite passage of this urgent supplemental appropriation bill. I would like to join my colleague from Iowa in indicating to the Senator from Michigan my support for revisiting this proposal in fiscal year 1992.

Mr. RIEGLE. I thank the Senators for their consideration and assurances.

NAVY REPAIR AND MAINTENANCE OF READY RESERVE FORCE VESSELS

Mr. HOLLINGS. Mr. President, I would like to call to the attention of my distinguished colleague, the chairman of the Defense Appropriations Subcommittee, Senator INOUYE, an issue that is of mutual interest and of national concern.

The workers at our Navy shipyards are a critical national asset that is in jeopardy if current Navy plans continue unabated. According to the latest figures provided by the Navy, reductions in the Navy ship repair and maintenance budget will cause the loss of almost 12,000 workers at our public shipyards by fiscal year 1993. This total represents almost 20 percent of the skilled workers at our shipyards. That is more workers than are employed in many Federal agencies.

These are the same skilled workers whose dedicated contributions to fleet readiness were so evident in the responsiveness and dependability of the fleet during the Persian Gulf conflict. In my own State, the Charleston Navy Shipyard, long recognized for the dedication of its work force and quality of its workmanship, is threatened by a reduction in force in fiscal year 1992 that could affect over a thousand employees.

Mr. INOUYE. Mr. President, my colleague is raising an important issue. I, too, am concerned about the erosion of our industrial base and capability to respond to future situations in which U.S. military forces may need to be deployed. These shipyard workers are highly skilled and have acquired expertise from long years of training and experience.

I am very aware of the reductions that some in the Navy leadership believe will occur during the next few years. As the Senator knows, Pearl Harbor Navy Shipyard also employs a skilled work force with a long and proud tradition of excellence. The Hawaii shipyard also is threatened by the same magnitude of employment reductions that the Senator mentioned.

Mr. HOLLINGS. The question is what to do to avert such a significant degradation in our industrial facilities and manpower. Obviously, the Senate could adopt legislated manpower floors such as the Congress has previously done with the work force at Army depots.

That should not be our course. Rather, I believe, that we should focus on workload and making our Navy shipyards more productive. To this end, I would like to point out to the chairman of the Defense Appropriations Subcommittee that the U.S. Navy is currently operating over 70 maritime administration Ready Reserve Force vessels in support of our forces in the Persian Gulf. With the cessation of hostilities, these ships will return to the United States and the Navy is obligated to repair and refurbish them before placing them back into RRF ports.

It would seem a wise and appropriate course of action to ensure that a substantial number of these ready reserve force deactivations are carried out at our Navy shipyards. I believe it would be fair and in the best interests of the Navy and the Maritime fleet if half of these RRF refurbishments were performed in U.S. Navy shipyards. This would appear to provide the type of diversity and workload to enable our shipyards to become more efficient and retain an adequate workforce.

Mr. INOUYE. I believe that my colleague, the Senator from South Carolina, has made an excellent suggestion. He and I have worked together for many years on sealift and defense issues. This proposal has merit and I will request that it be endorsed by the conferees to the dire emergency supplemental appropriations bill.

JSTARS FISCAL YEAR 1991 FUNDING

Mr. DECONCINI. Mr. President, would the distinguished chairman of the Defense Appropriations Subcommittee yield to this Senator to enter into a colloquy on the joint surveillance target attack radar system [JSTARS] ground station modules funding.

Mr. INOUYE. I would be pleased to yield to the senior Senator from Arizona for that purpose.

Mr. DECONCINI. I thank the chairman. As the chairman may be aware, when the original fiscal year 1991 supplemental was forwarded to Congress, it included a request for $7.9 million in Army research and development funding for the ground station modules to continue the JSTARS Research Program which was interrupted when the JSTARS system, and its ground station modules, were shipped to Saudi Arabia for use in Operation Desert Shield and Desert Storm. By all accounts, the system—even though it is only in the development state—proved its worth beyond the Army and Air Force's expectations.

Mr. MCCAIN. If my colleague from Arizona would yield, I would like to expand on his comments.

Mr. DECONCINI. I am pleased to yield to my colleague from Arizona for a comment.

Mr. MCCAIN. I thank the Senator. Mr. President, there is no question that the Joint STARS equipment deployed during the Persian Gulf war was a highly critical factor in our military achievements. In hearings before Congress in the past 2 weeks, Joint STARS has been given special praise by Pentagon representatives. JSTARS provided the eyes for following Iraqi troops, vehicles, and convoy movements. Its imagery is remarkable. It provided necessary intelligence both before and after an attack. There is no question that it saved allied lives. I thank my colleague for yielding.

Mr. DECONCINI. Because the JSTARS Development Program was interrupted by the gulf war, the Army has already acknowledged that there may be a 3- to 6-month slip in the program without the appropriation of supplemental funds. There may also be valuable operational data which may have been collected during Operation Desert Storm and which may have an impact on this development program.

Mr. President, am I correct that, if the Army and Defense Department provide the Defense Subcommittee accurate and reliable data on the need for, and ability to effectively use, supplemental funds in the current fiscal year, they could submit to Congress an expedited reprogramming request for the Army's Ground Station Module Development Program?

Mr. INOUYE. The Senator is correct. The Defense Department may be able to provide accurate and reliable data on the necessity for an above threshold reprogramming in order to avoid any further delay in the program.

Mr. DECONCINI. I thank the distinguished chairman. If I may ask another question, should the Pentagon provide reliable data as part of a reprogramming request to Congress, would the chairman be willing to consider such a request on an expedited basis? Similarly, if the Defense Department submits a revised list of items—including JSTARS—that it has determined should be made a part of a supplemental appropriations bill, would the chairman be willing to work with me on resolving this issue in conference?

Mr. INOUYE. I can assure the Senator that if reliable and accurate data is provided to this subcommittee in a reprogramming request, that request will be expeditiously considered. Also,

if the Defense Department provides the subcommittee with additional information, I can assure both Senators that I will see what we can do in conference.

Mr. DECONCINI. I thank the chairman for his courtesy in considering this request.

Mr. MCCAIN. I join my colleague from Arizona in thanking the chairman.

CHALLENGER CENTER FOR SPACE SCIENCE EDUCATION

Mr. GARN. Mr. President, Senators, ADAMS, MIKULSKI, BOND, and myself wish to enter into a colloquy during consideration of the supplemental appropriations bill today.

Mr. President, in October 1988, Public Law 100-104 was enacted by Congress establishing the Challenger Center for Space Science Education and allowing for its headquarters to be located in the District of Columbia. In April 1989, an exclusive rights agreement was signed by the Challenger Center and the D.C. Redevelopment Land Agency conveying, at no direct cost to the Challenger Center, parcel 76 for purposes of locating their headquarters there. Any minimal negotiated value of the property would be offset by the value of the center's services to the public schools of the District and economic impact on the community.

Mr. ADAMS. Mr. President, if the Senator from Utah will yield for a question. The Senator from Utah indicates a value offset by the center's services to the District's public schools. What are those services?

Mr. GARN. Challenger Center was established as a learning center for everyone, but primarily children, in space science. Its hope is to get children excited about science education by giving them a hands-on experience with life in the 21st century. The center would benefit teachers and students of the District and the broader community. It would benefit Challenger Center as well by providing direct access to those underrepresented minority students which are the heart of its purpose.

Mr. ADAMS. Has the conveyance of the land taken place?

Mr. GARN. Mr. President, the land conveyance has not taken place. The District of Columbia has been dragging their feet on this matter. In fact, in March 1990, the Redevelopment Land Agency erroneously attached a $16,768,000 price tag to parcel 76. Even with this cash payment demand, the Challenger Center Board reaffirmed their intent to build the headquarters in the District of Columbia, and to attempt to negotiate with the Redevelopment Land Agency to convey the land as originally agreed, at no cost. The Challenger Center proposed an exchange of appraisals for comment, after they had an independent appraisal which set the value of parcel 76 at $3,500,000. In January of this year, the Redevelopment Land Agency rejected the Challenger Center's appraisal without comment on technical inadequacies. The Challenger Center continues to attempt to negotiate with the Redevelopment Land Agency, but to no avail.

The Challenger Center has also recently attempted to speak with the Mayor of the District of Columbia, Sharon Pratt Dixon. Although they have been unable to meet with her as of yet, the Challenger Center continues to reaffirm their intent to build their headquarters in the District of Columbia, in keeping with the original intent of Public Law 100-104.

Ms. MIKULSKI. Will the Senator from Utah yield?

Mr. GARN. Yes.

Ms. MIKULSKI. I first wish to express my support for the efforts of the Mayor of the District of Columbia, Sharon Pratt Dixon, in her attempts to get the city back on track. She has a difficult task.

The Challenger Center's Learning Center would be of immeasurable value to the children of the District, and many others as well. The Challenger Center has a learning center in my State, which I have visited many times. It provides a fabulous resource for children and adults as well to learn about life in the future and about space science. I look forward to working with the Mayor in this regard.

Mr. President, I want to know if the Challenger Center is prepared to go ahead with construction if the land conveyance can be secured?

Mr. GARN. Mr. President, the learning center headquarters is ready to be built as soon as they get the property. The designs are finished. We simply await action by the D.C. government. In fact, the Challenger Center, while waiting for the outcome of the land conveyance, has been negotiating with the D.C. Public Schools Administration to pursue use of an empty warehouse, located across the street from parcel 76, on H Street, as an interim facility. In August 1990, Challenger Center signed a preliminary agreement with D.C. Public Schools to use the H Street warehouse as an interim facility. That effort has now been sidetracked as well by the D.C. government, who owns the property. The Challenger Center, to this point, has spent $900,000 in their effort to abide by their decision to locate their headquarters in the District of Columbia. Mr. President, this amount of money could have built three learning centers. That could have benefited numerous children. However, none of the money spent has gone to help children, which is a shame. Afterall, they are the reason the Challenger Center was established.

The Challenger Center Board is extremely frustrated with the government of the District of Columbia, and frankly, Congress should be as well. The Nation's Capitol stands to loose a very valuable learning tool for its children. The Challenger Center has several valid, outstanding offers of alternate locations for their headquarters. They have been extremely patient. The time is now to act to secure this property for the benefit of the children of the District of Columbia.

Mr. BOND. If the Senator from Utah will yield.

Mr. GARN. I will be happy to yield to the Senator from Missouri.

Mr. BOND. Mr. President, I agree with what the Senator from Utah is saying. It is a shame that this much time has gone by, and no one has benefited.

Mr. GARN. Mr. President, I ask that the chairman and ranking minority member of the Subcommittee on the District of Columbia appropriations include language in the D.C. chapter of the conference report on H.R. 1281 reflecting the desire of the subcommittee that the Mayor's office work with the subcommittee and the Challenger Center in securing the conveyance of this property for their headquarters, and that they work in an expedient manner.

Thank you, Mr. President.

SOLID WASTE DISPOSAL

Mr. WARNER. Mr. President, I rise today not to offer an amendment to H.R. 1281, the dire emergency supplemental appropriations bill, but to offer my thoughts on an issue approved by the Senate last year during debate on H.R. 5311, making appropriations for the government of the District of Columbia, fiscal year 1991.

During consideration of the District's fiscal year 1991 appropriations, Senator ROBB and I offered an amendment which was adopted to require that an environmental impact statement be completed prior to the expansion of the I-95 sanitary landfill at Lorton, VA.

Mr. President, in March 1909, the Congress enacted a statute which authorized the Federal Government to begin acquiring property in Lorton, VA, for the purposes of housing a prison workhouse and reformatory for the District of Columbia. The United States continues to hold title to the more than 3,000 acres which comprise the District's Lorton Reformatory Reservation.

In 1971, the District, Fairfax County, Arlington County, and the city of Alexandria entered into an agreement under which 290 acres of this Federal reservation were set aside for use as a municipal waste landfill. Leachate flowing from this landfill into Mills Branch of the Occuoquan River has caused Fairfax County, the operator of the landfill since 1982, to be cited with numerous violations of State and Federal clean water statutes.

While the House and Senate agreed to require an environmental impact statement, the conference committee of the fiscal year 1991 District of Columbia appropriations bill agreed to delete this provision because of good faith commitments by Fairfax County to conduct an environmental impact statement without a Federal mandate.

The ongoing environmental problems at the existing landfill including leachate flowing into Mills Branch and the Occuoquan River, the associated increase in truck and private vehicular traffic from any expansion on the already severely congested Interstate 95 corridor and local arterial roads, the lack of impact mitigation measurs and failure to examine alternatives continues to give me great concern.

In February 1988 the Alexandria-Arlington waste to energy facility opened and in June 1990 Fairfax County's I-95 energy resource recovery facility opened and does process some of the District's solid waste. Because of these facilities, Virginia jurisdictions send less than 220 tons per day of solid waste to the Lorton landfill.

The existing landfill at Lorton receives approximately 1,800 tons per day of waste. Of this amount, about 1,600 tons of solid waste per day is received from the District of Columbia and the Federal Government. A portion of this waste is landfilled and a portion is sent to Fairfax County's incinerator at Lorton because of the available capacity.

In recent actions by the Fairfax County Board of Supervisors, the proposal for a 147-acre expansion of the landfill has been terminated. The current landfill will close either when it reaches its design capacity or as mandated by State regulations.

While it is unclear at this time what the District of Columbia may do to manage their solid wastes. It is my understanding that the District of Columbia could proceed with an expansion of landfill capacity and assume the operations of the new landfill under the District's current rights at Lorton.

Mr. President, I join with my colleagues in wishing the new Mayor of the District of Columbia every success in the formidable tasks ahead of the city. Also, I recognize the legitimate needs of local jurisdictions to effectively manage their solid wastes. However, our first priority must be the protection of the public health and the environment in the Lorton area.

While I have joined in discussions with the affected jurisdictions on improving the management of solid wastes generated by the region, it is my intention to return the Senate's attention to this matter during debate on the fiscal year 1992 District of Columbia appropriations bill.

More effective measures must be implemented to reduce the volume or quantity of waste generated in the District of Columbia and by the Federal Government through improvements and upgrades needed at the District's SWRC facility. And, if any expansion in landfill capacity occurs on the Lorton reservation, regardless of the operator, an environmental impact statement must be completed.

BUREAU OF RECLAMATION FUNDING

Mr. SEYMOUR. Mr. President, the fact that California is in its fifth and worst year of a drought is well known. And it is not just California that is feeling the effects of drought; many Western States are seeing their reservoir levels at all time lows.

In California alone, the State has severely curtailed the allocation of State project water, and has halted deliveries for agricultural users. On the Federal level, the Bureau of Reclamation's Central Valley project [CVP] has reduced its urban and agricultural allocations by approximately 75 percent.

The drought has placed all Californians and many Western State communities in the difficult position of trying to balance the need of our families, our communities and our industries, with the legitimate needs of our precious environmental resources—fish and wildlife.

Commissioner Dennis Underwood of the Bureau of Reclamation has informed the California congressional delegation that despite the recent rains, cumulative precipitation in the State is about 52 percent of average and the storage in major resorvoirs is 53 percent of average. Using these figures, the Bureau estimates that carryover for next year will be only slightly higher than it was in 1977, the driest year on record.

Relief is needed, Mr. President, and I am pleased the bill before us, the urgent supplemental appropriations bill, provides $20 million in supplemental funding for the Bureau of Reclamation to provide for high priority, emergency needs caused by the drought.

I am concerned, the level of funding in the committee's bill is below the House-passed measure which provides $30 million for these purposes, and provides urgently needed relief to California and the other Western reclamation States.

I appreciate the attention and support Senators JOHNSTON and HATFIELD have shown in providing this funding assistance, but I am concerned that it may not be enough. Seeing that the distinguished chairman and ranking member of the Energy and Water Subcommittee are on the floor, I would ask for their commitment to consider and hopefully support the higher appropriation when they meet with the House in conference later this week.

Mr. JOHNSTON. Mr. President, I want to thank Senator SEYMOUR for his kind remarks and the opportunity to discuss California's drought needs. Without a doubt, the subcommittee is aware of the crisis California and the other 16 reclamation States are facing, and we did make an effort to provide for the full funding level, but bumped up against our budget ceiling. We have reviewed the reports out of California and the other Western States and agree that current precipitation will not fully alleviate the burden of the drought. We want to help.

As the Senator has stated, the House did provide $30 million for these purposes, so it is an issue that we will discuss with the House conferees. I hope that agreement can be reached to provide the maximum benefit possible to California and the other drought-stricken States, and I will work to this end in conference.

Mr. HATFIELD. Mr. President, I would like to confirm what the chairman of our subcommittee, Senator JOHNSTON, has said. I am aware of the serious problems facing California and the other 16 reclamation States at this juncture and understand the importance of this Bureau of Reclamation funding to emergency relief efforts. I want to give my friend from California every assurance of my willingness to work with him and the members of the conference committee to see that California's and other Western States' drought needs are adequately addressed.

Mr. SEYMOUR. Mr. President, I thank my distinguished colleagues for the willingness to discuss this matter in conference, and appreciate their support for emergency drought relief funding.

ATMOSPHERIC RESEARCH

Mr. WIRTH. Mr. President, attention to the atmospheric sciences, particularly as it relates to global warming, has reached unprecedented levels. We in Colorado are proud of the role the National Center for Atmospheric Research [NCAR] has played—and will continue to play—in providing more and better information on the changes we have wrought on Earth's biosphere.

For nearly 30 years, NCAR has been one of the world's most important and respected atmospheric research institutions. It is not an overstatement to say that NCAR has credentials—particularly in the computer modeling area—that are superior to any organization in the world.

Unfortunately, as the need for more definitive answers from the atmospheric science community has increased significantly, the resources provided to the Nation's premier research institution have been dwindling. It is apparent that the declining budget trends at NCAR are precipitating a sharp decline in the morale and capabilities of NCAR's scientists.

During the past 5 years, NCAR has met a number of pressing national priorities in the atmospheric sciences—from the deployment of advanced equipment for observing the atmos-

phere and the oceans to the development of new ocean circulation models. NCAR also conducts programs in atmospheric chemistry, solar variability, climate analysis and modeling, oceanography, cloud systems and the hydrologic cycle, atmosphere-biosphere interactions and climate impacts that are essential to the United States Global Change Program. NCAR provides valuable scientific, computing and experimental support to the entire university atmospheric sciences community.

Advanced global climate change modeling is impossible without the use of supercomputers. NCAR lacks a supercomputer of its own, but has discussed the possibility of sharing supercomputer time with the National Test Facility [NTF] at Falcon Air Force Base in Colorado Springs. They have submitted a proposal to fund this cooperative effort to the DOD's Strategic Environmental Research and Development Program [SERDP]. Would the chairman of the Armed Services Committee, who was the leader in the creation of the SERDP, comment on whether in his view this sort of project would be an appropriate use of SERDP funds?

Mr. NUNN. One of the reasons for creating the Strategic Environmental Research and Development Program was to focus the use of Department of Defense assets for environmental research purposes. The collaborative effort of the National Center for Atmospheric Research with the Strategic Defense Initiative office is exactly the type of work the SERDP was created to encourage.

Mr. WIRTH. I thank the chairman. NCAR has identified an opportunity for the SERDP to accelerate progress toward reliable predictions of global and regional climate changes in the decedes ahead. This proposal solicits supercomputer time on the supercomputers within the SERDP domain, upgrades to the NCAR Mass Storage System [MSS], and money for programming support. These facilities will be dedicated to climate change modeling research, with particular emphasis on defining and reducing model uncertainties and on climate model performance assessment.

The availability of allocated supercomputer time dedicated to climate modeling would accelerate progress in quantifying and reducing major uncertainties associated with current models, particularly those at the regional scale where climate changes are likely to be the largest and have the greatest impact. Focused studies to define better the critical role of the clouds, oceans, greenhouse gasses, ecosystems processes and ice in climate change would be possible. More extensive studies of the regional impacts of global change would also be possible with these additional computational resources available. Perhaps most important, a large number of sensitivity and validation studies could be conducted to identify which research objectives are of the highest priority and to quantify the accuracy of current climate change predictions.

Under this proposal, SERDP would provide allocated supercomputer time over a 2-year period, for the execution of climate models. The vast amount of model output data generated would be transported to the NCAR MSS for archiving and analysis. Various upgrades are requested for the NCAR MSS because of the impact that will be caused by importing an additional one to three terabytes of data per year. In addition, support staff will be needed at NCAR for climate model development and management of the ongoing execution of climate models at the remote SERDP Computer Center. NCAR proposes to contribute many of its existing facilities and support functions to this effort, thus enabling the scientific staff to rapidly make use of the model results. The model output data archived from this effort will contribute to future studies by both NCAR scientists and university researchers to resolve the issues of model sensitivity, validation, and improved model performance.

Mr. President, I believe that NCAR has performed outstanding work in the past. I am convinced that it can play a leading role in the United States and the world on global climate research in cooperation with the NTF in Colorado Springs. But, as I have just explained, NCAR will require funds to implement this cooperative effort. It is this Senator's hope that the DOD will fund this program in the fiscal year 1991 budget for the SERDP.

Mr. NUNN. I too fully support the work of this center, a national consortia of universities actively engaged in global climate research. However, for the SERDP to work as envisioned, we must refrain from earmarking any of these funds for specific projects. The Defense Department must have the flexibility to determine its priorities and its capabilities in making funding decisions under the environmental research program.

Mr. WIRTH. I appreciate and share the chairman's concerns.

Mr. NUNN. I would conclude by saying to my good friend from Colorado that I do hope the Defense Department decides to fund this worthwhile research project proposed by NCAR, and I encourage them to do so.

Mr. INOUYE. Mr. President, the Senator from Colorado wants the Defense Department to allocate $2,500,000 of previously appropriated, fiscal year 1991 funds for the Strategic Environmental Research and Development Program [SERDP] for execution of climate models and upgrading a data storage system by the National Center for Atmospheric Research. This effort would be conducted at the National Test Facility of the Strategic Defense Initiative Organization.

It is our understanding that, upon release of an appropriate amount of SERDP funds, the Office of the Secretary of Defense already intends to make these funds available for this purpose. Our colleague seeks to expedite and ensure this allocation process, and we support him in this endeavor.

U.S. DEPARTMENT OF AGRICULTURE USER FEES

Mr. INOUYE. Will the distinguished chairman of the Senate Agriculture Appropriations Subcommittee engage in a discussion with me regarding the proposed U.S. Department of Agriculture rule to establish user fees for agricultural quarantine and inspection services?

Mr. BURDICK. I would be pleased to discuss this very important matter with the Senator.

Mr. INOUYE. I thank the Senator from North Dakota. I have two major concerns, one of procedure and the other of substance. On the matter of procedure, I am very opposed to USDA's 2 week comment period, rather than the 30 days required by the Administrative Procedure Act, and the April 1, 1991, automatic effective date for the airlines to collect the fees. I see no reason to bypass the APA procedures which are intended to provide all interested parties with a sufficient time to comment and an adequate time for the agency to respond to those comments. In addition, the proposed rule has an automatic effective date of April 1, and would require the retroactive application of the fee to airline tickets sold prior to the effective date. This would mean that a passenger who purchases a ticket before April 1, for travel after that date, would be required to pay the fee at the gate before boarding the plane.

This is further complicated by the fact that a new user fee has been proposed for domestic airline passengers traveling between Hawaii or Puerto Rico and the continental United States. There is no existing mechanism for the airlines to collect such a fee. A specific procedure will have to be developed and shared with the more than 50,000 travel agencies in conjunction with the U.S. airlines. Additionally, a uniform designator must be established to indicate that collection has occurred. I think that the Senator from North Dakota would agree with me that such an elaborate procedure cannot be implemented on April 1—the day the airlines receive the final rule, setting forth exactly what will be required of them.

Would the Senator from North Dakota agree with me that these proposed rules should be reissued in accordance with APA requirements, and that the airline industry be given sufficient lead time to implement the necessary pro-

cedures, at least as it relates to the new domestic user fees.

Mr. BURDICK. I would agree with the Senator from Hawaii. It seems to me that adequate time should be given for all interested parties to have input into the new procedures. Furthermore, adequate time must be given to implement the proposed changes. The dates set by USDA at this point are not adequate.

Mr. INOUYE. The second concern I have relates specifically to the new user fee that USDA is proposing for domestic travel between Hawaii or Puerto Rico and the continental United States. The only fee authority approved in the farm bill related to international user fees. USDA relies on another authority, the Independent Offices Appropriations Act, as the justification for this domestic fee, the proceeds of which will go toward deficit reduction. Additionally, it plans to issue a proposed rulemaking at a later date on user fees for domestic agricultural cargo originating from Hawaii and Puerto Rico. I sent a strong letter of opposition to the proposed rule relating to the domestic user fee. In my letter, I put USDA on notice that I plan to move legislation in the very near future to correct the unfairness of its rules which treat Hawaii as an international destination while exempting Canada from international user fees.

This is not the appropriate legislative vehicle to accomplish my goal. However, I am committed to legislatively mandate equity regarding the treatment of Hawaii and Puerto Rico as it relates to domestic passenger fees and agricultural cargo. Accordingly, it would make sense for the USDA to provide a reasonable period of lead time because I intend to pass legislation to correct the unfair system USDA is planning to implement.

Mr. BURDICK. The Senator from Hawaii makes very compelling arguments. And, as I know from our years of service together in this honorable body, the Senator from Hawaii keeps his word.

Mr. INOUYE. I thank the Senator from North Dakota for his gracious comments, and for engaging in this discussion with me on a matter of extreme importance to Hawaii's two major industries—tourism and agriculture.

DROUGHT RELIEF TO WESTERN STATES

Mr. SIMPSON. Mr. President, I rise only briefly today to express my sincere gratitude to my distinguished colleague from West Virginia for his understanding and accommodation on funding for drought relief to the Western States. There is $20 million appropriated in this legislation for that purpose and that will go a long way in helping all the Western States to deal with a water emergency that, if it accelerates, can lead to dire consequences for the entire Nation.

Mr. President, I also want to commend the Bureau of Reclamation for its diligence in working with Congress to deal with the ever increasing drought in a fiscally responsible manner. I would ask unanimous consent that a letter, addressed to me from Commissioner Dennis Underwood, be printed in the RECORD immediately following my remarks. This is further evidence that the Bureau is very sensitive to the needs of all Western States and that they are eager to do whatever they can to help as swiftly as is possible to do so.

This provision of the dire emergency supplemental legislation also includes the much needed authority to finally finish the completion of the raising of a dam and increasing the capacity of a reservoir near my home town of Cody, WY: the Buffalo Bill Reservoir. We have been waiting a very long time in Wyoming to finally finish this worthy project. As my colleagues know, this project has been on a 50-50 cost share with the State of Wyoming and Wyoming has "ponied up" its share long ago. While we have been waiting for the Congress to act on this, people around the area have been suffering a number of construction-related problems.

One of the most troubling is the massive increase in dust levels resulting from the draw down of the reservoir in anticipation of the final construction phase. That work can now begin and those good people will finally have some relief in sight.

So I do sincerely thank the distinguished chairman for his cooperation, his sensitivity, and his objectivity in working so hard in crafting a responsible dire emergency supplemental appropriations bill. This will go a long way towards helping a large portion of our country through some tought, dry, years and will also directly help some very deserving people.

I thank the Chair.

There being no objection, the order to be printed in the RECORD, as follows:

BUREAU OF RECLAMATION,
Washington, DC, March 19, 1991.

Hon. ALAN SIMPSON,
U.S. Senate,
Washington, DC.

DEAR SENATOR SIMPSON: You have requested information on which areas of the West will use the funds included in the Dire Emergency Supplemental bill for drought-related activities to be undertaken by the Bureau of Reclamation of the Department of the Interior.

I have requested the Regional Directors of all five Reclamation Regions to identify projects in the 17 Reclamation States throughout the West which should be placed on a priority list to receive funds to relieve drought problems.

That work is underway at the present time in order to make it possible for Reclamation to be able to specify at an early date exactly what funds are needed in each Region in the West to deal with problems brought on by the prolonged drought.

There will be no effort to have these funds used in just one State or Region because the drought affects several areas that are located great distances from each other, including California, eastern Oregon, and parts of Montana, Idaho and Wyoming.

The Bureau of Reclamation wants to make the very best possible use of the additional funds provided for fiscal year 1992 under the terms of the Dire Emergency Supplemental bill; you may be sure all areas in the Reclamation West now suffering from drought are being studied and every effort will be made to maximize the funds allocated to our programs.

Sincerely,

DENNIS B. UNDERWOOD,
Commissioner.

EMERGENCY FUNDING FOR ISRAEL

Mr. LAUTENBERG. Mr. President, this dire emergency supplemental spending legislation includes emergency funding to help our friend and ally, Israel, pay for the significant costs it incurred as a result of the Persian Gulf war. I strongly support providing this funding to Israel.

Israel was a strong, silent coalition partner in the war to get Saddam Hussein out of Kuwait. Although Israel was not a party to the conflict, Saddam Hussein cynically tried to draw Israel into the conflict in an effort to divide the coalition and undermine the United States' effort in the gulf. Fortunately, he did not succeed. In the face of 39 Scud missile attacks fired by Saddam Hussein, Israel demonstrated remarkable restraint. Israel showed that she is a reliable friend who can be trusted.

Unfortunately, the people of Israel paid a high price for this restraint. Innocent lives were lost. Entire neighborhoods were devastated. Over 8,000 homes and apartments were damaged or destroyed. Nearly 2,000 Israeli families were left homeless.

The war cost the Israeli Government and the people of Israel billions of dollars. Throughout the conflict, the Israeli military was kept on the highest state of alert. Reservists had to be paid for additional service. Extra flight missions, equipment, and ordnance were secured to protect innocent Israeli citizens from Saddam Hussein's aggression. Because the threat that Saddam Hussein would use chemical weapons was very real, gas masks had to be purchased and distributed to Israeli citizens.

Israel needs and deserves assistance to help pay for significant costs she incurred during the war. The international community, acting through the Gulf Crisis Financial Coordination Council, has contributed billions to the frontline Arab States to help ease the pain of the war. Even Jordan's King Hussein, who sided with Saddam Hussein during the war, has received assistance from the international community.

Despite the important role Israel played as the coalition's strong, silent,

partner, however, Israel has received very little financial support from the countries of the world. Germany has stepped forward. The European Community is considering an aid package. But those contributions pale in comparison to the billions provided to frontline Arab States.

To help Israel pay for the costs of the war and to show our gratitude for the important role Israel played in the conflict, the United States should provide this emergency funding for Israel immediately.

I am glad the Administration reversed its position on providing emergency assistant to Israel. Despite the fact that I and 21 other members of the Senate Appropriations Committee sent a letter to President Bush urging him to provide emergency assistance for Israel, the administration did not include a dime for Israel in the original version of the emergency spending bill it sent to Congress for consideration. It resisted providing emergency funding. I'm delighted that now, however, the administration has lifted its opposition and has agreed that Israel needs and deserves assistance to help pay for the costs of the war.

Mr. President, Israel was a critical and good friend throughout the gulf war. I urge my colleagues to approve this legislation so we can provide this emergency funding to Israel without delay.

AID TO TURKEY AND GREECE

Mr. D'AMATO. Mr. President, the Congress has a long standing policy of maintaining a 10-to-7 ratio of military aid going to the countries of Turkey and Greece. The existence of this ratio has played a major role in the very positive relations which our country enjoys with that very strategically located nation. In addition to being our long time ally—in World War I and World War II, where one out of every nine Greeks lost their lives for the allied effort, and the Korean war—they were one of the very few nations which contributed manpower and equipment to our efforts in the Persian Gulf.

Greece should understand that the American people greatly value the fact that the Government of Greece recently renewed our American bases on the strategically located island of Crete, Greece, in the Mediterranean and the extraordinary cooperation they have given to American efforts to combat international terrorism.

As a member of the Senate Appropriations Committee I have supported the legislation before us today which contains within it a $200 million grant aid to Turkey because it is a one-time payment in an effort to help Turkey recover some of its economic losses due to the Persian Gulf effort. These monies do not change the American commitment to the 10-to-7 ratio and to maintaining a balance in the eastern Mediterranean which assures our ally, Greece, that the United States is acutely sensitive to its security needs.

REFUGEE RESETTLEMENT AND H.R. 1281

Mr. SEYMOUR. Mr. President, I rise today to voice my concern with a provision the committee included in this fiscal year 1991 supplemental appropriations bill regarding our Nation's refugee resettlement programs.

Specifically, the provision takes $1.7 million from the refugee cash and medical assistance fund and directs it to an expanded private sector initiative sponsored by the Cuban-American National Federation.

I understand the intent behind the provision, and the commitment of members of the Appropriations Committee to promote self-sufficiency among our refugee population.

This funding may be warranted, Mr. President, so I do not come to the floor today to dispute the work and dedication of the Cuban-American National Federation.

What I dispute is the process and the precedent it sets for future refugee resettlement funding allocations.

This provision sets a dangerous precedent because it puts the Congress in the position of earmarking cash and medical assistance funds for one private sector initiative that it is serving one specific refugee group. Cash and medical assistance funding is intended to reimburse State and local government costs.

I am concerned with the precedent this provision sets, and am worried that it could open the flood gates to additional earmarking of this refugee cash and medical assistance account, especially when other refugee groups and certainly the States see how they have been excluded.

States and local governments are the workhorse of our Nation's refugee resettlement program.

Unfortunately, since 1985 States and local governments have seen Federal funding assistance reduced to but a fraction of what the Refugee Act of 1980 intended. In fiscal year 1990, for instance, a majority of the States were forced to absorb shortfalls of over $34 million in the cash and medical assistance program. This fiscal year, it is anticipated that the Office of Refugee Resettlement [ORR] may have to reduce the reimbursement period for cash and medical assistance programs below 12 months.

These funding reductions are already forcing States to make unilateral reductions in their fiscal year 1991 refugee unaccompanied minor programs. Needless to say, the pie is already too small; this diversion of funds, albeit small, harms my State's resettlement efforts, and it sends the message that the Federal Government has little interest in supporting their refugee resettlement needs.

I am also concerned because this provision contradicts the intent of the private sector initiative program. Previously, the admission of refugees under this program was contingent upon the availability of private sector funding sufficient to cover the resettlement costs. Despite this fact, the provision before us provides a Federal funding commitment; again, a precedent will be established that could open the way for future requests from numerous refugee groups for Federal funding commitments. By giving medical assistance funds to this private sector initiative, we are limiting the funds available to the states and other refugees for medical assistance programs.

Mr. President, the Congress established the Fish-Wilson provisions of the Refugee Act to create new methods of resettling refugees, and it did so in such a manner that it ensured coordination between ORR, the sponsoring organization, and the States. The provision in this bill end-runs that process, and, based on the reaction from California, it could end up pitting refugee service providers against each other.

Private sector initiatives may be worthy of our support and funding assistance, Mr. President, but not if it is done in a manner that undermines the States and local governments.

USTF MEDICARE REIMBURSEMENT AMENDMENT

Mr. ADAMS. Mr. President, I rise to engage the distinguished chairman of the Finance Committee, the Senator from Texas, concerning an amendment that I and my colleagues from Washington, Senator GORTON, and Maryland, Senator MIKULSKI, had planned to offer during the Appropriations Committee markup of H.R. 1281, the dire emergency supplemental appropriations bill.

As the Senator understands, the amendment addresses a serious problem facing an important public health care provider in Seattle, as well as institutions in Baltimore and Boston, all three of which have been designated uniformed services treatment facilities [USTF's]. Between the fall of 1986 and the end of 1989, the three USTF's provided health care services to elderly patients eligible for both military and Medicare health care benefits. Because the Department of Defense [DOD] USTF reimbursement agreements in effect at the time did not pay for the care, the facilities, with the knowledge of DOD, billed Medicare for services provided to these patients. DOD and the Department of Health and Human Services subsequently determined that the billings were inappropriate for institutions designated USTF's and directed that they cease. The USTF's stopped billing Medicare promptly upon being directed to do so but now face probably recoupment by Medicare for these evidently mistaken billings. Such recoupment would be very harmful and perhaps even fatal to these facilities. It also would be unjust under

the circumstances, requiring, in effect, the facilities to have provided care to beneficiaries of two Government health care programs at no cost to either.

Our amendment would have prevented the recoupment. The distinguished chairman has expressed his interest in this matter and his sympathy for the plight of these facilities; however, he notes that the Finance Committee is the more appropriate venue for its resolution. Accordingly, we have decided against pursuing our amendment to this Appropriations bill.

Mr. BENTSEN. The distinguished Senator from Washington has made a number of compelling points. I appreciate his diligence in calling this important matter to our attention. It is under review, and I am hopeful that we can find an appropriate resolution, either through administrative action or as part of health legislation we plan to report later this year. I appreciate my colleagues' understanding of my preference for handling this matter this way as well as their efforts in bringing this unfortunate problem to my attention. I can assure them that its reasonable resolution will have my attention.

Mr. ADAMS. Mr. Chairman, I know that you are also aware that the Health Care Financing Administration may feel compelled to pursue recoupment in the meantime but I hope you also understand how harmful the actual assertion of any claim against these facilities would be while your committee has the matter under consideration.

Mr. BENTSEN. I certainly do understand and concur with my colleague's assessment that we expect to work with HCFA to resolve this issue before HCFA takes steps to recoup these Medicare billings.

Mr. ADAMS. I thank the Chairman and appreciate his continuing assistance with this matter.

Mr. BENTSEN. I thank the Senator and his colleagues on the Appropriations Committee, Senators MIKULSKI and GORTON.

Mr. GORTON. Mr. President, I rise to join my colleagues from Washington in expressing my appreciation to the distinguished chairman of the Finance Committee. I have always had an abiding interest in the preservation of uniformed services treatment facilities. In 1981, I worked with the late Senator Jackson on an amendment to designate ten former public health services hospitals across the country as USTF's. This amendment authorized USTF's to continue to serve military beneficiaries and their dependents after the public service hospital system ended. Since the passage of the Jackson amendment, these facilities have been exceedingly popular with the patients they service. These facilities offer an excellent innovative approach to assuring that the health care we provide our military and their dependents is the best possible. I am a strong believer in the survival of the uniformed service treatment facilities and will continue to work to remedy this problem. I appreciate the Chairman's interest in resolving the matter as well as the interest and support of his colleagues on the committee.

Mr. GRASSLEY. Mr. President, I would like to commend my colleagues for the action taken yesterday to ban arms sales to allies who have not fulfilled their pledges to the United States to help pay for the Persian Gulf war. As you are aware, the issue of honoring gulf war pledges has been of great interest to me from the very beginning.

The distinguished Senator from New Jersey [Mr. LAUTENBERG] and I were chief sponsors of legislation in the Senate to require detailed reports from the administration on foreign pledges. The legislation would track the pledges made to defray the war's costs, and the progress made by our allies in meeting their commitments. That legislation was strengthened in the Armed Services Committee and later passed the Senate. It has also passed the other body.

As recent events have demonstrated, Mr. President, it was indeed prudent and prescient on the part of the U.S. Senate to take these two steps—the requirements for detailed reports and the ban on arms sales to allies who fail to meet their pledges. At this time, we are right to be concerned about the actions of two of our allies engaging in what I consider to be back-peddling on their financial commitments to the United States. These allies are Germany and Japan.

As recent news reports indicate, Japan has unilaterally changed its 1991 commitment to the war effort from $9 billion to $8.6 billion. This change was accomplished by changing the mode of payment from dollars to yen, hereby losing $400 million through foreign exchange manipulations.

Mr. President, this would be an extra $400 million that the U.S. taxpayer would have to cough up to cover the war's expenses. Not only has Japan unilaterally reduced its pledge, but it has now attached numerous strings as to how the $8.6 billion contribution can be spent.

First of all, the money will not be paid directly to the United States. It will go instead to the Gulf Cooperation Council for eventual disbursement to recipients. The United States is by no means guaranteed to receive all of the $8.6 billion. Furthermore, Japan has restricted what the money can and cannot be used for. For instance, the money cannot be used for weapons; it can, however, be used for food and transportation.

Germany's mode of back-peddling, while different, has the same end-result. As the distinguished chairman of the Appropriations Committee pointed out this morning, the German Government—under pressure from opposition parties—has agreed to send a delegation to Washington to request a reduction in Germany's financial commitment to fight the war. It is yet unclear how much of the $5.5 billion pledge for 1991 Germany would like to take back.

Mr. President, neither of these allies—Germany or Japan—contributed any fighting forces to the Persian Gulf war. I find it particularly troubling—now that the war is over—that even a financial commitment is being reconsidered by our allies. The American people and the international community should take note. They should take note of who fulfilled their commitments during this crisis, and who back-peddled once the worst seemed to be over.

Today, Senator LAUTENBERG and I will send a letter to the White House. In that letter, we ask the President—in his ongoing discussions on this matter with the allies—to send a very strong signal to them. Otherwise, we risk opening a Pandora's box in which all our other allies start back-peddling on their pledges. And before long, the entire burden is shouldered by the American taxpayer once again.

Mr. President, our allies have a moral obligation to fulfill their commitments. It is a moral imperative for them to do so. It is a prerequisite for those countries who wish to be viewed as leaders in the new world community. We must take a resolute stand on this matter to be fair to the American taxpayer, and to those countries who are diligent in fulfilling their commitments.

I would urge the President, when the delegation from Germany arrives next week, to stand firm. Let's not open up Pandora's box. Let's not make it easy for an ally to turn its back on its own moral obligation. Let's not turn our backs on what is fair to the citizens of our own country.

Instead, let us resist these attempts to renegotiate. And let the signal be loud and unmistakable. Indeed, I have confidence that the President will insist on fairness, and will turn down such requests.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. If there be no further amendment to be proposed, 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 a third time.

The bill was read a third time.

The PRESIDING OFFICER. If there be no further debate, the question is, Shall the bill pass. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 92, nays 8, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—92

Adams	Exon	McConnell
Akaka	Ford	Metzenbaum
Baucus	Fowler	Mikulski
Bentsen	Garn	Mitchell
Biden	Glenn	Moynihan
Bingaman	Gore	Murkowski
Bond	Gorton	Nunn
Boren	Graham	Packwood
Bradley	Gramm	Pell
Breaux	Grassley	Pressler
Bryan	Harkin	Pryor
Bumpers	Hatch	Reid
Burdick	Hatfield	Riegle
Burns	Heflin	Robb
Byrd	Heinz	Rockefeller
Chafee	Hollings	Rudman
Coats	Inouye	Sanford
Cochran	Jeffords	Sarbanes
Cohen	Johnston	Sasser
Conrad	Kasten	Seymour
Craig	Kennedy	Shelby
Cranston	Kerrey	Simon
D'Amato	Kerry	Simpson
Danforth	Kohl	Specter
Daschle	Lautenberg	Stevens
DeConcini	Leahy	Symms
Dixon	Levin	Thurmond
Dodd	Lieberman	Warner
Dole	Lott	Wellstone
Domenici	Mack	Wirth
Durenberger	McCain	

NAYS—8

Brown	Lugar	Smith
Helms	Nickles	Wallop
Kassebaum	Roth	

So the bill (H.R. 1281), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Pursuant to the previous order, the Chair appoints the following conferees on the part of the Senate: Mr. BYRD, Mr. INOUYE, Mr. HOLLINGS, Mr. JOHNSTON, Mr. BURDICK, Mr. LEAHY, Mr. SASSER, Mr. DECONCINI, Mr. BUMPERS, Mr. LAUTENBURG, Mr. HARKIN, Ms. MIKULSKI, Mr. REID, Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. HATFIELD, Mr. STEVENS, Mr. GARN, Mr. COCHRAN, Mr. KASTEN, Mr. D'AMATO, Mr. RUDMAN, Mr. SPECTER, Mr. DOMENICI, Mr. NICKLES, Mr. GRAMM, Mr. BOND, and Mr. GORTON.

Mr. BYRD. Mr. President, I want to thank my friend, the ranking member of the Appropriations Committee, the Senator from Oregon [Mr. HATFIELD] for his usual diligence and cooperation throughout the deliberations on the two supplemental appropriations bills on which the Senate has completed action. As always, he has been most helpful in working with me and with the leadership in expediting consideration of these two important measures.

I thank my colleagues also on the committee and on both sides of the aisle. I thank our two leaders, Mr. MITCHELL and Mr. DOLE, for their fine cooperation and support, and the splendid help which they gave.

As to Mr. HATFIELD, I have been working with him quite a long time on the Appropriations Committee. He was formerly the chairman of the Appropriations Committee, as I stated many times. I not only thank him for his able assistance again, but I also look forward to working with him in the upcoming conference on these measures which we hope to begin on tomorrow.

I certainly would be remiss if I did not also thank the very capable staff of the Appropriations Committee in the Senate; the staff members who have put in many hours of work on these measures, who will continue to do so, and who are doing so even now until the final conference report is passed by both Houses and sent to the President.

These are supplemental appropriations bills. They are usually referred to as Christmas trees in that they gather many amendments on the way through the subcommittee, the full committee, and through the Senate.

But I also want to commend the House of Representatives on their restraint which was shown by the House committee members and House Members in dealing with these two supplemental appropriations bills, as well as my own members of the Senate Appropriations Committee and all of my colleagues in the Senate. There were some amendments added but I believe that as I look back over the years, this seems to be a case to me when our Members did exercise restraint in this body, and I believe that the conference will be made easier thereby.

The entire staff of the Appropriations Committee was involved, and I would like to recognize each member of the staff. I thank the majority and minority clerks, and their assistants for their dedication and professionalism. Without their efforts the work of the committee in the Senate would be, and the Senate would be, much more difficult.

I would like to take a moment to say a special thanks to the full committee staff for their dedication and professionalism: Jim English, staff director; Terry Sauvain, deputy staff director; Mary Dewald, chief clerk; Dick D'Amato, counsel for international and national security policy; Marsha Berry, professional staff member; Jack Conway, professional staff member; Bob Putnam, professional staff member; Anita Skadden, staff assistant; Diana Gourlay, staff assistant; Jodi Capps, staff assistant; Rheda Freeman, telephone operator; Nancy Bradel, telephone operator; Norman Edwards, clerical assistant; Joseph Chase, clerical assistant; and Keith Kennedy, minority staff director.

My appreciation and thanks is also extended to both the majority and minority clerks of our subcommittees:

Agriculture: Rocky L. Kuhn, majority clerk; Irma H. Pearson, minority clerk.

Commerce: Scott B. Gudes, majority clerk; John Shank, minority clerk.

Defense: Richard L. Collins, majority clerk; Keith Kennedy, minority clerk.

District of Columbia: Tim Leeth, majority clerk; Rick Pierce, minority clerk.

Energy and Water: Proctor Jones, majority clerk; Mark Walker, minority clerk.

Foreign Operations: Eric Newsom, majority clerk; Jim Bond, minority clerk.

Interior: Charles Estes, majority clerk; Cherie Cooper, minority clerk.

Labor/HHS: Mike Hall, majority clerk; Craig Higgins, minority clerk.

Legislative: Jerry Bonham, majority clerk; Sean O'Hollaren, minority clerk.

Military Construction: Mike Walker, majority clerk; Rick Pierce, minority clerk.

Transportation: Pat McCann, majority clerk; Anne Miano, minority clerk.

Treasury: Patty Lynch, majority clerk; Rebecca Davies, minority clerk.

VA/HUD: Kevin Kelly, majority clerk; Stephen Kohashi, minority clerk.

I would also like to take a moment to thank my chief of staff, Barbara Videnieks, for her excellent advice and counsel on all matters relating to both supplementals and to thank Melvin Dubee for his special assistance in relation to the issues in connection with the Desert Shield/Desert Storm supplemental, as well as other matters in the dire supplemental appropriation bill.

Mr. CHAFEE. Mr. President, I voted for the legislation we just passed. There was much in it I did not approve of. It is my hope the bill can be cleaned up in conference. Should it not be, I reserve, obviously, the right to not only vote against it but to support a veto of the President, should that become necessary on the President's part.

I wanted to make that clear, Mr. President.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. FORD], is recognized.

ORDER OF PROCEDURE

Mr. FORD. Mr. President, there are several Senators who wanted to speak and I am not going to try to restrict them. But I wonder if we might have some idea how long they will require. I see the Senator from Vermont, 5 minutes; the Senator from Pennsylvania, about 5 minutes; the Senator from Montana?

Mr. BURNS. That is correct, about 5 minutes, sir.

Mr. FORD. So I will give some idea—there will be about half an hour of speeches—to give people an understanding of about how long it is going to be before we close for the evening.

I thank the Chair.

Several Senators addressed the Chair.

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there be a period for morning business, and that Senators be allowed to speak therein.

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

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS pertaining to the introduction of S. 715 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BURNS. Thank you, Mr. President, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

ISRAEL'S RESTRAINT

Mr. HEINZ. Mr. President, I want to take a moment just to reflect on one item in this bill and how it relates to the recent victory in the gulf, because with the victory in the gulf behind and the task of securing a lasting peace before us, the United States is about to embark on a diplomatic odyssey of great and perhaps historic importance. Before we delve into the intricacies of postwar politics in the Middle East, it is appropriate at this time to consider the question of who our friends are.

We are grateful, of course, to the members of the coalition, our old friends, England and France, joined with more recent allies, including Saudi Arabia and Egypt, to stop Saddam Hussein's aggressive rampage in the region.

I wish to pay special tribute, however, to the leaders and the people of the State of Israel, a noncombatant nation. Israel was the target of a cowardly attack designed to pull her into war and shatter the coalition. The cynical calculation employed by Saddam Hussein would have shamed Machiavelli, and many of us thought he would get his way.

I well remember, Mr. President, that first night as I stood watching on television with deep disbelief as reporters in Jerusalem and Tel Aviv donned gas masks and told us that missile warheads were falling in the streets of Israel. Like many, I thought that Israeli retaliation was inevitable. Certainly, it was justifiable. And then what many of us thought the impossible would be actually happened: Israel stayed her hand.

The reward for this restraint was a furious blitzkrieg of Scud attacks, dozens of them, night after night, and still the Israeli sword remained in its scabbard long after virtually anyone in this Chamber, had our Nation been under attack, would have struck back with as devastating a force as we could muster.

I say this, Mr. President, because I personally have experienced exactly those same feelings of rage. I experienced them the day I learned of the death of over a dozen young members of the 14th quartermaster's detachment from Greensburg, PA. They were killed by the last Scud missile to fall in the war, and it fell, unfortunately, on their barracks near the air base in Dhahran.

I can tell you, Mr. President, I felt a fury that would never have allowed me to forswear retaliation the way the Israelis did. I have been amazed ever since by the monumental effort of self-restraint it must have taken for the Israelis to do what so many, including myself, I doubt, could have done.

What guarantees did the Israelis have? The air war raged on, and the United States and its allies tried to assure Israel that we would eliminate the Scuds still left in the field. But still those missiles fell, and still the Israelis waited. Fears that the coalition would unravel would prove groundless as Saudi Arabia, Egypt, and even Syria indicated that they would not object if the Israelis did, indeed, exact their vengeance.

Even Syria, Mr. President, Syria, Israel's most dedicated enemy, made it clear that they would not defect from the coalition or otherwise object if the Israelis did what I think we would all say was their right to do. And still the Israelis waited, even as the Palestinians, in their own nation, cheered the sight of falling warheads, and Jordanian authorities warned that their airspace was not to be violated unless the violator was a bomb-laden Scud.

Mr. President, what was the source of this remarkable restraint? In essence, the Israelis decided to forego vengeance and to do what was best, not necessarily for themselves, but for the international community. This entailed great risk to Israeli security.

It is instructive to consider here the difference between Jordan and Israel. When the chips were down and the Jordanians sensed the dangers of war mounting about them, they panicked and joined forces with the neighborhood bully rather than take the risk of doing what was right.

The Israelis took those risks and the price paid in Israeli lives and property when the flaming remnants of Saddam's Scuds rained down on the homes of Haifa and Tel Aviv.

Mr. President, it is my hope that the Iraqi people will throw off the dictatorship of Saddam Hussein and that he and his henchmen will be brought to justice as the war criminals they most certainly are. The Iraqi people need to know we bear them no ill will. Indeed, I look forward to the day when we can welcome Iraq and Jordan, as well, back into the family of civilized nations, as we did with Germany and Japan before them.

But for Israel, we must show our gratitude, we must make clear that we have understood the awesome nature of the burden they undertook in their patience, and we must be firm in our assurances that we will never forget that Israel chose the path of resolve rather than the path of fear.

In that regard, Mr. President, I am pleased that the legislation that we have just passed, H.R. 1281, reimburses the people of Israel for a portion of the material costs inflicted on them because they chose the course of responsibility and restraint.

EXPLANATION OF SUPPORT OF H.R. 1281

Mr. HEINZ. Mr. President, I do want to make clear that although I did indeed support the final passage of H.R. 1281 for a variety of reasons, there are things in that legislation that I am not in support of.

It is my hope in sending the legislation to conference that some of the decisions made, both in committee and on the floor, will be worked out and will be reversed, and that this will be legislation that the President can sign.

If, however, the bill is not improved and if the bill should be vetoed, I may well decide to support such a veto should it come.

Mr. President, I thank my colleagues, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. I thank the Chair.

(The remarks of Mr. JEFFORDS pertaining to the introduction of S. 716 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

NO HOMECOMING FOR HOSTAGES

Mr. DOLE. Mr. President, as we celebrate the return of our POW's and our other forces from the Persian Gulf, we must not forget that, for some Americans, there is still no homecoming.

Six Americans—six totally innocent Americans—remain hostage in Lebanon. In a very real sense, too, their families remain hostage to uncertainty, anxiety, and fear.

Six innocent Americans. By name—Terry Anderson, Thomas Sutherland, Joseph Cicippio, Jesse Turner, Alan Steen, and Edward Austin Tracy.

Terry Anderson has been captive the longest—6 years.

I wonder how often any of us really think about that. Six years. Our term in the Senate; Terry Anderson's term in a living hell.

Think about erasing from your mind all that you have seen, heard, and learned these past 6 years. Do the hos-

tages know that we have won a great victory in Desert Storm? Do they know that there was a Desert Storm?

Do they know of the great leadership of our President, George Bush? Do they even know that our President is George Bush?

Think about what each of us has done, experienced, enjoyed, these past 6 years. By any reasonable guess, Terry Anderson has enjoyed not 1 day of it.

Think about how long just these last 7 or 8 months have been for those Americans who have had family members serving in the gulf; how each day has dragged on, filled with uncertainty and anxiety.

And multiply that period of time by 10 times or more, and those feelings by a hundredfold—and perhaps you can begin to sense the anguish of the hostage families.

Mr. President, in many ways, these are days filled with joy and celebration.

That is as it should be.

But let us never forget, even in those moments of celebration, that our final and full celebration cannot come until all Americans—including our hostages in Lebanon—come home again.

YUGOSLAVIA IN CRISIS

Mr. DOLE. Mr. President, the crisis in Yugoslavia deepens by the hour; it is, in essence, a struggle between democracy and communism—the outcome of which will determine the future of Yugoslavia.

This ongoing struggle was evident in recent anti-Communist demonstrations in Belgrade—demonstrations which were met by brutal force—as well as at the highest levels of the Yugoslav Government. A dramatic vote in the federal presidency last week revealed the battle lines that have been drawn.

In collaboration with the Yugoslav army, the President of Yugoslavia brought forward, to the other members of the collective presidency, a proposal to impose martial law in Yugoslavia. Well, the representatives of the four democratic republics and the representative from the Province of Kosova, saw the proposal for what it really was: A last ditch effort to retain Communist control at the federal level and to bolster the regime of the hardline President of the Republic of Serbia. As a result, the measure failed by a 5-to-3 vote.

In response, the President of Yugoslavia—who is also the representative of the Republic of Serbia—and the Communist representatives from the republic of Montenegro and from the province of Vojvodina, all resigned. The Serbian Government then fired the Kosova representative in retaliation for his refusal to vote for martial law.

So, having failed in their takeover attempt at the federal level, the Communists adopted new tactics—tactics designed to create a pretext for army intervention. The three resignations and the dismissal were intended to undermine the federal presidency, to give the impression that things were out of control and that army intervention was the only option. Nevertheless, the representatives from the democratic republics have continued to meet in order to keep the presidency functioning.

Yesterday, the Yugoslav Army issued a statement that left supporters of Democracy very uneasy. The statement was ambiguous; it did not clarify what the army's plans or intentions were. Although the statement indicated that the army would "not interfere in political talks on the country's future," it left open the possibility of unilateral action in response to "armed interethnic conflicts and civil war in Yugoslavia." This type of excuse was used by the army twice before when it deployed troops in Belgrade against anti-Communist Demonstrators, and, in a small village in Croatia.

Today, there are news reports that the resignation of Yugoslav President Jovic has been rejected by the Serbian Assembly. Does this mean that the other hardliners are coming back, too? If so, what will their next move be? Will the representative from Kosova return? Or will a new representative—A puppet—be chosen by the Serbian hardliners?

Mr. President, I don't have the answers to those questions. The situation in Yugoslavia is very uncertain and very volatile.

However, Mr. President, what is certain is that the democratic republics of Yugoslavia are doing all they can to fight attempts by the military and Serbian hardliners to crush democracy and to spread the oppressive policies of Kosova throughout Yugoslavia. These leaders are meeting with each other continuously and are keeping the channels of communication open with Serbian President Milosevic and with the Serbian opposition—who recognize that Milosevic and his policies are to blame for the problems in Serbia and the crisis in Yugoslavia as a whole.

Mr. President, what we need to do is let these courageous leaders, from the fledgling democracies of Bosnia, Croatia, Macedonia, and Slovenia, know that we support their efforts to keep the peace and to protect the gains made in free elections last year. But, we also need to send a clear message to the Yugoslav army and the hardliners, that if martial law is imposed there will be grave reprecussions for our relations with Yugoslavia. Last week, our Ambassador in Belgrade, indicated in a TV interview, that a military crackdown would lead to a cut-off in United States foreign assistance to Yugoslavia. Mr. President, that is not a hollow threat—there is no doubt that the U.S. reaction to the imposition of martial law in Yugoslavia, would be swift decisive, and punitive.

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Mr. DOLE. Mr. President, the final vote on the appropriations bill was 92 to 8. I commend the distinguished chairman of the Appropriations Committee and also Senator HATFIELD, the ranking Republican, but I do not want anybody to misunderstand that vote. I did insert earlier in the day a letter from the OMB Director, Richard Darman. I also had an opportunity to meet with Chief of Staff John Sununu and briefly with the President at noon. There are a number of provisions in that legislation that are very distasteful to the administration.

I hope that, and I would just say I believe, the bill be improved in conference, but I also want to indicate that I suggest if the bill should be vetoed that the veto will be sustained.

I talked with a number of Members on my side who have indicated they were voting for final passage but they cast individual votes on different provisions, and they were opposed to some of those provisions.

So I hope when the bill comes back from conference it will be one that is acceptable to the administration, to the President of the United States, and one that we can pass very easily.

A TASTE OF IMMORTALITY AND THE FUTURE

Mr. BYRD. Mr. President, I understand that one of our colleagues, the very distinguished senior Senator from New York, DANIEL PATRICK MOYNIHAN, has recently enjoyed the miracle of being presented with his first grandchild. I wish to take this opportunity to be the first Senator to welcome Senator MOYNIHAN publicly into the senatorial grandfathers fellowship, and to extend to our illustrious colleague all of the rights and privileges appertaining thereunto.

Through no merit of my own, over the years I have several times experienced the joy of grandfatherhood, and I can testify that life offers few existential moments more humbling, more marvelous, more awesome, or more stunning than for the first time holding one's grandchild in one's arms.

Erma and I, as grandparents, have often reflected on the blessings of grandchildren. So often a grandchild is a mirror—a speculum— one's self. There I see—in boy child or girl child—my nose, my mouth, my eyes, my chin or my ears, and in a more perfect degree, each in miniature but reflective of their ancestry.

There I witness—in a boy child or girl child—a glimmer of my own immortality, and a glimpse of the future that will be, even when I am no more.

If a father can take pride in his child, how much more can a grandfather take absolute limitless and uncritical pride in his grandchild. A father must be aware of his own child's errors and correct them. A father must be aware of misbehavior and change it. A father must, from time to time, use a light hickory switch on those darling little ones.

But in the fullness of his pride, a grandfather seldom notices any blemish or misstep to correct in his grandchild. To be a grandfather is to love and to revel in this tiny extension of himself.

I welcome Senator MOYNIHAN to that incomparable experience, and Erma and I join in hoping for him and for his dear and wonderful wife, Liz, the fullest portion of the blessings of grandparenthood. They now have reached a new plateau in life, indeed, their first taste of immortality.

Likewise, I welcome young Michael Patrick Avedon into the Senate family, and I hope that right soon young Michael Patrick awakens to an appreciation of the distinguished lineage into which he has been born as the grandson of Senator and Mrs. Patrick Moynihan.

Indeed, without fear of contradiction, I can say that few men in U.S. history have entered the Senate with the credentials and the record that Senator MOYNIHAN brought with him subsequent to his 1976 election. He could well have graced a Senate seat in any Congress beginning with the first and continuing through the beginning of the 102d.

A native of Oklahoma, DANIEL PATRICK MOYNIHAN was educated in the public and parochial schools and the City College of New York City. Following service in the U.S. Navy from 1944 to 1947, PAT MOYNIHAN continued his education at Tufts, from which he earned a B.A. (cum laude) in 1948, an M.A. in 1949, and a Ph.D. in 1961.

Subsequently, Mr. MOYNIHAN served Cabinet and subcabinet positions under Presidents Kennedy, Johnson, Nixon, and Ford. From 1973 to 1975, he was Ambassador to India. From 1975 to 1976, he was our Permanent Representative to the United Nations.

In addition, Senator MOYNIHAN has taught and lectured at Syracuse, Cornell, and Harvard, as well as several other colleges, and has been the recipient of numerous national and international awards.

He has written many books, so many that I cannot recall the names of all, but they are excellent books, and they should be, because PAT MOYNIHAN is an excellent and talented intellectual.

Senator MOYNIHAN'S marriage to the former Elizabeth Brennan, a talented, accomplished woman in her own right, has given the Senate one of its most admired and distinguished contemporary pairings.

Mr. President, I know that I speak for all of our colleagues—and most especially for all of our grandfather colleagues—in congratulating Senator and Mrs. Moynihan on the arrival of their first grandchild. To the Moynihan family, I wish every blessing and pleasure that a grandchild can bring, both now and in the years ahead.

And to that fine young grandson, Michael Patrick Avedon, I say:

First, in thy grandfather's arms, a new-born child,
Thou dids't but weep while those around thee smiled;
So live that in that lasting sleep,
Thou mayes't smile while those around thee weep.

SENATOR MOYNIHAN'S GRANDCHILD

Mr. FORD. Mr. President, let me join with the distinguished Senator from West Virginia in his remarks about welcoming our distinguished friend from New York into the grandfatherhood of the Senate.

I want to be a little more practical, maybe, or get practical from experience. Being a grandfather is just what it says. It costs you an extra grand a year. And so he is just beginning the cost of grandchildren. That is another experience, I say to my good friend from West Virginia, that the distinguished Senator from New York will experience.

IN RECOGNITION OF THE 96TH BIRTHDAY OF FREDERICK BENSON OF BLOCK ISLAND, RI

Mr. CHAFEE. Mr. President, it is my honor and privilege to pay tribute to Mr. Frederick Benson of Block Island, RI, in recognition of his 96th birthday on April 14, 1991.

Since his arrival in 1903 on this picturesque island 11 miles off the Rhode Island coast, Mr. Benson has been leaving his mark on generations of Block Islanders. Born in Boston in 1895, he was abandoned by his parents when he was 3 years old and placed in an orphanage. Gordon and Hannah Milliken, who had always cared for foster children, brought Fred to the island, his new home. He lived in the same house for more than 80 years until he recently moved into the new island elderly housing facility.

Many Block Islanders have fond memories of Fred from their school days. His involvement with the Block Island School dates back to his days as the high school baseball coach. However, because he ran the island's only repair garage the principal asked Fred if he could teach auto shop at the school. At the age of 55, Fred returned to school and obtained his high school diploma so he would feel more qualified to teach. He remained as the island's auto shop teacher until he retired at the age of 69, eventually branching out to teach carpentry, machine repair and driver instruction.

Fred has been involved in almost every level of community activity from coaching the island baseball team to his present position as the island registrar of motor vehicles. His list of accomplishments includes service as the island civil defense director for 12 years, police commissioner, first captain of the local rescue squad, president of the chamber of commerce five times, and island man of the year.

Always deeply concerned about the youth of the island, Mr. Benson established a scholarship fund in 1977 for students who graduate from the Block Island High School. This unique generosity helped make possible a college education for many deserving island students.

I commend Mr. Benson for his years of community service and I join with all his many island friends in congratulating him on this happy occasion.

THE LEADERSHIP AMENDMENT TO S. 578

Mr. MURKOWSKI. Mr. President, I am pleased to rise in support of the leadership amendment to S. 578. This amendment would provide additional benefits for our military personnel, some of whom served in the Persian Gulf war. I applaud those who have diligently worked on this amendment—especially Senators DOLE, MITCHELL, MCCAIN, and GLENN.

As former ranking minority member of the Veterans' Affairs Committee and a current member of that committee, I am pleased to have played a role in the development of the veterans portion of this amendment. Our committee will continue to explore the needs of the Persian Gulf war veterans and make necessary adjustments which may be needed in the future.

I am pleased a compromise agreement was reached with respect to the $50,000 death gratuity. Under this package, servicemembers who died after August 2, 1990, and before March 31, 1991, in the performance of military duty will receive a $50,000 death gratuity. The dollar figure is equal to the amount of the proposed increase in the Servicemen's Group Life Insurance Program. I appreciate the leadership's acceptance of the suggestions made by Senator SIMPSON and myself on this provision.

The package does not include a provision to require employers to rehire reservists who had been employed as temporary employees, as had been suggested by Senator KENNEDY. However, I would note that with respect to seasonal employees—like those who work in some Alaska industries such as fishing—the current practice, as provided for under the current law, is that employers would be required to reemploy

the reservist during the next season. That is, if the season is over, the employer would not be required to create a new job but rather hire the reservist during the next season.

Again, I take this opportunity to acknowledge the outstanding performance of our troops in the Persian Gulf. We are proud of them and I hope that this benefits package will help to address some of the challenges they will face upon their return to the States.

I urge my colleagues to vote in support of the leadership package.

I ask that a summary of S. 578 be included in the RECORD.

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

LEADERSHIP PACKAGE—PERSIAN GULF BILL—S. 578 SUMMARY OF MAJOR PROVISIONS

Total cost $500 million over 5 years.

DOD benefits:

Increases the Servicemen's Group Life Insurance (SGLI) Program from $50,000 to $100,000.

Pays a death gratuity of $50,000 to those who have died in the performance of duty before date of enactment and after 8/2/90.

Provides a $6,000 death gratuity for those who don't have SGLI.

Provides 30 days of DOD health coverage for separated reservists.

Veterans:

Defines Persian Gulf era (needed for VA Pension purposes).

Extends eligibility for these Vets to get counseling at VA's Vet Centers.

Extends presumption of psychosis to these veterans if the illness occurs within 2 years after discharge (automatic service-connected disability compensation).

Requires employers to take steps to retrain employees returning from duty and to make accommodations for their disabilities.

Extends the filing date for reimbursement for burial expenses for two years.

Strengthens reemployment rights for returning disabled Persian Gulf Veterans.

Provides eligibility for Persian Gulf Veterans of other veterans programs (including: home loan) who served for 90 days.

Increases Montgomery GI Bill Education for active duty and reservists.

Other:

Excludes from taxes hazardous duty pay.

Permits federal employees to donate annual leave to be distributed equally among Federal Employee veterans of Desert Storm.

Provides loan repayment deferral under the Stafford loan program for military personnel serving in Desert Storm.

TRIBUTE TO JIM CLAYTON, KNOXVILLE, TN

Mr. SASSER. Mr. President, I rise today to pay tribute to Mr. Jim Clayton of Knoxville, TN, who is 1 of 10 recipients selected from across the country to receive the 1991 Horatio Alger Award. It is with great pride that I recognize Jim on behalf of all Tennesseans. His life typifies the spirit that made the lives of the Horatio Alger characters so inspirational—despite somewhat humble beginnings as the son of a tenant farmer, Jim has achieved great success, and he has shared the fruits of that success with his fellow man.

Jim founded his namesake business—Clayton Homes—in 1966 on a single lot in Knoxville. Since that time, the company has become a multimillion-dollar business and the Nation's largest retailer of manufactured homes. Even in the face of the current recession, Clayton Homes continues to prosper and was one of the top 10 performing companies on the New York Stock Exchange last year.

Jim's accomplishments are not limited to his role as a business leader and leading employer in the Knoxville area. Over the years, he has also been a major benefactor to both the Knoxville Museum of Art and the Knoxville Symphony Society. It is because of this kind of generosity that these organizations can continue to enrich the lives of thousands throughout east Tennessee.

In light of these achievements, it's easy to see why Jim was chosen to receive the Horatio Alger Award. Mr. President, I join my fellow Tennesseans in congratulating Jim for this great honor and expressing our appreciation for his years of corporate leadership and civic commitment to the Knoxville area and the entire State of Tennessee.

LESSONS FROM THE WAR

Mr. BOREN. Mr. President, my distinguished colleague, Senator ROBERT KERREY of Nebraska, visited the State of Oklahoma to address the Jefferson-Jackson Dinner. His remarks were thoughtful, provocative, and eloquent. I ask unanimous consent that the full text of his comments be printed in the CONGRESSIONAL RECORD.

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

STATEMENT OF SENATOR ROBERT KERREY, LESSONS FROM THE WAR, MARCH 9, 1991, OKLAHOMA CITY, OK

The war to liberate Kuwait is over.

From now until the Fourth of July we're going to be welcoming home the men and women who went to the Gulf, and whose lives will always bear the imprint of that sacrifice. For many of us argued against the President, ours is a rather difficult position.

We have one foot in a vote for an alternative course of action and the other, in the joy we feel for this victory and the good America has done. We stand vulnerable to illegitimate as well as legitimate criticism.

The illegitimate criticism is simply grounded in political natures, and threatens to do little damage to this country, except perhaps to our chances for re-election. Perhaps the worst of these kinds of political statements occurred last week when Rep. Newt Gingrich—that great chaser of parked cars—was quoted in the Atlanta Constitution using the example of Desert One—the mission in 1980 to free Americans held hostage by Iranian terrorists—for apparent political expediency.

He gained a headline, and I suppose he got some points for political cleverness. This avoider of military service also gained my permanent enmity, debasing the memory of those men who died in that noble, dangerous, heroic, and—yes, in the end—unsuccessful try to liberate their fellow Americans.

The legitimate criticism that we face focuses upon what we as Democrats stand for, what we will fight for, and as well, what we will die for. The answer, I believe, can be seen in the fact that we gave strong support for this war once it begun. For, in spite of their attempt to say that we tried to obstruct President Bush, after making our case for an alternative, most of us were behind the President all the way.

Ironically, this places us in the uncomfortable position at times of having to explain ourselves in two directions at once. The first is to those who are disappointed stopped our criticism. The second is to those who disapproved of our ever beginning that criticism.

It would be a terrible mistake for us to pay much attention to this temporary discomfort. It would be the height of self-indulgence to fret about the political impact upon the Democratic Party.

Rather, I believe we should examine the events of Desert Storm, and examine them carefully, giving full credit where credit is due, and, most of all, trying to learn from our own mistakes. If we do, if we pay attention to policy, look for mistakes and try to learn from them, America will benefit. And if America is the beneficiary we will be too—even if it's not in time to salvage our political careers.

My own voyage this past seven months has been an interesting one. It reminds me of a similar voyage taken by a friend, John Zier, may he rest in peace. John was a Second Lieutenant in the First Marine Division. John and I met while we were patients in the Philadelphia Naval Hospital in 1969.

Zier led a platoon out one night, a platoon that he was quite convinced he was going to be able to lead out safely and back safely. He had done a great deal of work planning the operation. But he wasn't out long before he realized that he didn't notice any of the things he thought he was going to be noticing. It occurred to him that he was someplace that he wasn't supposed to be and he began to worry that perhaps he had strayed off course.

He called his compass man back. And his compass man said, "Lieutenant don't worry, I know exactly where we are." Zier proceeded on for a couple more minutes before he was certain he was lost.

Then he moved up behind his point man and took charge expecting to lead his platoon to safety. He took over, as all good commanders should when they're in doubt. He took the compass, and he said, "I know what we're doing, son, I'm in charge."

Again he went forward, convinced and knowing where he was going. However, it wasn't long after that that he saw in the path ahead the unmistakable form of men moving right to left perpendicular to his line of movement. In that split second where you have to decide whether or not to engage, he knew they were Americans by the way they walked, by their unmistakable body language.

So he stopped his platoon, and sent his point man ahead. And his point man came back. You could see he was quite upset, he wanted to know who was out there. Who was operating in his area of operation? The point man came back and said, "Lieutenant, they're ours." And John said, "Yes I know they're ours; I can see they're Americans."

And the point man said, "No, Lieutenant, it's our platoon; we've been going in a circle."

Zier—as I think we as Democrats must do—got up, moved out and as he passed the men, he asked who they were with. And they said, "We're with Lieutenant Zier." And he said: "I know him; he's a good man; you're in good hands."

The voyage that I've made the past seven months provides me with more than just a powerful and jolting awakening to the fallibility of my own nature. It awakens me, as well, to many other sides, that have lain in the shadows of my own forgetfulness.

My own war experience affected me throughout. And I say, as I have said to Nebraskans—not always in a constructive fashion. The political lies of Vietnam, and their tragic impact, have put me on constant alert for a battle cry that is tainted with insincerity or evasiveness.

Thus, I reacted against the unwillingness to level with the American people about how we got into this issue about being terrorized by Saddam Hussein. And I still believe it is important to get this full understanding if we're not going to repeat our mistakes in the future. The fact of politicians hiding their own complicity or exaggerating the extent of the danger in a battle situation is not one which should cause the policy to fail all by itself.

Thus, the first awakening that I must declare openly is that President Bush led this nation and the world in a fight against a terrible enemy. He led us—supporters and critics alike—to a successful conclusion because he was committed, he was courageous, and because he was strong. He did not, as he has been known to do on other occasions, put his finger in the changing winds of political polls. He marshalled the forces of Americans who know we must constantly give ourselves to the battle for freedom.

But I also must tell you that my own awakening to the value that Americans place on this thing called freedom did not occur because of President Bush. Indeed, I believe his driving cause all along from the beginning was dominated by a desire and need to protect an economic interest.

Instead, I, as one human being, began to awaken when the Berlin Wall fell, due to the combined weight of millions of people who had a simple, powerful yearning to be free—and the resistance of Americans to tyranny by repressive military police states. The tears of a trusted U.S. ambassador to Germany, Vernon Walters—a man not easily given to such expressions of emotion—at the sight of East Germans' gratitude, said it all.

I began to awaken, as well, to the strong poetry of Vaclav Havel; the honest determination of Lech Walesa; and the proud dignity of Nelson Mandela. They, in appearing before Joint Sessions of Congress to thank the American people for standing for their freedom, opened a skeptical heart and an absent-minded brain to the value of our gift.

We sacrificed much to free them from the jails of their former lives. We influenced their jailers with our opposition and our resolve. And we encouraged, as well as emboldened, the prisoners themselves to revolt.

I believe it happened so quickly that it was easy to miss what it cost. I believe, as well, that while we paid attention to the benefits of freedom for the people who now struggle with the imperfections of self-rule, we missed the benefits for those of us who have enjoyed freedom all our lives obtained as well.

To illustrate that benefit, let me call your attention to Czechoslovakia. Prior to their peaceful revolution they were a haven and a resource for the world's terrorists. Their manufacturing expertise supplied some of violence's best explosives and weapons.

After they became a democracy the transformation was stunning. When they became a government of, by, and for the people, they changed. Not only did Vaclav Havel and other prisoners turned leaders teach us a lot about the Fourth Amendment—about unreasonable search and seizure—and the tangible nature of freedom denied, they asked our help in advancing the benefits of democratic rule.

Most important for our policy in the Middle East, Czechoslovakia became an example of the value of subordinating economic interests to the interests of life. They are no longer an arms merchant in this world. They are no longer providing a safe haven nor are they providing any of the weapons they have been able to produce and sell in the past.

I would also call your attention to East Germany. Two years ago they were a threatening, hard-lined state. But they are no longer. They are part of a larger Germany. And the only threat they pose to us is that the German people are taking consumption today and making productive investments in roads and water systems and communication; and the only threat they pose to us is the threat five years from now they will start to reap the rewards from those productive investments.

Democracy: Something a lot of Americans have taken for granted, or worse, have become to doubt. The rule of laws made by and for the people is a disorderly way of doing business. The emotions which power us can produce intolerance and vindictiveness, as we are seeing in the aftermath of our debate about the wisdom of the war in the Persian Gulf.

Still, democracy offers not only the best hope for protecting and embracing and enhancing the dignity of the weak and the strong. It offers the best hope for a world at peace. Democracy offers the best hope for a world where nations reconcile bitter, hate-filled differences rather than destroying the lives of their children at war.

The importance of this awakening for me is that I now see the origin of the Iraqi government's danger to their own people and their neighbors. It is not the singular person of Saddam Hussein, but a military dictatorship which permits no dissent, disagreement, or opposition. And if we are timid in opposing that dictatorship now; if we are unwilling to be concerned about the repression of Iraqi people that is going on today; if we are blind to Iraqi citizens who are being tortured and abused today by Saddam Hussein; then I believe and fear that we run the risk of once again having to face not only him but others like him.

Thus, I believe as we rejoice at the return of our sons and daughters and as we prepared to make certain their freedom is made more meaningful with the helping hand of jobs, education, and health care, we should not close our eyes to the brutal repression of Iraqi dissidents by Saddam Hussein. It is simply not enough to make certain that he is no longer a threat to our economic interests. If all we do after this war is over is take advantage of construction contracts, cheap oil, and new buyers of military hardware, the sweet taste of victory could become as bitter as the defeat in Vietnam.

And if we respond at home to the stunning superiority of our weapons systems by only building more of the same, we will be judged the biggest fools of all. The people of the Soviet Union are moving in the direction of democracy and private individual ownership of property. Lord help us if we are so intimidated by the reactionary words fo lifetime members of the Soviet Communist Party that we cringe in fear from the opportunity of nuclear and conventional arms reductions treaties.

We should tell the people of the Soviet Union that we understand their fear about the risk of free markets, and the disorderliness of free speech. We should tell them we are by their side as they make the leap to go. It is in their interest, and it is in ours.

Finally, I am moved by the unselfish sacrifice of Desert Storm's participants and the awakening of glory of liberty and freedom which occurs in that moment when I feel a love so strong I am freed from the fear of losing what I have. Do not be so impressed by our technology that you ignore the individual willingness of soldiers to risk it all for something more valuable than their own lives. I tell you the destructive power of our impressive military force simply will not and cannot turn our neighborhoods, schools, businesses, or hospitals into places worthy of the description: the best place on earth.

In war, we are drawn to the heroic performance of the single individual. General Powell. General Schwarzkopf. Fighter pilots. Tank commanders. The brave actions of a single soldier. In doing so, some have been strengthened in their belief in the ideal of the rugged individual operating alone.

My own experience has taught me to believe the opposite. That all individuals derive their strength and achieve the possibility of becoming more as a result of the support of the group. That group may be family. That group may be friends. That group may even be strangers. Whatever I have done in my life, whatever I have accomplished in my life, is in no small measure the result of others—family, friends, strangers, who have helped me every step of the way.

This respect for what I can if I am helped did not remove from me the obligation of listening—listening for God's voice in the midst of the cacophony of today's world. My conscience still creates my responsibilities.

This respect for the help of others leads me to the strong belief as to what we should be doing, what Americans should be doing with the pride we feel as a result of Desert Storm. I'd like to give you some examples. But let me point out at the beginning something which is unifying of the entire list: We will not advance any of it if we worry only about ourselves; and we cannot win this battle by merely trying to please the audience.

First, I believe, and believe so strongly, that we should share much more of our abundance with mothers and children who we serve with Head Start and WIC. I believe that we would be rewarded if we fully funded these Democratic programs for the next 10 years—and we are nowhere near fully funding either one.

In 10 years, the performance of our schools would be improved. The cost of our welfare programs would be reduced. And the productive capacity of our workplace would be enhanced. Some will say we can't afford to do this. They will say that the deficit reduction package of last year dictates restraint. But I tell you these children didn't cause our deficit. Our disregard for them did.

Second, I believe we need to face the rising cost and decreasing access of health care in America with a national plan that guarantees access to health care as a right. A plan

that places upon Americans the obligation of deciding how much we will spend and how we will allocate the resources. A plan that moves the basing of health care benefits away from businesses, and preserves the private, diverse system of health care itself. And we will not do this unless we care enough about our country and its future to do something for others now. If we continue to cover our own needs first, we cannot possibly do what is best for all of us.

Third, I believe we need radical change in our public schools. We are squandering human potential every day. We allow this assembly line to stay in operation turning out too high a percentage of defective products.

In the 1980s American businesses awakened to the threat of international competition. The marketplace was no longer as tolerant of poor-quality goods as it was in the 30 years after World War II. Business leaders who saw this began quality control programs which required them to change an entire workplace culture grown accustomed to carelessness. But we have not done this same thing with our schools.

The reason I believe we have not is because we tend to look for someone else to blame, rather than to accept, in a personal way, the responsibility for the million United States students each year who drop out. We blame teachers. We blame school boards. We blame each other. We blame administrators. Sometimes we even blame the students themselves.

I tell you that these students belong to us. They're our responsibility. They do not belong to someone else. They are part of our heart and our soul and we must care for them as if they were our own children.

And I also believe that we, as a people, will suffer the consequences of their inadequate achievement until at least a majority of us accept this. The sad part is, we already know what do to. If we fully funded Head Start and WIC, we'd go a long way toward achieving the President's goal of having every American child ready for school by the year 2000. If we held parents responsible for helping their children, and schools for helping the parents, we would also supply a crucial element. If we recognized, that in a competitive marketplace, it's going to be increasingly difficult to recruit our teachers unless we're willing to pay them what the marketplace will pay them, we would as well stand a chance of getting the best Americans to enter education. If we started earlier to prepare the student for the workplace, I believe we'd also be focusing on the right problem.

In general, as a people, we're simply waiting too long to act. We arrive on the scene after a problem develops, rather than before. Those of you who can put a pencil to a percentage and understand what it means, take seven percent of a million and extend it out for 10 years. We have a million people in jails and prisons all across this country—a million people—and we're growing at seven percent a year. It costs us $50,000 to build us one of those cells, and $20,000 a year to keep them there. That's what it costs.

Some politicians tell us that we need to build more jails; throw them in jail and we'll lock them up and throw away the key. That policy hasn't worked. We need to get there before the problem is created. We know what to do.

Fourth, I believe we are misapplying the technologies of communication. Not only are we damaging the minds of our children and weakening the bonds of families, but we are missing a tremendous opportunity to give our teachers and our students an advanced tool to discovery. Doors are shut simply because we are unable to imagine what is on the other side.

Fifth, I believe—and I am not discouraged by past failure—we can break this cycle of poverty which traps too many of our people and threatens to destroy our cities. And I believe the deficit which must be filled first—first, if we want to succeed—is not a fiscal or a trade deficit. It is quite simply and regrettably a deficit of love: unselfish, non-indulgent love. It is still the lowest-cost, best way to build a better tomorrow for poor Americans. If we begin hating the poor, as is often the case, our world will steadily get worse.

Sixth, and the last item on my short list is this: America needs to relearn the magic of the lesson of compounding interest and the impressive, powerful force of a productive investment. The precursor of sustainable economic growth fueled by increases in our capacity to produce higher quality goods and services is a massive cultural change in America towards production and consumption.

We need to connect today with tomorrow by setting aside some of today's consumptive needs for tomorrow's productive requirements. If we continue to insist on having everything we want today, even if it means borrowing from our children to do it, the sacrifice of Desert Storm will not be viewed as a real turning point in the history of America. Tomorrow's roads, tomorrow's water systems, tomorrow's communications infrastructures, and tomorrow's productive citizens are being built today. And I must tell you what I think you already know, that we are not building them enough.

In this regard, one of the starting awakenings for me in the past seven months is that I now see oil as a productive asset. It was created, it was given to us by God, to use in our lives, and we Americans are using too much. Our profligacy today reduces opportunity for our children tomorrow.

The failure to view oil as an asset affects more than just our future. It also blinds us in this application of its benefit today. Look at the example of what we are going to do in Kuwait—what the rebuilding of Kuwait entails. The short economic and social description of what we will do in Kuwait is this: Over the next five years, we are going to convert two-and-a-half to five billion barrels of that God-given asset to rebuild a city of 1.5 million people that is run by a man with 80 wives. Now, you be the judge.

Finally, I have observed in my short and happy life that the greatest moments of human history occur when a single man or woman saves or improves the life of another. That single man or woman can be you and I. To do so we must overcome deep personal fear and cross dangers capable even of ending our own lives.

I pray, and I pray with the power I have, that Americans will use this great moment of confidence, pride, and thanksgiving to leap across our political, economic, and social fears—to help save the lives and improve the lives of our neighbors. I believe we are capable of it. I believe we have the courage to try. In this hour of triumph, let us summon the desire and the strength to go further.

EDUCATION SECRETARY LAURO CAVAZOS

Mr. HATCH. Mr. President, this week is a new beginning for the Department of Education. However, it is also a good time to pause and reflect on the accomplishments of former Secretary Lauro Cavazos, who served our Nation well.

Education is currently viewed as a major concern by every State, local, and national leader in this country. Much of this increased focus can be attributed to the efforts of former Secretary of Education Lauro Cavazos. I think this Nation owes him a hearty thank you for his dedication and for his accomplishments.

One of the major vehicles for achieving this prominence for education was the educational summit called by the President in Charlottsville. Secretary Cavazos took the lead in organizing that successful summit. Governors are now working together in a bipartisan fashion to ensure that the end result of that summit is a stronger educational system. National goals have been adopted and are being implemented. Experts in education and assessment are working with the Governors to measure our success in reaching those goals. Government and business leaders are uniting to upgrade all programs in education so our children can compete in the international environment in which we find ourselves. Much of this activity was generated by Secretary Cavazos.

Secretary Cavazos worked hard during this tenure to ensure that a quality education was available to all Americans. He has been especially sensitive to the needs of disadvantaged populations. Knowing all too well that dropping out of school spelled failure for our Nation's youth, Secretary Cavazos worked tirelessly together with State and local educators, business, and community leaders to encourage teenagers to stay in school. I am also grateful for the efforts he made to help thwart the traditional turf battle among Federal agencies. He developed and maintained a solid working relationship with the Department of Labor which, if carried on by new Secretaries Alexander and Martin, will continue to insure to the benefit of structually unemployed citizens through greater coordination and more targeted programs.

The former Secretary spoke often of the need for parents to become involved in the education of their children. Supportive families are crucial to the success of our children in school. They are also crucial to our success as a nation. The best teachers, the most sophisticated teaching materials, and the newest facilities will not significantly improve educational achievement if a child does not receive encouragement from home. Encouraging parents to become involved in schools will result in increased communication as well as greater accountability. Parents in this Nation have responded by accepting this challenge. Our Nation will be strengthened by Dr. Cavazos' concern for parental responsibility.

A new emphasis on parental choice and site-based management exists in our schools. Choice programs throughout this Nation have shown remarkable success as one way to increase the competitiveness and quality of our schools. Secretary Cavazos has been a strong advocate of such programs.

Within the Department of Education, and within the educational system, Dr. Cavazos urged accountability on all participants. Students, lenders, schools, and guaranty agencies were called upon to work together to reduce the student loan default problem. Much has been accomplished under his direction. New accountability measures were built into legislation affecting vocational education to ensure that desired outcomes are achieved.

I salute former Secretary Cavazos for his leadership in education and for his commitment to a quality education for all Americans. Students in our schools today have benefited from his dedication to education. The workplace and community of tomorrow will be a better place because of his leadership in shaping the schools of this country.

TRAVEL AND TOURISM EXPORT PROMOTION ACT OF 1991

Mr. HOLLINGS. Mr. President, recently my colleague, the junior Senator from West Virginia [Mr. ROCKEFELLER], introduced the Travel and Tourism Export Promotion Act of 1991. This is important legislation, of which I am pleased to be an original cosponsor.

The tourism industry is critical to our Nation's economy and represents important jobs and revenue. As a leading employer in the United States, it employs 6 million people directly and 25 million people in related industries. In my own State of South Carolina, I have witnessed how tourism has increased exponentially—tourism is now the second largest employer in South Carolina.

It has been 30 years since I helped convince a friend, Commerce Secretary Luther Hodges, to establish the U.S. Travel and Tourism Administration [USTTA]. In the span of these 30 years, thanks in part to the efforts of the USTTA, tourism has grown into this country's largest export industry. Last year the tourism industry posted a $4 billion surplus.

The bill introduced by my distinguished colleague, Senator ROCKEFELLER, is an important step in providing the USTTA with the direction and funding to carry out its mission in promoting the United States. I hope we can move it expeditiously through the Senate.

I also intend to work with our colleagues in the House and pass a tourism bill this year. It is important that we build upon the progress that we have made in promoting this industry.

S. 602—CHILDHOOD HUNGER PREVENTION ACT OF 1991

Mr. DASCHLE. Mr. President, I rise today to express my support for the Childhood Hunger Prevention Act of 1991, introduced by my distinguished colleague from Tennessee, Senator SASSER.

I applaud Senator SASSER's efforts to improve the programs that help nourish our Nation's most valuable resource—children. While this country produces more food, at a lower cost to the consumer, than any other country in the world, we have a deplorable number of children who do not get enough to eat. Nearly 20 percent, or one out of every five, of our country's children live in poverty—a level that is higher than for any other age group. Studies show that a staggering 2 to 5 million children go hungry every day, while nearly twice that number may be at risk of being hungry. Thus, our most fragile citizens, the children of this country who have the highest nutritional requirements, also face the greatest risk.

Many unfortunate children arrive at day care or school hungry. If a free lunch program is not available, they face the possibility that they will come home still hungry. If this child's family is not eligible for food stamps, or if it is the end of the month and the food stamp allotment for that month has already been spent, he or she may go to bed at night without dinner. And with the current recession this Nation is experiencing, more children may soon be swept into this cycle of daily hunger. It is our moral duty to ensure that the children of our country do not lose any more battles in the war against hunger.

Senator SASSER's bill would make significant improvements to a number of valuable programs that are designed to provide relief to hungry children: the WIC Program, the School Lunch Program, and the Food Stamp Program.

The WIC Program has been unanimously hailed as a successful and cost-effective measure to improve pre- and post-natal nutrition, and reduce subsequent health care costs. However, this program is not available to all those that are eligible, and rising food costs are further reducing the number of mothers and infants that can be served by this program. This bill provides a much-needed increase of $250 million for this program, that would provide food for an additional 400,000 participants.

Currently, many children from low-income families attending for-profit child care slip through the cracks, and fail to receive adequate food. By providing needy children with equal access to the Child Care Food Program, regardless of the status of their child care center, this bill would help remove this barrier to proper child nutrition and also provide greater food services to homeless preschool children.

Throughout the 1980's the number of eligible poor who received food stamps steadily shrank. When this trend is combined with the fact that over half of food stamp recipients are children, it is obvious that this program must be improved and made more accessible if we hope to reduce childhood hunger.

Only 18 percent of eligible homeless individuals receive food stamps. Consistently for the past decade, less than half of eligible rural poor families have received food stamps. This bill will make several significant changes to the Food Stamp Program that would remove some of the barriers that face the homeless and rural citizens of this country.

A large number of poor households have averted homelessness only by using a large proportion of their income to pay for housing, resulting in less money to buy groceries. Mr. SASSER'S bill would eliminate the cap on shelter deductions that currently reduces food stamp benefits for over 1 million households.

Currently there is a critical need to raise food stamp benefits so that they match actual food costs. On the thrifty food plan, fewer than one in six households are able to purchase enough food to obtain the recommended daily allowances of the basic nutrients.

Lastly, this bill will help rectify a problem that has long kept many rural families out of the Food Stamp Program. In rural America mass transit does not exist, and, thus, a reliable vehicle is a necessity, not a luxury. The current vehicle allowance of $4,500 has not been changed since 1977, during which time the price of used cars has increased 120 percent. Mr. SASSER's bill would provde a new baseline of $5,500 and allows for indexed adjustments in the vehicle allowance.

In conclusion, Mr. President, while we must remain mindful of the budgetary limitations that we face, we must take action to eliminate the scourge that is childhood hunger. David Packard, board chairman of Hewlett-Packard and a man who obviously knows the value of tight fiscal management, has stated that "we mortgage our future as a nation to a much greater extent by the negligence of child welfare than by our failure to reduce the budget deficit." I commend the distinguished Senator from Tennessee for his continued devotion to this critical issue, and am pleased to lend my support to this legislation.

TRIBUTE TO GYORGY KRASSO

Mr. HEINZ. Mr. President, I have recently learned of the death of Mr. Gyorgy Krasso, a Hungarian economist, activist, and intellectual, with whom I had the fortune to meet in April 1986. I would like to pay tribute

to Mr. Krasso, whose experience during the 1956 revolution and the years it earned him in jail helped inspire his deep and unflagging devotion to the dissident movement in Hungary.

In 1979, Gyorgy Krasso was the first person to publicly describe the events of 1956 as a democratic national revolution. His determination to reveal the truth about the 1956 revolution in Hungary, about who its real heroes and victims had been, exposed him to increasing harassment and intimidation from the Communist authorities—including fines, house searches, and refusal of the right to travel, even to other Soviet bloc countries. But his perseverance and courage also won him the respect and trust of many Hungarian citizens.

Gyorgy Krasso was loyal to the Hungarian people throughout his career, embracing their causes as his own. As he wrote in 1981, "There is no more important nor more timely task than for us to sweep away the propaganda lies that have been told against the revolution for the last quarter of a century, and to give back to the people their own, forgotten history." He was among the most vocal and the bravest of dissidents, and for these reasons he was among those who suffered the most.

The past 18 months have witnessed tremendous changes in Hungary's political system and tremendous advances in the area of human rights. As we look hopefully toward the future, we must not forget the important contributions of individuals like Gyorgy Krasso, who stood resolute through far grimmer days. I am honored to have met him and to pay tribute to him here.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,195th day that Terry Anderson has been held captive in Lebanon.

REMARKS OF RABBI ANGEL

Mr. MOYNIHAN. Mr. President, the Rabbinical Council of America recently hosted its midwinter conference in Washington, DC. Dr. Marc Angel, the spiritual leader of the Congregation Shearith Israel in New York City, serves as president of the Rabbinical Council, the largest orthodox rabbinical group in the world. Congregation Shearith Israel was founded in 1654 and is the oldest synagogue in North America. I have visited this synagogue and spoken there on several occasions.

I believe the Members of the Senate will appreciate Rabbi Angel'c thoughtful remarks on the occasion of this conference, and I ask unanimous consent to place excerpts of his address in the CONGRESSIONAL RECORD.

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

JANUARY 21, 1991.

We congratulate the United States on its leadership in confronting Iraqi aggression. We commend President Bush; our prayers of gratitude and good wishes go to the military personnel who have risked their lives for the good of America.

Following the resolution of this Gulf Crisis, we are hopeful that the United States will use its good offices to work towards a genuine peace in the entire Middle East. With its great stature and power, the United States has the respect of all parties. We hope that President Bush will support diplomatic efforts to bring about direct negotiations between Israel and her Arab antagonists. We are confident that the Palestinian issue can be solved within the context of an overall peace plan between Israel and her neighbors.

Any peace negotiations should include the following stipulations:

1. The United Nations should immediately rescind its heinous resolution equating Zionism with racism. Any country which maintains support for this resolution should be disqualified from any role in the Middle East peace negotiations. Understandably, Israel must reject suggestions and demands from those who are on record for denying the integrity and legitimacy of Israel.

2. Jews, Christians and Muslims should have the right to live in freedom and dignity in all the countries of the Middle East, including Saudi Arabia.

3. The claims of Palestinian Arabs must be addressed as must the claims of the 600-700,000 Jews who were driven out of Arab lands after 1948. The process of negotiations should keep in mind the injustices committed against Arabs and Jews. One must not forget that Arab countries systematically persecuted Jews and confiscated Jewish property.

4. There must be an immediate end to propaganda which vilifies and demonizes Jews or Arabs. A climate of trust and respect must be forstered. Educational materials, popular media, etc. should be purged of materials which lead to hatred. (Vicious attacks on Jews and Israel have been prevalent in the Arab world's media, even in Egypt which has diplomatic relations with Israel.)

Israel does not and has never asked for special treatment. Israel asks only for fairness and justice, for a proper hearing of its needs and concerns.

TRIBUTE TO LUCILLE SIMPSON

Mr. MITCHELL. Mr. President, I rise today to pay special tribute to Lucille Simpson. On February 28, 1991, she celebrated 25 years of service with the York County Community Action Agency in Sanford, ME, and is retiring in her position as director of the Fuel Assistance Program.

To the residents of York County, ME, Lucille is known to all. A former research chemist at Parke-Davis and selectwoman in the town of Shapleigh from 1956 to 1968, Lucille Simpson joined Community Action in February of 1966.

After serving in several positions within the agency, including director of the Outreach Program, Transportation, Operation Health Mobile, the WIC Program, family planning, and as deputy director for 12 years, Lucille Simpson accepted the position of director of the Fuel Assistance Program in 1980 and continued her dedication to this program even after her semiretirement 3 years ago.

During these many years of hard work and dedication, Lucille Simpson has also devoted herself to the betterment of her community through her service with many social service organizations, including the Cumberland-York Council on Aging, the York County Extension Program, the Maine Ambulatory Care Coalition, the New England Public Health Association, and many many more.

Lucille Simpson was recognized for her exemplary service to her community with the Outstanding Citizen of the Year by the Kiwanis, as well as the Jefferson Recognition Award in 1978.

Lucille Simpson is a public servant in the greatest sense of the word. She has used her many talents and abilities to work in behalf of the neediest within her community and State. She is a great leader and a true friend to all. I know that my colleagues join me in commending her on her many years of service with York County Community Action and wishing her well in her retirement.

GONZE LEE TWITTY: FATHER OF SOUTH CAROLINA'S COOPERATIVE MOVEMENT

Mr. HOLLINGS. Mr. President, I rise to pay my very special respect to a distinguished son of South Carolina, Gonze Lee Twitty, who will be inducted into the Cooperative Hall of Fame tomorrow evening here in Washington.

Gonze is a sterling example of the dictum that one does not have to be on the public payroll in order to be an outstanding public servant. For three decades, he has worked tirelessly to found and develop more than 100 cooperatives and credit unions throughout the Southeast. In the process, he has made a positive difference in the lives of countless thousands of poor and low-income rural Americans.

What is more, his leadership of both the Federation of Southern Cooperatives and the Southern Cooperative Development Fund for the last 20-plus years has been nothing short of inspirational. It is fitting and appropriate that, at long last, the man known as "father of the cooperative movement in South Carolina" is receiving national recognition through induction into the Cooperative Hall of Fame. On behalf of the U.S. Senate and the people of South Carolina, I extend congratulations to Gonze Lee Twitty for an honor well earned and richly deserved.

HEARING THE DALAI LAMA

Mr. MOYNIHAN. Mr. President, the Chinese Government has worked tirelessly in an effort to prevent Tibet's tragic story from reaching the world. But its story is being told. In the Dalai Lama the Tibetan people have had a champion for peace, freedom and nonviolence who would not and could not be silenced.

But it has not been easy. On Tuesday, that most eminent commentator, A.M. Rosenthal, wrote an important column describing the efforts of the administration to insure that the Dalai Lama is not given the opportunity to address the Congress. I urge my colleagues to read this column and consider whether we can truly launch a new world order and ignore the situation in Tibet. As the New York Times said in a 1989 editorial:

Since 1950, China has shown Tibet the rawest face of imperialism—destruction of thousands of monasteries, suppression of the Tibetan langauge and culture and widespread settlement by Chinese colonists. This has resulted in the death of perhaps a million Tibetans.

In 1960, the International Commission of Jurists issued a report on Tibet which concluded that "acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group * * *." The report also concluded that "from 1913 to 1950 the conditions of statehood as generally accepted under international law" were present in Tibet.

I ask unanimous consent that the article entitled "One Small Country" be printed in the RECORD.

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

[From the New York Times, Mar. 19, 1991]

ONE SMALL COUNTRY

(By A.M. Rosenthal)

There was no way to escape writing this column. I thought I was going to write about other things, which I knew would interest more people, like the Soviet Union's approaching civil war of Saddam Hussein's approaching annihilation, or those sickening lynching pictures from Los Angeles.

But I could not escape knowing that now was the time to write about Tibet—and how cruel April will be in Washington for one small country unless members of Congress say no, they have had enough.

Every person has certain things about which he feels he must speak now and then, not because people listen but because they don't. Something strong coming out of experience or convictions insists that eventually attention may be paid but even if not, at least speak.

Some of the reasons I cannot escape the Dalai Lama and his countrymen are personal—years spent in Asia as a foreign correspondent, and detestation of Communism and all other forms of dictatorship—all, no picking and choosing.

Another reason has to do with Raphael Lemkin. Raphael Lemkin was a very annoying man. For years he wandered the headquarters of the United Nations, plucking at diplomats, trying to persuade the member countries to sign a convention making it a crime to destroy a whole people or its culture. After a long time they did sign, and he died, almost alone.

Tibet is a victim of a case of genocide as ugly as any since World War II. The country had 6.5 million people when Communist China invaded in 1950. Its Government of monks was tyrannical in its own ways. But its people were united by common history, common language, the common religion of Buddhism.

Nine years later the Dalai Lama, for Tibetans the 14th incarnation of the spirit of godliness and their national leader, escaped to India. In exile, traveling the world, he has grown to be a celebrated international political and religious figure and, ever more, his people's leader.

But in the Himalayas, at least a million Tibetans were murdered or tortured to death, or died of starvation because of Chinese colonialism.

Beijing annexed two-thirds of Tibet. Scores of thousands of children were shipped to China for education and indoctrination. Millions of Chinese were sent into Tibet, a criminal, genocidal attempt to erase Tibet's reality. In the annexed area they outnumber Tibetans.

The United States refuses to recognize the Tibetans. Be sensible—what kind of a market is Tibet compared with China and how many missiles does it have?

The Dalai Lama goes on. He offers to give up foreign and military affairs if Beijing gives Tibetans self-rule. He outlines a Tibetan government based on democracy and nature. And in 1989 this man who cannot get beyond State Department doors, literally, receives the Nobel Peace Prize.

Tibet asks no soldiers from the United States, no Patriots, just attention, and plain words to its oppressors that genocide is as ugly in the mountains as in the desert.

The greatest of all American assets, tested and proved repeatedly, is not that it is a world policeman but that it will give its political support to freedom. There lies American national interest in Tibet.

In Washington are senators and representatives of both parties who believe this. Congress has passed seven resolutions supporting Tibetans. In Tibet they are passed from hand to hand, a secret wheel of prayer.

Last year, members of both Houses tried to organize a joint session of Congress for the Dalai Lama. The White House objected, so they selected a new date—April of this year when the Dalai Lama would again be in the United States.

But just a few days ago the White House was seized by a sudden desire to have President Violeta Barrios de Chamorro of Nicaragua speak to a joint session in April, and of course Queen Elizabeth is coming in May. Congressional leaders said that eliminated the Dalai Lama because after all, how many joint sessions could you have?

Traditionally Congress follows the White House lead on joint sessions for foreigners, but there is no law about it. Representative Charles Rose, the North Carolina Democrat, says he is so mad he may have a meeting on the Capitol steps. Others talk about a meeting in the Rotunda.

Everybody knows it won't be the same thing at all. A joint session, such as Lech Walesa had after he received the Nobel Peace Prize, would be recognition of the captivity and hope of the Tibetan people. It does not seem too much, in the interest of one small country and this large one.

SENATOR MOYNIHAN'S RECEIPT OF THE WOLFGANG FRIEDMANN AWARD

Mr. BIDEN. Mr. President, I rise today to inform the Senate of a prestigious—and very well-deserved—honor that our colleague from New York, Senator MOYNIHAN, has recently received.

The Wolfgang Friedmann Award is given each year by Columbia Law School's Journal of Transnational Law, the most esteemed publication of its kind. The Friedmann Award goes to a distinguished author and scholar who has produced the most important and significant work on international law that year.

Senator MOYNIHAN won that award, for his highly regarded new book, "On the Law of Nations." Anyone who has read Senator MOYNIHAN's book—as I have—knows why it is so deserving of this honor.

For those of you who have not yet read it, I offer the assessment given by Columbia Law School Dean Barbara Black, who called it, "powerful, witty, passionate, eloquent, and reasoned." A fitting description of the work—and a fitting description of our colleague, as we all know.

It should be no surprise that Senator MOYNIHAN has received this honor for his insightful and intelligent analysis of the role of international law in foreign policy. He is the Senate's leading expert on this topic, and in my view, the Nation's foremost thinker in this field.

It is a pleasure to see his work receive the honors it deserves, and I ask unanimous consent that the remarks of Dean Black in presenting the award to Senator MOYNIHAN—and the Senator's remarks at the ceremony where he received it—be printed in the RECORD at this time.

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

INTRODUCTION BY DEAN BARBARA ARONSTEIN BLACK ON THE OCCASION OF THE WOLFGANG FRIEDMANN AWARD FOR "ON THE LAW OF NATIONS" TO DANIEL PATRICK MOYNIHAN, COLUMBIA LAW SCHOOL, MARCH 1, 1991

Senator Moynihan, Mrs. Moynihan, Honored Guests:

It is an honor to welcome you to the 1991 Wolfgang Friedmann Memorial Award Dinner. The Friedmann Dinner and the Friedmann Conference (in which many of you participated this afternoon) are special events for Columbia Law School, and particularly so for the students who produce the Journal of Transnational Law and participate in the Society of International Law. Conducted in the memory of Wolfgang Friedmann, a distinguished member of the international law faculty whose life was violently ended, these events remind members of the law school community of Professor Friedmann's unrelenting attention to the welfare of this community, his steadfast principles and his unyielding courage. Those of you who studied under, or knew, Professor

Friedmann will be delighted to know that his legacy in the law school lives on.

A central element of the Friedmann dinner is the presentation of the Friedmann Award, given by the Journal of Transnational Law each year since 1975. Tonight it is my pleasure to introduce to you this year's Friedmann Award recipient, after which I will turn the podium over to Tom Scherer, currently editor-in-chief of the Journal, for the presentation of the award.

In recent years the Columbia Law School Faculty has had a practice, which is by now a tradition, known as the faculty lunch—a regular biweekly gathering of the faculty for the presentation of a paper by a colleague. For the first few years the organizer and leader of this event was my colleague Henry Monaghan. Professor Monaghan introduced the speakers, and his method of doing so was to stand up and say "Our speaker today needs no introduction" and sit down. Well, this year's Friedmann Award recipient certainly needs no introduction—but that won't stop me. (It will, however, produce brevity.)

It is, personally and on behalf of the Columbia Law School, my privilege and my pleasure to introduce to you the senior United States Senator from New York, Daniel Patrick Moynihan.

Senator Moynihan has had a long and distinguished career of service to the public as sailor, scholar, educator, Presidential advisor, diplomat, and, since 1976, United States Senator. Along the way, presumably in his spare time, he has authored or edited fifteen books. That's right, fifteen! How, one asks, has he done it all? And the answer is, of course, brilliantly.

As Senator from New York, Pat Moynihan has, as we would expect, important affiliations with New York's great University, Columbia, including delivering the Feingold Lectures here in 1985 and receiving a Doctor of Law degree, honoris causa, in 1987. He was also, in May '87, commencement speaker for the Columbia Law School graduating class. Indeed that was the occasion on which I first made his acquaintance. This is actually a rather bizarre way to meet someone, since the attention of all concerned is on academic regalia, and conversation in at the level of "Is my hood on straight?" But it was a start, if a curious one, and the Senator and I have, since, shared other occasions, and we have had some opportunity for exchange of views on a variety of subjects—people, politics, policy. And that has been my good fortune.

It is also my good fortune to own a copy of Pat Moynihan's latest book, and to be reading it. This book, titled "On the Law of Nations" is subtitled "a historical and personal account of the role of international law in foreign policy". There is a finite group of people from whom one would expect such an account—historical and personal—to be a treasure, and Pat Moynihan is one of that number. And the work does not disappoint. Erudite, powerful, witty, passionate, eloquent, reasoned—these are the words that readers of this book have used, and will surely use, in commenting on it, these and other equally complimentary words and phrases. And they are the words that capture what the world has come to know as the qualities of our distinguished honoree: Erudition, power, wit, passion, eloquence, reason have marked him in his many roles. I am pleased that I have, in recent years, come to know Senator Moynihan, and most honored to have had this opportunity to say a few words in introduction of this man who certainly needs no introduction.

A WORLD REGAINED? DANIEL PATRICK MOYNIHAN ON THE OCCASION OF RECEIVING THE WOLFGANG FRIEDMANN AWARD FOR "ON THE LAW OF NATIONS," COLUMBIA LAW SCHOOL, MARCH 1, 1991

The honor of receiving the 1991 Wolfgang Friedmann award at Columbia University is exceeded only by my gratitude to those who brought this about. In the first instance, I would thank my friend, the Honorable Richard Gardner, Henry Moses Professor of International Law here at Columbia. We met some 39 years ago in the "press cuttings" room of Chatham House, the home of the Royal Institute of International Affairs in St. James Square in London. We were working on our respective theses, and even then it was evident that he had twice the energy and considerable more natural endowment than I, but also the diplomatic skills to soften these disparities with an unaffected friendship. He was later to employ those diplomatic skills to the great advantage of our nation, with the same composure with which he has sustained our friendship.

My esteem for the Chancellor Kent Professor of Law at this University, President Michael I. Sovern, is boundless, as I hope he knows. And I yield to none save that eminent poet Charles Black in my affection for the Dean of the Law School Barbara Aronstein Black.

Nor should I fail to thank all at the Harvard University Press, and especially my editor, Ann Hawthorne, who is here tonight. As is my associate and mentor Stephen Rickard.

The book begins here at Columbia. More specifically, the opening passage is taken word for word from the opening of Chancellor Kent's enduring classic, Commentaries on American Law.

PART I.—OF THE LAW OF NATIONS

Lecture I.—Of the Foundation and History of the Law of Nations.

When the United States ceased to be a part of the British empire, and assumed the character of an independent nation, they became subject to that system of rules which reason, morality, and custom had established among the civilized nations of Europe, as their public law. During the war of the American revolution, Congress claimed cognizance of all matters arising upon the law of nations, and they professed obedience to that law, "according to the general usages of Europe." By this law we are to understand that code of public instruction, which defines the rights and prescribes the duties of nations, in their intercourse with each other. The faithful observance of this law is essential to national character, and to the happiness of mankind.

The plain purpose of my book was to describe the steady growth of this conviction in at very least the pronouncements of American statecraft, reaching a peak of sorts in the early part of this century, only to recede and finally to be "lost in the fog of the cold war."

I did not write as one proposing a felicific calculus for the greater perfection or pacification of mankind.

To the contrary, I wrote as a United States Senator, sworn to uphold the Constitution of the United States against "all enemies, foreign and domestic." This particular formulation of the oath of office was crafted in 1868 having, obviously, the Civil War in mind. I had a newer conflict in mind. Article I, Section 8 of the Constitution explicitly provides:

"The Congress shall have power * * * To define and punish * * * Offenses against the Law of Nations. * * *

Article VI continues:

* * * Treaties * * * shall be the supreme Law of the Land.

It was clear to me—I hope I am not wrong in this—that whilst customary international law is still relevant in many situations, a very large and growing body of "international law" is now treaty law, including, of course, the Charter of the United Nations. Treaties into which the United States has entered are the "supreme Law of the Land". No less so than Congressional enactments, both having received the approval of the President and the peoples' representatives in Congress. Having sworn to uphold such law, I had become concerned that it was held in such obvious contempt in portions of the executive branch, and general indifference in the legislative and judicial branches.

And so I produced this modest volume, asking, that if we don't believe what we once believed, then surely the question arose as to just what we do believe. I offered the alternative of Wordsworth's Rob Roy:

"The good old rule * * * the simple plan,
That they should take, who have the power,
And they should keep who can."

The book concludes with the invasion of Panama.

Then a funny thing happened, as you could say, on the way to the printer. The fog of the Cold War lifted. But aggression, if anything, resumed. On the Law of Nations was published September 12, 1990. Forty-one days earlier Iraq had invaded and conquered Kuwait.

Of a sudden the United States had turned to the theretofore not unreasonably disparaged United Nations. And, to the U.N. Charter, a document, by contrast, of considerable nobility and honorable lineage. With equal suddenness, the President commenced to invoke principles of international law in expounding and defending American foreign policy. In a press conference of August 23, 1990, he used that term no fewer than six times, added eight references to the United Nations, with three specific citations of Chapter VII of the Charter, and one appeal to the rule of law thrown in for good measure. On the day he launched Operation Desert Storm President Bush gave an address to the nation, stating:

"This is a historic moment. We have, in this past year, made great progress in ending the long era of conflict and Cold War. We have before us the opportunity to forge, for ourselves and for future generations, a new world order—a world where the rule of law, not the law of the jungle, governs the conduct of nations."

As the war coming to an end, last Monday, February 25, the President again invoked the rule of law:

"This was a war thrust upon us, not a war that we sought, but naked aggression such as we have seen must be resisted if it is not to become a pattern. And our success in the Gulf will bring with it not just a new opportunity for peace and stability in a critical part of the world, but a chance to build a new world order based upon the principles of collective security and the rule of law."

Just this morning President Bush had this to say in an exchange at a White House press briefing concerning a report in LeMonde that Saddam Hussein had agreed to go into exile in Algeria if he was assured that he would not be pursued as a war criminal.

"QUESTION. It [is] said the Algerians had worked out a deal whereby the allies including yourself had agreed that Saddam if he came there, he would not be tried for any war crimes. You have said that no one can be

absolved. Would you not agree to any deal whereby he got political asylum?

"President BUSH. [W]e cannot absolve anyone from his responsibility under *international law.* * * * The report is simply fallacious if it included that.

"QUESTION. But to get him out of the country, you wouldn't agree to not try him.

President BUSH. I would leave that matter to the *international system of justice.* * * * I cannot wave a wand and absolve somebody from their responsibilities under *international law.* (My emphasis.)[1]

Now what was this all about?

Historians will tell us more; the principles may yet do before long. But let me offer, an hypothesis which I set forth in a 1985 address to the American Bar Association conference on restoring bipartisanship in foreign affairs:

"To the degree that law—the Law of the Charter included—is seen to be, and is, the basis of our international conduct, a bipartisan foreign policy does not require a party out of office to agree with policies of the party in power, but rather simply to agree with the principles of law on which those policies are based.

"Principles prior, as you might say, to whatever is the present emergency, the incumbent president, the prospects for the next election. The same principle applies to allied and non-aligned nations, who can far more readily support (or at least accept) American policies if our conduct is seen to be based on law that binds them as well as us.[2]"

Let no one detract from the immense diplomatic skill President Bush deployed in compiling the Security Council resolutions and assembling the great coalition which ended Iraqi aggression with such thundering finality. Yet, it is also fact that he was able to ask this extraordinary coalition to join in support of the Charter and not of the United States. The latter would have served, in many instances, but not in all. Probably not in most. International law served us well when we needed it. There, still standing in the ruins, were the guideposts of an earlier world, and world that might yet be regained.

Perhaps most importantly, the events in the Gulf have exorcised at least for now and possibly for a long while, the notion that international law is somehow a refuge from reality, more particularly, a way to avoid the use of force. It is nothing of the sort, of course. Or need be nothing of the sort.[3] Law does not eschew force; it defines the circumstances in which force may and will be exercised.

And now we move on to a new world order. On that point, let there be no question. The age of totalitarianism is over. It lasted most of this century, indeed threatened, as The Economist wrote, to take the century by storm.

Well, it didn't. Alright? I would like to make the point—tentatively, even a little defensively—that we might have figured this out a bit earlier. In 1979, Newsweek magazine featured a symposium on what large events might happen in the 1980s. I submitted a brief entry on a simple enough theme:

"The Soviet empire is coming under tremendous strain. It could blow up. The world could blow up with it.[4]"

By 1989, this forecast had just about come to pass.

It is not clear whether the Soviet Union will, in fact, "blow up" or will just disintegrate, but something such is happening. My statement that, "The world could blow up with it," referred to the question of which groups would end up with control of those 10,000 nuclear warheads. The current New Republic has a fine article by Gabriel Schoenfeld, entitled "Loose Cannon: The Scary State of Soviet Nukes," which makes exactly this point:

"As nationalism tears apart the Soviet Union, the chance [emerges] that it could split into fifteen or more states—some of them armed with nuclear weapons. * * *[5]"

(Just yesterday at a coffee hour with the Committee on Foreign Relations, Hans-Dietrich Genscher remarked on the irony, that we have spent what, a generation, since the signing of the Non-Proliferation Treaty seeking to prevent the emergence of new nuclear powers. Little did it occur to us that we might look up one day and find that one old nuclear power had become six new ones!)

Here is my point. In the 1970s, a reasonable person with reasonable access to a decent library could conceive that the Soviet empire might be on the verge of collapse, with all the attendant worries that that might bring about. But the idea was inaccessible to the policy centers of the national government. Hence, we find ourselves at present lurching about, improvising from day to day.

Much the same may be said of our concept of a New World Order. There is going to be one. The President was wholly right to insist on this, to announce it, if you like. But the concept has very little content in Washington just now. This is not the worst thing, We grew perhaps too heady, triumphalist you could say, in the atmosphere of 1918 and 1945. More modest aims may prove more practical ones. We could do worse than simply espousing what the President has called for: the Rule of Law.

Let me put it this way. During most of 1989, as the Soviet hegemony in Eastern Europe collapsed, and it appeared the Cold War had ended—the Cold War in the sense of the Marxist-Leninist claim to be the next stage in history— you could feel the old cold warriors in Washington asking that celebrated question Metternich is said to have posed at the Congress of Versailles. Informed that the Russian Ambassador had just dropped dead, he paused and pondered: "What can have been his motive?" In our case, it was more a question of why were the Soviets pretending to implode. To induce complacency? Ah!

The same may be said of a New World Order. There was no anticipation that we would ever face such a question, still less a question framed in the terms of international organization and international law that President Bush has chosen.

Very well. Let us get to work. For I really do believe the fog is lifting in Washington.

I cite a passage in Haynes Johnston's surpassingly excellent new book, Sleepwalking Through History. It concerns the mining of the Nicaraguan harbors in 1984 at the behest of the Central Intelligence Agency. Now, this clearly was an act contrary to international law. (Or so I and 14 judges on the International Court of Justice believe.) In any event, it was a measure which by statute should have been reported in advance to the Senate Select Committee on Intelligence. This was not done. When, in time, the harbor mining emerged, Senator Goldwater protested in a letter to the head of the CIA, stating among other things, "This is an act violating international law." As I remarked in the introduction to On the Law of Nations, Goldwater and I were effortlessly discredited.

"It was put about that we were merely trying to cover up our own failure, as chairman and vice-chairman respectively of the Senate Intelligence Committee, to pay attention to what we had been told.[6]"

Nor was there the least political protest when soon thereafter the United States renounced the compulsory jurisdiction of the World Court. (I know perfectly well that a case could be made that Nicaragua had never fully accepted the compulsory jurisdiction of the Court. But so what? The Court was our idea, not theirs.) Now Johnson's work has appeared. In five simple pages, he has not the least difficulty explaining what happened. Explaining events that no national newspaper could grasp in 1984. He had no greater access to information. It is just that the fog has lifted.

Haynes Johnson ends this section with a remark I made sometime later:

"What we had here, however unwitting, was an effort to subvert the Constitution of the United States. Such is the fruit of contempt of government.[7]"

The disdain for international law, or its neglect, in recent decades had the effect of encouraging lawlessness in general. Something like a crisis of the regime emerged. It is in this sense that the mining of the harbors led directly to the Iran-Contra scandals. Of which Theodore Draper noted:

"If ever the constitutional democracy of the United States is overthrown, we now have a better idea of how this is likely to be done.[8]"

And this is a point on which I would close. International law is our law, and ought to be our pride. It is no more surety against misfortune than any other law. Wolfgang Friedmann, who escaped Hitler's Germany alive, was murdered on Amsterdam Avenue years later. By three youths. For $95.

Yet, he taught international law to the day he died, and he believed in it. I would ask this question. Is this not the time for the universities of the land, the laws schools of the land to join Columbia in vigorously pursuing his legacy? The nation needs you. It needs men and women trained to international law, it needs journals, it needs faculties, it needs energy of a kind once routine, but preserved only in a few settings such as this one on Morningside Heights. It needs you a damned sight more than it needs experts on mergers and acquisitions.

Seventy-eight years ago, when Woodrow Wilson went to Washington, he took with him for the position of counsellor to the Department of State, John Bassett Moore, professor of international law at Columbia University. In those times it was just assumed that a President would need such an advisor and that such an advisor would be at hand. It is time that assumption returned. It is in the American interest.

We will hear much in the months and years to come of moving forward to a Pax Americana, of moving back to a balance of power, of moving over to isolation. Yet we have a more powerful tradition and prospect than any of these. It is to pursue our national interests in accord with a revived national tradition. Edward C. Banfield of Harvard, not known for his excessive enthusiasms, writes of just this matter:

"That the United States should set the standard of law-abidingness is a proposition that needs shouting from the high places, including the Capitol Dome."

FOOTNOTES

[1] Secretary Baker repeated this point during his appearance on "Meet the Press" on March 3, 1991: "The President spoke to that in his press conference on Friday when he was asked would we agree not to prosecute any war crimes, claims against him if he did that. And the President's response was we are not in a position to absolve anybody of their international responsibilities. They have responsibilities under *international law. . . .*" (My emphasis.)

[2]Daniel Patrick Moynihan, "The Role of International Law in Restoring Bipartisanship in Foreign Affairs," Address to the American Bar Association Conference on Restoring Bipartisanship in Foreign Affairs, May 23, 1985.

[3]Brian Urquhart makes the valid point that Article 42 of the Charter states: "Should the Security Council consider that measures provided for in Article 41 [sanctions] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." Clearly, no such determination about the inadequacy of sanctions was ever made by the Council. From the President down, civil and military officials judged that they had been tried and failed. Portions of the Congress argued that a much longer time would have been required to reach this judgment with any certainty. Just as clearly, there had been little thought given the subject within the Executive branch. Brian Urquhart, et al., "The Wake of 'Desert Storm'", *New York Review of Books*, March 7, 1991, p. 35.

[4]Daniel Patrick Moynihan, "Will Russia Blow Up?", Newsweek, November 19, 1979.

[5]Gabriel Schoenfeld, "Loose Cannon: The Scary State of Soviet Nukes", New Republic, March 11, 1990, pp. 16-18.

[6]Daniel Patrick Moynihan, "On the Law of Nations" (Havard University Press: Cambridge, 1990), p.5.

[7]Haynes Johnson, "Sleepwalking Through History: America in the Reagan Years" (W.W. Norton & Company: New York, 1991), p. 279.

[8]Theodore Draper, "Getting Irangate Straight", New York Review of Books, October 8, 1987, p. 47.

SENATOR JOHN HEINZ SPEAKS FOR THE NEEDS OF MASS TRANSIT

Mr. D'AMATO. Mr. President, last Monday, March 11, my colleague from Pennsylvania, Senator HEINZ, gave an eloquent speech before the American Public Transit Association about the need for all Americans to recognize the important role mass transit plays in our Nation's transportation net-work.

Since coming to the Senate in 1977, Senator HEINZ has played a key role in developing the structure and direction of the Federal Transit Assistance Program.

As the Banking and Urban Affairs Committee begins its consideration of the 1991 transit reauthorization legislation, I look forward to working with Senator HEINZ toward strengthening this Nation's transit program.

Mr. President, I urge my colleagues to read this important speech and I ask unanimous consent that a copy of it be printed in the RECORD at this point.

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

REMARKS OF SENATOR JOHN HEINZ, AMERICAN PUBLIC TRANSIT ASSOCIATION, WASHINGTON, DC, MARCH 11, 1991

Thank you, it's a pleasure to be here today to discuss mass transit with people who really care about the program. This week marks the beginning of the transit reauthorization process and it's appropriate that I start off this important week before you.

Above all, this week marks the beginning of the toughest job I've had since coming to the Senate in 1977—convincing my colleagues of the importance of transit. All of us in this room have fought many battles over the years and I'm glad to be in the trenches with you again.

The importance of transit is now beyond getting an office worker downtown. Transit is now an important solution to today's problems of smog, traffic congestion, dependence on foreign oil, and improving economic productivity.

Just think where we would be without public transportation. In areas fortunate enough to have heavy rail transit, a subway system can carry up to 34,000 passengers per hour. That means 30,000 automobiles can remain parked at home. More important, that's some 30,000 vehicles that aren't clogging roads and highways, or damaging bridges that are extremely expensive to repair.

Even fixed route bus service has the capability to carry nearly 90 passengers every time a bus makes its rounds. Put another way, that's 90 less vehicles highway engineers, traffic managers, and city planners have to worry about.

And yet, traffic congestion is now a way of life for many commuters even in areas thought to be relatively kinder and gentler in their way of life. In hospitable Charlotte, North Carolina, the number of congested freeways is forecasted to double by the year 2005. In Minneapolis-St. Paul, the miles of congested freeways is forecasted to double by the year 2005.

It isn't only the commuter worried about traffic jams that transit helps. Transit helps all of us who worry about breathing clean air. In my own state, Philadelphia not only fails to meet ozone requirements, but it also fails to meet carbon dioxide requirements. One doesn't have to be an EPA scientist to figure out a solution to Philadelphia's critical problem: Southeastern Pennsylvania must reduce the amount of pollutants it loads into the atmosphere. And that means getting cars off the road and people into mass transit.

The Persian Gulf war should be a reminder to all of us that reducing America's dependence on huge quantities of imported oil should be of paramount priority. We should remind people that transportation accounts for over 65 percent of our petroleum use and the most cost effective way to reduce that use is to substitute mass transit for individual transit.

For my part, I intend to remind my colleagues of these facts of life and work with them to translate these matters of simple common sense into strong Federal support for mass transit. But there will be an aggressive contest during the reauthorization process. The Administration will push its bill to the same Senators that I will push to restore operating assistance, to increase Federal funding of capital projects, and to help you fund the unfunded Federal mandates, like the Americans with Disabilities Act.

While I am still studying the Administration's bill, I would like to share with you some of my impressions about the direction the Administration would like to steer the Federal transit program.

First, the good.

For the first time in a decade an Administration has sent a bill that is not automatically dead on arrival.

Let's give some credit to Brian Clymer, Sam Skinner and President Bush for agreeing with the principle that mass transit needs and deserves federal support. Now, if I can help it, they won't get everything they want, but at least we've got something to talk about.

After a decade of downright miserly Federal budget support for transit, the Bush Administration has proposed an over $3 billion transit program. By contrast, for years we have had to start off with what might have been called—at least for mass transit—"zero-based budgeting."

For years, many of us have said we aren't investing enough in infrastructure. The Administration has given us a plan, a comprehensive look at transportation. One that seeks to create more investment in transportation infrastructure and takes responsible positions on several underutilized modes. Take railroads. The Administration recognizes that there is significant underutilization of railroad capacity. It won't support bigger, heavier trucks unless truckers pay their fair share.

While I can't and don't support lock, stock and barrel where they want transit to go, they've got some good ideas.

Predictability. From spending down the trust fund, to relying more on formula funding, the Administration has some good ideas about addressing the budgetary uncertainties you face every year.

Greater local accountability. The bill's increase in the local share for new start projects generally reflects the trend we have witnessed in recent years. And up to a point there should be greater local funding of new rail projects. We don't need anymore Miami metro movers where the 25% of projected ridership actually attained is the reciprocal of the 75% federal funding share.

Together with strict, cost effective criteria for building new rail projects, I think the Administration is on the right track.

Flexibility. In principle, the proposal enabling shifting of transit and highway dollars is an important new tool for transportation planners. Like you, I've got some very strong concerns about the highway bias in this proposal, but it is at least a good start toward greater local involvement in overall transportation planning.

Having said this, I must admit that this plan still falls short of meeting the needs of transit and of the people who depend on it.

Cutting operating assistance while increasing the local share of projects is a plan to raise fares to a level no one can afford.

Keeping federal transit assistance at current levels for five years, while increasing federal highway aid by almost 40% strengthens America's love affair with the private auto.

The highway bias becomes even more clear considering only 30% of highway funds can be used for transit, while nearly all transit funds can be used for highways.

Don't get me wrong. I'm a big fan of the highway and bridge program. Coming from Pittsburgh, the City of a Thousand Bridges, I know the criticality of the need for greater investment in our roads and bridges.

But that investment must not come at the expense of moving people. It must not come at the expense of your systems.

The Administration's proposal to invest the mass transit account, to spend it down, is a proposal we all support. But to rely solely on the transit penny-and-a-half set aside of the gas tax is a dangerous idea.

The mass transit account, given access to the unobligated balance and all current revenues plus interest, seems to be able to support a $3.3 billion annual spend down from FY 92 to FY 96.

But where will we be five years from now? $900 million in the trust fund and only one cent of the gas tax supporting the program. Not only will even a $3 billion program be impossible under this scenario, but transit will be left high and dry, without any Federal support from general appropriations.

Transit must not be left high and dry. The transit program must remain viable beyond FY 96. It is for this reason, I will continue to fight for general revenue support from appro-

priations, while fighting for spending the trust fund.

These are tough issues. But the Secretary of Transportation and the head of UMTA both have solid experience in running a major transit system. They do understand your needs.

Last year, I was very involved in reauthorizing the Washington, D.C., Metro system. I heard from many of you—keep Metro out of Section 3! We don't want to compete with America's Subway for dollars! We were able to accomplish just this.

Sam Skinner and Brain Clymer negotiated in better than good faith. They're tough, but fair. They listen. We made a clear case for Metro, and they understood the needs of the transit community. They do understand your needs and I'm confident we can put together a good bill that will take UMTA well into the '90's.

While we have a good chance in convincing the Administration, I don't think we've convinced all the people of transit's importance. And we need to broaden our focus.

We need to support the type of transportation policies that address America's obsession with the car. That means supporting stricter CAFE standards. That means ensuring the tax code doesn't encourage parking while treating transit passes with kid gloves. That means getting gas guzzlers off the road.

Suppose Saddam Hussein had been lucky and burned the Saudi oil fields as well as Kuwaiti. Suppose the President's hands were tied and Saddam captured the entire Gulf's oil resources.

How would people get to work if they couldn't afford to drive? Transit.

Our highways are called the National System of Interstate and Defense Highways. The Federal Government invested in highways for national security reasons. It's time we recognize that transit too plays an important role in our national security, our national well-being.

The day will come when driving is simply too expensive to make it worthwhile. And our transit systems are the only ones who will be there to fill the void.

RELIEF FOR MICHIGAN'S UNEMPLOYED WORKERS

Mr. RIEGLE. Mr. President, I rise today on a subject that affects working men and women across the country, particularly in those areas like my home State of Michigan.

I am both pleased and saddened that we are discussing this matter today. I am pleased that the White House and the distinguished Senator from West Virginia have responded to my requests and the requests of others to consider the increased needs of State unemployment insurance offices. We have a nationwide shortfall of between $150 and $200 million, resulting in waiting lines of half a day or more, and processing delays of 6 to 7 weeks.

A few weeks ago I wrote the Senator from West Virginia and the President asking for more money on an emergency basis. I am pleased that the Appropriations Committee has responded by passing $150 million to cover administrative costs for State offices, and they have given this funding emergency designation.

Working men and women across the country are losing their jobs or facing indefinite layoffs. We owe these people some protection against the hardships of job loss. In fact, while they were working, they paid in a little each month to the unemployment insurance system. Now that they are out of work, they have a right to expect that the system will work when they need it.

But in recent years, the Federal Government has cut back on assistance to the State offices. To some, those cuts made sense when our economy boomed in the 1980's. And as we cut that Federal aid, the States cut budgets and staff at unemployment offices. In my State alone, the total staff in State unemployment offices has dropped from 6,200 to 2,400 in a decade. Now as Michigan workers turn to their State unemployment system that they have paid for, they face a system overwhelmed by an $8 million shortfall, a system that cannot respond to their needs.

I represent a trucker from Sterling Heights, MI, named Tim Peck who lost his job and had to wait 7 weeks to get his first unemployment check. When he called the local unemployment office, the phone was busy or it was not answered. Discouraged with his inability to get any information on his application's status, Mr. Peck finally had to get in line at 7 on a cold winter morning with 30 other people to ask in person why he had not seen any money. Lynn Feehan is another constituent of mine. She lost her job at a photography studio and had to wait 9 weeks, I repeat, 9 weeks for her first unemployment check to arrive.

These cases and the many like them across the country are not statistics. They are real people who cannot pay the mortgage, the grocery bills, the rent, the doctor's bill, or put something away for their children's tuition. We set up a system that promised to help working men and women when times got rough. Well, times have gotten rough. It's time for us to live up to our end of the bargain.

I urge my colleagues to rectify this problem, to get the help to the people in our States who need it. I urge you to vote for this appropriations bill so we can help our State unemployment offices work the way they were intended to.

NOMINATION OF ROBERT MARTINEZ TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY

Mr. FORD. Mr. President, as in executive session, I ask unanimous consent that when the Senate proceeds to consider the nomination of Bob Martinez to be Director of National Drug Control Policy, it be considered under a 90-minute time agreement, equally divided between the chairman and ranking member of the Committee on the Judiciary; that following the conclusion or yielding back of time, the Senate vote on the nomination without any intervening action; that the motion to reconsider be laid upon the table; 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.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCATHRAN, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE ARMS CONTROL AND DISARMAMENT AGENCY—MESSAGE FROM THE PRESIDENT—PM 30

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I am pleased to transmit the United States Arms Control and Disarmament Agency annual report for 1990. This report deserves your close review.

The year 1990 witnessed the signing of the multilateral Conventional Armed Forces in Europe (CFE) Treaty, which, when satisfactorily implemented, will be a major step in reducing the numbers of deployed weapons in the area bounded by the Ural Mountains and the Atlantic Ocean. The U.S.-U.S.S.R. Chemical Weapons Destruction Agreement was also signed. Significantly, both the Treaty Between the United States and the Soviet Union on Underground Nuclear Weapon Tests (TTBT) and the Treaty on Underground Nuclear Explosions for Peaceful Purposes (PNET) entered into force. Substantial progress was made during 1990 in the Strategic Arms Reductions Talks (START) and in our efforts to curb the worldwide proliferation of weapons of mass destruction.

The Arms Control and Disarmament Agency's 1990 annual report provides details of these and other developments, including the conduct of arms control negotiations, the coordination of treaty implementation procedures, and other activities conducted pursu-

ant to the Arms Control and Disarmament Act.

As the report illustrates, the dramatic changes in Eastern Europe and in U.S.-U.S.S.R. relations have not diminished the importance of effective and verifiable arms control agreements.

GEORGE BUSH.

THE WHITE HOUSE, *March 20, 1991.*

MESSAGES FROM THE HOUSE

At 4:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 751. An act to enhance the literacy and basic skills of adults, to assure that all adults in the United States acquire the skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives, and to strengthen and coordinate adult literacy programs;

H.R. 831. An act to designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service";

H.R. 902. An act to provide assistance to recipients of loans from the Small Business Administration who are affected by military service as a part of Operation Desert Storm, and for other purposes;

H.R. 971. An act to designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office"; and

H.R. 1285. An act to resolve legal and technical issues relating to Federal postsecondary student assistance programs and to prevent undue burdens on participants in Operation Desert Storm, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 57. A concurrent resolution deploring the blatant destruction of the environment in the Persian Gulf region, and declaring that Saddam Hussein and the current Iraqi regime should be held liable under United Nations Security Council Resolution 686 for these cruel acts against the environment.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 831. An act to designate the Owens Finance Station of the United States Postal Service in Cleveland, Ohio, as the "Jesse Owens Building of the United States Postal Service"; to the Committee on Governmental Affairs; and

H.R. 971. An act to designate the facility of the United States Postal Service located at 630 East 105th Street, Cleveland, Ohio, as the "Luke Easter Post Office"; to the Committee on Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 57. A concurrent resolution deploring the blatant destruction of the environment in the Persian Gulf region, and declaring that Saddam Hussein and the current Iraqi regime should be held liable under United Nations Security Council Resolution 686 for these cruel acts against the environment; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

Pursuant to the order of the Senate of March 11, 1991, the following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 751. An act to enhance the literacy and basic skills of adults, to ensure that all adults in the United States acquire the basic skills necessary to function effectively and achieve the greatest possible opportunity in their work and in their lives, and to strengthen and coordinate adult literacy programs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-779. A communication from the Secretary of Agriculture and the Administrator of the Agency for International Development, transmitting jointly, pursuant to law, the seventh quarterly report on progress made in implementing the recommendations of the Agricultural Trade and Development missions; to the Committee on Agriculture, Nutrition, and Forestry.

EC-780. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report of the Department of Defense Reserve Forces Policy Board for fiscal year 1990; to the Committee on Armed Services.

EC-781. A communication from the Acting Under Secretary of Defense (Acquisition), transmitting, pursuant to law, certification with respect to the Harpoon program; to the Committee on Armed Services.

EC-782. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a "Pay-As-You-Go Status Report"; to the Committee on the Budget.

EC-783. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend the National Sea Grant College Program Act, as amended, to authorize appropriations for fiscal years 1992 and 1993; to the Committee on Commerce, Science, and Transportation.

EC-784. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, the semiannual report on the effectiveness of the Civil Aviation Security Program for the period July 1 to December 31, 1989; to the Committee on Commerce, Science, and Transportation.

EC-785. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-786. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-787. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-788. A communication from the Commissioner of the Bureau of Reclamation, Department of the Interior, transmitting, pursuant to law, a report stating that it is necessary to construct modifications to the O'Neill Forebay Dam, Central Valley Project, California; to the Committee on Energy and Natural Resources.

EC-789. A communication from the Acting Assistant Secretary of the Interior (Policy, Management, and Budget), transmitting, pursuant to law, the final reports of the Bureau of Land Management and the Fish and Wildlife Service on the implementation of section 318 of the 1990 Department of the Interior and Related Agencies Appropriations Act; to the Committee on Energy and Natural Resources.

EC-790. A communication from the Administrator of General Services, transmitting, pursuant to law, copies of certain lease prospectuses; to the Committee on Environment and Public Works.

EC-791. A communication from the Chairman of the Advisory Committee for Trade Policy and Negotiations, transmitting, pursuant to law, the findings and recommendations of the Committee regarding the President's request that Congress extend fast-track procedures implementing legislation for trade agreements; to the Committee on Finance.

EC-792. A communication from the President of the African Development Foundation, transmitting a draft of proposed legislation to authorize appropriations for the African Development Foundation; to the Committee on Foreign Relations.

EC-793. A communication from the Executive Director of the Board for International Broadcasting, transmitting a draft of proposed legislation to amend the Board for International Broadcasting Act of 1973, as amended, to authorize appropriations for fiscal years 1992 and 1993 for carrying out that Act and the Inspector General Act of 1978, as amended; to the Committee on Foreign Relations.

EC-794. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to March 14, 1991; to the Committee on Foreign Relations.

EC-795. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the annual report of the Board under the Government in the Sunshine Act for calendar year 1990; to the Committee on Governmental Affairs.

EC-796. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission on competition advocacy for fiscal year 1990; to the Committee on Governmental Affairs.

EC-797. A communication from the Secretary of Housing and Urban Development, as Chairman, and the Secretary of Health

and Human Services, as Vice-Chairman, of the Interagency Council on the Homeless, transmitting jointly, pursuant to law, the annual report of the Council for 1990; to the Committee on Governmental Affairs.

EC-798. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, the annual report of the Board for fiscal year 1990; to the Committee on Governmental Affairs.

EC-799. A communication from the Chairman of the Federal Reserve Board, transmitting, pursuant to law, the annual report for calendar year 1990; to the Committee on Governmental Affairs.

EC-800. A communication from the General Counsel of the Department of Defense, transmitting, pursuant to law, a draft of proposed legislation to amend the Ethics in Government Act of 1978 to authorize an extension of time for filing financial disclosure reports required by such Act for persons serving in a designated combat zone for up to 180 days after the person returns from such combat zone; to the Committee on Governmental Affairs.

EC-801. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a copy of the report entitled "Review of Receipts and Disbursements of the Office of the People's Counsel Agency Trust Fund"; to the Committee on Governmental Affairs.

EC-802. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a copy of the report entitled "Review of Fiscal Year 1990 Promotions—June 1, 1990–September 30, 1990"; to the Committee on Governmental Affairs.

EC-803. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the annual report of the Department of Defense under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-804. A communication from the Assistant Administrator of the Agency for International Development (Legislative Affairs), transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-805. A communication from the President of the Institute of American Indian and Alaska Culture and Arts Development, transmitting, pursuant to law, the annual report of the Institute for calendar year 1990; to the Committee on the Judiciary.

EC-806. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the annual report of the Endowment under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-807. A communication from the Postmaster General, transmitting, pursuant to law, the annual report of the United States Postal Service under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-808. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-809. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1990; to the Committee on the Judiciary.

EC-810. A communication from the Attorney General of the United States, transmitting a draft of proposed legislation to amend the Civil Rights Act of 1964 to strengthen protections against discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

EC-811. A communication from the Chairman and Members of the Railroad Retirement Board, transmitting, pursuant to law, a report on the Railroad Retirement Account's ability to pay benefits in each of the next five years; to the Committee on Labor and Human Resources.

EC-812. A communication from the Acting Secretary of Education, transmitting, pursuant to law, notice of final funding priorities for the Upward Bound and Talent Search Programs for Fiscal Year 1991; to the Committee on Labor and Human Resources.

EC-813. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the annual report on Department of Veterans' Affairs contract care programs; to the Committee on Veterans' Affairs.

EC-814. A communication from the General Counsel of the Department of the Treasury, transmitting a draft of proposed legislation to provide comprehensive regulatory supervision over stocks and stock derivative instruments, to protect investors and assure the stability of the United States capital markets, to enhance innovation and competition in financial products, and for other purposes; to the Committee on Agriculture.

EC-815. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report on the taxation of Social Security and Railroad Retirement benefits in calendar years 1987 and 1988; to the Comittee on Finance.

EC-816. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, reports on implementation of the SEED Act of 1989 and the Environment; to the Committee on Foreign Relations.

EC-817. A communication from the Senior Vice President and Chief Financial Officer of the Tennessee Valley Authority, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect for fiscal year 1990; to the Committee on Governmental Affairs.

EC-818. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on all calendar year 1990 actions taken by NASA which involve actual or potential cost to the United States in excess of $50,000; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FORD, from the Committee on Rules and Administration, without amendment and with a preamble:

H. Con. Res. 45: A concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony to commemorate the days of remembrance of victims of the Holocaust.

By Mr. FORD, from the Committee on Rules and Administration, without amendment:

S. Res. 79: A resolution authorizing printing additional copies of Senate report titled "Developments in Aging: 1990."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from a Committee on Labor and Human Resources:

George H. Oberle Jr., of Oklahoma, to be a member of the National Council on Disability for a term expiring September 17, 1992;

Mikiso Hane, of Illinois, to be a member of the National Council on the Humanities for a term expiring January 26, 1996;

Donald Hall, of New Hamsphire, to be a member of the National Council on the Arts for a term expiring September 3, 1996;

Catherine Yi-yu Cho Woo, of California, to be member of the National Council on the Arts for the remainder of the term expiring September 3, 1994;

Marta Istomin, of the District of Columbia, to be a member of the National Council on the Arts for a term expiring September 3, 1996; and

Bernadine P. Healy, of Ohio, to be Director of the National Institutes of Health.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. NUNN, from the Committee on Armed Services:

Duane H. Cassidy, of Virginia, to be a member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 102d Congress;

William L. Ball III, of Georgia, to be a member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 102d Congress; and

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Anthony J. Burshnick, 193-26-5025, U.S. Air Force.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. SANFORD:

S. 696. A bill to amend the Bank Holding Company Act of 1956; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SYMMS (for himself, Mr. CRAIG, Mr. COATS, Mr. LOTT, Mr. COCHRAN, Mr. KASTEN, and Mr. WALLOP.

S. 697. A bill to amend the Internal Revenue Code of 1986 to provide for the indexing of certain assets, to restore a capital gains tax differential for small business stock, and for other purposes; to the Committee on Finance.

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 698. A bill to amend the Internal Revenue Code of 1986 to provide for 50 percent exclusion of long-term capital gains, and for other purposes; to the Committee on Finance.

By Mr. BRYAN (for himself and Mr. REID):

S. 699. A bill to amend the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after January 31, 1998; to the Committee on Energy and Natural Resources.

By Mr. DURENBERGER (for himself, Mr. MCCAIN, Mr. WALLOP, and Mr. JEFFORDS):

S. 700. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on insurance companies not meeting certain requirements with respect to health insurance provided to small employers; to the Committee on Finance.

By Mr. COATS:

S. 701. A bill to amend the Internal Revenue Code of 1986 to increase the amount of the exemption for dependent children under age 18 to $3,500, and for other purposes; to the Committee on Finance.

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 702. A bill to authorize the planning and construction of the Mid-Dakota Rural Water System Project; to the Committee on Energy and Natural Resources.

By Mr. HEINZ (for himself and Mr. ROCKEFELLER):

S. 703. A bill to amend the Harmonized Tariff Schedule of the United States to correct the tariff rate inversion on certain iron and steel pipe and tube products; to the Committee on Finance.

By Mr. HEINZ:

S. 704. A bill to provide for the temporary suspension of duty on certain chemicals, and for other purposes; to the Committee on Finance.

S. 705. A bill to suspend temporarily the duty on certain chemicals, and for other purposes; to the Committee on Finance.

S. 706. A bill to extend the temporary duty suspension on certain knitting machines and parts, and for other purposes; to the Committee on Finance.

S. 707. A bill to extend until January 1, 1995, the existing suspension of duty on certain wools; to the Committee on Finance.

By Mr. NUNN (for himself and Mr. FOWLER):

S. 708. A bill to suspend temporarily the duty on fluometuron and IBTF; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. COCHRAN, Mr. CRAIG, Mr. HELMS, Mr. LEVIN, Mr. LOTT, Mr. LUGAR, Mr. MCCONNELL, Mr. PRESSLER, Mr. SHELBY, Mr. SIMON, Mr. SYMMS, and Mr. THURMOND):

S. 709. A bill to amend the Internal Revenue Code to allow a deduction for qualified adoption expenses, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. DIXON, Mr. SIMON, and Mr. DOLE):

S. 710. A bill to amend the Internal Revenue Code of 1986 to provide a permanent extension for the issuance of first-time farmer bonds; to the Committee on Finance.

By Mr. SEYMOUR:

S. 711. A bill to authorize the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SYMMS (for himself, Mr. LIEBERMAN, Mr. GRASSLEY, Mr. LOTT, Mr. WALLOP, Mr. BURNS, and Mr. CRAIG):

S. 712. A bill to amend section 411F(2) of the Higher Education Act of 1965 to exclude as an asset the net value of the family's principal place of residence and a family farm on which the family resides; to the Committee on Labor and Human Resources.

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 713. A bill to reform the Federal deposit insurance system, to improve the supervision and regulation of federally insured depository institutions, to reform the financial services industry as to the activities in which that industry may engage, to consolidate the regulatory structure for depository institutions, to recapitalize the bank insurance fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COCHRAN:

S. 714. A bill to provide for the establishment of the Margaret Walker Alexander National African-American Research Center; to the Committee on Labor and Human Resources.

By Mr. BURNS (for himself, Mr. DOLE, Mr. DIXON, Mr. BOREN, Mr. SYMMS, Mr. BAUCUS, Mr. GRASSLEY, Mr. LOTT, Mr. WIRTH, Mr. BROWN, Mr. CONRAD, Mr. NICKLES, Mr. PRESSLER, Mr. COCHRAN, Mr. SHELBY, Mr. MACK, Mr. WALLOP, Mr. COATS, Mr. FORD, Mr. SMITH, Mr. BURDICK, Mr. BOND, Mr. HELMS, Mr. KASTEN, Mr. GRAMM, Mr. SIMPSON, Mr. LUGAR, Mr. FOWLER, Mr. PRYOR, Mr. STEVENS, Mr. MCCONNELL, Mr. DASCHLE, Mr. KERREY, Mr. EXON, Mr. HEINZ, Mr. DOMENICI, and Mr. HEFLIN):

S. 715. A bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer; to the Committee on Commerce, Science, and Transportation.

By Mr. JEFFORDS (for himself, Mr. DOMENICI, Mr. WIRTH, Mr. BURDICK, Mr. BURNS, Mr. DASCHLE, Mr. CONRAD, Mr. SHELBY, Mr. CRAIG, Mr. SEYMOUR, Mr. REID, Mr. KERREY, Mr. AKAKA, and Mr. BINGAMAN):

S. 716. A bill to establish a replacement fuels and alternative fuels program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself and Mr. INOUYE):

S.J. Res. 97. A joint resolution to recognize and honor members of the reserve components of the Armed Forces of the United States for their contribution to victory in the Persian Gulf; to the Committee on Armed Services.

By Mr. EXON (for himself, Mr. ADAMS, Mr. AKAKA, Mr. BENTSEN, Mr. BIDEN, Mr. BRADLEY, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. BYRD, Mr. COATS, Mr. CONRAD, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. FORD, Mr. FOWLER, Mr. GLENN, Mr. GORE, Mr. GRASSLEY, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JEFFORDS, Mr. KASTEN, Mr. KENNEDY, Mr. KERRY, Mr. KERREY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. PRYOR, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. SANFORD, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. WARNER, and Mr. WELLSTONE):

S.J. Res. 98. A joint resolution to express appreciation for the benefit brought to the Nation by Amtrak during its 20 years of existence; to the Committee on Commerce, Science, and Transportation.

By Mr. GLENN (for himself, Mr. BRADLEY, Mr. REID, Mr. MOYNIHAN, Mr. CONRAD, Mr. SANFORD, Mr. WARNER, Mr. DIXON, Mr. JEFFORDS, Mr. CRANSTON, and Mr. MURKOWSKI):

S.J. Res. 99. A joint resolution designating November 24–30, 1991, and November 22–28, 1992, as "National Family Caregivers Week;" to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MACK (for himself and Mr. GRAHAM):

S. Con. Res. 23. A concurrent resolution deploring the blatant destruction of the environment in the Persian Gulf region, and declaring that Saddam Hussein and the current Iraqi regime should be held liable under U.N. Security Council Resolution 686 for these cruel acts against the environment; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANFORD:

S. 696. A bill to amend the Bank Holding Company Act of 1956; to the Committee on Banking, Housing, and Urban Affairs.

BANK EFFICIENCY ACT

Mr. SANFORD. Mr. President, I rise to introduce an important piece of banking legislation, the Bank Efficiency Act. I am pleased that my colleague from North Carolina, Mr. NEAL, is introducing the same legislation in the House of Representatives today as well. I am confident that this legislation, if enacted, would go a long way toward permitting many of our banks to operate more efficiently and more effectively, without costing taxpayers any money, without expanding the powers of banks and without trampling on the rights of our States to regulate State-chartered banks.

Many of our banking laws were enacted during the early 1930's, at a time when few banks expanded beyond their local market. Our laws governing the expansion of banks into other States reflect many of those 1930s concepts. But they do not reflect the world of today, when bank customers often live in one State, work in another and want access to their funds wherever they might be.

Nor do our laws reflect the realities of today. Thirty-three States have voted to permit nationwide interstate banking; 13 others permit interstate

banking within regional compacts. But Federal law prohibits branching across state lines. So although changes in state laws have permitted banks to set up operations in a variety of places, these operations must be set up through the more cumbersome and inefficient system of a separate bank. This makes no sense. We do not require industrial companies who sell in all 50 States to set up 50 separate companies, each with their own boards, accounting and reporting requirements and we ought not to require such an inefficient legal structure for banks.

My bill is very simple—it basically says that where institutions are permitted to set up a bank, they are permitted to set up a branch of their bank. This means that banks who already operate in a number of States can consolidate and streamline their operations into branches of their home banks, rather than being forced to set up separate institutions in each State.

Current law prohibits interstate branching. Thus, when a bank wishes to expand into another State, as permitted by State law, the bank can only do so through establishing a separate bank in that new State. The establishment of that bank carries with it substantial operating costs for separate boards of directors, separate regulatory requirements, separate audits, separate legal fees, separate accounting systems and duplicative personnel. My bill would allow banks to save those costs, without expanding their activities beyond those currently permitted and without giving them access to new geographic markets.

The costs that could be saved from permitting such interstate branching are substantial. The Treasury Department, in announcing it financial modernization approach, noted that Bank of America believes it could save $50 million per year, year after year from such an approach. It has been suggested that C&S/Sovran bank could save in the order of $35 million. Numerous other banks with multi-state operations could realize similar savings. All and all, at a time when banks need more capital, it only makes sense to permit banks to streamline their operations into a legal structure that is as efficient as possible, without undermining our current regulatory structure. Given the need to make banks more profitable so that there is less of a demand on the FDIC, we ought not to leave in place a government-mandated inefficiency in operating structure, when it costs the government nothing to change that structure.

Also, many of these savings could be passed on to consumers, making banking more competitive and cost efficient. In addition, interstate branching can create convenience for consumers, especially those who cross State lines for work or other activities. Removing the restrictions on interstate branching would remove the current impediment consumers face who have a bank account in one State but cannot get full-service banking from an affiliated bank in another State without opening a separate account.

Mr. President, I do not introduce this bill because I believe that it is the only approach to this issue. Indeed, I am currently a cosponsor of a bill introduced by my colleague from Connecticut, Mr. DODD, of a bill to permit nationwide interstate branching. I think that is the best approach. The Treasury, with some phase in times, has also suggested nationwide interstate branching. I hope we can achieve that. I would like to see the Congress pass laws that permit banks to diversify their risk and move outside of any narrow geographic regions.

However, I am concerned that there may be resistance to nationwide interstate branching. If that is the case, then I think the Bank Efficiency Act represents a fine compromise. It permits branching wherever interstate banking is already permitted, but does not go as far as nationwide interstate branching. It therefore represents the minimum of what I think the Congress should do this year. We simply must change some outmoded laws to permit our banks to operate in as efficient a manner as possible, particularly when we can do so without cost to the taxpayers and without changing the scope of activities of banks.

I urge my colleagues to take a look at this compromise approach. I welcome their support for the Bank Efficiency Act. I also ask unanimous consent that the text of the Bank Efficiency Act be printed in the RECORD.

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

S. 696

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 "Bank Efficiency Act".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to facilitate the efficient operation of banks that are subsidiaries of multistate bank holding companies;

(2) to enhance the interstate delivery of banking services to both consumers and businesses; and

(3) to strengthen generally the operation of the banking system.

SEC. 3. AMENDMENTS TO THE BANK HOLDING COMPANY ACT.

(a) DEFINITIONS.—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 subsection:

"(n) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this Act, the term 'appropriate Federal banking agency' shall have the same meaning as such term is given in section 3(q) of the Federal Deposit Insurance Act.".

(b) INTERSTATE BANKING.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by striking "(d)" and inserting the following:

"(d) LIMITATION BY STATE BOUNDARIES.—

"(1) IN GENERAL.—"; and

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

"(2) INTERSTATE COMBINATION.—

"(A) A bank holding company having subsidiary banks located in more than one State may combine two or more of such banks into a single bank by means of merger, consolidation, or other transaction.

"(B) Nothing in this paragraph shall be deemed to authorize—

"(i) a national bank to operate branches at locations in a State unless a national bank having offices only in such State could operate branches at such locations;

"(ii) a State-chartered bank to operate branches at locations in a State unless a State-chartered bank having branches only in such State could operate branches at such locations; or

"(iii) a State-chartered bank to operate branches at locations outside its chartering State in contravention of such chartering State's laws.

"(C) This paragraph does not affect any other requirement for regulatory approval or any other procedures that are applicable under Federal or State law to a combination authorized by subparagraph (A).

"(D) A bank resulting from a combination authorized by subparagraph (A) may retain and operate all existing main offices and branches in each bank involved in such combination and in existence at the time of such combination.

"(E) A national bank resulting from a combination authorized under subparagraph (A) may establish additional branches in any State in which it has branches to the same extent and same manner that a national bank having branches only in such State, may establish branches in such State.

"(F) A national bank resulting from a combination authorized by subparagraph (A) shall be entitled to exercise at each of its branches, all powers and privileges conferred by Federal law. To the extent that Federal law references State law, the applicable State law for each branch shall be the law of the State in which the branch is located, except that for purposes of section 5197 of the Revised Statutes, the appropriate State law shall be the law of the State in which the main office named in the bank's organization certificate is located.

"(G) A State-chartered bank resulting from a combination authorized under subparagraph (A) may, subject to the approval of the appropriate State regulatory authority, establish additional branches in any State in which it has branches, to the extent and in the same manner as a State bank chartered in such State and having branches only in such State. For purposes of this subparagraph, the appropriate State regulatory authority is solely the State bank supervisor for the State in which the branch is proposed to be established.

"(H) A State-chartered bank resulting from a combination authorized by subparagraph (A) shall be entitled to exercise at each of its branches, all powers and privileges conferred by the law of its chartering State and Federal law. However, a branch of such bank located in a State other than the chartering State of the bank, may not exercise any power or privilege that is not permitted under the laws of the State in which

the branch is located, for a branch located within such State of a bank chartered by such State. The State bank supervisor of the State in which the bank is chartered shall have authority to determine whether an activity of a branch is permissible as a matter of State law. If a branch is located in a State other than the chartering State, the State bank regulator for the State in which the branch is located may independently determine whether an activity of the branch is permissible under the law of such State.

"(I) A State-chartered bank resulting from a combination authorized by subparagraph (A) shall be subject to State supervision only by the State bank supervisor for the State in which the bank is chartered. The State bank supervisor for the State in which a branch is located may enter into a cooperative agreement with the supervisor for the chartering State to facilitate supervision of the bank and its branches. Nothing in this subparagraph shall affect the jurisdiction or authority of the appropriate Federal banking agency to supervise or examine a State chartered bank and all of its branches.

"(J) A bank may not participate in a combination otherwise authorized by subparagraph (A) if, as of the date of the filing with the appropriate Federal banking agency of an application for approval of such combination, the State in which such bank is located has a statute, enacted within 2 years following the effective date of this paragraph, that provides by express language and not merely by implication that no bank located in such State may combine with any other bank pursuant to the authority conferred by subparagraph (A).

"(K) If a bank resulting from a combination authorized by subparagraph (A) ceases to be a subsidiary of a bank holding company, it shall, within 2 years after the date on which it is no longer a subsidiary of a bank holding company, no longer be entitled to the benefits of this paragraph, and shall comply with all provisions of Federal or State law restricting the geographic location of its branches. The appropriate Federal banking agency may, upon application by a bank, extend the 2-year period described in this subparagraph, for not more than one year at a time, if such extension would not be detrimental to the public interest. No such extensions shall, in the aggregate, exceed 3 years.

"(L) If a bank that is combined with another bank pursuant to subparagraph (A) is subject to conditions imposed by State law pursuant to paragraph (1), the resulting bank shall comply with such conditions to the same extent that the bank originally subject to such conditions was obligated to do so.

"(M) For purposes of this paragraph—

"(i) a national bank is located in the State named in its organization certificate, and a State-chartered bank is located in the State in which it is chartered; and

"(ii) when a bank seeks pursuant to this paragraph to operate branches in a State other than the State in which the bank is located, the first location in such other State at which the bank seeks to operate a branch shall be considered to be the main office of the bank located in such other State.".

SEC. 4. NATIONAL BANK ACT AMENDMENTS.

(a) CONVERSIONS TO NATIONAL BANKS.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended in the first sentence by inserting before the period "unless said conversion is undertaken in connection with a combination authorized by section 3(d)(2) of the Bank Holding Company Act of 1956".

(b) DIRECTOR QUALIFICATIONS.—Section 5146 of the Revised Statutes (12 U.S.C. 72) is amended in the first sentence by striking "and at least two-thirds" and all that follows through "continuance in office,".

SEC. 5. EMERGENCY ACQUISITION AUTHORITY.

Notwithstanding any other provision of this Act—

(1) the amendments made by this Act shall not be construed to limit or otherwise impair the authority of the Federal Deposit Insurance Corporation to authorize extraordinary or emergency acquisitions under section 11(n)(8)(B) or subsections (f) or (k) of section 13 of the Federal Deposit Insurance Act;

(2) no bank holding company that has acquired a bank in accordance with section 11(n)(8)(B) or section 13(f) of the Federal Deposit Insurance Act shall, by reason of the combination of such bank with any other bank in accordance with section 3(d)(2) of the Bank Holding Company Act of 1956, as amended by this Act, lose or otherwise be deprived of any rights or privileges provided to the bank holding company under Federal law by virtue of the acquisition, including rights or privileges provided under section 13(f) of the Federal Deposit Insurance Act.

By Mr. SYMMS (for himself, Mr. CRAIG, Mr. COATS, Mr. LOTT, Mr. COCHRAN, Mr. KASTEN, and Mr. WALLOP):

S. 697. A bill to amend the Internal Revenue Code of 1986 to provide for the indexing of certain assets, to restore a capital gains tax differential for small business stock, and for other purposes; to the Committee on Finance.

CAPITAL GAINS INDEXING ACT

Mr. SYMMS. Mr. President, I would bet every Senator has had more than his fill of debate over capital gains. It seems we've had to fight this battle every year since the capital gains exclusion was repealed as part of the 1986 Tax Reform Act.

In the last Congress we went through a long and difficult debate over capital gains. As the 102d Congress unfolds, it seems we'll have to go through the debate again. Those of us who support reducing the tax are readying our arguments, as are those on the other side.

And all the time we're debating, long-term investment is suffering and taxpayers are subjected to a tremendously unfair tax.

This year, when President Bush included capital gains reduction in his State of the Union Address there was a near audible sigh of relief in some quarters, and of derision in others.

Some opponents of a capital gains reduction criticized the President for offering up, in their words, "the same old, tired policies of the past."

Perhaps it's not the policies but the politicians who are old and tired.

In any case, I think it's ironic that the President should be accused of bringing back failed proposals when the only thing failed about them is that they couldn't overcome certain powerful interests in the Congress, particularly in this body, while at the same time his accusers are bringing back their own defeated and discredited policies, such as job quotas and higher taxes.

Senators and Congressmen and Congresswomen may be tired of this debate, but the American people are fed-up. They are fed-up with talk. They are fed-up with paying taxes on capital gains that are due solely to inflation.

You know what's really sad? No matter how it turns out, if we continue down the present course we'll be back at it in the 103d Congress, and the 104th, and so on. If we pass a broad, flat exclusion with a 1-year holding period this year, somebody will try to repeal it next year.

And it'll only be a matter of time before they succeed. Maybe it'll be repealed as part of another major tax reform. Maybe it'll be repealed as a simple revenue-raiser. Who knows? What I do know is that it'll be repealed again on some sad day.

And if we cannot pass a simple capital gains exclusion this year we'll try again next year, and the year after that, and the year after that until we succeed.

Whatever happens, as long as we remain stuck on a broad exclusion for 1-year capital gains, the issue will never be settled, and taxpayers and our economy will continue to suffer.

So, what's the solution? How do we get out of this unproductive cycle?

Simple, index capital gains for inflation as the bill I am introducing today along with Senators CRAIG, COATS, COCHRAN, LOTT, and KASTEN proposes. And give an exclusion for all assets that are held for 5 years or more, as the bill introduced by my fellow Idahoan, Senator CRAIG, proposes.

I think a large majority of the Senate could agree to both indexing and a long-term exclusion. This would remove a great unfairness in the Tax Code—the taxation of inflationary capital gains—and would encourage long-term investment.

My bill does two things. First and foremost, it indexes capital gains for inflation. When a taxpayer buys and later resells an asset, he figures his capital gains tax liability. The inflation that occurs between the time he buys the asset and the time he sells it is reflected in the sale price. Part of the capital gain reflects a real increase in its value. But part of the gain reflects the increase in the general price level. This part of the gain isn't real, it's a phantom, and it shouldn't be taxed.

Capital gains indexing would mean a taxpayer would owe tax on the increase in the asset's value, not on its inflation-distorted price.

To see how indexing works, suppose you bought a grocery store for $100,000 and you resold it 20 years later for $250,000. Suppose inflation averaged 4 percent a year over the period, and the statutory tax rate was 28 percent.

Under the current rules, you would owe $42,000 in tax on $150,000 in nominal capital gains.

In fact, however, over 80 percent of the nominal capital gain is due solely to inflation. Under current law, you have to pay $42,000 on just over $130,800 in real capital gains. That's not fair in anybody's book.

With capital gains indexing, the taxpayer would be able to adjust the purchase price to just over $219,000 for calculating taxable capital gain. Subtracting the adjusted price from the sales price leaves this small businessman paying $8,650 in tax on real capital gains.

Even the best solutions sometimes have imperfections, and this is true of capital gains indexing. The one fair criticism of indexing is that it provides too little benefit to companies trying to raise venture capital.

When a company first issues shares to raise capital, the market demands a very high risk premium for those shares, which means the cost of capital to these companies is extraordinarily high. These growing companies have no choice, however, they must raise the equity capital to continue to grow.

One way of expressing the problem is that the price a company gets for its shares when it issues them is very low relative to the price the share purchaser hopes to get some years later if the company is successful. And this is where the criticism of capital gains indexing comes in. Because the basis or purchase price is so low relative to the sales price, and because indexing works by adjusting the basis upward to reflect inflation, indexing does little to reduce the capital gains tax for venture capital.

I believe the ability of small companies to grow is absolutely essential to the health of our economy. Through the energy and creativity of smaller companies comes many of the new products and new processes which raise our standard of living while sharpening our competitive edge in international trade.

To play this part, however, small companies must be able to raise equity capital, and to do this, we must lower their cost of capital.

And so the second part of my bill is a capital gains exclusion directed exclusively to the benefit of venture capital companies. Specifically, when a relatively small company issues shares, and provided the share purchaser holds those shares for at least 4 years, then the investor would be allowed a 33-percent exclusion, thereby reducing his statutory tax on venture capital gains to no more than about 20 percent.

This bill, in combination with Senator CRAIG's bill to encourage long-term investment, will help protect the American dream. By protecting, savers and homeowners, investors and pensioners, family farms and family businesses against being taxed on capital gains due to inflation, this bill removes a very real disincentive to save and to invest for the future.

By giving small businesses access to the capital they need to grow, this bill will bring new life to the hope of starting one's own business and succeeding in commerce.

And by encouraging long-term investment, Senator CRAIG's bill will help our economy to create new jobs, to raise incomes, to increase saving and investment, and to compete through the 1990's and beyond.

I would prefer to reduce the tax rate for assets held for 1 year and to allow indexing for assets held for 1 year. But I doubt we can win that battle. Maybe we could if the American people could vote on it, but not if the U.S. House of Representatives and the U.S. Senate vote on it.

But I think we can all agree that no one should have to pay tax on capital gains due to inflation. It is hard to imagine any tax policy that could be more unfair than taxing phantom capital gains.

And I think all of us accept the need to give small businesses better access to the capital they need to grow.

And I think all of us accept the need to encourage long-term investment and the vast majority of us can accept the idea of allowing an exclusion for assets that are held for at least 5 years.

So I believe it should be possible for an overwhelming majority of the Congress to support both of these bills. Let's pass these bills. Let's stop the unfair policy of taxing inflationary gains. Let's improve our economy's long-term performance. Let's stop holding the taxpayer and our economy hostage to a never-ending debate.

I ask unanimous consent that the full text of my bill be included in the RECORD following my remarks.

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

S. 697

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

TITLE I—INDEXATION OF CERTAIN CAPITAL ASSETS

SEC. 101. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) IN GENERAL.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) GENERAL RULE.—

"(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS.—Except as provided in paragraph (2), if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) EXCEPTION FOR DEPRECIATION, ETC.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) INDEXED ASSET.—

"(1) IN GENERAL.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) tangible property (or any interest therein), which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

"(2) CERTAIN PROPERTY EXCLUDED.—For purposes of this section, the term 'indexed asset' does not include—

"(A) CREDITOR'S INTEREST.—Any interest in property which is in the nature of a creditor's interest.

"(B) OPTIONS.—Any option or other right to acquire an interest in property.

"(C) NET LEASE PROPERTY.—In the case of a lessor, net lease property (within the meaning of subsection (h)(1)).

"(D) CERTAIN PREFERRED STOCK.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) STOCK IN FOREIGN CORPORATIONS.—Stock in a foreign corporation.

"(3) EXCEPTION FOR STOCK IN FOREIGN CORPORATION WHICH IS REGULARLY TRADED ON NATIONAL OR REGIONAL EXCHANGE.—Paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)), and

"(B) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(c) INDEXED BASIS.—For purposes of this section—

"(1) INDEXED BASIS.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) APPLICABLE INFLATION RATIO.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross national product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross national product deflator for the calendar quarter in which the asset was acquired by the taxpayer (or, if later, the calendar quarter ending December 31, 1991).

The applicable inflation ratio shall not be taken into account unless it is greater than 1. The applicable inflation ratio for any asset shall be rounded to the nearest one-tenth of 1 percent.

"(3) GROSS NATIONAL PRODUCT DEFLATOR.—The gross national product deflator for any calendar quarter is the implicit price deflator for the gross national product for such quarter (as shown in the first revision thereof).

"(d) SPECIAL RULES.—For purposes of this section—

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) a substantial improvement to property,

"(B) in the case of stock of a corporation, a substantial contribution to capital, and

"(C) any other portion of an asset to the extent that separate treatment of such por-

tion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—

"(A) IN GENERAL.—The applicable inflation ratio shall be appropriately reduced for calendar months at any time during which the asset was not an indexed asset.

"(B) CERTAIN SHORT SALES.—For purposes of applying subparagraph (A), an asset shall be treated as not an indexed asset for any short sale period during which the taxpayer or the taxpayer's spouse sells short property substantially identical to the asset. For purposes of the preceding sentence, the short sale period begins on the day after the substantially identical property is sold and ends on the closing date for the sale.

"(3) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(4) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(6) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(e) CERTAIN CONDUIT ENTITIES.—

"(1) REGULATED INVESTMENT COMPANIES; REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST FUNDS.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(E) QUALIFIED INVESTMENT ENTITY.—For purposes of this paragraph, the term 'qualified investment entity' means—

"(i) a regulated investment company (within the meaning of section 851),

"(ii) a real estate investment trust (within the meaning of section 856), and

"(iii) a common trust fund (within the meaning of section 584).

"(2) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(g) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

"(h) DEFINITIONS.—For purposes of this section—

"(1) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased real property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

"(2) STOCK INCLUDES INTEREST IN COMMON TRUST FUND.—The term 'stock in a corporation' includes any interest in a common trust fund (as defined in section 584(a)).

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 of such Code is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets for purposes of determining gain or loss."

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 of such Code (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—

For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets after December 31, 1991, see section 1022(a)(1)."

SEC. 102. EFFECTIVE DATE.

The amendments made by this title shall apply to dispositions after December 31, 1991, in taxable years ending after such date.

TITLE II—RESTORATION OF CAPITAL GAINS EXCLUSION FOR SMALL BUSINESS STOCK

SEC. 201. RESTORATION OF CAPITAL GAINS EXCLUSION FOR CERTAIN SMALL BUSINESS STOCK.

(a) TAXPAYERS OTHER THAN CORPORATIONS.—

"SEC. 1202. DEDUCTION FOR CAPITAL GAINS ON SMALL BUSINESS STOCK HELD MORE THAN 4 YEARS.

"(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a qualified small business net capital gain, there shall be allowed as a deduction from gross income an amount equal to 33 percent of such qualified small business net capital gain.

"(b) QUALIFIED SMALL BUSINESS NET CAPITAL GAIN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified small business net capital gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the net capital gain for the taxable year determined by taking into account only gain or loss from qualified small business stock with a holding period of at least 4 years at the time of the disposition.

"(2) QUALIFIED SMALL BUSINESS STOCK.—

"(A) IN GENERAL.—The term 'qualified small business stock' means stock which—

"(i) is issued by a qualified small business after the date which is 6 months after the date of the enactment of this section,

"(ii) is first acquired (whether directly or through an underwriter) by the taxpayer, and

"(iii) is not issued in redemption of (or otherwise exchanged for) stock not issued during the period described in clause (i).

"(B) QUALIFIED SMALL BUSINESS.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'qualified small business' means a corporation the paid-up capital of which immediately after the date of issuance described in subparagraph (A) is $100,000,000 or less.

"(ii) ACTIVE TRADE OR BUSINESS REQUIREMENT.—A corporation shall not be treated as a qualified small business unless such corporation—

"(I) was engaged in the active conduct of a trade or business during the 3-year period ending on the date of issuance described in subparagraph (A) (or if shorter, its period of existence), and

"(II) is so engaged immediately after such date.

"(iii) EXCEPTION FOR PERSONAL SERVICE CORPORATIONS.—The term 'qualified small business' shall not include a personal service corporation (within the meaning of section 269A(b)(1)).

"(c) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under section 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

(b) CORPORATIONS.—Section 1201 of the Internal Revenue Code of 1986 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) DEDUCTION FOR SMALL BUSINESS NET CAPITAL GAIN.—

"(1) IN GENERAL.—If for any taxable year a corporation has a qualified small business net capital gain—

"(A) there shall be allowed as a deduction from gross income an amount equal to 33 percent of such qualified small business net capital gain, and

"(B) paragraph (2) of subsection (a) shall be applied as if it read as follows:

'(2) a tax equal to the sum of—

'(A) 23 percent of the qualified small business net capital gain, plus

'(B) 34 percent of the net capital gain, reduced by the amount taken into account under subparagraph (A).'

"(2) QUALIFIED SMALL BUSINESS NET CAPITAL GAIN.—For purposes of this subsection, the term 'qualified small business net capital gain' has the meaning given such term by section 1202(b)(1)."

(c) MAXIMUM 21 PERCENT RATE.—Section 1(h) of the Internal Revenue Code of 1986 is amended to read as follows:

"(h) MAXIMUM CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(A) a tax computed at the rate and in the same manner as if this subsection had not been enacted on the greater of—

"(i) taxable income reduced by the amount of the net capital gain, or

"(ii) the amount of taxable income taxed at a rate below 28 percent, plus

"(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A).

"(2) SPECIAL RULE WHERE TAXPAYER HAS QUALIFIED SMALL BUSINESS NET CAPITAL.—

"(A) IN GENERAL.—If a taxpayer has qualified small business net capital gain for any taxable year, then the tax imposed by this section shall not exceed the lesser of—

"(i) the amount determined under paragraph (1), or

"(ii) the sum of—

"(I) the amount determined under paragraph (1) without taking into account qualified small business net capital gain for purposes of subparagraphs (A) and (B) thereof, plus

"(II) 21 percent of the qualified small business net capital gain.

"(B) DEFINITIONS.—For purposes of this paragraph, the term 'qualified small business net capital gain' has the meanings given such term by section 1202."

(d) CONFORMING AMENDMENTS.—

(1) Section 62(a) of such Code is amended by adding after paragraph (13) the following new paragraph:

"(14) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202."

(2) Subparagraph (B) of section 170(e)(1) of such Code is amended by inserting "(or, in the case of qualified small business stock under section 1202(b)(2), 67 percent of)" before "the amount of gain".

(3) Section 172(d)(2) of such Code (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed."

(4) Subparagraph (B) of section 172(d)(4) of such Code is amended by inserting ", (2)(B)," after "paragraph (1)".

(5)(A) Section 220 of such Code (relating to cross reference) is amended to read as follows:

"SEC. 220. CROSS REFERENCES.

"(1) For deduction for long-term capital gains in the case of a taxpayer other than a corporation, see section 1202.

"(2) For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out "reference" in the item relating to section 220 and inserting "references".

(6) Paragraph (4) of section 642(c) of such Code is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 4 years, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(7) Paragraph (3) of section 643(a) of such Code is amended by adding at the end thereof the following new sentence: "The deduction under section 1202 shall not be taken into account."

(8) Paragraph (4) of section 691(c) of such Code is amended by striking out "1(h), 1201, and 1211" and inserting in lieu thereof "1(h), 1201, 1202, and 1211".

(9) Clause (iii) of section 852(b)(3)(D) of such Code is amended by striking out "66 percent" and inserting "the rate differential portion (within the meaning of section 904(b)(3)(E))".

(10) The second sentence of paragraph (2) of section 871(a) of such Code is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for qualified small business net capital gains) and" after "except that".

(11) Section 904(b)(3)(E) of such Code is amended by striking out "1201(a)" in clause (iii)(II) thereof and inserting "1201 (a) or (b)".

(12) Section 1402(i)(1) of such Code is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(13) Section 1445(e)(1) of such Code is amended by striking out "34 percent (or, to the extent provided in regulations, 28 percent)" and inserting "34 percent (or, to the extent provided in regulations, the alternative tax rate determined under section 904(b)(3)(E)(iii))".

(14) The table of sections for part I of subchapter P of chapter 1 of such Code is amended by inserting after the item relating to section 1201 the following new item:

"Sec. 1202. Deduction for capital gains on small business stock held for more than 4 years."

(15)(A) The heading for section 1201 of such Code is amended by inserting "; DEDUCTION FOR GAIN ON QUALIFIED SMALL BUSINESS STOCK" after "CORPORATIONS".

(B) The item relating to section 1201 in the table of sections for part I of subchapter P of chapter 1 of such Code is amended by inserting "; deduction for gain on qualified small business stock" after "corporations".

SEC. 202. EFFECTIVE DATE.

The amendments made by this title shall apply to stock issued after the date which is 6 months after the date of the enactment of this Act.

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 698. A bill to amend the Internal Revenue Code of 1986 to provide for 50 percent exclusion of long-term capital gains, and for other purposes; to the Committee on Finance.

LONG-TERM GROWTH AND JOB OPPORTUNITY ACT

Mr. CRAIG. Mr. President, first of all, let me associate myself with the remarks of the senior Senator from Idaho, Senator SYMMS, in the introduction of his capital gains legislation. Today I also introduce capital gains legislation as a companion legislation for this body to begin to consider the variety of capital gains proposals that are currently before it.

What is so fundamentally critical to this country is that in the building and maintaining of the economic vitality of our economy we have to recognize that capital gains treatment is fundamental and foremost in doing so. There are other pieces of legislation of which I am a cosponsor that deal with this issue. This one in particular would encourage long-term investment by allowing taxpayers, whether corporate or individual, to exclude 50 percent of the capital gains for assets held for 5 years or more.

Just yesterday, as this body was debating a need, a recognizable need of treating the dairy industry of this country with some concern as it relates to their market conditions, I had several farmers call me who said they would like to get out of the business now but they simply did not see that they could afford to disinvest or sell their farms and/or their dairies because of the capital gains treatment. Uncle Sam would just be demanding and taking too much of the money, that we would view as their savings and their hard-earned gain that they would retire to, away from them. The kind of legislation that I introduce today and that my colleague from Idaho does, would treat that and other types of gain in the appropriate fashion.

These are the kinds of questions that this body must ask itself in the coming days if we are to continue to encourage and see our economy move in the direction that we would want it to move in. If we are to also encourage all old money that would like to move to new investments, that would like to create new jobs and obviously new opportunity to do so, then we must at some time in the very near future address the appropriate method in dealing with capital gains. We have not done that.

Mr. President, Members of both parties and President Bush have called for

a change in the tax treatment of capital gains.

They have spoken about the advantages of such a change—such as jump-starting the economy and creating jobs, making U.S. business more competitive and freeing up dollars for new investment. They have furnished statistics revealing that the change would benefit nearly half of all Americans at some time in their lives. They have even cited studies showing that a change would increase revenues to the Government.

Yet, while they agree on the goal and the benefits of achieving that goal, they have offered more than one legislative proposal that could take us there.

Mr. President, that variety of proposals isn't a weakness. On the Contrary, it reflects the strength of the movement to cut the capital gains tax. It is a testament to the basic soundness of this initiative that such a broad coalition has emerged to champion a capital gains tax cut.

Why does support continue to grow? One important reason is that more and more people are discovering that a working American homeowner's biggest single investment and savings plan is his or her family's home, and a huge tax on the sale of that home is a tax on his or her life's work.

That is why I am pleased today to join with Senator SYMMS to introduce two bills to provide additional avenues to the goal of a capital gains tax cut. With a number of good proposals to choose from—each offering its own advantages—Congress can tailor the change the Nation requires.

My bill today does not offer the only acceptable approach. I also support Senator SYMMS' bill and a number of other capital gains tax cut proposals because there are several alternatives that could work. Congress may well decide the best alternative is a hybrid approach.

But I believe my bill would trigger some additional considerations that should be part of the current debate. In particular, my bill would encourage long-term investment by allowing taxpayers—whether corporate or individual—to exclude 50 percent of a capital gain for assets held 5 years or more.

Mr. President, it is long-term investment that will provide the capital needed for new businesses to form, existing businesses to expand and improve, and research and development to take place. That means more jobs—and better jobs.

My bill offers many of the advantages of other capital gains tax cut proposals with one crucial enhancement: instead of just promoting a temporary economic surge—it will foster long-term economic growth and jobs for the future.

As a side note, several dairy farmers called my office yesterday saying they were ready to retire or sellout if only the capital gains were low enough to allow some personal savings.

The question is not whether it is good for America to cut the tax on capital gains—the question is how. Although I strongly support the efforts of Senator SYMMS and others on this issue, I think my Long Term Growth and Job Opportunity Act offers significant advantages, and I encourage my colleagues to support it and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 698

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

SECTION 1. SHORT TITLE; AMENDMENT TO 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Long Term Growth and Job Opportunity Act of 1991."

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

SEC. 2. REDUCTION IN CAPITAL GAINS TAX.

(a) TAXPAYERS OTHER THAN CORPORATIONS.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by adding at the end thereof the following new section:

"SEC. 1202. CAPITAL GAINS DEDUCTION FOR NONCORPORATE TAXPAYERS.

"(a) IN GENERAL.—If a taxpayer other than a corporation has a qualified net capital gain for any taxable year, there shall be allowed as a deduction an amount equal to 50 percent of such qualified net capital gain.

"(b) QUALIFIED NET CAPITAL GAIN.—The term 'qualified net capital gain' means the lesser of—

"(1) the net capital gain for the taxable year, or

"(2) the net capital gain for the taxable year determined by taking into account only gain or loss from capital assets with a holding period of at least 5 years at the time of disposition.

"(c) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

(b) CORPORATIONS.—Section 1201(a) is amended—

(1) by striking paragraph (2) and inserting:

"(2) a tax equal to the sum of—

"(A) 17 percent of the qualified net capital gain, plus

"(B) 34 percent of the net capital gain, reduced by the amount taken into account under subparagraph (A).", and

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

"(3) QUALIFIED NET CAPITAL GAIN.—For purposes of this subsection the term 'qualified net capital gain' has the meaning given such term by section 1202(b)(2)."

(c) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(d) TREATMENT AS PREFERENCE ITEM FOR MINIMUM TAX.—Section 57(a) is amended by adding at the end thereof the following new paragraph:

"(8) CAPITAL GAINS DEDUCTION DISALLOWED.—An amount equal to the deduction for the taxable year determined under sections 1201(a)(2) and 1202."

(e) REPEAL OF SECTION 1(h).—

(1) IN GENERAL.—Subsection (h) of section 1 is hereby repealed.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (4) of section 691(c) is amended by striking "1(h), 1201, and 1211" and inserting "1201 and 1211".

(B)(i) Subparagraph (D) of section 904(b)(3) is amended to read as follows:

"(D) SPECIAL RULE WHERE CORPORATE CAPITAL GAIN RATE DIFFERENTIAL.—In the case of a corporation there is a capital gains rate differential for any taxable year if any rate of tax imposed by section 11, 511, or 831 (a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1))."

(ii) Clause (iii) of section 904(b)(3)(E) is amended to read as follows:

"(iii) ALTERNATIVE RATE OF TAX.—For purposes of clause (i), the term 'alternative rate of tax' means, in the case of a corporation, the alternative rate of tax under section 1201(a)."

(f) CONFORMING AMENDMENTS.—

(1) Section 62(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) CAPITAL GAINS DEDUCTION.—The deduction allowed by section 1202."

(2) Clause (ii) of section 163(d)(4)(B) is amended by inserting ", reduced by the amount of any deduction allowable under

section 1202 attributable to gain from such property" after "investment".

(3) Section 170(e)(1)(B) is amended by inserting "(50 percent in the case of a qualified net capital gain as defined in section 1202(b)(2))" after "the amount of gain".

(4)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(5)(A) Section 220 (relating to cross reference) is amended to read as follows:

"SEC. 220. CROSS REFERENCES.

"(1) For deduction for net capital gains in the case of a taxpayer other than a corporation, see section 1202.

"(2) For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 is amended by striking "reference" in the item relating to section 220 and inserting "references".

(6) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 5 years, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for net capital gain). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(7) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The deduction under section 1202 (relating to deduction for net capital gain) shall not be taken into account."

(8) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for net capital gain) and" after "except that".

(9) Section 1402(i)(1) is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(10) Section 1445(e)(1) is amended by striking "34 percent (or, to the extent provided in regulations, 28 percent)" and inserting "34 percent (or, to the extent provided in regulations, 17 percent)".

(11)(A) Subparagraph (A) of section 7518(g)(6) is amended by striking the last sentence and inserting the following:

"With respect to any portion of any nonqualified withdrawal made out of the capital gain account during any taxable year which involves a qualified net capital gain (as defined in section 1202(b)(2)), the rate of tax taken into account under the preceding sentence in the case of a taxpayer other than a corporation shall not exceed 15.5 percent (or, in the case of a corporation, if section 1201(a) applies to the taxable year, the rate of tax taken into account under the preceding sentence shall not exceed 17 percent)."

(B) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936, is amended by striking the last sentence and inserting the following:

"With respect to any portion of any nonqualified withdrawal made out of the capital gain account during any taxable year which involves a qualified net capital gain (as defined in section 1202(b)(2)), the rate of tax taken into account under the preceding sentence in the case of a taxpayer other than a corporation shall not exceed 15.5 percent (or, in the case of a corporation, if section 1201(a) of such Code applies to the taxable year, the rate of tax taken into account under the preceding sentence shall not exceed 17 percent)."

(g) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1202. Capital gains deduction for noncorporate taxpayers."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after the date of the enactment of this Act in taxable years ending after such date.

By Mr. BRYAN (for himself and Mr. REID):

S. 699. A bill to amend the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after January 31, 1998; to the Committee on Energy and Natural Resources.

INDEPENDENT SPENT NUCLEAR FUEL STORAGE ACT

Mr. BRYAN. Mr. President, I rise today to introduce the Independent Spent Nuclear Fuel Storage Act of 1991. This legislation is necessary to protect the utility ratepayers and taxpayers, and to set the Nation on a sound policy course in attempting to deal with the sensitive issue of high-level radioactive waste management.

When President Reagan signed the Nuclear Waste Policy Act on January 7, 1983, less than a week after I became Nevada's Governor, our Nation embarked on a complex strategy to resolve a vexing technological problem—how to manage for hundreds of thousands of years the most toxic and dangerous waste products that man has ever created.

The premise of the 1982 Nuclear Waste Policy Act was to fairly and scientifically evaluate a variety of sites and different geological formations so that the best solution to the high-level commercial radioactive waste disposal problem could be found. That act also contemplated a geographically balanced approach to ensure that no single area of our country would be unfairly burdened with all of the waste products generated by the nuclear utilities.

A regionally balanced approach would also minimize the transportation of these lethal materials over long distances and through communities never before touched by nuclear waste.

In the Nuclear Waste Policy Amendments Act of 1987, signed by President Reagan on December 22, 1987, a political decision was made to abandon the fairness and safety that was the premise of the 1982 act and to shift the national policy away from a scientific approach to solving our Nation's high-level nuclear waste problem.

That legislation targeted only one site—Yucca Mountain, Nevada—for further consideration for a repository location.

This ill-conceived policy—abandoning science for politics when trying to solve a great scientific problem—was tangible evidence of the undue influence the commercial nuclear utility industry has had on the repository program since its inception.

The DOE and nuclear industry policymakers, however, underestimated the resolve of Nevada's citizens to rise up against this injustice. Even more fundamentally, the special interests were blind to the merits of the State's technical arguments that Yucca Mountain was a bad choice for further study.

Years of scientific study by the State has been very revealing about the merits of the Yucca Mountain site. As our technical knowledge increases, Nevada's misgivings about the Yucca Mountain site are being confirmed. At least 32 active geological faults are associated with the site, and recent volcanic activity appears to have occurred—either of which indicate the site cannot and should not be licensed by the NRC.

The geology, hydrology, volcanism, and mineral potential at Yucca Mountain all indicate it is unable to isolate these radioactive wastes from the environment for the tens of thousands of years necessary for the wastes to decay.

The repository program has been paralyzed by management, scientific, and legal deficiencies since the 1987 amendments were adopted. As a result, the target date for repository operations has slipped further with each passing year—first from 1998 to 2003, and now according to DOE's newest revised plan, no repository can open earlier than the year 2010.

As a result, utilities are having to face the reality of solving, at least on an interim basis, their own spent fuel storage needs. This occurs despite the fact that the Nation's utility ratepayers have contributed $6 billion to the nuclear waste fund, the utilities

owe an additional $1.6 billion, and $3 billion has been spent on the program.

Fortunately, technology has advanced the options available so that no fuel storage crisis looms. At reactor, dry cask storage has been proven to be safe and to require only minimal ongoing monitoring and maintence when compared to existing spent fuel storage pools. Some reactors have already approached or exceeded their spent fuel storage pool capacity.

A growing number of utilities—out of necessity—are purchasing and planning on using NRC licensed dry cask storage units at reactor sites to meet their interim storage needs.

The Nuclear Regulatory Commission has issued a revision of its waste confidence rule which indicates that all reactor spent fuel storage can be safely and effectively implemented for a period up to 100 years.

Thus the crisis that prompted the 1982 act and its unrealistic deadlines—which DOE was unable to meet—has now vanished with better technological approaches gaining acceptance.

Unfortunately, existing law does not protect utility ratepayers from having to finance both the faltering Federal effort and the interim storage that will be necessary because the Department of Energy will not be able to accept spent fuel for storage in 1998 as was promised in the original act.

The legislation I am introducing today corrects this inequity so that ratepayers only pay once for necessary waste storage efforts.

Currently, ratepayers finance the existing Federal program by paying more than $1 million per day into the nuclear waste fund. This legislation allows a nuclear utility to retain a portion of its existing payments equal to the on-site storage expenses incurred so that the ratepayers receive the waste management and disposal service for which they are already paying. Without such a provision, ratepayers will continue to pay billions for the existing program, and will also have to pay for interim fuel storage needed to allow for continued reactor operations.

The remaining fees paid will accrue in the dedicated nuclear waste fund to finance final storage once DOE has licensed permanent disposal sites.

Since the passage of the Nuclear Waste Policy Act in 1982, nearly $3 billion has been wasted with no progress made toward solving this problem.

In the 8 years the program has operated, it has already required one major legislative revision in 1987. During that time, the target date for repository operations has slipped by 12 years, and DOE itself has characterized the new target date for repository operations to begin—the year 2010—as optimistic.

Now, in the recently released national energy strategy, the administration is again proposing a fundamental legislative change to the act, this time proposing to strip Nevada of its remaining legal rights in the dump location process.

It is time for the Nation to face the fact that expanded on-site storage will become a reality for most nuclear utilities during the 1990's, whatever the outcome of DOE's efforts to build a waste dump at some future time.

On-site storage minimizes transportation risks, allows spent fuel to cool, and allows needed waste management flexibility so that a sound, equitable, and scientifically based disposal policy for the Nation's nuclear waste ultimately may be achieved.

The legislation I introduce today will be a first step in setting the Nation's nuclear waste management policy on a fiscal sound course.

Mr. President, I ask unanimous consent to submit for the RECORD a copy of a letter to the President dated February 14, 1991, from Nevada Governor Bob Miller, the entire Nevada congressional delegation, and Nevada's attorney general, Frankie Sue Del Papa, concerning the administration's proposed legislation. I am also submitting for the RECORD a collection of newspaper editorials from across the country which point out the flaws of the current program, a recent New York Times article about Yucca Mountain entitled "A Mountain of Trouble", and a thoughtful analysis of this topic by a Pennsylvania Public Utility Commissioner, Mr. Joseph Rhodes, Jr., entitled "Pyramids Underground." Finally, Mr. President, I ask unanimous consent that a copy of the bill and the articles I have just mentioned be printed in the RECORD.

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

S. 699

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Independent Spent Nuclear Fuel Storage Act of 1991".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Findings.
Sec. 5. Amendments to the Nuclear Waste Policy Act of 1982.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Commission" means the Nuclear Regulatory Commission; and

(2) the term "Secretary" means the Secretary of the Department of Energy.

SEC. 4. FINDINGS.

The Congress finds that—

(1) approximately 18,000 tons of spent nuclear fuel are now stored at 111 commercial nuclear reactors in the United States; by 1998, approximately 45,000 tons of spent nuclear fuel will be stored at commercial nuclear reactors;

(2) the deep geologic high level radioactive waste and spent nuclear fuel repository envisioned by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et. seq.) will not be constructed in time to permit the Secretary to receive and accept high level radioactive waste or spent nuclear fuel as contemplated by sections 123 and 302 of that Act (42 U.S.C. 10143, 10222), with the result that the Secretary will be unable to perform contracts executed pursuant to section 302(a) of that Act with persons who generate or hold title to high level radioactive waste or spent nuclear fuel;

(3) there have been no orders for the development or construction of civilian nuclear power generating facilities since the enactment of the Nuclear Waste Policy Act of 1982; several such facilities that were anticipated when the Act was enacted are not operating now;

(4) it does not now appear that a deep geologic high level radioactive waste and spent nuclear fuel repository will be available before the year 2010 or later;

(5) by the time a deep geologic repository is available many currently operating commercial nuclear reactors will need spent fuel storage capacity beyond the maximum now available in at-reactor spent fuel storage pools; nuclear utilities have spent and will spend major sums to construct facilities, including dry cask spent fuel storage facilities, for use in the interim before a deep geologic repository is available;

(6) the sums spent for the purposes described in paragraph (5) are the same funds that commercial nuclear utilities intended to contribute to the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222 (c));

(7) the technology for long term storage of spent nuclear fuel, including the technology of dry cask storage, has improved dramatically since the enactment of the Nuclear Waste Policy Act of 1982;

(8) the existing statutory jurisdiction of the Commission, under the Atomic Energy Act of 1954 (42 U.S.C. 2001 et. seq.), the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et. seq.), Executive Order 11834 (42 U.S.C. 5801 note), the Nuclear Regulatory Commission Reorganization Plan No. 1 of 1980, and the Commission's various authorization Acts includes the jurisdiction to review and evaluate the spent fuel storage capability of commercial nuclear utilities that hold or seek licenses to receive and possess nuclear materials from the Commission;

(9) commercial nuclear utilities that hold licensed to receive and possess nuclear materials are generally well suited to maintain the institutional capability necessary to become stewards of spent nuclear fuel during a period of interim storage;

(10) the increased radioactive decay that will occur in spent nuclear fuel that has been stored for interim periods prior to delivery to the Secretary pursuant to section 123 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10143) will ease and facilitate its subsequent handling, transportation, and final disposal; and

(11) the median estimated cost to commercial nuclear facilities of acquiring or constructing at-reactor dry storage facilities, plus the long term operating cost, is approximately 0.56 mil per kilowatt-hour under average industry fuel burnup rates.

SEC. 5. AMENDMENTS TO THE NUCLEAR WASTE POLICY ACT OF 1982.

Section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)) is amended by inserting at the end thereof the following new subsection:

"(f)(1) After January 31, 1998, if the Secretary does not have a facility available to

accept spent fuel from persons holding contracts under this section, those persons may, through credits on fee payment under subsection (a)(2), offset the expenses of providing storage of spent fuel generated after that date (including expenses reasonably incurred before that date in anticipation of the necessity of providing such storage) and until the date of the Secretary's first acceptance of that person's spent fuel at a storage or disposal facility authorized by this Act.

"(2) The credits described in paragraph (1)—

"(A) shall be deducted from each remittance of a person's fee payments to the Nuclear Waste Fund from the time that the person meets the conditions of paragraph (1) until the time that the Secretary first accepts that person's spent fuel at a storage or disposal facility authorized by this Act; and

"(B) shall be in the amount of 0.56 mil per kilowatt-hour for electricity generated by the person's civilian nuclear power reactor and sold during the period the person is eligible for the credit, or in such other amount as may be certified to the Secretary by the regulatory authority which establishes the rates charged to customers for electricity generated by the person's civilian nuclear power reactor.".

STATE OF NEVADA,
EXECUTIVE CHAMBER,
Carson City, NV, February 14, 1991.

Mr. PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to convey to you our grave concern regarding the Nuclear Waste Management section of the National Energy Strategy. The energy strategy document proposes that the Nuclear Waste Policy Act be amended to strip the State of Nevada and local governments of their statutory and regulatory authorities as they affect the continuation of the U.S. Department of Energy work at the candidate Yucca Mountain higher-level nuclear waste repository site. The document further proposes that the State's right to challenge the constitutionality of this unprecedented federal action be limited to sixty days of its enactment; further, it prohibits the court in which State action is brought from enjoining the DOE's activities at Yucca Mountain.

The proposed amendment of this nation's nuclear waste policy subverts the democratic process and threatens the foundation of state-federal relations, not only for Nevada, but for all states that may find themselves in a difficult conflict with stated federal purposes in the future.

For sound and widely supported reasons, states have been provided the opportunity to accept delegation of federal regulatory authority under various environmental and other statutes. The proposal to intrude upon this established process for purposes of resolving a unique, statute-driven conflict with a single state sets a precedent that tests for all states the full meaning and intent of the process of federal-state delegation of authorities.

Furthermore, the proposed nuclear waste policy amendment sets a precedent which dangerously imposes federal interference on state and local governmental rights, authorities and jurisdictions. And, it boldly infringes upon the separation of powers which have empowered the courts to fulfill the constitutional adjudication of questions of federalism.

The significance of this matter's treatment in the National Energy Strategy is of such magnitude that it may color and jeopardize the national debate of what some might otherwise consider to be the merits of the approach to providing an energy policy to keep our nation healthy and secure.

It is our most sincere request that the Nuclear Waste Management section of the proposed National Energy Strategy be deleted, and permit the traditional forces of our democratic principles and processes to prevail in this incident of disagreement between a state and the federal government. To do otherwise promotes a dangerously foreboding precedent for future state-federal relations, especially in areas of ongoing national concern over protection of public health and safety and the environment as related to the many already contaminated federal facilities nationwide.

We look forward to your attention to this matter of urgent concern to Nevada and all of the states of our Republic.

Governor Bob Miller, Senator Richard Bryan, Representative Jim Bilbray, Senator Harry Reid, Representative Barbara Vucanovich, Atty. General Frankie Sue Del Papa.

[From the Los Angeles Times, Dec. 11, 1990]

IF AMERICA EVER RUNS OUT OF IDEAS, IT'LL RUN OUT OF ENERGY—TIME TO PUT NUCLEAR POWER IN PERSPECTIVE AND DEVELOP OTHER OPTIONS

The United States will not soon break petroleum's stranglehold on its way of life because it has nothing to take the place of oil. Why? In large part because political and industrial leaders have refused to level with American voters. Instead, they led Americans to think they can avoid hard energy choices, on nuclear power or any other energy source. Instead, they led them into an energy trap.

Disposing of nuclear waste is just one example. For nearly two decades, the nuclear industry preached that getting rid of nuclear waste was more a matter of political will than technical skill. If politicians would stop pandering to public concerns about where to bury nuclear waste, the message went, safe hiding places would be found in short order.

You don't hear that sermon anymore. Not since Nevada's Yucca Mountain, the sole survivor of a long list of possible waste sites, began sending geological signals that it may not be the perfect place that scientists once said it was.

Not that the bureaucrats were wrong about Washington's lack of backbone.

Congress seized upon the general sentiment among Americans that nuclear power is a good thing—as long as it is being generated far from their neighborhoods. Thus, members wanted to keep government geologists from poking around granite masses in their own Atlantic states or salt domes in states along the Gulf of Mexico. So they effectively put every place but Yucca Mountain off limits.

The Yucca site, northwest of Las Vegas, no longer seems the perfect place, because there is some evidence that ancient earthquakes have let deep ground water force its way to the surface through cracks in the rock. If so, it could happen again. And if canisters of radioactive fuel rods were buried in the mountain, some future earthquake could send water into the Yucca nuclear waste burial site. If the ground water bathed canisters that were still hot, the encounter could cause a steam explosion that would scatter radioactivity around the West. Some scientists say this notion is far-fetched, but it could leach radioactive waste into Nevada's water table and perhaps into California's.

Further study may show that Yucca is as safe as any place, or a better site may turn up. But that could take 20 years.

The 1982 law that narrowed the search to Yucca Mountain also requires scientists to certify that any disposal site the government chooses will stay bone dry for 10,000 years. Science can deliver no such guarantee, the National Academy of Sciences said in July, only the best possible research.

Energy Secretary James D. Watkins had that figured out before the academy report was issued; his team was told to stop trying to find evidence to support Congress' choice of Yucca Mountain and was ordered to prepare a study based solely on science.

What happened at Yucca is a classic example of energy decisions without energy policy. First, Congress picked a desert site so remote from most Americans that few members would get complaints from home. Technicians then tried to prove that burying nuclear waste was simple when politics did not interfere.

Watkins' energy report may be Washington's last chance to level with Americans about their energy future. It must start a free-swinging debate over the real energy choices. It must force the nation to decide whether it can live with only a promise from science that it will do its best to bury nuclear waste safely. If not, does nuclear power have a real future? How much should be spent on alternative energy resources? And what should they be?

Setting energy policy by following the line of least resistance is leading toward a buildup of 400,000 or more American troops in the Middle East, the world's largest treasure of oil. Guarding that treasure may be America's only choice, but the desperate fact is that nobody knows for sure—because nobody asked the hard questions on energy policy. Time is up.

[From the St. Petersburg (FL) Times, December 1990]

NIGHTMARE AT YUCCA MOUNTAIN

There is not one reassuring detail in the United States' plan to build a repository for the nation's most deadly nuclear waste products deep inside Yucca Mountain, a ridge in the southern Nevada desert.

Not, for instance, the fact that pressure is on to keep the project on schedule because there currently is no place to bury this material, which is stacking up in temporary storage at the government's nuclear weapons factories and many nuclear power plants around the country;

And certainly not the notion that the underground repository is intended to protect the earth from the worst radioactive substances for 10,000 years, by which time the items will be merely less hazardous than they are now.

One development in particular, however, is nothing short of alarming. A geologist with the U.S. Department of Energy has been raising serious objections to the Yucca Mountain site since he discovered deposits of calcium carbonate throughout the mountain rock. The deposits are evidence of ground water welling upward from the water table originally thought to be a safe distance below the repository level. An intrusion of water upon the 70,000 metric tons of waste buried in the repository could cause a release of radioactive poison greater than that generated by nuclear war.

According to a compelling report in the New York Times Magazine, Jerry Szymanski

has been trying since 1984 to convince his Energy Department superiors that Yucca Mountain is no place to bury nuclear waste.

Yet they remain unconvinced. Szymanski's bosses gathered a team of experts who came up with the theory that the calcium deposits are from rain water, not an underground source, despite the presence of travertine limestone. Travertine, another geologist told the magazine, is a signal to even the most inexperienced in the field of the presence of an ejection of water. "It shouts at you, it screams at you."

Another scientist who concurs with Szymanski's work, Charles B. Archambeau at the University of Colorado, offered the magazine this frightening assessment of the danger: "At the very least, the radioactive material would go into the ground water and spread to Death Valley, where there are hot springs all over the place, constantly bringing up water from great depths. It would be picked up by the birds, the animals, the plant life. It would start creeping out of Death Valley. You couldn't stop it. That's the nightmare. It could slowly spread to the whole biosphere. If you want to envision the end of the world, that's it.

From the moment he discovered the calcium, Szymanski, a Polish immigrant who fled the repression of his country 20 years ago, has persevered courageously. He aptly likens the "banality of thought, absence of depth" that causes people to disregard his findings to the same attitude that allowed the Holocaust to happen. Until the government of Nevada released one of Szymanski's reports at a news conference, the 322-page document had not been read by his own boss.

The state of Nevada opposes the Yucca repository, and filed a suit that has stopped work there for the moment. Officials from the Geologic Survey have toned down criticism of Szymanski's work, admitting that the ground-water effects "probably do occur to some degree" but don't have any implications for the repository because they occurred so long ago. An independent panel is reviewing Szymanski's work, and further research is under way by the Department of Energy.

Szymanski is not an opponent of nuclear energy, and is not trying to derail the industry. Official treatment of his findings so far is appalling. His credible concerns about Yucca Mountain should be more than enough to force another choice for the repository.

The future of nuclear power depends on being able to properly dispose of its byproducts, but then so does our future.

[From the Seattle Post-Intelligencer, July 22, 1990]

U.S. SHOULD DROP WASTE BURIAL PLAN

At last, scientists have admitted what any layman could have told them: It is impossible to build an undergound repository for nuclear waste that can be guaranteed safe—as federal law requires—for 10,000 years.

This means we have to face two risky options: Bury it underground anyway and hope for the best, or keep the waste above ground—and hope for the best.

Simply put, it's a choice of whether we assume the risk ourselves, as seems only fitting, or assign it to our descendants, which seems immoral.

Few but the most deluded technocrats ever believed any structure could be built that would keep radioactive wastes from escaping into the human environment for 10,000 years.

But the Department of Energy has clung to the fiction that it could be done. To prove that, it has charged ahead with tests in a deep hole in the Nevada desert. However, the agency's efforts to demonstrate the safety of this disposal method have not gone well.

So now a National Academy of Sciences panel has issued a report calling for a "rethinking" of the safety standards, recommending they be relaxed. Rightly enough the scientists have concluded that present safety requirements are "unrealistic" and impossible to meet, especially since either volanic or earthquake activity might wreck the repository and allow air or waste to breach it.

The advantage of keeping this misbegotten waste above ground at such places as Hanford is that we can watch and control it. The disadvantage is that until new technology offers a better solution, the waste will have to be repackaged into uncontaminated containers every other generation or so for the next 250,000 years which is how long some of the waste will remain deadly.

To be sure, continuing above-ground storage for this dangerous waste is not a cheery economic or political prospect.

But it seems preferable to stuffing it into a dump that—perhaps even before the protective packaging has crumbled away centuries hence—might turn into an uncontrollable nuclear hellhole.

[From the Kansas City State, Reprinted in the Las Vegas Sun, Dec. 5, 1989]

GET THAT NUKE DUMP ROLLING AGAIN

More dismal planning now plagues the federal government's attempt to build a disposal facility for high-level nuclear waste from the nation's 110 nuclear power plants.

Energy Secretary James Watkins says he lacks any confidence in preliminary geological evaluations his department made at a site in the Nevada desert. Watkins says a burial spot for the waste won't be completed until 2010, instead of 1998. And that's if everything goes right.

Don't bet on that happening. Until now, the government has failed miserably in carrying out a mandate, delivered by Congress seven years ago, to develop a facility where spent nuclear fuel can be stored for thousands of years without endangering people or the environment.

The government in 1998 has to start accepting the high-level nuclear waste from reactors run by private electric utilities. Included are the Wolf Creek plant in Kansas and the Callaway County plant in Missouri, Utilities, through their customers, are paying the government to construct the storage area.

Now the government probably will have to develop temporary storage facilities for the nuclear waste. Guess how well that's going to go over in most places.

Reactor operators have good reason to be mad and concerned about this arrangement. The effort to develop more nuclear power will be set back. Opponents will have even more evidence that scientists still haven't found the answer to how to best handle nuclear waste, a solution they have been seeking for 30 years in the United States.

Two years ago, Congress ordered the Department of Energy to abandon other potential sites and concentrate on developing the Yucca Mountain disposal facility in Nevada. "It's fair to say we've solved the nuclear waste program," said Sen. J. Bennett Johnston of Louisiana. Right?

Wrong. Worse, $500 million has been spent to crawl this far. Watkins and his department ought to try to avoid throwing away more money and do the job right. That should include looking at other potentially safe sites in the nation, even if political problems crop up in doing that.

[From the New York Times Magazine, Nov. 18, 1990]

A MOUNTAIN OF TROUBLE

(By William J. Broad)

Yucca Mountain is a barren flat-topped ridge rising out of the Nevada desert. Located 100 miles northwest of Las Vegas, it stands amid a desolate expanse that is broken every so often by a Joshua tree or yucca plant. The mountain rises some 1,500 feet and runs six miles or so. Within two decades it could hold the most dangerous nuclear facility in the world.

The Government plans to build a dump inside Yucca Mountain for the most highly radioactive nuclear waste in the nation. The job is considered urgent. More than four decades after the start of the nuclear era, there is no permanent place to put the vast and rapidly growing accumulation of the most lethal of America's nuclear refuse—the spent fuel rods and radioactive debris that constitute a largely forgotten legacy of this country's conquest of the atom. The nation has sites for the storage of low-level waste—and one, under construction in Carlsbad, N.M., for some higher-level military byproducts—but none for the most deadly substances of all.

The Government wants a final burial place for these items, now stored at Federal sites for nuclear weapons production and at many of the nation's 111 operating nuclear power plants. It wants a repository that will keep them isolated from the earth's environment for 10,000 years, until radioactive decay has rendered them less hazardous than they are today.

Yucca Mountain is the last candidate, selected after a stormy, decades-long, multibillion-dollar search that criss-crossed much of the nation and eliminated dozens of other potential sites, often for reasons of politics rather than science. Today, the site's 1,800 federal and contract workers feel great pressure to stay on schedule in assessing the site's suitability and planning the repository, which would be a labyrinth of tunnels up to 115 miles long. Its cost is expected to be up to $15 billion, some $1 billion of which has already been spent. If everything goes according to plan, it will open for business in 2010.

At first glance, Yucca Mountain seems perfect for the job. Its main virtue is aridity. The Nevada desert is one of the driest places in the United States. The water table beneath Yucca Mountain is unusually low, a third of a mile down. By contrast, the water table in the East can be within a dozen feet of the surface. In theory, canisters of radioactive waste (which are very hot both physically and radioactively) could be deposited deep inside Yucca Mountain and still be hundreds of feet above the water table, safe and dry for thousands of years, unlikely ever to contact or contaminate ground water, unlikely ever to spread radioactivity.

One scientist, however, has quietly but persistently warned that this vision of a safe repository is little more than a delusion.

Jerry S. Szymanski (pronounced sha-MAN-ski) is a geologist who works on the Yucca Mountain project for the United States Department of Energy, which is in charge of evaluating the site and would run the repository. For years, he has argued that ground water under the mountain could eventually well up, flood the facility and prompt a calamity of vast proportions. The geological action is easy to visualize. Crustal stresses

in the area slowly open fractures and faults under and within the mountain. Water seeps into them. An earthquake occurs, compressing the fractures and forcing the ground water upward into the dump. As the inrushing water comes into contact with the hot canisters of nuclear waste, the water is vaporized, threatening to cause explosions, ruptures and the release of radioactivity.

Szymanski has worked for the D.O.E. since 1983. He takes pains to distance himself from foes of nuclear power. "This report is not the act of a disgruntled employee or an anti-nuclear freak," he wrote in the preface of a study he made on Yucca Mountain. "Rather, it is the act of a deeply concerned scientist, a public servant and a pro-nuclear activist."

He chain-smokes Winstons and drinks Scotch, neither of which seems to impair his ability to take brisk hikes up the mountain with his dog Max, a fierce-looking but friendly creature that is half Labrador, half pit bull. Szymanski's eyes flash when he speaks of those who oppose his view of the evidence. "It's banality of thought," he growls, "absence of depth." That same kind of banality, he says, was responsible for the Holocaust, around which his earliest memories revolve, and for a brutal crackdown in his native Poland, which prompted him to flee that country two decades ago with his wife and 6-month-old son. Today, he says, banality is prompting the Federal Government to court disaster.

Squinting in the bright Nevada sunlight, a cigarette firmly in his mouth, Szymanski walks into Trench No. 8, a deep scar on the side of Yucca Mountain dug at the behest of the Energy Department. It runs across a fault. He bends down to examine a one-yard-wide vein of rock whose creamy color stands in contrast to the dark, surrounding earth tones. His fingers play over its surface. The vein was deposited, he says, by mineral-laden water that welled up and turned this desolate site into an oasis.

"This is above the repository level," he says with studied understatement. The implication is clear and troubling—where water once flowed, it might flow again.

The repository would hold up to 70,000 metric tons of waste. A large release would have an environmental impact that, by some estimates, would exceed that of a nuclear war. For perspective, the explosion of the Chernobyl reactor in the Soviet Union shot into the atmosphere just a few dozen pounds of highly radioactive nuclear waste, one of the most dangerous components of which was cesium 137 (it would also be a significant part of the waste at Yucca Mountain). Various studies say the consequences of Chernobyl will eventually be somewhere between 17,000 and 475,000 deaths from cancer, as well as an alarming number of serious ailments.

For half a decade, Szymanski's was a lone voice. His grim appraisal was opposed by almost everyone else on the Yucca Mountain project, who let their displeasure be known in subtle and not-so-subtle ways. But recently, growing ranks of geologists have backed his view. The dispute is by no means resolved.

If Szymanski is right and his warnings are heeded, it could mark the end of the Yucca Mountain project. The retreat would be a stunning setback for the Government and the nuclear-power industry, which is poised for a revival. If he is right and his warnings go unheeded, some experts say it might be the beginning of the ultimate end.

"You flood that thing and you could blow the top off the mountain," says Charles B. Archambeau, a geophysicist at the University of Colorado who has reviewed Szymanski's work and found it persuasive. "At the very least, the radioactive material would go into the ground water and spread to Death Valley, where there are hot springs all over the place, constantly bringing water up from great depths. It would be picked up by the birds, the animals, the plant life. It would start creeping out of Death Valley. You couldn't stop it. That's the nightmare. It could slowly spread to the whole biosphere. If you want to envision the end of the world, that's it."

Jerry Szymanski was born, in 1943, to Polish nobility. The family's prosperity ended during the Second World War as waves of invading Germans and Russians swept the area. Born amid the turmoil, Szymanski says his earliest memory is of his grandmother telling a friend about a mass grave in which thousands of Jews were buried, many of them half alive. "Hands were sticking out of the ground," he recalls his grandmother as saying. "The earth was moving." His father, active in organized resistance against the Germans and Russians, was eventually sent to a labor camp in Russia for six years.

Szymanski grew up in Communist Poland, bright, eager to learn, and marked for advancement. He was sent to the University of Warsaw, where he graduated in 1965 with a geology degree. Two years later, he was hard at work on doctoral research and teaching when, in March 1968, he joined students clamoring for economic and social reform. "We wanted a dialogue," he says. "What we saw was brute, bloody force, storm troopers beating people." Students were arrested on charges of "anti-state activities," and hundreds of Jews were fired from newspaper and university posts as the Government blamed them for shortcomings in the Polish economy. Though not Jewish, Szymanski was fed up. The Government was eager to be rid of university agitators. So, in December 1968, he was allowed to board a plane with his wife, baby and two suitcases, bound for the United States.

Penniless, Szymanski went to work as a consultant to the burgeoning nuclear-power industry, helping find and evaluate sites for reactors and related facilities. Paramount in his work was the study of fault lines, breaks in rock strata that can shift and cause earthquakes. In 1972, he landed a job with Dames & Moore, a civil-engineering company with a global reputation for site-selection skill. Within some five years, Szymanski became a senior geologist, advising American companies and foreign governments in places like Iran, Korea, Spain and Chile on the geologic feasibility of setting up nuclear reactors. He also worked extensively with Federal regulators in charge of reactor licensing.

Peers held him in high esteem. "He's brilliant," says James G. McWhorter, the senior geologist at Dames & Moore. "One of his greatest talents is the ability to see the forest and the trees."

In 1977, at an international conference in Stockholm, Szymanski got a severe shock. Attending a session on the geologic disposal of used nuclear fuel, he was astonished to hear that the field was in its infancy, with one speaker after another talking only in theoretical terms. Nowhere in the world was there a permanent disposal site for the growing mountain of high-level nuclear waste. "I had been convinced there was somebody on the other end," Szymanski says. "I was wrong. The fuel cycle was not complete."

In 1982, he switched jobs, intending to address what he considered a looming obstacle to the industry's growth. At Decision Planning Corporation, a private company, he worked on Federal contracts to evaluate the merit of different types of deep geologic disposal. But he found himself only on the periphery of the process. In early 1983, he accepted a job with the Energy Department itself, though it meant a $20,000 cut in annual pay. "I figured I would have some influence," he says. Soon after, the D.O.E. offered him a position at the Yucca Mountain site, which was starting to undergo intense evaluation.

In February 1984, he arrived at the project offices in Las Vegas, blocks from the swirl of casinos, lights and illusion that make up the strip. Szymanski was one of the unit's four officials. He was in charge of gathering and assessing data from teams of scientists (mainly the U.S. Geological Survey and various contractors) whose work was to form the basis for evaluating the mountain. Equally important, he was in charge of packaging that data for the Nuclear Regulatory Commission, the Federal body that would be asked to license the nuclear-waste repository.

Everything went fine until Szymanski took his first field trip that September. It became what he calls "the most incredible three days of my life." He led a party of some 30 Federal and Nevada state officials to the mountain, and as they traveled back and forth across its arms and valleys, he grew increasingly edgy. From atop the mountain he could see 10 volcanic cones. Some showed little erosion, suggesting they were geologically quite young. Also visible were signs of six major fault lines. The area clearly had a history of intense geologic activity.

At Trench No. 14, on the mountain's east side, a scientist from the U.S. Geological Survey, which had done much of the exploratory work, used the word "travertine" to describe a large cream-colored deposit of fine, crystalline calcium carbonate exposed at one end of the ditch. Alarm bells went off in Szymanski's head. Travertine is a type of limestone found in caves (in the form of stalactites and stalagmites) and around springs. It is synonymous with the presence of water and is deposited in bands over long periods of time. Szymanski was no stranger to travertine, which is often associated with fault lines and which he had repeatedly searched for, found and examined all over the world. Its analysis can reveal the age of a fault, a fact that is important in evaluating whether it is likely to shift and damage a nuclear reactor.

Szymanski kept his concerns to himself. He doubted his perceptions, even his sanity. After all, none of the other geologists on the field trip seemed to be worried. The party continued its tour. But then came the evidence that tipped the balance. At Trench No. 8, on the west side of the mountain, was another deposit of travertine, situated, as usual, along a fault line. This time Szymanski examined it closely.

The travertine held many rock fragments in suspension, caught there by the mineral-coating process. Some had been cut in half by bulldozers. Those near the main vein had a shell of discoloration. Those farther away did not.

To Szymanski, the disparity was evidence that a warm spring had formed the travertine, etching rocks near the source but having no effect on those farther away, where the water would have been cooler. Other signs caught his eye. Travertine at the source was laced with vertical bands of minerals, including opal. The spring had definitely been warm, Szymanski concluded,

carrying different kinds of water-soluble minerals up from deep within the earth.

The tour group pulled away. Szymanski stayed behind, kicking the tires of his vehicle, blind with rage. For seven years, from 1977 to 1984, he had visualized in ever greater detail what a repository should look like. Yucca Mountain did not come close. In many respects, it was the least likely site he could imagine. Moreover, he could see no means of improvement. Trying to waterproof the dump was hopeless. Barriers could be broken by earthquakes. And diversion channels for water might not be big enough, or last long enough. At best, complex man-made structures survived for hundreds of years, not thousands. In any case, the whole philosophy of the project was to have the site be safe naturally—not made that way.

Yucca Mountain was predicated on dryness—falsely, Szymanski was now convinced. Yet here he was, in charge of the Federal team meant to explain to the Nuclear Regulatory Commission why this site was good. Szymanski knew there was no way he could do it. In that instant, he foresaw the fights, the bureaucratic battles, the personal attacks. "Why me?" he thought to himself. "I'm just an immigrant."

It was Friday, Szymanski drove back to Las Vegas, where a friend from Dames & Moore, Timothy R. Harper, was arriving to spend the weekend. The next day, Szymanski took Harper, a geologist who is now a research scientist with a major British oil company, on a tour of Yucca Mountain, eager for an independent analysis.

"It was so obvious," Harper recalls. "Travertine is well known by the most inexperienced geologist to be a spring deposit. You walk into that trench and it shouts at you, it screams at you: 'This was an ejection of fluid.' Familiarity with a situation sometimes closes your eyes to understanding. It's quite possible that people became too familiar with seeing these deposits all over the place. But an outsider could see it straight away. You just look at the thing and know it's a fluid flow."

Harper was the first of more than a dozen independent geologists Szymanski would take through the site over the next few years. Without exception, they supported his views.

Szymanski told his Energy Department superiors of his concerns. The officials, not being geologists themselves, were in a bind. They had to rely on advice from contractors, the Geological Survey and the nation's nuclear-weapons laboratories: Los Alamos, Livermore and Sandia. Very quickly, these experts, led by the Geological Survey, came up with an explanation that became the standard reply. The deposits were superficial, they said, the result of rain, dating from an age when Nevada's climate was wetter. Calcium dust on certain kinds of exposed rock, this theory went, was picked up by the wind, carried many miles, caught in raindrops over Yucca Mountain and deposited over the course of millions of years in pools, fractures and faults, where it grew ever more concentrated.

This vision was immensely reassuring. It said that while the mountain's surface might once have been wet, the repository area deep underground had always been dry and would stay that way into the distant future. No ground water would rush up from beneath the mountain. Except for Szymanski, no one spoke of travertine any more. * * *

Szymanski pressed his superiors to continue the investigation, to take core samples, to further expose the rein, to resolve the issue once and for all. "Nothing happened," he says. He pressed the contractors and Federal experts to document the findings and explain what they meant. "They resisted," Szymanski says.

For two years, Szymanski fought a losing battle to try to get the problem addressed. Finally, in frustration, he decided to do it himself.

Szymanski thought the source of the surface deposits was clearly warm water bubbling up from below. So he decided to wrestle with the problem of how the springs got there in the first place, hoping a clear explanation would persuade skeptics and give his science teams an intellectual framework on which to base their work.

Ground-water levels are usually governed by climatic trends. But Szymanski theorized that levels in the Yucca Mountain area could be altered by earthquakes, and sustained that way for hundreds or even thousands of years by the earth's inner heat, through a process known as thermal convection. "It's like water percolating up in a coffee pot," he says.

To test his hypothesis, Szymanski examined the huge amount of data on the geology and hydrology of Yucca Mountain and its environs, which had been accumulated over the years. The evidence, he concluded, was indisputable. Rock samples from the mountain's core showed calcium carbonate deposits extending down many hundreds of yards. Analysis of trace elements in the deposits showed that the water creating them had been warm—again, suggesting it came from below rather than in the form of cool rain.

But the powers that be were still not persuaded by the evidence. "My desk was moved closer and closer to the door," Szymanski recalls. "I was a forgotten man." In November 1987, he submitted a 322-page draft report. It sat in the mail room, untouched by his superior.

Meanwhile, a copy of the report came into the hands of Richard H. Bryan, then Nevada's Governor, who had strongly voiced the state's opposition to the repository. In January 1988, over Szymanski's objections, Bryan released the draft at a news conference. "If the conclusions of the report are accurate—and state scientists have every reason to believe that they are—there can be no doubt that Yucca Mountain should never have been selected as a possible repository site." Bryan told reporters. His comments threw the Federal bureaucracy into action.

More than 40 scientists were now put onto the job of reviewing Szymanski's draft. Their 133-page review, issued in July 1989, said the majority "doubt that there is sufficient technical basis to warrant pursuing the author's hypothesis further," adding that Szymanski's evidence was ambiguous at best. The lead reviewer, William W. Dudley Jr. of the Geological Survey, called the draft "deceitful" and riddled with "violations of scientific ethics."

In an interview last month, Dudley softened his tone, saying Szymanski's effects "probably do occur to some degree" but were blown "out of proportion." He even said that the area around Yucca Mountain may hold examples of calcium carbonate produced by the welling up of ground water but were too old to have any bearing on the repository project.

John S. Stuckless, a Survey geologist on the Yucca Mountain project, also remains unpursuaded. The disputed calcium on Yucca Mountain "cannot be deposited from the ground water," he said in an interview this fall. "That leaves only soil-forming processes." He said such action could account for much of the field data, including deposits of opal, although he conceded that the thickness of the band found in Trench No. 14 is "more than is typical in a soil horizon."

Asked about calcium carbonate found at great depths beneath Yucca Mountain, Stuckless acknowledged the possibility of ground water, but he, too, discounted its relevance. "We have a suspicion, unconfirmed, that we are looking at two different kinds of calcite, one up and one down," he said—one deposited by rain, the other by ground water far below the repository level, too far below to threaten the project.

Szymanski was calm amid the storm. During the yearlong review, he had been listening carefully to the criticism and revising his draft. He was confident. There was no way rainwater could become concentrated enough to produce opal that was as thick, pure and banded as that found here. Only a flowing source of ground water could carry enough of the dissolved minerals. And from careful study of rock cores, Szymanski knew the mountain was riddled with calcium from top to bottom, strengthening his thesis. Moreover, chemical analysis showed these calcium deposits were, for all practical purposes, identical.

Szymanski's final report, 911 pages long, was made public in July 1989. He wrote that evidence for his groundwater model was overwhelming and dismissed the Energy Department plan for Yucca Mountain as "wishful thinking." Privately, he viewed most of his critics as decent men who were blinded to the obvious by bureacratic inertia, a desire for career and financial security and a fear that the nation and the nuclear industry would be thrown into turmoil if Yucca Mountain were to be abandoned.

The report had an introduction written by Gerald A. Frazier, a scientist at the Science Applications International Corporation who had quit the internal-review panel because he felt it was biased. After listening to the criticisms and Szymanski's responses, and after traveling extensively through the desert with Szymanski, Frazier was sure his thesis had merit. "If there is but 1 chance in 10 that his postulates are valid," Frazier wrote, "then we must jointly share his concerns and seek resolution."

The battle between Szymanski and the Federal bureaucracy had by now been going on for five years. In 1989, it was moved to a higher plateau by Carl P. Gertz, a civil engineer who had become head of the Yucca Mountain project two years earlier. After making public the conflicting reports, Gertz announced that Szymanski's work would be reviewed again, this time by experts outside the Federal preserve. A five-member independent panel (with two members picked by Szymanski and three by Gertz) and a 17-member group from the National Academy of Sciences, a prestigious group that advises the Government, would separately review the material.

Gertz says he is openedminded. "We want to ask the hard questions right now," he said in an interview. "My personal view is that it's healthy for a scientific program to have debate at this stage." Even healthier, he says, would be more research to help resolve the ground-water issue. A lawsuit brought by the State of Nevada has stopped much work at the site.

"There are many things we don't know about Yucca," Gertz said. "Until we gather the data, I don't think I'll be surprised about anything out there." However, he said, the consequences of a flooded dump would prob-

ably not be as severe as Szymanski fears. The slow corrosion of canisters would be more likely than their explosive rupture, Gertz said, lessening the odds of a massive release.

John Stuckless feels that further research will resolve the ground-water riddles. "We're just starting a three-year study of this whole problem," he noted this fall, referring to a "site characterization" study the D.O.E. is undertaking "It's not like anybody is finished." After the data has been gathered, he said, it will undergo a fairly lengthy period of analysis. By this schedule, the issues Szymanski raised in 1984 might conceivably be answered a decade later.

Meanwhile, the five-member independent panel is expecteed to report near the end of the year. The National Academy of Sciences group is to file an interim report in 1991 and a final one is 1992.

"Max!" Szymanski shouts. The dog bounds out of the desert into the vehicle. As we drive off, Szymanski holds up a yellow butane lighter. "My objective is to make sure we see reality and act accordingly," he says. "I don't really care what the specific actions are. But when a society starts calling a yellow lighter black, that's the end."

He says the waste project needs no more data. It simply needs to examine objectively the huge amount of evidence already in hand.

What are the odds of ground water welling up through the mountain in the next 10,000 years? "It's a sure thing," Szymanski answers, "just like death."

The project has so far failed to weigh seriously the worst-case consequences, he adds—a major release from waste containers.

We leave Yucca Mountain behind, crossing a valley dotted with volcanic cones. At Bare Mountain, we get out and climb its lower elevations, still in sight of Yucca. Gold miners have dug on the mountain's side, exposing layers of rock as they worked their way along a fault line. Clearly evident are the same cream-colored deposits of calcium carbonate, alternating with thick, four-inch bands of opal, some of gem quality. Gold ore lies along the fault, Szymanski says, deposited there in the same manner as the calcium carbonate. "That stuff has uranium in it," he says. "You don't get that from the sky."

He picks up a cream-colored, heavily banded rock. "To say this is the result of rain is preposterous," he asserts. "Take it to Columbia University and say that. They'll throw you out of the office."

We drive away, across the dry, dusty valley toward the state highway. I ask if there are springs around like the ones he is suggesting may someday appear on Yucca Mountain. Yes, Szymanski says, including ones on the sides of mountains.

We pull up to a site known as Devil's Hole. The rocky outcropping is cut by a deep gash. At its bottom is a pool of crystal-clear water, which Szymanski says goes down hundreds of feet. "This is not rainwater," he says. A gorge leading to the gash is obviously a fault, covered with the same calcium deposits we have seen all day long.

We drive down the mountain. The sun is setting, the desert tinged with gold. Ahead is a lake surrounded by dense foliage. It is known as Crystal Pool, Szymanski says. It is spring fed, an oasis in the desert.

Covered with dirt, I pull off my clothes and plunge into the water, swimming far from shore. A flock of birds glides by. Looking back, I see Szymanski sitting on a bank near the shoreline, fully clothed. He is smoking a cigarette, waiting patiently, staring into the distance.

COMMENTS OF JOSEPH RHODES, JR. AT THE 102D ANNUAL CONVENTION OF NARUC, ORLANDO, FL, NOVEMBER 13, 1990

NUCLEAR POWER: WASTE DISPOSAL, NEW REACTOR TECHNOLOGY—"PYRAMIDS UNDERGROUND"

This morning as I look around at this distinguished panel about to address this complex and important pair of subjects, I must confess that the thought that runs through my mind is a rather simple one: "How did I get here?"

How did I get here? I do not sit on the NARUC electricity committee and hence not on the Subcommittee on Nuclear Issues—Waste Disposal. This panel presentation today represents the first challenge I have had as a Pennsylvania commissioner to think about these issues in a detailed and national way. After I'm finished, I hope you won't go away muttering "who was that guy anyway?"

I suspect I received this assignment for a simple reason. At the last meeting of the Finance and Technology Committee in Los Angeles I happened to ask Bruce Morrison of Westinghouse a few technical questions about the AP600. In other words my presence here today is a practical manifestation of the adage: "no good deed should go unpunished." Gerry Gunther, I'm going to get you wherever you are.

As I prepared for this presentation I reflected on the experiences that I have had that have shaped my views on nuclear power. Earlier this year the Pennsylvania commission rendered a decision in the Limerick II rate case, undoubtedly the most recent nuke-going-into-rate-base case in the country and probably one of the last of such cases in this century. Over the past year I have learned more about Mark II containment and crud induced localized corrosion than I ever wanted to know.

The very first issue I took up when I came on the commission in 1988 was the situation at Peach Bottom and the efforts by PECO to "jump start" the reactor long before they were really prepared to do so. As it turned out the schedule was lengthened, and so far things seem much improved at this station forty miles down river from Three Mile Island.

Three Mile Island, now there was a formative experience. I lived through Three Mile Island on a personal level. I was there. The contemplation of nuclear disasters is not an abstract exercise for me. In my last term as a State representative, I heard the sirens in the capital complex go off to warn us to close our windows because another big release has just escaped from the reactor. My home in Pittsburgh was filled with friends from Harrisburg who were only part of the tens of thousands who voluntarily evacuated central Pennsylvania while Governor Thornburgh and the NRC tried to calm everyone down with what turned out to be a gross underassessment of the extent of the accident.

Though you might think otherwise at this point, I don't consider myself either pro- or anti-nuke. The dream of becoming a nuclear engineer was the sustaining vision that got me out of the inner city. I can still see Dr. Williams at the University of Virginia reactor facility in the summer of 1964 drilling us National Science Foundation high school students with two group reactor theory. Late at night I would look down into the reactor pool, and fascinated with the eerie blue glow of the Cherenkov radiation, I would dream of someday running a big power reactor.

I don't believe one should be ideological about technology. I do, however, believe that given the potential for catastrophic and virtually permanent environmental damage from nuclear operations, when in doubt we should err on the side of caution when it comes to nuclear power. In my book, nuclear proponents have a heavy but not insurmountable burden of proof to satisfy before they carry the day.

Now, what about "waste disposal and advanced reactor designs"? Of the two issues, to me, the former is more critical than the latter. If we don't solve the waste problem, it won't matter if a passively safe, standardized nuclear power system is developed. This is true even if the new designs include, as I am led to believe they do, enough on-site storage capacity for the useful life of the station. Eventually the station will be decommissioned and the waste removed to a permanent site. And just how permanent is "permanent"?

It is now the end of 1990. What will life be like in the year 12,000? What was life like in 8,000 B.C.? The time span of 10,000 years encompasses all of recorded human history. All we know from 10,000 years ago we decipher from geologic sediments and waste heaps. The period of 10,000 years is relevant because that's how far out the EPA regulations currently call for a measurable limit of ground water contamination from high level waste stored in the permanent repository. Given probabilistic risk assessment, time horizons of sufficient length and sufficiently unacceptable outcomes, you may not be able to get there from here with known or even imagined technologies and geological sites. To paraphrase the Bard: "That's the rub."

And the problem of time horizons is even worse. When we talk about building a permanent site for high level nuclear waste disposal, we are actually trying to develop a structure before 2010 which will last eons of time longer than known human history and protect the human population from its existence throughout that period. This plan is tantamount to constructing an underground facility with the durability of the pyramids. We are talking about building the modern equivalent of "pyramids underground." Can you imagine the archaeologists of 12,000 A.D. scratching at the hieroglyphics of a nuclear waste repository wondering what the symbols mean?

The question of nuclear waste that must be answered is: Given current technologies, Earth sciences, the law of the land and politics, can a safe, permanent repository for high level waste be built in a reasonable period of time? This is the $64 question for regulators, scientists, the industry, ratepayers and the public.

To a regulator who must set electricity rates, this is more than a curiosity. It is a mega buck calamity. As of June 30, 1990 almost $7 billion had been contributed by utilities and their ratepayers to the nuclear waste fund in the U.S. Treasury. Since its inception, $2.7 billion has been disbursed from the fund for DOE use for research and development, roughly a billion of that having gone into Yucca Mountain. So the remaining $4.3 billion is being used to offset the Federal deficit just like the Social Security funds. In addition, DOE hasn't contributed the $483 million it owes to the nuclear waste fund. Do you think their contributions made it into the deficit reduction package? It is estimated that the total cost to establish that the high level waste depository might approach $40 billion.

And this is the good news. The decision to push back the active date of the permanent repository has necessitated an interim solution: Expanded on-site storage and the Monitored Retrievable Storage Program. The estimates for storing the waste essentially twice vary so much I really couldn't guess how much the mil/kWh charge will rise in the near future.

Are we making ratepayers pay for something that will amount to the utility regulator's nightmare: A phantom facility that costs more and more each year but never gets built or used?

All of us know that time is money. In 1982 we promised to collect the dollars for development, and the Feds promised to have a facility in place to receive the waste in 1998. They have not lived up to their side of the bargain. In the six years from 1983 to 1989 the estimated cost of the nuclear waste program has escalated 60%, of which ⅓ is due to inflation, but DOE's current estimate contains no contingency for future escalation other than inflation.

Will the first permanent repository be built by 2010, the current schedule? And more important: will it be built and licensed in Yucca Mountain, Nevada? This is the real question because the current strategy seems to be Yucca Mountain or bust, an all or nothing bet.

A major factor is the legal question. Two months ago, in Nevada vs. Watkins, the ninth circuit shredded Nevada's claim that Secretary Watkins' decision to proceed with the site characterization of Yucca Mountain was unconstitutional. Furthermore, the court found that Nevada was premature in exercising its veto power. But the legal fight is far from over. There is no doubt that Nevada will appeal this decision and attempt to maintain the district court stay order against DOE implementation of its plan pending Supreme Court disposition of the case.

What about the political dimension? The ninth circuit decision notwithstanding, I can't imagine that there will ever be a usable Yucca Mountain repository if the people of Nevada don't want it. The political barrier is a deal breaker. There are just too many ways to delay the program, even if the site characterization proceeds.

Will the people of Nevada accept a high level waste repository in Yucca Mountain or anywhere else? Regrettably, my conclusion is that they will not. A recent poll commissioned by the "Las Vegas Review Journal" found that 78 percent of Nevadans oppose the siting of any such repository anywhere in Nevada. In addition, 80 percent want State leaders to oppose such siting with any means available. Call out the National Guard.

My rough estimate is that if Nevada exhausts all of its options and wages total political and regulatory war over Yucca Mountain, it would be at least another twenty years before all the other States could gang up on Nevada and force this site down their throats. This might not have been the case if an eastern site had been simultaneously designated with Yucca Mountain, but that would have ignited its own political maelstrom—the proverbial catch 22.

Can a safe repository be built and licensed at Yucca Mountain within a reasonable span of time? The issue of safety is what the characterization is all about. Last year the National Research Council's Board on Radioactive Waste Management issued its report: "Rethinking High-Level Radioactive Waste Disposal." In the body of that report the Board concludes that: "There is no scientific reason to think that an acceptable HLW repository cannot be built and licensed." Case closed? Not quite.

The NAS/NRC report goes on to conclude that "the U.S program, as conceived and implemented over the past decade is unlikely to succeed." In other words, science does not rule out the possibility of siting and constructing a safe repository, but we won't get there the way DOE has chosen to do the job. A principal reason for this is the U.S. having adopted a waste disposal program that "is characterized by a high degree of inflexibility with respect to both schedule and technical specifications."

Let's take this a step further. Even if all that we have reviewed so far is wrong, is it prudent to believe that the DOE can manage a Yucca Mountain once it is built? Given the legacy of Hanford, Fernald, West Valley, Savannah River etc., the answer to that question must be—no. I know that under Admiral Watkin's leadership there is a high level commitment to reverse this dismal record. But we are not there yet. We cannot base our plans on promises, only on past performance.

Time is running out. Much of what I have read and heard from the industry, DOE and even my fellow regulators sounds painfully like whistling past the graveyard. A permanent disposal site won't happen because we want it to, or because we hope it will and maybe not even if well meaning and able managers make every effort for it to happen. At some point—and I would posit that that time is sooner rather than later—we must decide that we just aren't going to make it. Then what?

The options facing us are not pretty. The underlying premise behind any consideration of options is that the current plan for permanent disposal in general, and the specific use of Yucca Mountain, just won't work. Given that assumption, and I am prepared to advance it as the only realistic conclusion to draw, there are five options available to us.

We can: (1) continue along the path we are now following knowing that it won't work but believing that for appearances' sake we ought to spend the billions on a doomed effort in the hope that we are buying time; (2) adopt a permanent on-site storage approach; (3) deploy the monitored retrievable storage program; (4) revisit fuel reprocessing; or (5) delay the siting of the permanent respository for several decades and store on-site in the interim.

Option one—the ostrich approach—is attractive but unconscionable. If the gig is up, we have to admit it. The reason is simple. Without such an admission we will lose critical time to develop an alternative.

What about option two—permanent on-site storage? This too is unacceptable. Option two is expedient in the short term but grossly irresponsible if I remember any of my sophomore physics. As many have pointed out, as bad as a permanent, poorly sited underground repository might be, it is infinitely safer than a program of permanent storage above ground in dry casks or in fuel pools. Unfortunately option two does not constitute a fix of the nuclear waste crisis and will effectively terminate any future expansion of the U.S. nuclear power option. With global warming and acid rain we cannot accept this result.

What about the MRS—option three? The Waste Act calls for the siting of an above ground monitored retrievable storage program. This supposedly would offer an interim solution to delays in the geological permanent repository. However, Congress coupled the MRS with the permanent repository precisely because it thought, and rightly so, that no State would accept an MRS unless a permanent repository had been licensed for fear that the MRS would become the permanent site.

Decoupling the MRS from the permanent repository won't work. Congress will not likely do it, and if Congress did so, no State would accept it. If Congress or DOE tried to force an MRS on a State, we would have Yucca Mountain all over again and we would be back to square one. As the Red Queen said to Alice: "it takes all the running you can do to keep in the same place."

If we cannot build pyramids underground, perhaps we could scale the problem down to size and that might mean recycling and reprocessing spent fuel—option four. The Europeans and Japanese have both recognized this reality of the equation for waste relief. Call it a "bottle bill" for nuclear power.

Now, I said the alternatives to permanent storage of spent fuel are ugly. Establishing a credible nuclear fuel reprocessing program for the American nuclear industry on the scale required would be really ugly. Any such system of facilities would vastly multiply the physical security problem of the current plan. With Saddam Hussein lurking on the horizon, can anyone argue that the nuclear proliferation issue is any less ominous now than it was in 1977 when we abandoned the reprocessing option?

In addition, the residue from such plants would also require permanent disposal albeit at a greatly reduced scale. The economics of yellow cake now seem to make reprocessing the uneconomical choice. But does such an analysis factor in the $40 billion anticipated cost of the current plan?

Reprocessing is no easy option. To develop a credible reprocessing option would take time, and to implement it would take even more time. And time is what we think we don't have. The biggest obstacle to overcome for a reprocessing option would be, in my opinion, the question of the management of the program. The logical choice for this assignment would be the DOE, but the litany of DOE management disasters at existing nuclear material processing plants does not recommend this agency for this role. Again, I didn't say there are any easy choices here. That's why we are paid the big bucks.

Now we come to the final option: Delay the siting of the permanent repository for several decades and store on-site in the interim. What would this option entail? As far as I can determine, option five must include at least four elements. First, it would necessitate the abandonment of the Yucca Mountain site or at least the scaling back of the characterization effort for Yucca to put it in the context of other potential sites. It would most certainly require that Congress and the DOE lift the designation yoke from Yucca's throat.

Second, option five would require that the lead Federal agency charged with the High Level Waste Program launch a thorough national evaluation of potential geological sites with the objective of developing a list of acceptable sites within the next three decades. I left the identity of the designated agency deliberately blank because it is not self-evident to me that DOE should automatically be that agency. Maybe it should be the USGS.

We need to acknowledge that the time of Draconian siting approaches which force States and communities to accept waste facilities is probably over (if it ever really existed). There needs to be an up front commitment to voluntarism in the siting of the re-

pository. That means giving States and local governments full participation rights in the process as well as affording local control in important decisions. This approach is being tried right now, with some success, in Canada with respect to low-level waste sites, and it has promise for affording new, innovative and potentially workable approaches for the high-level waste disposal morass in this country.

It is also not self-evident that we should confine this search to U.S. boundaries. As suggested by Wolf Hafele in a recent "Scientific American" article, this effort might be best accomplished in an international context because the High Level Waste Program is international by its very nature. All nuclear power nations have a stake in solving this problem, and solutions like mid-ocean island storage would become more likely if adopted by an international process.

The third element of option five would be the implementation of a plan of on-site storage of spent fuel for the next 100 years. Karl Cohen, formerly of G.E., has advanced this intermediate solution. We have the technology to accomplish this already at hand. The NRC has certified dry cask storage as safe as geological storage for between 120 and 150 years. Perhaps concrete canisters would meet the same standards.

The fourth element of option five would be the launching of a serious re-examination of the fuel reprocessing option. If it were possible to negotiate the hurdles to this option that I have already enumerated, it would reduce our high level waste disposal problem by roughly a factor of five. We must remember that all this sound and fury about Yucca Mountain is only over the first repository siting. If we continue with nuclear power, we will need to site many more.

Option five has its obvious drawbacks. Unless launched with a clear mandate and commitment, it carries with it all the negative baggage of a pure option two solution: namely, it brings to a halt nuclear power in the U.S. because on-site storage is clearly not a permanent solution. Furthermore, from the utility regulator's point of view it guarantees that our ratepayers will have to pay twice for spent fuel storage. Finally, from the industry's point of view and perhaps even from the viewpoint of Washington policy makers, option five could be construed as going backward in time to a pre-1987 or even 1982 status. Alice, where are you when we need you?

I recognize all of these drawbacks with this proposal, but I don't believe the other options are viable. We most certainly cannot plunge ahead in pursuit of a mirage-like permanent repository at Yucca Mountain. Let's face the truth. It ain't going to happen.

Now, as for the other topic of this panel, I have very little to say. It is undoubtedly a good and proper thing that various vendors are working hard to develop an inherently safer nuclear generating system. To you I can only say: Good luck. No, I have a little more than that to say.

In my opinion, the challenge you have undertaken must take into account two spheres of reality: the safety issue as it animates public opinion about nuclear power and the economics of power generation in this last decade of the century. If you satisfy the one sphere of reality without the other, you will most certainly fail.

In terms of the safety sphere of reality, I will only offer a couple of observations. Credibility will be everything in this game. Be modest. Don't oversell your product. If your emergency water injection systems rely on sensor activation, you don't have a passively safe system. If your physical activation system for any backup water injection can be set for different pressure settings carefully explain that this is a crucial judgment call that must be made by institutions that have little or no credibility. And if your control and safety rods still must defy gravity to operate, try another design. By the way, I personally believe that all of these hurdles can be overcome.

Here I speak only to the light water designs under development. As for the more exotic advanced reactors, I will only observe that if you must eliminate containment to make the numbers work, forget it. People died at Chernobyl and nobody died at TMI. The difference was containment, and I will state categorically that no nuclear power station will ever be built in this country without a containment structure.

As for the economic sphere, nuclear power stations will not be ordered unless they can beat the economic bogeyman. Don't expect any special treatment from regulators because this is clean nuclear power—that is, unless you can come up with some plan to magically transform the costs of the "externalities" into money in ratepayers' pockets.

One of the biggest economic hurdles is the excess capacity disallowance. Given the recent history and current forecasts of load growth, it will be very difficult to even add 600MW chunks of capacity to our systems without triggering excess capacity penalties. The economics of the plant must take this eventuality into account.

Another major hurdle will be the least cost procurement test. Each new unit must be able to compete with other sources of power on a least cost basis at the time of selection of the unit, and the unit will be held accountable for any escalation in cost. The least cost test is becoming a significant early hurdle for any generating unit to clear. Up front hearings on the incorporation of a unit into a production plan places greater risk at the developmental phase but can reinforce the selection during its construction.

I was pleased to hear an estimate of the AP600 at under $1300/kW at the recent summer meetings of NARUC. But a gas-fired combined cycle unit is $800/kW and can be built on a schedule with more flexibility to meet expected load growth. Wake up people! Until you can match that performance, you won't sell a single unit in the U.S.

Finally, a third economic hurdle is the restructuring of the generation side of the electric business. Can you bid the opportunity to provide power for a fixed price within a known time horizon? I believe the only way Westinghouse or GE will get an AP600 or an SBRW to the market is not to be an equipment supplier but to be an electricity supplier. They would be nuclear IPP's bidding to provide energy at such and such a price, at such and such a future date, just as B&W, Wheelabrator, AES, Bechtel, Air Products, Bonneville Pacific, O'Brien Energy, Long Lake Energy and Pyropower all are doing today.

There is very little you can do to make the future nuclear technology more attractive until you come to grips with the industry restructuring which is placing the risks of power development on independent entrepreneurs. These independents will be less likely to take a risk on nuclear technology when they can avoid the hazards of the industry with virtually any other technology on the market and beat nuclear's price.

In conclusion, I believe there is still time to rejuvenate the nuclear power industry in the U.S. To do so, however, will require new thinking and a willingness to hear what is said, not what we want to hear. And now I'd like to follow the admonition of the king to the white rabbit when he said "Begin at the beginning, and go on till you come to the end: then stop." Thank you.

By Mr. DURENBERGER (for himself, Mr. MCCAIN, Mr. WALLOP, and Mr. JEFFORDS):

S. 700. A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on insurance companies not meeting certain requirements with respect to health insurance provided to small employers; to the Committee on Finance.

AMERICAN HEALTH SECURITY ACT

• Mr. DURENBERGER. Mr. President, it goes without saying that the American people are dissatisfied with their health care. We have problems of access: One in eight Americans have no health insurance protection, public or private. We have problems with costliness: Insurance premiums and benefit costs continue to rise at alarming rates.

As cochair of the Pepper Commission, I can say that the problems of our system are agreed upon and well understood. The challenge now is how to span the gap between where we are today, and where we want to be next year and 10 years from now.

Today, I am introducing legislation which I hope will be the first plank in a crosswalk which will bridge the inadequate system we now have, to the improved system the American people want, and deserve.

I am introducing along with Senator MCCAIN and Senator WALLOP the American Health Security Act of 1991. This legislation will help address the issue of America's uninsured by adding essential consumer protection standards into the private health insurance market as it relates to employees of small businesses.

I invite my colleagues on both sides of the aisle to join me in cosponsoring this legislation. This is a bipartisan issue and I believe I have crafted a solution that has great bipartisan appeal.

Today, over 30 million Americans lack health insurance protection. They are vulnerable not only to the high costs of medical care, but their very economic security can be threatened by the expense of a major illness.

Significantly, most of the uninsured are not jobless. It has been estimated that 70 percent of the uninsured, or about 20 million people, are either employed workers or the dependents of workers. Further, three out of every four working uninsured persons are employed in small businesses, with the biggest gap in health insurance coverage occurring in companies with fewer than 25 employees.

Why is this the case? Is it because small employers do not want to offer this important fringe benefit to their

employees? No. The fact is that many small firms are interested in securing these benefits, but when they go to the private insurance market to get them, they run into serious obstacles.

Insurers can and do refuse to sell insurance contracts if they don't want to accept the employer's group—for any reason—and can cancel contracts unilaterally. They can and do selectively deny or restrict coverage for specific employees or an employee's dependent child—with preexisting medical conditions. They can and do charge prohibitive risk premiums.

In addition, insurers often low-ball the premiums offered to an employer in the first year, and once they've hooked the account, raise the premiums abruptly in later periods by 20, 30, 40 percent or more.

They also market carefully to attract primarily lower risk groups. Selecting low risks is known as creaming or cherry-picking.

These practices foster enormous instability and turnover, or churning, among small employers who try to buy health benefits, and discourage many employers from even trying.

These are not just run-of-the-mill sharp business practices that we can deplore, but shrug our shoulders over. They have important and negative societal consequences.

For instance, in the Pepper Commission field hearings, we heard testimony from individuals who could not leave dead-end jobs because they had a sick child and could not risk losing their health care coverage.

Reverend Oakes of West Virginia told us about how he was fired from his job when his wife was diagnosed with cancer because his employer feared that the company's health benefit plan premiums would skyrocket or that the plan would be terminated for everyone.

So the question for us as legislators is what can we do to help small employers do the job they'd like to do.

If we want to help expand health benefits through the small business workplace, then we must act to stabilize this market. We must have consumer protection standards that are clear and effective, that insurers can comply with, and whose fairness all small employers can rely upon.

The legislation I am introducing, the American Health Security Act of 1991, will tackle these problems by setting uniform standards nationwide that require the following: Guaranteed issue of policies; limits on insurers' ability to impose coverage restrictions due to preexisting conditions; guaranteed renewability of policies; and restrictions on experience rating and limits on annual increases in premiums.

In addition, the bill includes two benefit packages designed expressly with the needs of small businesses in mind.

Although these are Federal standards, this legislation permits States to regulate these practices provided the State laws are at least as rigorous as the Federal standards.

The No. 1 problem for small employers is the costliness of private health insurance. The high cost of medical care is a major part of this and an issue we cannot continue to neglect.

However, another important cost factor is the trend in State legislatures to mandate that health insurance policies include all manner of costly benefits that are not essential to most people's basic health insurance needs. Yet these State mandates can raise premium costs an estimated 20–30 percent.

To address this problem, I propose to require insurers to make available to small employers, two specially tailored benefit packages called Medplans. One is a core plan, the second is an enriched standard plan. However, both are exempt from State benefit mandates and will give small employers a more affordable alternative.

We estimate that the core Medplan could be marketed at a premium of about $900 to $1,200 per year or as low as $75 per month. The standard Medplan could be marketed at about $1,200–$1,600 per year, or as low as $100 per month. This is much lower than the average cost of $2,000 per year for benefit plans now on the market.

I would be the first to acknowledge that these are not ideal health plans—but, they are ideal income security plans. And that is the main issue for employees who currently get no insurance protection.

Mr. President, if these reforms are enacted, it will be a watershed event in the evolution of the private health insurance industry in this country. Can the private health insurance industry rise to the challenge?

The industry itself acknowledges the need for the basic reforms contained in this legislation. If we work together, there is a real opportunity to preserve the choices, diversity, and potential for innovation that resides in the private sector.

I, for one, believe that insurers can thrive financially by "doing good," so long as all carriers must abide by the same rules. If even one company can undercut these rules, our efforts to perfect America's unique system of mixed public and private benefits will be doomed.

Mr. President, it has been suggested to me that this boils down to two simple tests for the industry:

First, the market test. Can insurance carriers give us what we want at a price the serves the insurer's necessary economic goals of market share and profit margin?

Second, the social test. Can insurance carriers give us what we want—namely access to financial protection, affordable premiums and coverage for the health care services we most need?

The course that we currently are on in the private health insurance market will most assuredly make it fail both these tests. Some carriers will inevitably fail on the market side due to competitive pressures and poor management. However, I'd like to focus now on why many companies are failing the social test.

Insurance plans compete to give buyers what they want, but only within the limits that will produce acceptable financial margins to them as businesses! The very practices companies must engage in to survive and compete on economic terms, are fundamentally at odds with our social objectives of broad-based affordable, comprehensive coverage.

Companies can't survive if their premiums aren't competitive. Therefore, they deny coverage to high-risk groups and individuals to keep their premiums down. The facts are that in today's market, risk selection is a much more powerful tool and generates much greater competitive advantages to companies than does the much harder task of managing people's care and keeping their claims expenses down. It is this dynamic that we must stop.

Mr. President, the industry is in a crisis. It is facing a severe loss of public confidence in its ability to play a viable role in the future. Unless we act now to create a level playing field, the future ability of insurers to provide us with the financial security and services we need will be in grave jeopardy.

And my solutions are geared toward solving the social problems not toward protecting the status quo in the private insurance industry, nor in the regulatory framework that has allowed it to evolve into what it is today.

The challenge for me and others who share these concerns is to put a new framework together that better meets our social needs.

In closing, Mr. President, as I said at the beginning, this is merely the first plank in building a crosswalk to a new order in our health care system. This new order must be a system where protection against the high cost of getting sick is seamless. By that, I mean that there must be no gaps left in the future between private and public programs for indviduals to fall through.

The American Health Security Act of 1991 cannot and will not do the whole job of closing the existing gaps in health insurance coverage. We must also redesign our major public programs like Medicare and Medicaid to achieve seamless protection for all regardless of age, employment or economic circumstances. To this end, I will be introducing major restructuring proposals for these programs later this session to achieve universal access for all Americans.

In addition, we must reexamine the $40 billion in tax subsidies that underlie employer-based health benefits. It

is incumbent upon us to make sure that public subsidies of this magnitude support only those health benefit plans that meet social objectives of equity and efficiency. These are large undertakings. But if we are to have a socially just approach to meeting people's basic health care needs, we must tackle these issues. Mr. President, I ask unanimous consent that the complete text of this bill and a section-by-section summary be printed in the RECORD.

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

S. 700

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 "American Health Security Act of 1991".

SEC. 2. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE PROVIDED TO SMALL EMPLOYERS.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans) is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Health Insurance Provided to Small Employers

"Sec. 5000A. Failure to satisfy standards for health insurance of small employers.

"Sec. 5000B. General issuance requirements.

"Sec. 5000C. Specific contractual requirements.

"Sec. 5000D. State compliance agreements.

"Sec. 5000E. Definitions and other rules.

"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE OF SMALL EMPLOYERS.

"(a) GENERAL RULE.—In the case of any person issuing applicable accident and health insurance contracts, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year—

"(1) the general issuance requirements of section 5000B, or

"(2) the specific contractual requirements of section 5000C.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 20 percent of the gross premiums received during such taxable year with respect to all accident and health insurance contracts issued by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, or exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a).

"(d) LIABILITY FOR TAX.—The person issuing the applicable accident and health contract with respect to which a failure occurs shall be liable for the tax imposed by subsection (a).

"SEC. 5000B. GENERAL ISSUANCE REQUIREMENTS.

"(a) GENERAL RULE.—The requirements of this section are met if a person meets—

"(1) the mandatory policy requirements of subsection (b), and

"(2) the guaranteed issue requirements of subsection (c).

"(b) MANDATORY POLICY REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met if any person issuing accident and health contracts to any eligible small employers makes available to such eligible small employers—

"(A) an accident and health contract which provides benefits which are identical to the benefits under the core Medplan described in subsection (d), and

"(B) an accident and health contract which provides benefits which are identical to the benefits under the standard Medplan described in subsection (d).

A person shall not be treated as failing to meet the requirements of this paragraph if the deductible and copayment requirements are less than those in the core or standard Medplan.

"(2) PRICING AND MARKETING REQUIREMENTS.—The requirements of paragraph (1) are not met unless—

"(A) the price at which the contract described in paragraph (1) is made available is not greater than the price for such contract determined on the same basis as prices for other accident and health contracts within the same class of business made available by the person to eligible small employers, and

"(B) such contract is made available to eligible small employers using at least the marketing methods and other sales practices which are used in selling such other contracts.

"(c) GUARANTEED ISSUE.—

"(1) IN GENERAL.—The requirements of this subsection are met if the person offering applicable accident and health insurance contracts to eligible small employers issues such contracts to any eligible small employer seeking to enter into such a contract.

"(2) FINANCIAL CAPACITY EXCEPTION.—Paragraph (1) shall not require any person to issue a contract to the extent that the issuance of such contract would result in such person violating the financial solvency standards (if any) established by the State in which such contract is to be issued.

"(3) EXCEPTIONS FOR CERTAIN EMPLOYERS.—Paragraph (1) shall not apply to a failure to issue a contract to an eligible small employer if—

"(A) such employer is unable to pay the premium for such contract, or

"(B) in the case of an eligible employer with fewer than 15 employees, such employer fails to enroll at least 60 percent of the employer's eligible employees for coverage under such contract.

"(d) MEDPLAN.—For purposes of this section—

"(1) CORE MEDPLAN.—The term 'core Medplan' means an accident and health plan which provides the core benefits described in paragraph (3).

"(2) STANDARD MEDPLAN.—The term 'standard Medplan' means an accident and health plan which provides—

"(A) the core benefits described in paragraph (3), and

"(B) the supplemental benefits described in paragraph (4).

"(3) CORE BENEFITS.—The term 'core benefits' means benefits for any of the following which are determined to be medically necessary:

"(A) Inpatient and outpatient hospital services.

"(B) Inpatient and outpatient surgical services.

"(C) Inpatient and outpatient physicians' services.

"(D) Diagnostic and screening services.

"(E) Prenatal care.

"(F) Ambulance services.

"(G) Durable medical equipment.

Such term does not include a supplemental benefit.

"(4) SUPPLEMENTAL BENEFITS.—The term 'supplemental benefits' means benefits—

"(A) for inpatient or outpatient treatment for a mental disorder, or

"(B) for inpatient and outpatient treatment of a chemical dependency disorder.

"(5) DEDUCTIBLES AND COPAYMENTS.—A plan shall not be treated as providing the benefits described in paragraphs (3) and (4) unless the following requirements are met:

"(A) The plan does not require—

"(i) a deductible amount for any plan year in excess of $500 per individual and $1,000 per family, and

"(ii) a deductible amount for any plan year for prenatal care.

"(B) The plan does not require out-of-pocket expenses for any plan year in excess of $3,000 per individual and $6,000 per family.

"(C) The amount of any copayment required to be paid by an employee for any core benefits does not exceed—

"(i) 20 percent for core benefits described in subparagraphs (A), (B), (C), (D), and (E) of paragraph (2),

"(ii) 50 percent for core benefits described in subparagraphs (F) and (G) of paragraph (2).

"(D) The amount of any copayment required to be paid by an employee for supplemental benefits does not exceed 50 percent.

"(E) The plan provides benefits of not less than 45 days for supplemental benefits which are provided on an inpatient basis and not less than 25 visits for supplemental benefits provided on an outpatient basis.

"SEC. 5000C. SPECIFIC CONTRACTUAL REQUIREMENTS.

"(a) GENERAL RULE.—The requirements of this section are met if, with respect to any applicable accident and health insurance contract, the following requirements are met:

"(1) The coverage requirements of subsection (b).

"(2) The rating requirements of subsection (c).

"(3) The disclosure and recordkeeping requirements of subsection (d).

"(b) COVERAGE REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any applicable accident and health contract if, under the terms and operation of the contract, the following requirements are met:

"(A) GUARANTEED ELIGIBILITY.—No eligible employee (and the spouse or any dependent child of the employee eligible for coverage) may be excluded from coverage under the contract.

"(B) LIMITATIONS ON COVERAGE OF PREEXISTING CONDITIONS.—Any limitation under the contract on any preexisting condition—

"(i) may not extend beyond the 6-month period beginning with the date an insured is first covered by the contract, and

"(ii) may only apply to preexisting conditions which manifested themselves, or for which medical care or advice was sought or recommended, during the 3-month period preceding the date an insured is first covered by the contract.

"(C) GUARANTEED RENEWABILITY.—

"(i) IN GENERAL.—The contract must be renewed at the election of the eligible small employer unless the contract is terminated for cause.

"(ii) CAUSE.—For purposes of this subparagraph, the term 'cause'—

"(I) includes nonpayment of premiums, fraud or misrepresentation, noncompliance with plan provisions (including participation requirements), or misuse of network provisions, but

"(II) does not include any reason related to risk characteristics.

"(2) WAITING PERIODS.—Paragraph (1)(A) shall not apply to any period an eligible employee is excluded from coverage under the contract solely by reason of a requirement applicable to all employees that a minimum period of service with the employer is required before the employee is eligible for such coverage.

"(3) DETERMINATION OF PERIODS FOR RULES RELATING TO PREEXISTING CONDITIONS.—For purposes of paragraph (1)(B), the date on which an insured is first covered by a contract shall be the earlier of—

"(A) the date on which coverage under such contract begins, or

"(B) the first day of any continuous period—

"(i) during which the insured was covered under 1 or more other health insurance arrangements, and

"(ii) which does not end more than 120 days before the date employment for the employer begins.

"(4) CESSATION OF SMALL EMPLOYER HEALTH INSURANCE BUSINESS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a person shall not be treated as failing to meet the requirements of paragraph (1)(C) if such person terminates the class of business which includes the applicable accident and health insurance contract.

"(B) NOTICE REQUIREMENT.—Subparagraph (A) shall apply only if the person gives notice of the decision to terminate at least 90 days before the expiration of the contract.

"(C) 5-YEAR MORATORIUM.—If, within 5 years of the year in which a person terminates a class of business under subparagraph (A), such person establishes a new class of business which includes contracts within the class of business so terminated, the issuance of such contracts in that year shall be treated as a failure to which this section applies.

"(D) TRANSFERS.—If, upon a failure to renew a contract to which subparagraph (A) applies, a person transfers such contract to another class of business, such transfer must be made without regard to any risk characteristic.

"(c) RATING REQUIREMENTS.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any applicable accident and health insurance contract if—

"(A) the premium rate or rates under the contract are within the acceptable premium range, and

"(B) any increase in any premium rate under the renewal contract over the corresponding rate under the contract being renewed does not exceed the applicable annual adjusted increase.

"(2) ACCEPTABLE PREMIUM RANGE.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The acceptable premium range includes premium rates which are not more than 120 percent, or less than 80 percent, of the lowest index rate for all classes of business of the issuer which include applicable accident and health insurance contracts.

"(B) INDEX RATE.—For purposes of subparagraph (A), the term 'index rate' means, with respect to any class of business, 50 percent of the sum of—

"(i) the lowest premium rate, determined under the rating system for the rating period which covers the contract, which may be charged by the person issuing the contract for substantially similar coverage to employers with similar case characteristics (other than risk characteristics) as the employer under the contract to which paragraph (1) is being applied, plus

"(ii) the highest premium rate which may be so charged.

"(C) RANGE MAY BE DETERMINED BY SECRETARY.—In the case of any class of business covering applicable accident and health insurance contracts—

"(i) with respect to which employers who are eligible are not, and have never been, rejected for coverage on the basis of risk characteristics as defined under section 5000C(b)(2)(B),

"(ii) to which business may not be involuntarily transferred from another class of business, and

"(iii) which is currently available for purchase,

the acceptable premium range with respect to such contracts shall be the range (if any) established by the Secretary in accordance with the principles of this subsection.

"(3) APPLICABLE ANNUAL ADJUSTED INCREASE.—

For purposes of paragraph (1)(B)—

"(A) IN GENERAL.—The applicable annual adjusted increase is an amount equal to the sum of—

"(i) the applicable percentage of the premium rate under the contract being renewed, plus

"(ii) any increase in the rate under the renewal contract due to any change in coverage or to any change of case characteristics (other than risk characteristics).

"(B) APPLICABLE PERCENTAGE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage is the percentage (if any) by which—

"(I) the premium rate for newly issued contracts for substantially similar coverage for an employer with similar case characteristics (other than risk characteristics) as the employer under the applicable accident and health contract (determined on the 1st day of the rating period applicable to such contracts), exceeds

"(II) such rate on the 1st day of the rating period applicable to the contract being renewed.

"(ii) CASES WHERE NO NEW BUSINESS.—If no new contracts are being issued for a class of business during any rating period, the applicable percentage shall be the percentage (if any) by which the lowest premium rate determined under paragraph (2)(B)(i) with respect to the renewal contract exceeds such rate for the contract to be renewed.

"(d) DISCLOSURE AND RECORDKEEPING, ETC. REQUIREMENTS.—The requirements of this subsection are met if—

"(1) DISCLOSURE.—Any person issuing an applicable accident and health insurance contract includes in any sales materials the following:

"(A) The extent to which premium rates are based on risk characteristics and on factors other than risk characteristics.

"(B) The extent to which the person may change the premium rates.

"(C) The class of business within which the contract falls, including a description of the grouping of contracts within a class of business.

"(D) Provisions relating to renewability.

"(2) RECORDKEEPING, ETC.—Any person issuing an applicable accident and health insurance contract—

"(A) maintains at its principal place of business a complete and detailed description of its rating and renewal underwriting practices, and the information on which such practices are based, and

"(B) files with the Secretary each year an opinion of a qualified health actuary, based on a review of appropriate records, that the rating practices of such person for the preceding year are based upon commonly accepted actuarial assumptions and in accordance with the provisions of this section and sound actuarial principles.

For purposes of paragraph (2), the term 'qualified health actuary' means a member of the American Academy of Actuaries who is qualified by reason of prior and continuing education and relevant experience to render the actuarial opinion.

"SEC. 5000D. STATE COMPLIANCE AGREEMENTS.

"(a) AGREEMENTS.—The Secretary may, in his discretion, enter into an agreement with any State—

"(1) to apply the standards set by the laws of such State for applicable accident and health insurance contracts in lieu of the requirements of this subchapter, or

"(2) to provide for the State to make the initial determination as to whether a person is in compliance with the provisions of this subchapter.

"(b) STANDARDS.—An agreement may be entered into under subsection (a)(1) only if—

"(1) the chief executive officer of the State requests such agreement be entered into,

"(2) the Secretary determines that the State standards to be applied under the agreement will apply to substantially all applicable accident and health contracts issued in such State, and

"(3) the Secretary determines that the application of the State standards will carry out the purposes of this subchapter.

"(c) MEDPLAN REQUIREMENT MAY NOT BE WAIVED.—Any agreement entered into under subsection (a)(1) shall not waive the mandatory policy requirement under section 5000B(a)(1) (relating to offering of Medplan).

"(d) TERMINATION.—The Secretary shall terminate any agreement if the Secretary determines that the application of State standards ceases to carry out the purposes of this subchapter.

"SEC. 5000E. DEFINITIONS AND OTHER RULES.

"(a) APPLICABLE ACCIDENT AND HEALTH INSURANCE CONTRACT.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'applicable accident and health insurance contract' means a contract under which a person authorized

under applicable State insurance law provides a health insurance plan or arrangement to an eligible small employer. Such term does not include any self-insured plan of an employer.

"(2) CERTAIN CONTRACTS NOT COVERED.—The term 'applicable accident and health insurance contract' does not include any contract—

"(A) which provides for accident only, dental only, or disability only coverage,

"(B) which provides coverage as a supplement to liability insurance,

"(C) which provides insurance arising out of a workmens' compensation or similar law, or automobile medical-payment insurance, or

"(D) which provides insurance which is required by law to be contained under any self-insured plan of an employer.

"(3) EXCEPTION FOR SMALL ISSUERS.—The term 'applicable accident and health insurance contract' shall not include any contract issued during a taxable year by a person which had less than $1,000,000 in gross premiums from accident and health contracts during the preceding taxable year. For purposes of the preceding sentence, the aggregation rules of section 448(c) shall apply.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) CLASS OF BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'class of business' means, with respect to accident and health insurance provided to eligible small employers, all accident and health insurance provided to such employers.

"(B) ESTABLISHMENT OF GROUPINGS.—An issuer may establish separate classes of business with respect to accident and health insurance provided to eligible small employers but only if such classes are based on 1 or more of the following:

"(i) Business marketed and sold through persons not participating in the marketing and sale of such insurance to other eligible small employers.

"(ii) Business acquired from other insurers as a distinct grouping.

"(iii) Business provided through an association of not less than 20 eligible small employers which was established for purposes other than obtaining insurance.

"(iv) Business related to managed health care arrangements.

"(v) Business within groupings under clauses (i) through (iv) which is based on risk selection or underwriting criteria expected to produce substantial variations in claims costs.

"(vi) Any other business which the Secretary determines needs to be separately grouped to prevent a substantial threat to the solvency of the insurer.

"(C) MANAGED HEALTH CARE ARRANGEMENT.—For purposes of subparagraph (B)(iv), the term 'managed health care arrangement' means an arrangement which integrates the financing and delivery of health care services to covered individuals by employing the following:

"(i) Contracts with selected health care providers to furnish health care services to members.

"(ii) The adoption of explicit standards for the selection and recertification of providers.

"(iii) An explicit, formal program for ongoing quality assurance and utilization review.

"(iv) Significant financial incentives for members to use the providers and procedures associated with the arrangement.

"(2) CHARACTERISTICS.—

"(A) IN GENERAL.—The term 'characteristics' means, with respect to any insurance rating system, the factors used in determining rates.

"(B) RISK CHARACTERISTICS.—The term 'risk characteristics' means factors related to the health risks of individuals, including health status, prior claims experience, the duration since the date of issue of a health insurance plan or arrangement, industry, and occupation.

"(C) GEOGRAPHIC FACTORS.—In applying geographic location as a characteristic, an insurer may not use for purposes of this subchapter areas smaller than Census Bureau designations of metropolitan statistical areas and nonmetropolitan statistical areas.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means any employee other than an employee who works less than 30 hours per week. For purposes of this paragraph, the term 'employee' includes a self-employed individual as defined in section 401(c)(1).

"(4) ELIGIBLE SMALL EMPLOYER.—The term 'eligible small employer' means an employer who normally employed more than 1 but not more than 50 eligible employees on a normal business day. For purposes of the preceding sentence, all employers covered under the same health insurance plan or arrangement covered by a contract shall be treated as 1 employer."

(b) CONFORMING AMENDMENT.—So much of chapter 47 of the Internal Revenue Code of 1986 as precedes section 5000 is amended to read as follows:

"CHAPTER 47—CERTAIN GROUP HEALTH PLANS

"SUBCHAPTER A. Nonconforming group health plans.

"SUBCHAPTER B. Health insurance provided to small employers.

"Subchapter A—Nonconforming Group Health Plans

"Sec. 5000. Certain group health plans."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to contracts issued, or renewed, after the date of the enactment of this Act.

(2) GUARANTEED ISSUE.—The provisions of section 5000B(c) of the Internal Revenue Code of 1986 shall apply to contracts which are issued, or renewed, after the date which is 18 months after the date of the enactment of this Act.

(3) PREMIUM RANGE.—In the case of any contract in effect on the date of the enactment of this Act, the provisions of section 5000C(c)(1)(A) of such Code shall not apply to the premiums under such contract or any renewal contract for benefits provided during the period beginning on such date and ending on the last day of the 2nd plan year beginning after such date.

AMERICAN HEALTH SECURITY ACT OF 1991

SECTION-BY-SECTION SUMMARY

A bill to amend the Internal Revenue Code of 1986 to impose an excise tax on insurance companies not meeting certain requirements with respect to health insurance benefits provided to small employers.

Section 1. Title:

Section 2. Failure to satisfy certain standards for health insurance provided to small employers:

Section 5000 A:

Insurers must satisfy certain mandatory product offering, coverage and rating standards in selling health insurance contracts to small employers.

Failure to meet one or more of these standards during a taxable year shall make the insurer liable for an excise tax penalty equal to 20 percent of gross premium income on accident and health insurance contracts issued by the insurer.

Secretarial discretion on applying the tax penalty is permitted where: insurer did not know or exercising reasonable diligence would not have known the failure existed, and failures are corrected within 30 days, or if failure was due to reasonable cause.

Section 5000 B: This section describes mandatory product offering and guaranteed issue (of contracts) requirements.

Guaranteed issue of contracts: No eligible small employer can be denied issuance of a health insurance contract except for the employer's failure to achieve minimum employee participation rates, where applicable. There is a separate (delayed by 18-months) effective date solely for this requirement, to permit States to enact appropriate enabling legislation for reinsurance.

MANDATORY PRODUCT OFFERING: MEDPLANS

Insurers marketing any health insurance products to small employers must make available (but employers are not required to purchase) a dual product offering known as MEDPLANS, described below. These two products must be priced consistently with the standards employed by the insurer in pricing and marketing their other products in the small group market, and with the requirements of this Act.

MEDPLANS are exempt from state benefit mandates. This preemption does not exempt from state benefit mandates other health insurance products marketed to small employers.

Benefits	Core Medplan	Standard Medplan
Deductible (single/family).	$500 to $1,000	$500 to $1,000.
Out-of-pocket limit (single/family.	$3,000 to 6,000	$3,000 to $6,000.
Hospital services (IP/OP).	20 to 80 percent (EE/ER).	20 percent.
Surgical services (IP/OP).	20 percent	20 percent.
Physician services (IP/OP).	20 percent	20 percent.
Diagnostic and screening services (IP/OP).	20 percent	20 percent.
Prenatal care	20 percent [1]	20 percent.[1]
Mental disorders		
Inpatient		30 days/50 percent.
Outpatient		25 visits/50 percent.
Chemical dependency disorders:		
Inpatient		30 days/50 percent.
Outpatient		25 visits/50 percent.

[1] No deductible.

Section 5000 C. Specific contractual requirements: This section sets standards for coverage, rating, disclosure, and recordkeeping.

Limits on preexisting medical conditions: Any limitation on coverage may not extend beyond 6 months after the initial issuance of coverage. This limit can apply only if the preexisting condition manifested itself during the 3-month period prior to issuance of coverage (aka "look-back" provision). No further waiting period for the preexisting condition can be imposed under any circumstances (such as change of carrier, or change to a different plan through switching jobs), unless an individual has had a break in coverage in excess of 120 days.

Guaranteed renewability: Contracts must be renewed at the election of the small employer, unless the contract is terminated for cause, such as non-payment of premiums.

Contracts cannot be canceled due to adverse claims experience.

Rating requirements:

Acceptable premium ranges are defined within classes of business and between classes of business.

Within class range: Premiums must be within 80–120% of the average rate (aka index rate) of the class.

Between classes range: If an insurer has two or more classes of business, the average (or index) rate for any class cannot be more than 20 percent above or below the average (or index) rate for any other class.

Exceptions: The Secretary may develop different ranges, as appropriate, for insurer's who do not underwrite premiums based on health status or claims experience and who offer policies on an open enrollment, basis.

Annual rate change limitation: Within a class, rate increases on existing contracts are capped at the level of rates charged to new businesses, with adjustments for changes in a group's coverage and/or case characteristics.

Disclosure and recordkeeping: These are rules requiring disclosure in sales materials of how premiums are set, the extent to which they can change, and the class into which a contract would fall.

Further, insurers must maintain at their principal place of business detailed descriptions of rating factors and procedures. Insurers must file annually with the Secretary, a qualified actuarial certification that their rating practices are based on commonly accepted actuarial assumptions and principles.

Section 5000 D. State compliance agreements:

The Secretary, at his discretion, may enter into agreements with States to permit State laws to govern instead of the federal standards.

The CEO of the State must request such an agreement, and

The Secretary must determine (1) that the State's standards will carry out the purposes of this Act, and (2) that the State's standards will apply to substantially all small-employer health insurance contracts issued in the State.

Regardless of the above, the mandatory policy offering known as MEDPLANS cannot be waived.

Separately, even if a State does not obtain an agreement permitting State laws to carry out the purposes of this Act, the State may still enter into a separate agreement with the Secretary to make determinations of whether insurers are in compliance with the federal standards.

Section 5000 E. Definitions and other rules: This section defines contracts, classes of business and class groupings, eligible employers and employees, permissible rating factors and other rules.

Important to note:

(1) Exception for small insurers: Insurers who had less than $1 million in gross accident and health premium income during the preceding taxable year are exempt from the requirements of this Act for the subsequent taxable year (aggregation rules apply).

(2) A small employer is defined as an employer who normally employed more than 1 but not more than 50 employees, and self-employed individuals as defined under section 401(c)(1) of the Internal Revenue Code.

(3) Prohibited factors in determining rates (beyond the boundaries permitted within classes) include health status, prior claims experience, industry, occupation or duration since the date of issue of a policy. If geographic location is used, insurers may not use areas smaller than Census Bureau designations of metropolitan statistical areas and non-metropolitan statistical areas.

(4) Effective date is upon enactment for all requirements except guaranteed issue. That requirement will not be effective until 18 months after enactment.

(5) Transition rules permit rates on contracts issued prior to the effective date to exceed the premium ranges within classes and across classes for two years or the second renewal of a contract, whichever is earlier.•

• Mr. McCAIN. Mr. President, I rise today to join my colleague Senator DURENBERGER of Minnesota in introducing the American Health Security Act of 1991. This legislation is needed to help enable more small businesses to provide health insurance coverage to their employees, and to assist in the national effort to make affordable health insurance available to more American families and individuals.

Today, between 32 and 37 million Americans are without adequate health insurance. Because of the continuing escalation of health care costs in this country, many of these people are forced to go without routine and needed medical care. The result is more acute health problems in some individuals, including children. When this happens, government must frequently step in.

Mr. President, contrary to what most of us believe, the bulk of uninsured Americans are not unemployed. Rather, between 70 and 80 percent are employed or are dependents of employed individuals. The vast majority of these work for small businesses. Also, contrary to general opinion, these people are without insurance not because small business owners are unwilling to provide coverage, but in large part because of the business is unable to pay the high cost of health coverage as mandated by most States.

If we are to make significant progress toward filling this need and rectifying this difficult situation, we must look for solutions which are fair and equitable to employees who need insurance coverage, to small firms who may experience difficulty in obtaining and paying for coverage, and to insurance providers as they struggle to keep pace with inflation in health care. This legislation represents what I believe to be the best available solution to this problem.

Mr. President, let me say first that this legislation in no way mandates coverage. While that may be an easy solution, in practice it will not work because mandating coverage in no way addresses the fundamental reasons why many small firms are unable to buy and pay for employee health care plans. Mandates exacerbate the symptom of the problem rather than attacking the root of the problem.

Rather, this legislation seeks to provide alternatives to existing insurance plans, and to ease the cost of buying insurance by providing tax incentives and limitations on premium increases for some types of coverage.

Mr. President, this bill applies to businesses having between 2 and 50 employees, and to insurers who provide health care plans to small business.

We know that a great deal of the cost of small group health policies reflects the many mandates imposed by State governments on insurers. While there may be many good reasons for the practice of mandating certain minimum coverage requirements for group policies, the effect has been to make those policies cost prohibitive to many small businesses. In fact, Mr. President, premium rate increases of 50 to 100 percent are not uncommon for this class of insurance consumer.

To alleviate this problem, this legislation takes five important steps.

First, it guarantees that policies must be issued to small businesses wishing to purchase them.

Second, it places reasonable but not absolute limits on an insurer's ability to impose coverage restrictions due to preexisting conditions of those to be insured.

Third, it guarantees renewability of policies where the contract has not been terminated for cause.

Fourth, it places limitations on annual rate increases, such that increases cannot exceed the percentage increase charged to new businesses plus adjustments for changes in coverage and class characteristics.

And, fifth, it mandates the creation of minimum coverage insurance plans which are exempted from State mandates.

Mr. President, this last point is important. As we know, benefits and coverage mandated by States has become a key factor leading to powerful upward pressure on premium rates. This legislation requires insurers who market to small business to offer a dual product called Medplans. Medplans provide minimum basic coverage and are exempted from State mandated benefits, thus enabling insurers to offer this product at a significantly reduced cost. There is, however, nothing in this legislation that would prohibit a small business' purchase of a more generous plan should that be the desire of the purchaser.

Mr. President, in addition to this legislation, we have offered S. 88 and S. 89 which would make permanent the small business deduction for health insurance premiums, and which would raise the deduction for small businesses from 25 to 100 percent thus bringing small employers into line with IRS regulations governing large businesses. Together, this forms a complete and thorough package that will make real progress toward making health insurance available to more Americans, at a reasonable cost.

But, most importantly, this is fair legislation. It does not seek to penalize employers or insurers. No mandatory coverage is called for, and premium rates are capped within ranges that will reflect the marketplace and actual experience.

Mr. President, this legislation represents a real, working solution for millions of uninsured Americans. I urge my colleagues to look carefully at this bill, along with S. 88 and S. 89.

By Mr. PRESSLER (for himself and Mr. DASCHLE):

S. 702. A bill to authorize the planning and construction of the Mid-Dakota Rural Water System Project; to the Committee on Energy and Natural Resources.

MID-DAKOTA RURAL WATER SYSTEM ACT

Mr. PRESSLER. Mr. President, today I am introducing legislation with my colleague Senator DASCHLE to authorize the Mid-Dakota Rural Water System. This water pipeline system would bring clean drinking water to the citizens of South Dakota.

For many years we have attempted to use Missouri River water in a positive way for the citizens of our State. We are presenting this legislation with the support of Governor Mickelson's office, the electrical power community, and other local groups. Mid-Dakota would provide clean drinking water for a large area of eastern South Dakota. It is another step in our long struggle to get fair treatment for South Dakota.

The proposed Mid-Dakota Rural Water System would provide clean, safe drinking water to 29,000 people and 650,000 head of livestock in a 7,000 square mile, 12-county area in South Dakota. The proposed pipeline project is the only feasible means of providing the area with good quality water. Twenty-three towns within the Mid-Dakota area presently fail at least one EPA drinking water standard. If Congress is at all concerned about protecting human health and environmental protection, then we cannot overlook the tremendous good that would be provided by this proposed project. We have a responsibility to protect the health of the people we represent.

I remind my colleagues once again of the sacrifice South Dakota made for the construction of the four Missouri River mainstem dams in our State. In the 1940's, South Dakota agreed to sacrifice over 500,000 acres of farmland for the construction of these dams. The dams have provided hydroelectric power, flood control, and navigation for downstream States. In return for the sacrifices South Dakota made for the construction of the dams, the Federal Government made a commitment to South Dakota. That commitment was to support water development in the State. Since first coming to Congress, I have continually fought for the development of South Dakota water projects. We have had some success in the area of water development during that time with the construction of the WEB project and the rehabilitation of the Bell Fourche irrigation project, but the Federal commitment to South Dakota is far from being fulfilled. The authorization of the Mid-Dakota Rural Water System is an effort to obtain at least a partial fulfillment of the Federal commitment to South Dakota.

Mr. President, the future of South Dakota depends on responsible water development of Missouri River water resources. My goal is to see South Dakotans from border to border enjoy clean, safe drinking water. This proposed project has been planned carefully and great attention paid to the protection of the environment, as well as to the needs of the citizens in the project area.

Many people have put years of hard work into this much-needed water project. I especially commend Julie Apgar, the project manager, for her tireless efforts and selfless dedication to this project. She and countless other Mid-Dakota Rural Water System supporters deserve to enjoy the fruits of their labors. I urge my colleagues to support this important pipeline project.

Mr. President, I ask unanimous consent that the text of the Mid-Dakota Rural Water System Act be printed in the RECORD at this point.

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

S. 702

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 "Mid-Dakota Rural Water System Act of 1991".

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) the term "feasibility study" means the study entitled "Mid-Dakota Rural Water System Feasibility Study and Report" dated November 1988 and revised January 1989 and March 1989, as supplemented by the "Supplemental Report for Mid-Dakota Rural Water System" dated March 1990 (which supplemental report shall control in the case of any inconsistency between it and the study and report);

(2) the term "Foundation" means the South Dakota Game, Fish and Parks Foundation, a nonprofit corporation under the laws of the State of South Dakota with its principal office in South Dakota;

(3) the term "pumping and incidental operational requirements" means all power requirements incident to the operation of intake facilities, pumping stations, water treatment facilities, reservoirs, and pipelines up to the point of delivery of water by the Mid-Dakota Rural Water System to—

(A) each entity that distributes water at retail to individual users; or

(B) each rural use location;

(4) the term "rural use location" includes a water use location—

(A) that is located in or in the vicinity of a municipality identified in appendix A of the feasibility report, for which municipality and vicinity there was on December 31, 1988, no entity engaged in the business of distributing water at retail to users in that municipality or vicinity; and

(B) that is one of no more than 40 water use locations in that municipality and vicinity;

(5) the term "Secretary" means the Secretary of the Interior;

(6) the term "summer electrical season" means May through October of each year;

(7) the term "water system" means the Mid-Dakota Rural Water System, substantially in accordance with the feasibility study;

(8) the term "Western" means the Western Area Power Administration;

(9) the term "wetland component" means the wetland development and enhancement component of the water system, substantially in accordance with the wetland component report;

(10) the term "wetland component report" means the report entitled "Wetlands Development and Enhancement Component of the Mid-Dakota Rural Water System" dated April 1990; and

(11) the term "wetland trust" means a trust established in accordance with section 11(b) and operated in accordance with section 11(c).

SEC. 3. FEDERAL ASSISTANCE FOR RURAL WATER SYSTEM.

(a) IN GENERAL.—The Secretary shall make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water system.

(b) SERVICE AREA.—The water system shall provide for safe and adequate municipal, rural, and industrial water supplies, mitigation of wetland areas, and water conservation in Beadle County (including the City of Huron), Buffalo, Hand, Hughes, Hyde, Jerauld, Potter, Sanborn, Spink, and Sully Counties, and elsewhere in South Dakota.

(c) TERMS AND CONDITIONS.—The Secretary shall make the grants and loans authorized by subsection (a) on terms and conditions equivalent to those applied by the Secretary of Agriculture in providing assistance to projects for the conservation, development, use, and control of water under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), except to the extent that they are inconsistent with this Act.

(d) AMOUNT OF GRANTS.—Notwithstanding the percentage limits that would otherwise apply under section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), the Secretary shall make a grant or grants under subsection (a) to Mid-Dakota Rural Water System, Inc., in the amount necessary to hold user costs to a reasonable level.

(e) LOAN TERMS.—Interest on a loan made under subsection (a) to Mid-Dakota Rural Water System, Inc.—

(1) shall be at a rate of 5 percent per annum; and

(2) shall not be charged during planning and construction of the water system,

and the first payment on such a loan shall not be due until after completion of construction of the water system.

SEC. 4. FEDERAL ASSISTANCE FOR WETLAND DEVELOPMENT AND ENHANCEMENT.

(a) INITIAL DEVELOPMENT.—The Secretary shall make grants and otherwise make funds available to Mid-Dakota Rural Water System, Inc. and other private, State, and Fed-

eral entities for the initial development of the wetland component.

(b) OPERATION AND MAINTENANCE.—The Secretary shall make a grant, providing not to exceed $100,000 annually, to Mid-Dakota Water System, Inc., for operation and maintenance of the wetland component.

(c) NONREIMBURSEMENT.—Funds provided under this section shall be nonreimbursable and nonreturnable.

SEC. 5. WATER CONSERVATION.

(a) WITHHOLDING OF FUNDS.—The Secretary shall not obligate Federal funds for construction of the water system until the Secretary finds that non-Federal entities have developed and implemented water conservation programs throughout the service area of the water system.

(b) PURPOSE OF PROGRAMS.—The water conservation programs required by subsection (a) shall be designed to ensure that users of water from the water system will use the best practicable technology and management techniques to reduce water use and water system costs.

SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation for fish and wildlife losses incurred as a result of the construction and operation of the water system shall be on an acre for acre basis, based on ecological equivalency, concurrent with project construction.

SEC. 7. USE OF PICK-SLOAN POWER.

(a) IN GENERAL.—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, Western shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water system during the summer electrical season.

(b) CONDITIONS.—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water system shall be operated on a not-for-profit basis.

(2) The water system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a cooperative power supplier which purchases power from a cooperative power supplier which itself purchases power from Western.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be Western's Pick-Sloan Eastern Division Firm Power Rate Schedule in effect when the power is delivered by Western.

(4) It shall be agreed by contract among—

(A) Western;

(B) the power supplier with which the water system contracts under paragraph (2);

(C) that entity's power supplier; and

(D) Mid-Dakota Rural Water System, Inc.,

that for the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water system, but the water system's power supplier shall not be precluded from including in its charges to the water system for such electric service its other usual and customary charges.

(5) Mid-Dakota Rural Water System, Inc., shall pay its power supplier for electric service, other than for capacity and energy supplied pursuant to subsection (a), in accordance with the power supplier's applicable rate schedule.

SEC. 8. RULE OF CONSTRUCTION.

This Act shall not be construed to limit authorization for water projects in the State of South Dakota under existing law or future enactments.

SEC. 9. WATER RIGHTS.

Nothing in this Act shall be construed to—

(1) invalidate or preempt State water law or an interstate compact governing water;

(2) alter the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(3) preempt or modify any State or Federal law or interstate compact dealing with water quality or disposal; or

(4) confer upon any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resources.

SEC. 10. USE OF GOVERNMENT FACILITIES.

The use of and connection of water system facilities to Government facilities at the Oahe powerhouse and pumping plant and their use for the purpose of supplying water to the water system may be permitted to the extent that such use does not detrimentally affect the use of those Government facilities for the other purposes for which they are authorized.

SEC. 11. WETLAND TRUST.

(a) FEDERAL CONTRIBUTIONS.—The Secretary shall make a Federal contribution to a wetland trust that is—

(1) established in accordance with subsection (b); and

(2) operated in accordance with subsection (c),

in the amount of $3,000,000 in the first year in which a contribution is made and $1,000,000 in each of the following 4 years.

(b) ESTABLISHMENT OF WETLAND TRUST.—A wetland trust is established in accordance with this subsection if—

(1) the wetland trust is administered by the Foundation;

(2) the Foundation is under the direction of a Board of Directors that has power to manage all affairs of the Foundation, including administration, data collection, and implementation of the purposes of the wetland trust;

(3) members of the Board of Directors of the Foundation serve without compensation;

(4) the corporate purposes of the Foundation in administering the wetland trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of South Dakota;

(5) an advisory committee is created to provide the Board of Directors of the Foundation with necessary technical expertise and the benefit of a multiagency perspective;

(6) the advisory committee described in paragraph (5) is composed of—

(A) 1 member of the staff of the Wildlife Division of the South Dakota Department of Game, Fish and Parks, appointed by the Secretary of that department;

(B) 1 member of the United States Fish and Wildlife Service, appointed by the Director of Region 6 of the United States Fish and Wildlife Service; and

(C) 3 residents of the State of South Dakota who are members of wildlife or environmental organizations, appointed by the Governor of the State of South Dakota; and

(7) the wetland trust is empowered to accept non-Federal donations, gifts, and grants.

(c) OPERATION OF WETLAND TRUST.—The wetland trust shall be considered to be operated in accordance with this subsection if—

(1) the wetland trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of South Dakota;

(2) under the corporate charter of the Foundation, the Board of Directors, acting on behalf of the Foundation, is empowered to—

(A) acquire lands and interests in land and power to acquire water rights (but only with the consent of the owner);

(B) acquire water rights; and

(C) finance wetland preservation, enhancement, and restoration programs;

(3)(A) all funds provided to the wetland trust under subsection (a) are invested in accordance with subsection (d);

(B) no part of the principal amount (including capital gains thereon) of such funds are expended for any purpose; and

(C) the income received from the investment of such funds is used only for purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d);

(D) income earned by the wetland trust (including income from investments made with funds other than those provided to the wetland trust under subsection (a)) is used to—

(i) enter into joint ventures, through the Division of Wildlife of the South Dakota Department of Game, Fish and Parks, with public and private entities or with private landowners to acquire easements or leases or to purchase wetland and adjoining upland; or

(ii) pay for operation and maintenance of the wetland component;

(E) when it is necessary to acquire land other than wetland and adjoining upland in connection with an acquisition of wetland and adjoining upland, wetland trust funds (including funds other than those provided to the wetland trust under subsection (a) and income from investments made with such funds) are used only for acquisition of the portions of land that contain wetland and adjoining upland that is beneficial to wetland;

(F) all land purchased in fee simple with wetland trust funds shall be dedicated to wetland preservation and use; and

(G) proceeds of the sale of land or any part thereof that was purchased with wetland trust funds are remitted to the wetland trust;

(ii) management, operation, development, and maintenance of lands on which leases or easements acquired;

(iii) payment of annual lease fees, one-time easement costs, and taxes on land areas containing wetlands purchased in fee simple;

(iv) payment of personnel directly related to the operation of the wetland trust, including administration; and

(v) contractual and service costs related to management of wetland trust funds, including audits.

(4) the Board of Directors of the Foundation agrees to provide such reports as may be required by the Secretary and makes its records available for audit by Federal agencies; and

(5) the advisory committee created under subsection (b)—

(A) recommends criteria for wetland evaluation and selection;

(B) recommends wetland parcels for lease, easement, or purchase and states reasons for its recommendations; and

(C) recommends management and development plans for parcels of land that are purchased.

(d) INVESTMENT OF WETLAND TRUST FUNDS.—(1) The Secretary, in consultation with the Secretary of the Treasury, shall es-

tablish requirements for the investment of all funds received by the wetland trust under subsection (a) or reinvested under subsection (c)(3).

(2) The requirements established under paragraph (1) shall ensure that—

(A) funds are invested in accordance with sound investment principles; and

(B) the Board of Directors of the Foundation manages such investments and exercises its fiduciary responsibilities in an appropriate manner.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) WATER SYSTEM.—There are authorized to be appropriated to the Secretary $108,400,000 for the planning and construction of the water system under section 3, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after October 1, 1989, such sums to remain available until expended.

(b) WETLAND COMPONENT.—There are authorized to be appropriated to the Secretary—

(1) $2,756,000 for the initial development of the wetland component under section 4;

(2) such sums as are necessary for the operation and maintenance of the wetland component, not exceeding $100,000 annually, under section 4; and

(3) $7,000,000 for the Federal contribution to the wetland trust under section 11.

By Mr. HATCH (for himself, Mr. COCHRAN, Mr. CRAIG, Mr. HELMS, Mr. LEVIN, Mr. LOTT, Mr. LUGAR, Mr. MCCONNELL, Mr. PRESSLER, Mr. SHELBY, Mr. SIMON, Mr. SYMMS, and Mr. THURMOND):

S. 709. A bill to amend the Internal Revenue Code to allow a deduction for qualified adoption expenses, and for other purposes; to the Committee on Finance.

FAIRNESS FOR ADOPTING FAMILIES ACT

Mr. HATCH. Mr. President, I am introducing today the Fairness for Adopting Families Act, a bill that will greatly assist American families to adopt children. Senators COCHRAN, CRAIG, HELMS, LEVIN, LOTT, LUGAR, MCCONNELL, PRESSLER, SHELBY, SIMON, SYMMS, and THURMOND are joining with me to introduce this legislation.

A tax deduction for adoption expenses is desperately needed, both for its substance as well as its message. It is needed by children who are awaiting to be adopted and it is needed by families who are sacrificing to finance the ever-increasing costs of adopting a child. As lawmakers, we must make sure our laws treat families formed through adoption the same as families formed biologically. As lawmakers, we must also continue to express our support for the family unit. We all agree that strong families are the key to a strong America and our support for their formation must be the cornerstone of our policy.

For many prospective parents, the only way to form their family is through adoption. Our laws must recognize this fact and not discriminate against these families.

To many seeking to adopt a child, the costs associated with such a procedure are simply prohibitive. Prospective parents are often required to pay not only court and attorney fees but also expenses for maternity home services, hospital and physician costs, and at times, prenatal care expenses for the natural mother. Data provided by the National Committee for Adoption shows that the actual costs connected with legal adoptions can exceed $15,000. One family in my home State of Utah illustrates the financial burden an adoption can place on a family. This family was in the process of adopting a foreign infant. All of the paperwork had been filed with the appropriate agencies when they discovered that they were required to pay a lump sum of $13,000 in just a short period of time. This was a significant amount of money for this middle-class family and they concluded that they could not continue to finance the adoption. Their insurance company would reimburse them for $3,000 of this, but only after the adoption was finalized. This was too little, too late. This family just could not afford to continue with the adoption, and had to discontinue the proceeding. This situation should not have to happen. Family wealth should not be the determinative factor in adopting a child. This bill recognizes the importance of the family unit by alleviating many of the cost barriers associated with adoption.

This proposed legislation has three major features. First, it would provide a tax deduction of up to $5,000 for unreimbursed and legitimate adoption expenses. This deduction would be available whether the taxpayer itemizes or not. Second, it would exclude from an employee's gross income up to $5,000 in payments made by an employer for adoption expenses. Third, it would treat any employer contribution to an adoption expense plan as a deductible business expense.

This bill provides that as long as an adoption is in accordance with State and local law, the tax deduction for unreimbursed adoption expenses would be available. Each legal adoption is socially useful and beneficial. Each adopting family deserves our support. This is true whether the child is a healthy infant, a child with special needs, or a child from another country. We cannot arbitrarily support some children and not others. We must support all legal adoptions.

This legislation does not provide, however, a deduction for expenses for adoptions administered through illegal practices, such as through a baby broker. Many adopting parents in my own State of Utah and in other States have been defrauded by such schemes.

The cost of an illegal adoption often exceeds $25,000, most of which goes into the pockets of middlemen. Fees for such unconscionable arrangements should not and would not be deductible.

Two of this bill's provisions deal with the interest in adoption by many of America's employers. Corporations such as Dow Chemical, IBM, Digital Equipment, and Honeywell currently offer adoption benefits. This legislation will encourage more employers to establish such pro-family plans.

The bill addresses two problems now associated with employer-provided adoption benefits. The first problem is that adoption payments made to employees are taxable to the employee as income. The bill excludes from an employee's income those payments. The second problem is that employers may not treat their adoption payments to employees as deductible business expenses. The bill solves this problem by treating employer contributions to an adoption expense reimbursement program as ordinary and necessary business expenses.

This legislation will also save our society money. The National Committee for Adoption has shown savings in two ways. First, the bill would move thousands of children, who might otherwise have lingered in foster care, into loving homes. Second, the tax deduction encourages shifting medical costs to the adopting family and away from the more expensive AFDC and Medicaid systems.

This bill will do a great deal to help children of minority racial or ethnic background who are awaiting adoption. Currently, healthy babies who are of minority racial or ethnic background frequently wait for years in foster care simply because of economic factors. Often, these children do not meet the definition of a special needs child in the State where they reside. Many of the families who want to adopt these children have very modest incomes and need tax breaks to help them form their families and to offer permanent loving homes to these children. Do we want to deny these children our support because they are healthy or under 5 years of age?

I strongly encourage my colleagues to support this legislation. We are representatives of a society that professes a commitment to ensure the success of the family. The Tax Code should demonstrate that commitment by allowing for the deduction of adoption expenses. President Bush has recognized the importance of such a deduction by including a special needs adoption expense deduction in his budget proposal. While the special needs deduction is a necessary and positive move, it is far from adequate. Under the Bush proposal, a state would have the authority to define when a child fits the special needs category. We cannot let even one child remain unadopted because he or she does not fit some State's definition of special needs. How can we discriminate against any child waiting for adoption?

How can we tell a 4-year-old child that he or she is not a special needs child until he or she turns 5? it must be our policy that all children awaiting adoption are special, regardless of sex, race, age, religion, sibling size, or disability.

I urge my colleagues on the Finance Committee to take quick action on this bill. I realize that the Budget Enforcement Act places severe restrictions on tax legislation that is scored as losing revenue. I really believe that this legislation will save the Treasury money—not lose it. However, our cost estimators may not agree with me on this. The Finance Committee will be considering extending several expiring tax provisions this year. Offsets will be found for these provisions. Somehow, the money for this bill can also be found.

The most important resource America has is its families. We must do everything in our power to ensure their continued growth and success. All adoption is good, not just the adoption of children arbitrarily defined as having special needs. This legislation will greatly benefit not only children and families but society as a whole. A relatively small dollar investment in this bill will move us a long way toward strengthening the American family.

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

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

S. 709

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 "Fairness for Adopting Families Act".

SEC. 2. DEDUCTION FOR ADOPTION EXPENSES.

(a) DEDUCTION FOR ADOPTION EXPENSES.—

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. ADOPTION EXPENSES.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year the amount of the qualified adoption expenses paid or incurred by the taxpayer during such taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate amount allowable as a deduction under subsection (a) for all taxable years with respect to the legal adoption of any single child by the taxpayer shall not exceed $5,000.

"(2) INCOME LIMITATION.—The amount allowable as a deduction under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's taxable income (determined without regard to this section section 134) exceeds $60,000, bears to

"(B) $10,000.

"(3) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) GRANTS.—No deduction shall be allowed under subsection (a) for any expenses paid from any funds received under any Federal, State or local program.

"(c) QUALIFIED ADOPTION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees (including agency fees), court costs, attorney fees, and other expenses which—

"(A) are directly related to the legal adoption of a child by the taxpayer but only if such adoption has been arranged—

"(i) by a State or local agency with responsibility under State or local law for child placement through adoption,

"(ii) by a non-profit, voluntary adoption agency which is authorized by State or local law to place children for adoption, or

"(iii) through a private placement, and

"(B) are not incurred in violation of State or Federal law.

"(2) ADOPTION EXPENSES NOT TO INCLUDE CERTAIN AMOUNTS.—The term 'qualified adoption expenses' shall not include any expenses in connection with—

"(A) the adoption by an individual of a child who is the child of such individual's spouse, or

"(B) travel outside the United States, unless such travel is required—

"(i) as a condition of a legal adoption by the country of the child's origin,

"(ii) to assess the health and status of the child to be adopted, or

"(iii) to escort the child to be adopted to the United States.

"(3) CHILD.—The term 'child' means an individual who at the time of adoption under this section has not attained the age of 18."

(2) CLERICAL AMENDMENT.—The table of sections for such part VII is amended by striking the item relating to section 220 and inserting the following:

"Sec. 220. Adoption expenses.

"Sec. 221. Cross reference."

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code is amended by adding after paragraph (13) the following new paragraph:

"(14) ADOPTION EXPENSES.—The deduction allowed by section 220."

(c) ADOPTION ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Part III of chapter B of chapter 1 of such Code (relating to items specifically excluded from gross income) is amended by redesignating section 136 as section 137 and by inserting after section 135 the following new section:

"SEC. 136. ADOPTION ASSISTANCE PROGRAMS.

"(a) IN GENERAL.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATIONS.—The aggregate amount excludable from gross income under subsection (a) for all taxable years with respect to the legal adoption of any single child by the taxpayer shall not exceed the excess (if any) of $5,000 over the amount allowable as a deduction (or amounts taken into account in computing the deduction) under section 220 with respect to such adoption.

"(2) INCOME LIMITATION.—The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

"(A) the amount (if any) by which the taxpayer's taxable income (determined without regard to this section and section 220) exceeds $60,000, bears to

"(B) $10,000.

"(c) ADOPTION ASSISTANCE PROGRAM.—For purposes of this section, an adoption assistance program is a plan of an employer—

"(1) under which the employer provides employees with adoption assistance, and

"(2) which meets requirements similar to the requirements of paragraphs (2), (3), and (5) of section 127(b).

"(d) QUALIFIED ADOPTION EXPENSES.—For purposes of this section, the term 'qualified adoption expenses' has the meaning given such term by section 220(c)."

(2) CLERICAL AMENDMENT.—The table of sections for such part III is amended by striking the item relating to section 136 and inserting the following:

"Sec. 136. Adoption assistance programs.

"Sec. 137. Cross reference to other Acts."

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1990.

SUMMARY OF FAIRNESS FOR ADOPTING FAMILIES ACT

Sponsors: Senators Orrin G. Hatch, Thad Cochran, Larry E. Craig, Jesse Helms, Carl Levin, Trent Lott, Richard G. Lugar, Mitch McConnell, Larry Pressler, Richard C. Shelby, Paul Simon, Steven D. Symms, Strom Thurmond.

DATE OF INTRODUCTION

1. Provides a tax deduction for adoption expenses: allowance of a deduction for the costs of an adoption, in accordance with state law, including infant, special needs, or foreign child. The amount allowable is capped at $5,000 and is available whether the taxpayer itemizes or not. Families with taxable incomes up to $60,000 could deduct 100 percent of qualified expenses, with a gradual phaseout of the benefit from $60,000 to $70,000 annual income. Adoption expenses which are not tax deductible include relative adoptions and foreign travel not associated with requirements of a foreign adoption.

2. Excludes from employee's income adoption expenses paid by an employer up to $5,000.

3. Treats employer contribution to adoption expense plan as an ordinary and necessary business expense.

4. Effective date: applies to qualified adoption expenses incurred in taxable years beginning after December 31, 1990.

By Mr. GRASSLEY (for himself, Mr. DIXON, Mr. SIMON, and Mr. DOLE):

S. 710. A bill to amend the Internal Revenue Code of 1986 to provide a permanent extension for the issuance of first-time farmer bonds; to the Committee on Finance.

EXTENSION OF ISSUANCE OF FIRST-TIME FARMER BONDS

• Mr. GRASSLEY. Mr. President, I rise today to reintroduce legislation to extend permanently the Federal tax exemption for agricultural private activity bonds. These aggie bonds are part of a larger package of tax-exempt bonds scheduled to sunset at the end of this year. Joining me in this effort are Senators DIXON, SIMON, and DOLE.

Aggie bonds are used to finance low-interest farm loans targeted to beginning farmers. The borrower must secure a participating private lender, who assumes all of the loan risk. Federal law limits use of the bonds for loans to first-time farm purchases and restricts them to a maximum of $250,000 per family per lifetime. State law may impose additional restrictions, such as net worth and residency requirements.

Unfortunately, State programs could be extinguished if the tax-exempt status is lost, since the tax-exempt status is precisely what enables the finance programs to issue low-interest loans to first-time farmers.

As we all know, Mr. President, there has been a steady flow of people and income from rural to urban America, which has had a detrimental effect on the rural economy. Continuation of the Aggie Bond Program could be a real boon for rural development. The program addresses the one problem admitted by the Task Force on Agricultural Finance—that of accessible and affordable credit to beginning farmers.

To date, over 3,000 loans worth over $250 million have been processed through the Aggie Bond Program nationwide. In my State of Iowa, aggie bonds were first issued in 1981. Under Iowa's beginning farmer program, nearly 1,000 loans worth over $80 million have been approved.

Mr. President, the National Council of State Agricultural Finance Programs, the National Association of Wheat Growers, the National Farmers Union, the National Farmers Organization and Communicating for Agriculture have all strongly endorsed this legislation because they have seen firsthand how the Aggie Bond Program provides necessary support to first-time farmers. It is also important to note that there is absolutely no financial risk to the Federal Government in this program and the cost is minimal.

Fortunately, the aggie bond tax exemption was extended last year through 1991 by the Congress. However, it will be essential to extend the program further to realize the program's full potential.

I urge my colleagues to join me and the cosponsors of this bill by supporting this effort to help America's beginning farmers.

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

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

S. 710

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

SECTION 1. FIRST-TIME FARMER BONDS EXTENDED PERMANENTLY.

IN GENERAL.—Section 144(a)(12) of the Internal Revenue Code of 1986 (relating to termination dates) is amended by adding at the end thereof the following new subparagraph:

"(D) FIRST-TIME FARMER BONDS.—Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any land or property in accordance with section 147(c)(2)."

"(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 144(a)(12) of such Code is amended to read as follows:

"(B) BONDS ISSUED TO FINANCE MANUFACTURING FACILITIES.—In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any manufacturing facility, subparagraph (A) shall be applied by substituting 'December 31, 1991' for 'December 31, 1986'."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1991.•

By Mr. SEYMOUR:

S. 711. A bill to authorize the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions, and for other purposes; to the Committee on Energy and Natural Resources.

RECLAMATION DROUGHT RELIEF ACT

• Mr. SEYMOUR. Mr. President, I rise today to introduce legislation to the Drought Relief Act of 1991 to provide relief to the most pressing emergency facing the State of California—the drought.

The fact that California is in its fifth and worst year of a drought is well known. The State needs help.

Clearly, Mr. President, there is no single solution to our drought crisis, and unfortunately, unless mother nature blesses us with interminable rains, there are no quick fixes. Recognizing this fact, any solution must look to the future and the potential reoccurrences of this drought.

In this regard, let me take a moment to share with the Senate what I learned this past weekend and during recent visits to areas of my State where entire communities have been devastated by the drought. All agree that we must, as Californians from every walk of life, join hands to confront this problem head-on.

We must all utilize water conservation techniques.

We must all share what limited resources that are available.

We must all compromise for the good of the State.

Without this camaraderie and teamwork, without a consensus, each and everyone in the State will lose today and will sacrifice our children's future for many years to come.

Absent a miracle that will produce massive quantities of new water, everyone concerned must focus on viable options to free up existing water resources. This means balancing the needs of our families, our communities, and our industries, with the legitimate needs of our precious environmental resources—our fish and wildlife.

This most recent drought tour has opened my eyes even further to California's urgent needs.

In response, the legislation I am introducing today responds to the concerns expressed by Californians and provides assistance for California and to the other Western reclamation States who are experiencing serious drought conditions as well. Specifically, my bill would do the following:

Grant to the Secretary of the Interior the authority to implement emergency drought relief measures, but only after extensive consultation with the affected States.

Authorize the Secretary of the interior to work in cooperation with State agencies to establish water banks where Federal water and other supplies in a State can be bought and sold consistent with State law.

Allow the use of Federal facilities during drought periods to store and deliver non-Federal project water supplies for nonagricultural purposes such as municipal and industrial, recreational, and for fish and wildlife.

Authorize the Secretary to purchase and facilitate the purchase of water on a "willing-buyer/willing seller basis."

Authorize the appropriation of funds to provide emergency loans for purchase of interim water supplies and for projects that conserve limited water resources.

Allow local water users to defer payment on Federal water loans until the drought crisis is alleviated.

Authorizes the appropriation of Federal funds to assist California in the construction of intrusion barriers at the mouth of the delta; this will protect valuable delta water for saltwater contamination.

Once again, Mr. President what California needs is flexibility from the Federal Government. We need a Federal Government willing to work with us and to assist us, not preempt us. I want to add that in recent testimony before the Subcommittee on Water and Power, Governor Wilson's administration stated that the Department of the Interior should have the authorities my legislation would grant as soon as possible.

In closing, as I mentioned, we are in the fifth year of a drought. The recent rains have helped, but much more is needed and the end of the rainy season is quickly upon us. In fact, the burden of reclamation has informed us that despite this most recent precipitation, the storage in major reservoirs is 53 percent of the average. Using these fig-

ures, the Bureau estimates that carryover for next year will be only slightly higher than it was in 1977, the driest year on record.

Before we start reallocating the State's water at the Federal Government's behest, we should be addressing the Westwide drought in a manner that respects State laws. I have tremendous confidence in the people of California and the Western States and the ability of Governor Wilson and his administration to uphold and enforce the public trust.

Mr. President, I have faith in the people of California and I believe the Federal Government should have faith in them as well. As we all know, action to ensure drought relief is urgently needed, and I hope my colleagues will join with me in support of this legislation.●

By Mr. SYMMS (for himself, Mr. LIEBERMAN, Mr. GRASSLEY, Mr. LOTT, Mr. WALLOP, Mr. BURNS, and Mr. CRAIG):

S. 712. A bill to amend section 411F(2) of the Higher Education Act of 1965 to exclude as an asset the net value of the family's principal place of residence and a family farm on which the family resides; to the Committee on Labor and Human Resources.

FAIRNESS FOR FARM FAMILIES IN PELL GRANTS

● Mr. SYMMS. Mr. President, I rise today to introduce legislation which will alleviate a serious inequity for many farm families with respect to education. This inequity denies farmers' children eligibility for student financial aid.

The Pell grant program is the largest of the title IV Higher Education Act student aid programs in terms of Federal appropriations. For academic year 1989–90 the level of funding for the program was $4.48 billion, with approximately 3 million recipients and an average Pell grant award of $1,460 per student.

"Need analysis" is the term used for the process of determining a student's need for financial assistance. The system calculates the total cost of education for a student at the individual's institution of higher education, then it calculates the expected family contribution to that cost, then subtracts this contribution from the total to determine the remaining need to cover costs. There has long been controversy whether or not the Pell grant need analysis is too restrictive for the students it is intended to benefit most: those with the lowest incomes.

Current requirements place many farm families at a considerable disadvantage in qualifying under the need evaluation for Pell grant funding. Rising land values are farmers' primary assets against which they could borrow to finance their children's education. However, because of the continuing farm crisis, they can rarely borrow against the value of their land. Even if they can borrow, they may not be able to repay a student loan during low-income years. Therefore, they not only are ineligible for Pell grant assistance, but also unable to qualify for a loan.

By eliminating consideration of home and farm equity in the need analysis for families with adjusted gross incomes of less than $30,000 we could provide equity in the need evaluation for those famlies and it would allow them to participate in the Pell grant program on a level playing field with nonfarm families.

This bill is very simple. It opens up access, or rather creates opportunities, for more young people who wish to further their education. The legislation will enable many who may not have access to higher education, to achieve a college degree, making them a valuable commodity in today's work force.

I ask unanimous consent that the text of the bill be printed in the RECORD. I would encourage my colleagues to give this bill their support.

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

S. 712

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

SECTION 1. TREATMENT OF NONLIQUID ASSETS.

Section 411F(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a–6(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end thereof the following:

"(B) For academic year 1992–1993, and succeeding academic years, the term 'assets' shall not include the net value of—

"(i) the family's principal place of residence; or

"(ii) a family farm on which the family resides.".●

●Mr. GRASSLEY. Mr. President, it is with great pleasure that I join the Senator from Idaho in introducing this most important bill.

Students of middle-class families are increasingly finding themselves shut out of opportunities for financial assistance to attend higher education. These middle-class students from farm families frequently are not able to qualify for financial aid because of the assets their families hold in the farming operation. This is because the current financial aid formula assumes that students' families can either liquidate their assets or borrow against them to acquire the funding to pay the expenses of college tuition, room, and board.

This is not realistic for farm families, however. They cannot liquidate assets—those assets produce the income the family lives on. Selling the farm would have the same effect as quitting a job. Neither are farm families able to borrow against those farm assets. Farm assets are often already leveraged and tight credit conditions that are inherent in agriculture prohibit many farmers from encumbering their farm equity for credit needs unrelated to the farm operation. The effect of the current policy is that young people in moderate-income farm families cannot obtain funding to attend higher education without eroding the income base of their family's farm.

This legislation does not, however, provide any perks to affluent farm families. The equity value of the family farm and the family home would be excluded from students' needs analysis only for families whose incomes are less than $30,000.

This legislation is simple and straightforward. Even more importantly, it is fair. In fact, the Senate has adopted this same provision at least twice before, but the legislation with which it was included was not passed by the House. I applaud the Senator from Idaho in sponsoring this bill and hope that it will be incorporated into the legislation which will reauthorize the Higher Education Act.●

● Mr. WALLOP. Mr. President, I am pleased to join my friend and colleague, Senator SYMMS, in sponsoring legislation to eliminate consideration of home and farm equity in the needs analysis with respect to eligibility for student financial aid. The bill being introduced today will place farm families with adjusted gross incomes of less than $30,000 on a more level playing field with nonfarm families which participate in the Pell Grant Program.

I have received several letters from students in my State of Wyoming complaining that current requirements of the Pell Grant Program put them at a severe disadvantage. Rising property values frequently put their parents over the income threshold for eligibility. Yet more often than not, their parents cannot afford to borrow against their valuable farm property due to the farm crisis and low annual incomes. And, even if those students do borrow money to go to school, they may not be able to repay the loan.

Mr. President, I believe everyone should be given the opportunity to attend college. We would be remiss in our duties if we did not improve access to higher education for those who have the skills and are eager to learn. The main purpose for creating the grant program was to improve student aid delivery and bring more equity and uniformity into the distribution of student financial assistance. This legislation furthers that goal.

At the University of Wyoming during the last school year, there were 2,990 Pell grants awarded. The average grant was $1,509 for two semesters. Among arts and sciences students, 817 of them received an average grant of $1,513. At the colleges of agriculture, English, education, commerce and industry, and health sciences, 1,820 students received an average Pell grant of $1,544. The family incomes of dependent students

averaged only $19,206. For independent students, their average income was $7,584 per year. These incomes are very low, yet the average Pell grant is also well below the maximum allowable grant of $3,100. This proposal will ensure that more Wyoming families have access to student financial assistance.

Later in this Congress, we will reauthorize the Higher Education Act of 1965. I anticipate that in that process there will be much debate over the imbalance between loan and grant assistance. In recent years, loans have replaced grants as the main source of student financial assistance due to tight budgets and skyrocketing college costs. As a result students incur significant debt and suffer grave consequences if they default on their loans. This is a universal problem and one which, if unchecked, will only get worse as college costs continue to rise. For that reason and many others, I hope that we will closely review the methodology for assessing the needs analysis for student loans. In that context, I urge my colleagues to give every favorable consideration to this sensible approach to broadening Pell grant eligibility.•

By Mr. RIEGLE (for himself and Mr. GARN) (by request):

S. 713. A bill to reform the Federal deposit insurance system, to improve the supervision and regulation of federally insured depository institutions, to reform the financial services industry as to the activities in which that industry may engage, to consolidate the regulatory structure for depository institutions, to recapitalize the bank insurance fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT

• Mr. RIEGLE. Mr. President, I am pleased to introduce today, at the request of the Treasury Department, the Financial Institutions Safety and Consumer Choice Act of 1991—the administration's proposed banking legislation. Senator GARN joins me in introducing this bill.

I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 713

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 "Financial Institutions Safety and Consumer Choice Act of 1991".

(b) TABLE OF CONTENTS.—

TITLE I—FEDERAL DEPOSIT INSURANCE REFORM

Subtitle A—Federal Deposit Insurance Reform

Sec. 101. Deposit and pass-through insurance.
Sec. 102. Deposit solicitation restricted.
Sec. 103. Least-cost resolution.
Sec. 104. Risk-based assessments.
Sec. 105. Restrictions on federally insured State bank activities.
Sec. 106. Examinations.
Sec. 107. Market value and other disclosure.
Sec. 108. Capital standards and interest rate risk.
Sec. 109. Requirements to expense deposit with National Credit Union Share Insurance Fund.

Subtitle B—Reinsurance Demonstration Project

Sec. 116. Reinsurance demonstration project.

TITLE II—FINANCIAL SERVICES MODERNIZATION

Subtitle A—Financial Services Holding Companies

Sec. 201. Financial services holding companies.
Sec. 202. Acquisition of banks.
Sec. 203. Interests in nonbanking organizations.
Sec. 204. Diversified holding companies.
Sec. 205. Administration.
Sec. 206. Reservation of rights to States; preemption of anti-affiliation provisions.
Sec. 207. Penalties.
Sec. 208. Conforming amendments to judicial review provision.
Sec. 209. Antitrust review.
Sec. 210. Technical amendment.
Sec. 211. Effective date.
Sec. 212. Application of the limitations on tying arrangements and insider lending to financial services holding and diversified holding companies.
Sec. 213. Provisions exempting financial services holding companies from the savings and loan holding company act.

Subtitle B—Financial Activities of National Banks

Sec. 221. Amendments to the Banking Act of 1933.
Sec. 222. Insurance activities of national banks.
Sec. 223. Amendments to sections 23A and 23B of the Federal Reserve Act.
Sec. 224. Customer disclosure.
Sec. 225. Bankers' banks.

Subtitle C—Non-banking Activities of Foreign Banks in the United States

Sec. 231. Amendments to the International Banking Act of 1987.

Subtitle D—Amendments to the Securities Acts

Sec. 241. Amendments to the Securities Act of 1933.
Sec. 242. Amendments to the Securities Exchange Act of 1934.
Sec. 243. Amendments to the Investment Company Act of 1940.
Sec. 244. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
Sec. 245. Treatment of bank common trust funds.
Sec. 246. Securities and Exchange Commission study of bank insurance pooled investment vehicles.
Sec. 247. Effective date.

Subtitle E—Prompt Corrective Action

Sec. 251. Prompt corrective action.

Subtitle F—Nationwide Banking and Branching

Sec. 261. Nationwide banking.
Sec. 262. Interstate branching by national banks.
Sec. 263. Interstate consolidation or merger of national banks or State banks with national banks.
Sec. 264. Interstate branching by State banks.
Sec. 265. Interstate branching and banking by foreign banks.
Sec. 266. Interstate acquisitions by savings and loan holding companies.
Sec. 267. Effective dates.

TITLE III—REGULATORY RESTRUCTURING

Subtitle A—Office of Depository Institutions Supervision

Sec. 301. Establishment of the Office of Depository Institutions Supervision.
Sec. 302. Definitions.
Sec. 303. Director of the Office of Depository Institutions Supervision.
Sec. 304. Authority of the Director.
Sec. 305. Personnel.
Sec. 306. Regulations and orders.
Sec. 307. Funding.

Subtitle B—Interim Provisions; Transfer of Functions, Personnel, and Property

Sec. 311. Interim provisions for the Office of Depository Institutions Supervision.
Sec. 312. Office of Thrift Supervision abolished.
Sec. 313. Office of Comptroller of the Currency abolished.

Subtitle C—Regulatory and Supervisory Responsibility

Sec. 321. Transfer of powers and duties.
Sec. 322. Appropriate Federal banking agency.
Sec. 323. Examinations.
Sec. 324. Conforming amendments.
Sec. 325. Appointment of a receiver.

Subtitle D—Transfer of Federal Deposit Insurance Corporation Authority

Sec. 331. Amendments to the Federal Deposit Insurance Act.
Sec. 332. Amendments to the Federal Reserve Act.
Sec. 333. Savings provisions.
Sec. 334. Transfer of personnel and property.

Subtitle E—Litigation Authority

Sec. 341. Litigation authority.

Subtitle F—Reorganization of Boards of Directors

Sec. 351. Federal Deposit Insurance Corporation Board of Directors.
Sec. 352. National Credit Union Administration Board of Directors.

Subtitle G—Savings Provisions for the Transfer of Authority From the Board of Governors of the Federal Reserve System to the Director

Sec. 361. Savings Provisions.

TITLE IV—BANK INSURANCE FUND RECAPITALIZATION

Subtitle A—Federal Deposit Insurance Corporation Borrowing

Sec. 401. Federal Deposit Insurance Corporation borrowing.
Sec. 402. Amendments to the Federal Reserve Act.

Subtitle B—Federal Deposit Insurance Corporation Assessments

Sec. 411. Maximum aggregate assessment.
Sec. 412. Bank insurance fund borrowing assessment.

TITLE V—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

Sec. 501. Findings and purpose.

Sec. 502. Definitions.
Sec. 503. Bilateral netting.
Sec. 504. Clearing organization netting.
Sec. 505. Preemption.
Subtitle B—Right to Financial Privacy Act of 1978
Sec. 511. Amendments to the Right to Financial Privacy Act of 1978.
Subtitle C—Reduction in Regulatory Burden
Sec. 521. Home Mortgage Disclosure Act.
Sec. 522. Regulatory burden study.
Sec. 523. Fair housing reporting.
Subtitle D—Expedited Funds Availability
Sec. 531. Amendment to the Expedited Funds Availability Act.
Subtitle E—Final Settlement Payment Procedure
Sec. 541. Final Settlement Payment Procedure.
TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS
Subtitle A—Severability; Transition References
Sec. 601. Severability.
Sec. 602. Transition references.
Subtitle B—Technical and Conforming Amendments
Sec. 611. Amendment to Acts codified in title 2, United States Code.
Sec. 612. Amendments to title 5, United States Code.
Sec. 613. Amendment to Act codified in title 7, United States Code.
Sec. 614. Amendments to title 11, United States Code.
Sec. 615. Amendments to Acts codified in title 12, United States Code.
Sec. 616. Amendments to Acts codified in title 15, United States Code.
Sec. 617. Amendment to Act codified in title 16, United States Code.
Sec. 618. Amendments to title 18, United States Code.
Sec. 619. Amendment to Act codified in title 22, United States Code.
Sec. 620. Amendment to Act codified in title 25, United States Code.
Sec. 621. Amendments to the Internal Revenue Code of 1986.
Sec. 622. Amendments to title 28, United States Code.
Sec. 623. Amendments to title 31, United States Code.
Sec. 624. Amendments to Acts codified in title 42, United States Code.
Sec. 625. Amendments to title 44, United States Code.
Sec. 626. Amendment to title 46, United States Code.
Sec. 627. Amendments to Public Law 101-647.
Subtitle C—Repeal of Obsolete Provisions of Law
Sec. 631. Repeal of obsolete provisions of law.
Subtitle D—Effective Date
Sec. 641. Effective date.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) To return deposit insurance coverage to its original purposes of protecting small depositors and promoting financing stability.

(2) To strengthen the role of capital in insured depository institutions.

(3) To enhance the supervision of insured depository institutions.

(4) To restrict risky activities of insured depository institutions.

(5) To permit nationwide banking and branching.

(6) To authorize the establishment of financial services holding companies to permit companies owning depository institutions to engage in other financial activities with appropriate safeguards.

(7) To promote consumer convenience by permitting banking organizations a broader range of financial products.

(8) To simplify the regulatory structure for depository institutions by establishing a consolidated regulatory agency, the Office of Depository Institutions Supervision.

(9) To recapitalize the Bank Insurance Fund.

TITLE I—FEDERAL DEPOSIT INSURANCE REFORM

Subtitle A—Federal Deposit Insurance Reform

SEC. 101. DEPOSIT AND PASS-THROUGH INSURANCE.

(a) Definitions Relating to Insured Deposits.—

(1) Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended—

(A) by amending paragraph (1) to read as follows:

"(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, the term 'insured deposit' means the net amount due to any depositor for deposits in an insured depository institution less any part thereof which is in excess of $100,000 as such net amount is determined in accordance with section 11(a) of this Act."; and

(B) by inserting after paragraph (2) the following new paragraph:

"(3) The term 'insured deposit' shall not include—

"(A) funds obtained or accepted, directly or indirectly, by or through any deposit broker, as defined in subsection (y) of this section, for deposit into one or more deposit accounts; provided, however, that this subparagraph shall not apply to any insured depository institution for which the Federal Deposit Insurance Corporation or the Resolution Trust Corporation has been appointed as conservator or the appropriate Federal banking agency has appointed a conservator and such conservator has determined that the acceptance of such funds—

"(i) is not an unsafe or unsound practice; and

"(ii) either—

"(I) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or

"(II) is consistent with the conservator's fiduciary duty to minimize the losses of the institution; and

"(B) A depository institution investment contract or similar contract entered into between an insured depository institution and an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act (29 U.S.C. 1002), including a plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), which contract is nontransferable and provides for the deposit of funds over an extended period of time at a specified rate of interest whether or not the funds can be withdrawn without penalty prior to maturity.".

(2) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by inserting after subsection (x) the following new subsection:

"(y)(1) DEPOSIT BROKER.—The term 'deposit broker' means—

"(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; or

"(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

"(2) EXCLUSIONS.—The term 'deposit broker' does not include—

"(A) an insured depository institution with respect to funds placed with that depository institution or any other insured depository institution;

"(B) an employee, as defined in section 29(b), of an insured depository institution, with respect to funds placed with the employing depository institution;

"(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(D) the trustee of a pension or other employee benefit plan with respect to funds of the plan;

"(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that such person is performing managerial functions with respect to the plan;

"(F) the trustee of a testamentary account;

"(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

"(H) a trustee or custodian of a pension or profit sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

"(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions."

(b) INSURANCE OF DEPOSITS.—

(1) INSURED AMOUNTS PAYABLE.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended to read as follows:

"(a)(1)(A) The Corporation shall insure the deposits of all insured depository institutions as provided in this Act. The maximum amount of the insured deposit of any depositor shall be $100,000 per insured depository institution as determined in accordance with this Act.

"(B) All deposits shall be registered under the taxpayer identification number or employer identification number of each depositor. For the purpose of aggregating and attributing deposits the Corporation may consider additional information contained in the records of the insured depository institution or made available by the depositor.

"(C) For the purpose of determining the amount due to any depositor under subparagraph (A), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor or by others for the benefit of the depositor. The amount due to a depositor is the lesser of the amount calculated hereunder, or $100,000. For the purpose of aggregating amounts due to a depositor, the following shall apply—

"(i) deposits registered under the same taxpayer identification number or employer identification number of one depositor shall be attributed to that depositor;

"(ii) deposits registered under the taxpayer identification number or employer identification number of more than one depositor

shall be attributed equally, unless otherwise specified in the deposit account records, among those depositors;

"(iii) deposits consisting of a revocable trust or similar account shall be attributed to the settlor or grantor of the deposit account;

"(vi) deposits maintained by an individual or entity (including an insured depository institution) acting as an agent, custodian, nominee, conservator or in a similar capacity on behalf of a principal (other than an insured depository institution) shall be attributed to such principal; and

"(v) such other attribution to a depositor as the Board of Directors determines by regulation not to be unduly burdensome and costly to calculate; provided that the depositor has control over the deposit account and that such attribution would be consistent with the insurance purposes of this Act.

"(D) For the purpose of determining the amount of insurance due under subparagraph (A), the Corporation shall not provide deposit insurance coverage on a prorata or pass-through basis to a participant in or beneficiary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act (29 U.S.C. 1002), including a plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401), other than a participant in or beneficiary of an individual account plan, as defined in section 3(34) of the Employee Retirement Income Security Act (29 U.S.C. 1033) or a plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)), under which participants and beneficiaries have the right to direct the investment of assets held in individual accounts maintained on their behalf.

"(E) Notwithstanding subparagraph (C)(iv), the Corporation shall provide separate deposit insurance coverage on a pro-rata or pass-through basis if—

"(i) the deposit account is maintained for a business purpose.

"(ii) the principal or beneficiary does not have any control over where the funds are deposited;

"(iii) the deposit account is not maintained for investment purposes; and

"(iv) the deposit account is not maintained principally for the purpose of increasing insurance coverage.

"(F) The Board of Directors may adopt such regulations as may be necessary to implement this subsection and subsection (i)(3) and to clarify the insurance coverage thereunder.".

"(2) CERTAIN RETIREMENT ACCOUNTS.—Section 11(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(3)) is amended to read as follows:

"(3)(A) Notwithstanding paragraph (1)(C) relating to the amount of deposit insurance available for the account of any one depositor, deposits in an insured depository institution made in connection with an individual retirement account, as described in section 408 of the Internal Revenue Code of 1986, and an individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (29 U.S.C. 1033), or plan described in section 401(d) of the Internal Revenue Code of 1986, under which participants and beneficiaries have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan, shall be aggregated and insured in an amount not to exceed $100,000 per participant per insured depository institution.

"(B) For purposes of subparagraph (A), the amount aggregated for insurance coverage hereunder shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.".

"(3) CERTAIN TRUST FUNDS.—Section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) is amended to read as follows:

"(i) INSURANCE OF TRUST FUNDS.—Trust funds held on deposit by an insured depository institution as trustee pursuant to irrevocable trusts, established pursuant to statute or written trust agreements, shall be insured in an amount not to exceed $100,000 for each trust estate. When such trust funds are deposited by the fiduciary depository institution in another insured depository institution, such trust funds shall be similarly insured to the fiduciary depository institution according to the trust estates represented. The Board of Directors may adopt such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.".

"(4) REGULATIONS.—For the purpose of promulgating regulations, during the one-year period beginning on the date of enactment of this Act, the Board of Directors shall review the capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation. At the end of such period, the Board of Directors may promulgate regulations, to be effective not earlier than two years after the date of enactment of this Act, that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage and is consistent with the insurance provisions of the Federal Deposit Insurance Act.

"(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective two years after the date of enactment of this Act. Such amendments shall not apply to any time deposit that was entered into before the date of enactment of this Act and that matures more than two years after the date of enactment of this Act. Such amendments shall apply, however, to any renewal or rollover of a time deposit that occurs more than two years after the date of enactment of this Act.

"(d) FEASIBILITY STUDY.—

"(1) *In General.*—The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the feasibility of implementing a system of deposit insurance based on systemwide limitations on coverage for each depositor. The study shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system. As part of the study, the Corporation shall investigate, review and evaluate—

"(A) the data systems that would be required to implement the system;

"(B) the reporting burdens of such a system on individual depository institutions;

"(C) the interface with existing data processing systems maintained by depository institutions; and

"(D) the use of a selective audit of depositors for compliance after the resolution of a failed depository institution.

"(2) SURVEY.—As part of the feasibility study, the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held and the type of financial institutions in which the deposit accounts are held. The results of the survey shall be provided to the Federal Deposit Insurance Corporation not later than one year from the date of enactment of this Act for analysis and inclusion in the feasibility study.

"(3) *Report to Congress.*—Not later than 18 months after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.

"(e) CONFORMING AMENDMENTS.—

"(1) Section 11(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(2)) is amended by inserting after subparagraph (B) the following new subparagraph:

"(C) Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States, of Puerto Rico, of Guam, of American Samoa, of the Trust Territory of the Pacific Islands, of the Virgin Islands, of the Northern Mariana Islands, of any county, or any municipality, or of any political subdivision thereof, herein called 'public unit', having official custody of public funds and lawfully depositing the same in an insured depository institution shall, for the purpose of determining the amount of insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in an insured depository institution in a custodial capacity.".

(2) Section 12(c) of the Federal Deposit Insurance Act (12 U.S.C. 1822(c)) is amended by inserting "as provided in section 1821(a)(1)(B) or" after "Except".

SEC. 102. DEPOSIT SOLICITATION RESTRICTED.

(a) IN GENERAL.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended to read as follows:

"SEC. 29. Deposit Solicitation Restricted.

"(a) IN GENERAL.—No insured depository institution which does not meet the applicable minimum capital requirements, or employee of any such institution, shall engage, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such institution's normal market areas.

"(b) EMPLOYEE.—For purposes of this subsection, the term 'employee' means any employee—

"(1) who is employed on a full-time or part-time basis by the insured depository institution;

"(2) whose compensation is primarily in the form of a salary;

"(3) who does not share such employee's compensation with a deposit broker; and

"(4) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employes such individual.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 103. LEAST-COST RESOLUTION.

(a) Section 13(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)) is amended—

(1) by amending subparagraph (A) to read as follows:

"(A) (i) With respect to any insured depository institution, the Corporation shall provide assistance or make payments only in such amounts as are necessary to satisfy the Corporation's obligations to that institution's insured depositors at the least cost to the affected deposit insurance fund whether by insured deposit payout, insured deposit transfer, or such other least-cost method as determined by the Corporation in accordance with subparagraph (B).

"(ii) Nothwithstanding clause (i), the Corporation shall provide assistance or make payments to satisfy, in whole or in part, the institution's liability to its uninsured depositors if such assistance or payments would constitute the least-cost method of resolving the depository institution.";

(2) by redesignating subparagraph (B) as subparagraph (D) and inserting after subparagraph (A) the following new subparagraphs:

"(B) In making determinations under subparagraph (A), the Corporation shall—

"(i) evaluate alternatives on a present value basis, using a realistic discount rate; document that evaluation; retain that documentation for not less than five years; and treat the 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, and

"(ii) determine and compare the costs of assistance or liquidation as of the date on which the Corporation makes the determination to provide assistance under this Act,

except that the Corporation shall not consider the impact of such a transaction on the financial system.

"(C) Upon a joint determination by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury that the Corporation would be unable to resolve an insured depository institution in accordance with subparagraph (A) without causing a servere adverse impact upon the financial system, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, in consultation with the Corporation and the Director of the Office of Management and Budget, shall direct the Corporation to provide assistance or make payments to an insured depository institution to satisfy the institution's liability to its depositors or take such other action as determined to be necessary to lessen the risk posed by such depository institution.".

(b) Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) in subsection (i)(3)(A), by striking "The Corporation may" and inserting instead "Subject to section 13(c)(4) of this Act, the Corporation may";

(2) in subsection (m)(1), by striking "As soon as possible" and inserting instead "Subject to section 13(c)(4) of this Act, as soon as possible"; and

(3) in subsection (n)(1)(A), by striking "When 1 or more" and inserting instead "Subject to section 13(c)(4) of this Act, when 1 or more".

(c) Section 13(c) or the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) is amended—

(1) in paragraph (1)—

(A) by striking "The Corporation is authorized in its sole discretion and" and inserting instead "Subject to paragraph (4), the Corporation is authorized";

(B) in subparagraph (A), by inserting "or" after the semicolon;

(C) in subparagraph (B), by striking "; or" and inserting instead a period; and

(D) by striking subparagraph (C); (2) in paragraph (2)—

(A) in subparagraph (A), by striking "In order to" and inserting instead "Subject to paragraph (4), in order to";

(B) in subparagraph (B)(i), by inserting "or" after the semicolon;

(C) in subparagraph (B)(ii), by striking "; or" and inserting instead a period; and

(D) by striking subparagraph (B)(iii).

(d) Section 13(i)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1823(i)(7)) is amended to read as follows:

"(7) The assistance provided to a qualified depository institution pursuant to this subsection must result in the least-cost to the affected deposit insurance fund as provided in subsection (C)(4).".

(e) Section 13(i)(1)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)(1)(A)(i)) is amended by striking "determining that severe" and all that follows through "Corporation" the second time it appears and inserting instead "a determination made in accordance with subsection (c)(4)(C)(i), the Corporation".

(f) EFFECTIVE DATE.—The amendments made by this section shall become effective three years after the date of enactment of this Act.

SEC. 104. RISK-BASED ASSESSMENTS.

(a) ASSESSMENT RATES.–

(1) Section 7(b)(1)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)(i)) is amended by striking "the greater of 0.15 percent or"; and

(2) Section 7(b)(1)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)(i)) is amended by striking "the greater of 0.15 percent or".

(b) RISK-BASED ASSESSMENTS.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by redesignating paragraph (9) as paragraph (10), and by inserting after paragraph (8) the following new paragraph (9):

"(9) RISK-BASED ASSESSMENTS.—

"(A) IN GENERAL.—Subject to paragraph (1), the Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

"(B) Risk-Based Assessment System Defined.—For purposes of this paragraph, the term 'risk-based assessment system' means a system relating insured depository institutions' assessment rates to the risk those institutions pose to the affected deposit insurance fund.

"(C) PROVISIONS APPLICABLE TO ESTABLISHMENT OF SYSTEM.—In establishing an assessment system under subparagraph (A), assessment rates shall be established based upon categories of risk. In determining the categories of risk, the Board of Directors—

"(i) shall use the ratio of capital to risk-weighted assets for the insured depository institutions; and

"(ii) may use the following criteria—

"(I) the activities conducted by insured depository institutions;

"(II) the assets and liabilities of insured depository institutions; and

"(III) such circumstances, conditions, activities or other risk factors that the Board of Directors determines may appropriately be taken into account.".

(b) PROMULGATION OF REGULATIONS.—Not later than 18 months after the date of enactment of this Act, the Board of Directors of the Federal Deposit Insurance Corporation shall promulgate the regulations required by section 7(b)(9) of the Federal Deposit Insurance Act. Such regulations shall become effective not later than two years after the date of enactment of this Act.

SEC. 105. RESTRICTIONS ON FEDERALLY INSURED STATE BANK ACTIVITIES.

(a) 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. ACTIVITIES OF FEDERALLY INSURED STATE BANKS.

"(a) IN GENERAL.—Beginning one year after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

"(1) the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

"(2) the State bank is, and continues to be, in compliance with minimum capital standards prescribed by the appropriate Federal banking agency.

"(b) Equity Investments by State Banks.—

"(1) IN GENERAL.—A State bank may not directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank.

"(2) EXCEPTION FOR CERTAIN SUBSIDIARIES.—Paragraph (1) shall not prohibit a State bank from acquiring or retaining an equity investment in a subsidiary of which the State bank is a majority owner.

"(3) TRANSITION RULE.—

"(A) IN GENERAL.—The Federal Deposit Insurance Corporation shall require any State bank to divest any equity investment the retention of which is not permissible under this subsection as quickly as can be prudently done, and in any event not later than five years from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.

"(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any State bank on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the bank shall be deemed not to be in violation of the prohibition in this subsection on retaining such investment so long as the bank complies with the applicable requirements established by the Corporation for divesting such investments.

"(c) SUBSIDIARIES OF FEDERALLY INSURED STATE BANKS.—

"(1) IN GENERAL.—Beginning one year after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, a subsidiary of an insured State bank may no engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

"(A) the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

"(B) the bank is, and continues to be, in compliance with minimum capital standards prescribed by the appropriate Federal banking agency.

"(2) Notwithstanding paragraph (1), no subsidiary of an insured State bank may engage in securities or insurance underwriting ex-

cept to the extent such activities are permissible for national banks.

"(d) DETERMINATIONS.—The Federal Deposit Insurance Corporation shall make determinations under this section by regulation and order.

"(e) DEFINITIONS.—

"(1) ACTIVITY DEFINED.—For purposes of this section, the term 'activity' includes acquiring or retaining any investment.

"(2) STATE BANK DEFINED.—The term 'State bank' has the same meaning as provided in section 3(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)).

"(f) OTHER AUTHORITY NOT AFFECTED.—This section shall not be construed as limiting the authority of the Board of Governors of the Federal Reserve System, the Office of Depository Institutions Supervision, or any State authority to impose more stringent restrictions.".

(b) Section 9 of the Federal Reserve Act (12 U.S.C. 330) is amended by inserting "the Board of Governors of the Federal Reserve System is authorized to restrict the activities of State banks and their subsidiaries consistent with section 24 of the Federal Deposit Insurance Act: *Provided further*," after "*Provided, however*,".

SEC. 106. EXAMINATIONS.

(a) FEDERAL RESERVE SYSTEM.—

(1) Section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)) is amended—

(A) by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) of the following new paragraph:

"(2) To conduct annual on-site examinations of each bank, and each branch of a foreign bank for which the Board of Governors of the Federal Reserve System is the appropriate Federal banking agency, except that banks and branches that have total assets of less than $1,000,000,000 as of December 31 of the year preceding an examination and that are in compliance with requried capital standards shall be examined on-site at least once during the following 18-month period."; and

(B) in paragraph (3) (as redesignated), by striking clauses (i) through (iv) and inserting instead:

"appropriate Federal banking agency, the National Credit Union Administration Board in the case of insured credit unions, and such State officer or agency as the Board may designate in the case of State banks, savings associations and credit unions that are not federally insured.".

(2) Section 9 of the Federal Reserve Act (12 U.S.C. 338) is amended in the twenty-third paragraph—

(A) by striking the first sentence and inserting instead:

"In connection with examinations required by section 11(a)(2) of this Act, for which the Board of Governors of the Federal Reserve System is the appropriate Federal banking agency, examiners selected or approved by the Board of Governors of the Federal Reserve System shall examine the affairs of any affiliate, other than those examined pursuant to the Financial Services Holding Company Act of 1991, in the same manner and to the same extent as affiliates are examined by the Director of the Office of Depository Institutions Supervision pursuant to section 323 (d) and (g)(2) of the Financial Institutions Safety and Consumer Choice Act of 1991.";

(B) in the second sentence by—

(i) striking "of any State member bank"; and

(ii) striking "such bank" the first time it appears and inserting instead "the bank affiliated with such affiliate;" and

(C) in the third sentence, by striking "State member".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1993.

SEC. 107. MARKET VALUE AND OTHER DISCLOSURE.

(a) MARKET VALUE DISCLOSURE.—Not later than one year after the date of enactment of this Act, the appropriate Federal banking agencies and the Securities and Exchange Commission, jointly, shall develop a method for banks to provide for the supplemental disclosure of the fair market value of assets and liabilities, to the extent feasible and practicable, in financial statements and reports required to be filed with the appropriate Federal banking agencies and the Securities and Exchange Commission.

(b) AUDIT REPORTS.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by inserting after paragraph (8) the following new paragraph:

"(9) INDEPENDENT AUDITOR REPORTS.—

"(A) Each insured bank shall provide to the appropriate Federal banking agency copies of audit reports and any qualifications to such reports, management letters and any other reports within 15 days of receipt from the bank's independent auditors.

"(B) Each insured bank shall provide written notification to the appropriate Federal banking agency of the resignation or dismissal of its independent auditor and the engagement of a new independent auditor including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.".

SEC. 108. CAPITAL STANDARDS AND INTEREST RATE RISK.

The appropriate Federal banking agencies shall develop a system to monitor interest rate risk and to adjust risk-based capital standards to reflect interest rate risk. In order to implement this system, the appropriate Federal banking agencies shall promulgate regulations within one year after the date of enactment of this Act, to be effective no later than two years after the date of enactment of this Act.

SEC. 109. REQUIREMENTS TO EXPENSE DEPOSIT WITH NATIONAL CREDIT UNION SHARE INSURANCE FUND.

(a) Section 201(b)(8) of the Federal Credit Union Act (12 U.S.C. 1781(b)(8)) is amended to read as follows:

"(8) to make an initial capitalization payment to the Fund in an amount, as determined by the Board, equalling the current equity ratio of the Fund times the total insurable shares of the applicant credit union, and to pay the annual capitalization adjustment and any premiums imposed by the Board pursuant to this Act: *Provided*, That the initial capitalization payment shall be expensed as prescribed by the Board, over a period not to exceed twelve years, in an amount of not less than one-twelfth each year: *Provided, however*, That amounts expensed in excess of one-twelfth each year shall be credited to amounts due in future years; and".

(b) Section 202 of the Federal Credit Union Act (12 U.S.C. 1782) is amended—

(1) in subsection (b)(1), by striking all that appears after "preceding insurance year" and inserting instead ", the amount of its capitalization adjustment due to the Fund for that year, the amount of its insurance premium, if any, due for that year, and such other information as the Board shall prescribe."; and

(2) by amending subsection (c) to read as follows:

"(c)(1) CAPITALIZATION ADJUSTMENT.—Each insured credit union shall pay to the National Credit Union Share Insurance Fund, in accordance with procedures established by the board, a capitalization adjustment equalling 1 percent of any increase in the credit union's insured shares over the course of the previous insurance year. Any insured credit union experiencing a decline in its insured shares over the course of the previous insurance year shall receive a refund in an amount equalling 1 percent of the decline.

"(2) PREMIUM.—In addition to the capitalization adjustment specified in paragraph (1), each insured credit union shall pay an annual insurance premium, in accordance with procedures established by the Board, in such amount as shall be necessary to maintain Fund equity at its minimum level of 1.25 percent: *Provided*, That the premium shall be determined as the same percentage of insured shares for all insured credit unions: Further provided, that in any year in which the fund's equity level experiences a substantial decline, as determined by the Board, to a level below 1.25 percent, the Board shall have the discretion to allow the replenishment of the Fund to its minimum level of 1.25 percent over a period longer than one year.

"(3) REBATE.—In the event Fund equity exceeds its normal operating level and any loans to the Fund from the Federal Government and the interest thereon have been repaid at the end of a given insurance year, the Board shall provide a rebate for that insurance year to all insured credit unions in an amount sufficient to reduce the equity in the Fund to its normal operating level: *Provided*, That the rebate shall be determined at the same percentage of insured shares for all insured credit unions.";

(3) in subsections (d), (e), and (f), by striking "deposit" each time it appears and inserting instead "capitalization payment or adjustment";

(4) in subsection (g)—

(A) by striking "deposits" and inserting instead "capitalization payment and adjustments";

(B) by striking "payment of any deposit or adjustment thereof" and inserting instead "making of any capitalization payment or adjustment"; and

(C) by striking "deposit" the last time it appears and inserting instead "capitalization payment";

(5) in subsection (h), 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, based on market value accounting, equal to 1.3 percent of the aggregate amount of insured shares in all insured credit unions, or such other level, not less than 1.25 percent and not more than 1.5 percent, as the Board shall establish; and"; and

(6) by adding at the end thereof the following new subsection:

"(i) Over a 12-year transition period beginning one year after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, insured credit unions shall expense the one percent deposit maintained with the Board pursuant to the Deficit Reduction Act of 1984 (P.L. 98-369); *Provided*, That the deposit, as calculated on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, shall be expensed, as prescribed by the Board, over a period not to exceed 12 years, in an amount of not less than one-twelfth

each year: *Provided, however*, That amounts expensed in excess of one-twelfth each year shall be credited to amounts due in future years.".

(c) Section 203(b) of the Federal Credit Union Act (12 U.S.C. 1783(b)) is amended by striking "deposits" and inserting instead "capitalization payments or adjustments".

Subtitle C—Reinsurance Demonstration Project

SEC. 116. REINSURANCE DEMONSTRATION PROJECT.

(a) DEMONSTRATION PROJECT.—

(1) PURPOSE.—The Federal Deposit Insurance Corporation, in consultation with the Secretary of the Treasury, shall establish a reinsurance demonstration project to determine the feasibility of developing a private reinsurance system.

(2) PROJECT DEFINED.—The demonstration project is to consist of a sample of private reinsurers and insured depository institutions that would simulate the activities required for actual reinsurance. These activities should include but are not limited to: establishing the pricing structure for risk-based premiums, formulating insurance contracts, and identifying and obtaining the information necessary to evaluate and monitor the risks in the subject insured depository institutions. If deemed appropriate by the Corporation, the project may engage in actual reinsurance transactions.

(3) COMMITTEE ESTABLISHED.—There is hereby established a Reinsurance Demonstration Project Committee comprised of the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and a representative of each of the private reinsurers and insured depository institutions participating in the demonstration project. The committee shall analyze and review the results of the demonstration project and report to Congress as required by subsection (b).

(b) REPORT TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report on the results of the demonstration project required by subsection (a). The report shall include the conclusions reached regarding the feasibility of a private reinsurance system; whether public policy goals can be satisfied by such a system; and any recommendations for administrative and legislative action that may be necessary for the establishment of such a system. The report also shall include a separate statement of the views of the private participants regarding whether private reinsurers are sufficiently interested, and have the capacity to participate, in such a system.

TITLE II—FINANCIAL SERVICES MODERNIZATION

Subtitle A—Financial Services Holding Companies

SEC. 201. FINANCIAL SERVICES HOLDING COMPANIES.

(a) DEFINITIONS MODIFIED.—Section 2 of the Bank Holding Company Act (12 U.S.C. 1841) is amended—

(1) by amending subsection (a)(1) to read as follows:

"(a)(1)(A) The term 'financial services holding company' means any company (other than a diversified holding company) which has control over any bank.

"(B) The term 'diversified holding company' means any company (other than a bank or a foreign bank) which has control over a bank only through a financial services holding company and which engages in activities or controls any company engaged in activities that are not permissible for a financial services holding company or any subsidiary thereof under this Act.";

(2) in the second sentence of subsection (a)(5)(A), by inserting a period after "thereto" and striking the balance of the sentence;

(3) by amending subsection (f) to read as follows:

"(f)(1) The term 'appropriate Federal banking agency' shall have the same meaning as set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

"(2) the term 'Board' means the Board of Governors of the Federal Reserve System.";

(4) by inserting after subsection (m) the following new subsections:

"(n) SECURITIES AFFILIATE.—The term 'securities affiliate' means any company that is controlled by a financial services holding company and that is engaged in the United States in activities pursuant to section 4(c)(15).

"(o) INSURANCE AFFILIATE.—The term 'insurance affiliate' means any company that is controlled by a financial services holding company and that is engaged in the United States in activities pursuant to section 4(c)(16).

"(p) FOREIGN BANK.—The term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"(q) INSURED DEPOSITORY INSTITUTIONS.—The term 'insured depository institution' means any insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and any insured institution.

"(r) ZONE 1 AND ZONE 2.—The terms 'Zone 1' and 'Zone 2' have the same meaning as in section 35 of the Federal Deposit Insurance Act.

"(s) ZONE 1 FINANCIAL SERVICES HOLDING COMPANY.—The term 'Zone 1 financial services holding company' means any financial services holding company that qualifies as a Zone 1 financial services holding company pursuant to section 35(d)(2) of the Federal Deposit Insurance Act.

"(t) FUNCTIONAL REGULATOR.—The term 'functional regulator' means a Federal or State agency that has supervisory authority concerning the activities of a company (other than an insured depository institution) that are of concern to the appropriate Federal banking agency for purposes of section 6(c)(2).".

"(u) NEW FINANCIAL ACTIVITY.—The term 'new financial activity' means any activity authorized pursuant to sections 4(c)(8), 4(c)(15), or 4(c)(16) other than any activity that, prior to the date of enactment of the Financial Services Safety and Consumer Choice Act of 1991, the Board had determined, by any order or regulation that continued to be in effect on December 31, 1992, to be closely related to banking and a proper incident thereto.

"(v) QUALIFIED FINANCIAL ACTIVITY.—The term 'qualified financial activity' means any activity authorized pursuant to sections 4(c)(8), 4(c)(15), or 4(c)(16).

"(w) FINANCIAL AFFILIATE.—The term 'financial affiliate' means any company that is controlled by a financial services holding company that is engaged in the United States in qualified financial activities and any other company that is controlled by a diversified holding company that is engaged in activities authorized to be engaged in by a subsidiary of a financial services holding company pursuant to sections 4(c)(8), 4(c)(15), or 4(c)(16).".

(b) CONFORMING AMENDMENTS.—Section 2 of the Bank Holding Act of 1956 (12 U.S.C. 1841), as amended by subsection (a), is further amended—

(1) in subsection (c)(2)(J), by striking "Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance" and inserting instead "Savings Association Insurance Fund to Bank Insurance Fund";

(2) in subsection (h)(5), by striking "bank" the first time it appears and inserting "insured depository institution";

(3) by striking "bank holding company" wherever it appears except in subsection (b) and inserting instead—

(A) in subsections (a)(5)(A), (a)(5)(B), (a)(5)(C), (a)(5)(D), (d), and (g)(1), "financial services holding company and diversified holding company"; and

(B) in all other instances, "financial services holding company"; and

(4) by striking "Board" wherever it appears except in subsection (f) and inserting instead "appropriate Federal banking agency".

SEC. 202. ACQUISITION OF BANKS.

(a) AMENDMENTS TO APPLICATION PROCESS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (a)—

(A) by amending paragraph (3) to read as follows:

"(3) for any financial services holding company to acquire ownership or control of any voting shares of any insured depository institution or financial services holding company, for any diversified holding company to acquire ownership or control of any voting shares of any financial services holding company, or for a company to acquire ownership or control of a diversified holding company if, after such acquisition, such company will own or control more than 5 per centum of the voting shares of such institution or company;";

(B) by inserting before "Notwithstanding the foregoing" the following new sentence:

"It shall be unlawful for any insured depository institution (other than a foreign bank operating an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) to become a financial services holding company or a diversified holding company.";

(C) by adding at the end thereof the following new sentence: "Notwithstanding paragraph (1), any company that was a bank holding company under the Bank Holding Company Act of 1956 on December 31, 1992, shall be a financial services holding company as of January 1, 1993 without further approval by the appropriate Federal banking agency."; and

(D)(i) in subparagraph (A), by striking "or" at the end thereof;

(ii) in subparagraph (B), by striking the first period and inserting instead "; or"; and

(iii) by inserting after "; or", as added by clause (ii), the following:

"(C) the acquisition by a company of control of a bank in a reorganization in which a person or group of persons exchange their shares of the bank for shares of a newly formed financial services holding company and receive after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if—

"(i) immediately following the acquisition, the bank meets the requirements for Zone 1 or Zone 2;

"(ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization; and

"(iii) the company provides 30 days prior notification to the appropriate Federal banking agency.";

(2) in subsection (b)—

(A) by amending the first sentence to read as follows:

"Upon receiving from a company any application for approval under this section to acquire any interest in an insured depository institution, the appropriate Federal banking agency shall give notice to the other appropriate Federal banking agency, if any, for such bank and, if the institution is State-chartered, to the appropriate supervisory authority of the interested State in order to provide for the submission of the views and recommendations of the other appropriate Federal banking agency and the State supervisory authority, as appropriate.";

(B) by striking the term "Comptroller of the Currency" wherever it appears and inserting instead "the other appropriate Federal banking agency"; and

(C) in the third sentence, by striking "disapproves" and inserting instead "recommends disapproval of";

(3) in subsection (c)—

(A) by striking ", or" at the end of paragraph (1) and inserting instead a semicolon;

(B) by striking the period at the end of paragraph (2) and inserting instead "; or"; and

(C) by inserting after paragraph (2) the following new paragraph:

"(3) any acquisition or merger or consolidation if the appropriate Federal banking agency determines that the insured depository institution to be acquired or any other insured depository institution controlled by the company involved in the proposal is engaging in any unsafe and unsound practice or, following the transaction, will be in an unsafe and unsound condition.";

(4)(A) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively; and

(B) by inserting after subsection (c) the following new subsections:

"(d) Expedited Procedures for Acquisition of Additional Banks by Zone 1 Financial Services Holding Companies.—

"(1) Procedures.—

"(A) Upon receiving from a Zone 1 financial services holding company a complete application for approval under this section to acquire an insured depository institution, the appropriate Federal banking agency shall notify the other appropriate Federal banking agency, if any, and the appropriate supervisory authority of an interested State as provided for in subsection (b). Notwithstanding subsection (b)(1), the views and recommendations of the other appropriate Federal banking agency and the appropriate supervisory authority of an interested State, as appropriate, shall be submitted within 21 days of the date on which notice is given to them by the appropriate Federal banking agency.

"(B) The appropriate Federal banking agency must approve or disapprove the application within 45 days after the date of receipt of such application.

"(C) In the event of the failure of the appropriate Federal banking agency to act on any such application within 45 days after it has been received, the application shall be deemed to have been approved.

"(D) If the appropriate Federal banking agency has found that an emergency exists requiring expeditious action, or that it must act immediately to prevent probable failure, or if the appropriate Federal banking agency receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)(D)) from the other appropriate Federal banking agency or State chartering authority that a bank is in danger of closing, the appropriate Federal banking agency may waive or shorten the 45-day notice period with respect to any application for an acquisition received pursuant to this subsection.

"(2) EXTENSION OF TIME FOR NOTICE AND HEARING.—The 45-day period may be extended if the other appropriate Federal banking agency or the State supervisory authority recommends disapproval of an application subject to subparagraph (1) in writing based on its consideration of the factors listed in paragraphs (1), (2), or (3) of subsection (c). In the event that the other appropriate Federal banking agency or the State Supervisory authority recommends disapproval, the appropriate Federal banking agency shall follow the review period and procedures for notice and hearing contained in subsection (b)(1).

"(3) GROUNDS FOR DISAPPROVAL.—An application under this subsection shall be disapproved only—

"(A) pursuant to subsections (c)(1), (c)(2) or (c)(3);

"(B) if the financial services holding company does not qualify as, or would not continue to qualify as, a Zone 1 financial services holding company after consummation of the transaction; or

"(C) if the appropriate Federal banking agency determines that the transaction would not be consistent with the convenience and needs of the community to be served.

"(e) ACQUISITION INVOLVING DIVERSIFIED HOLDING COMPANIES.—The appropriate Federal banking agency shall not permit any acquisition or merger or consolidation of a financial services holding company involving a diversified holding company or a company that seeks to become a diversified holding company unless any financial services holding company controlled by the diversified holding company is and remains in Zone 1, and any financial services holding company to be acquired, will be, upon consummation of the transaction, a Zone 1 financial services holding company. An application involving a proposal that meets the requirement of this subsection shall be reviewed in accordance with the procedures and standards under subsection (d).".

(b) CONFORMING AMENDMENTS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended by subsection (a), is further amended—

(1) by striking "bank holding company" wherever it appears (except in the last sentence of subsection (a) as added by this section or as it appears in the reference to the "Bank Holding Company Act Amendments of 1970") and inserting instead—

(A) in subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d), and in provision (a)(A), "financial services holding company or diversified holding company"; and

(B) in all other instances, "financial services holding company";

(2)(A) by striking "Board" wherever it appears and inserting instead "appropriate Federal banking agency"; and

(B) in subsection (a), by striking "Board's judgment" and inserting instead "judgment of the appropriate Federal banking agency"; and

(3)(A) in subsection (a)(2), by striking "causes a bank" and inserting instead "causes an insured depository institution";

(B) in subsection (a)(4)—

(i) by striking "other than a bank" and inserting instead "other than an insured depository institution"; and

(ii) by striking "assets of a bank" and inserting instead "assets of an insured depository institution";

(C) in provision (a)(A), by striking "acquired by a bank" and inserting instead "acquired by an insured depository institution"; and

(D) in provision (a)(B), by striking "in a bank" and inserting instead "in an insured depository institution".

SEC. 203. INTERESTS IN NONBANKING ORGANIZATIONS.

(a) INTERESTS IN NONBANKING ORGANIZATIONS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (a), by deleting the last two sentences;

(2) in subsection (a)(2)—

(A) by striking ", or in the case of a company which has been" and all that follows through "December 31, 1980" and inserting instead "or in the case of a company that becomes a financial services holding company as a result of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, on January 1, 1993";

(B) in subparagraph (A)—

(i) by striking "of banking or"; and

(ii) by inserting at the end thereof the following:

", in the case of a foreign bank, the business of banking, where otherwise permitted through a branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1987 (12 U.S.C. 3101);";

(C) in subparagraph (B), by striking "those permitted under" and all that follows through "under such paragraph" and inserting instead the following:

"those permitted under subsection (c)(8)(A)(i) subject to all the conditions specified in such subsection or in any order or regulation issued by the appropriate Federal banking agency under such subsection; and

"(C) those permitted under subsection (c)(16) provided that the financial services holding company is a company exclusively owned in a mutual form by holders of contracts of insurance issued by such financial services holding company, or is a company organized as a reciprocal inter-insurance exchange";

(D) in the second sentence, by inserting a period after "practices" and striking the remainder of the sentence; and

(E) by deleting the last sentence. (3) in subsection (c)—

(A) in paragraph (8)—

(i) by redesignating clauses (i) and (ii) in each of subparagraphs (C), (D), and (E) as subclauses (I) and (II); respectively;

(ii) by redesignating subparagraphs (B) through (G) as clauses (ii) through (vii), respectively;

(iii) by redesignating subparagraph (A) as subparagraph (B)(i);

(iv) in subparagraph (B)(vii) (as redesignated), by striking "subparagraph (A), (B), or (C)" and inserting instead "clauses (i), (ii), or (iii)";

(v) by striking "shares of any company" and all that follows through "provide" and inserting instead the following:

"(A) shares of any company the activities of which the appropriate Federal banking agency, after due notice and opportunity for

comment, has determined (by order or regulation) with the concurrence of the other appropriate Federal banking agency to be of a financial nature.

"(i) Any activity that the Board of Governors of the Federal Reserve System has determined (by order or regulation that is effective on December 31, 1992) to be closely related to banking and a proper incident thereto shall be deemed to be of a financial nature for purposes of this paragraph.

"(ii) Any company that was a bank holding company on December 31, 1992 and that, on January 1, 1993, becomes a financial services holding company as a result of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, may without further approval under this paragraph retain shares of any company engaged in any activity described in clause (i) and continue to engage in any activity described in clause (i), provided that such company lawfully acquired the company or commenced the activity pursuant to approval that was granted by the Board of Governors of the Federal Reserve System prior to January 1, 1993, and was still in effect on December 31, 1992.

"(iii) Notwithstanding clause (ii), no financial services holding company may pursuant to this paragraph engage in, or acquire or retain the shares of any company engaged in, underwriting and dealing in securities that a national bank may not underwrite or deal in under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), except that a financial services holding company that received approval of the Board of Governors of the Federal Reserve System to underwrite and deal in such securities may continue to do so pursuant to this section subject to all the same conditions and limitations as required by the Board of Governors of the Federal Reserve System on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 for a period of time not to exceed three years from the date of enactment of that Act.

"(iv) Real Estate investment, management, or development and the purchase and sale of real estate as principal or broker shall not be deemed to be of a financial nature except to the extent authorized pursuant to clause (i).

"(v) Activities described in paragraph (16) shall not be deemed to be of a financial nature, except providing";

(vi) by striking "except" as it appears immediately before subparagraph (B) (as redesignated); and

(vii) by striking the last five sentences;

(B) in paragraph (13), by striking "or" at the end thereof;

(C) by inserting after paragraph (14) the following new paragraphs:

"(15)(A) shares of any company engaged in any of the following activities subject to the provisions of subsection (*l*):

"(i) underwriting, distributing, or dealing in securities;

"(ii) organizing, sponsoring, controlling, or distributing the shares of any registered investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

"(iii) securities brokerage, private placement, or investment advisory activities; or

"(iv) other securities activities permitted for brokers or dealers registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or for investment advisers registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

"(B) ACTIVITIES PERMITTED FOR BANK AFFILIATES.—A financial services holding company that acquires control of a securities affiliate under this paragraph shall not, after one year from the date of that acquisition, permit a bank or an insured depository institution that it controls to engage, directly or indirectly, in the United States in activities described in subparagraph (A) except to the extent that these activities are specifically authorized by statute for a national bank (other than underwriting and dealing in obligations issued by a State or political subdivision as permitted by law) or by a regulation or order promulgated by the Office of the Comptroller of the Currency pursuant to that statute before the date of enactment of the Financial Institutional Safety and Consumer Choice Act of 1991: *Provided, however*, That a financial services holding company acquiring control of a securities affiliate under this paragraph shall not permit, after one year from the date of that acquisition, an insured depository institution it controls to underwrite or deal in obligations issued by a State of political subdivision and shall permit these activities to be conducted only by a securities affiliate and not by an affiliate pursuant to subsection (c)(15).

"(C) For purposes of this paragraph, a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank (as the terms 'agency', 'branch', 'commercial lending company', and 'foreign bank' are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101)), shall be considered a bank.

"(16)(A) shares of any company that provides insurance as principal, agent, or broker subject to the provisions of subsection (*l*).

"(B) A financial services holding company that acquires control of an insurance affiliate may not permit an insured depository institution it controls or a subsidiary thereof to provide insurance—

"(i) as principal; or

"(ii) as agent or broker, including insurance in which an affiliate acts as principal, agent or broker, unless the laws of the State in which the bank is located permit banks chartered by the State to provide insurance as agent or broker in that State and is permitted for national banks.

"(C) Nothing in subparagraph (B) shall be construed to limit the ability of a financial services holding company to sell insurance pursuant to subsection (8).

"(D) For purposes of this paragraph, a branch or agency of a foreign bank (as the terms 'branch' and 'agency' are defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)) shall be considered an insured depository institution."; and

(D) in subsection (c), by striking the last two sentences; and

(4) by striking subsection (i) and inserting instead the following new subsections:

"(i) Notice Procedures for Nonbanking Activities.—

"(1) General Notice Procedure.—

"(A) NOTICE REQUIREMENT.—No financial services holding company may engage in activities or acquire or retain ownership or control of the shares of a company engaged in qualified financial activities without providing the appropriate Federal banking agency with at least 45 days prior written notice of the proposed transaction or expansion.

"(B) CONTENTS OF NOTICE.—The notice submitted to the appropriate Federal banking agency shall contain such information as the appropriate Federal banking agency shall prescribe by regulation or by specific request in connection with a particular notice. The appropriate Federal banking agency may only require such information as may be relevant to the nature and scope of the proposed transaction and to the appropriate Federal banking agency's evaluation of the criteria provided for in paragraph (2) and subsection (j), as appropriate.

"(C) PROCEDURE FOR AGENCY ACTION.—A notice filed under this subsection shall be deemed to be approved by the appropriate Federal banking agency unless, prior to the expiration of 45 days from the receipt of a complete notice, the appropriate Federal banking agency issues an order setting forth the reasons for disapproval. The appropriate Federal banking agency may extend the 45-day period for an additional 30 days.

"(D) EXPEDITED PROCEDURES FOR ZONE 1 FINANCIAL SERVICES HOLDING COMPANIES.—

"(i) COMMENCEMENT OF PERMISSIBLE NONBANKING ACTIVITIES.—Notwithstanding subparagraph (A), any Zone 1 financial services holding company may commence through a subsidiary (other than a depository institution), any activity authorized by subsections (c)(15) and (c)(16) of section 4 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843) or that has been determined by regulation by the appropriate Federal banking agency under section 4(c)(8) of such Act to be permissible for such a financial services holding company or subsidiary. The financial services holding company shall provide the appropriate Federal banking agency with written notice of the commencement of such activity not later than 30 days following such action.

"(ii) ACQUISITIONS.—Notwithstanding subparagraphs (B) and (C), a notice filed under this subsection by a Zone 1 financial services holding company that will qualify as a Zone 1 financial services holding company both before and after the proposed transaction shall be deemed to be approved unless prior to the expiration of 30 days after the receipt of a complete notice, the appropriate Federal banking agency issues an order setting forth the reasons for disapproval.

"(E) Any proposal may proceed prior to the expiration of the disapproval period if the appropriate Federal banking agency issues a written notice of approval. The appropriate Federal banking agency may provide for no notice under this paragraph or notice for a shorter period of time with respect to particular activities or transactions.

"(F) In the case of any proposal to engage in, or acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) that has not been previously approved by order or regulation, the appropriate Federal banking agency may extend the notice period under this subsection for an additional 90 days.

"(2)(A) GENERAL STANDARDS FOR REVIEW.—In connection with a notice under this subsection, the appropriate Federal banking agency may consider the following criteria—

"(i) the managerial resources of the companies involved;

"(ii) the adequacy of their financial resources, including their capital, giving consideration to the financial resources and capital of others engaged in similar activities;

"(iii) any material adverse effect on the safety and soundness or financial condition of an affiliated depository institution; and

"(iv) whether, in the case of notice for approval involving activities under subsection (c)(8), performance of the activity by a financial services holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh

possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

"(B) REQUIREMENTS FOR DISAPPROVAL.—The appropriate Federal banking agency shall not approve any proposed transaction under this subsection if the appropriate Federal banking agency determines that any insured depository institution controlled by the financial services holding company is engaging in any unsafe and unsound practice or is in an unsafe and unsound condition.

"(C) STANDARDS FOR ZONE 1 FINANCIAL SERVICES HOLDING COMPANY.—A notice filed under this section by a Zone 1 financial services holding company or any subsidiary (other than an insured depository institution of such company) may be disapproved only pursuant to subparagraph (B) or if the appropriate Federal banking agency determines that the financial services holding company is not a Zone 1 financial services holding company.

"(j) ADDITIONAL CAPITAL REQUIREMENTS FOR NEW FINANCIAL ACTIVITIES.—The appropriate Federal banking agency shall disapprove a notice to engage in, or acquire or retain the shares of a company engaged in, a new financial activity unless the company filing the notice is a Zone 1 financial services holding company, or the appropriate Federal banking agency finds that—

"(1) the capital of each insured bank controlled by the company is above the mean capital level of the range for insured banks in Zone 2; and,

"(2) the financial services holding company is making substantial progress toward qualifying as a Zone 1 financial services holding company.

"(k) MAINTENANCE OF HIGHER CAPITAL.—Any financial services holding company that—

"(1) engages, directly or indirectly, in any new financial activity, or controls any company engaged in any such activity, and

"(2) fails to qualify as a Zone 1 financial services holding company within the time period specified by the appropriate Federal banking agency, shall be subject to the provisions of section 35(d)(6) of the Federal Deposit Insurance Act.

"(l) LIMITATIONS ON ACTIVITIES OF FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) DISCLOSURE.—A securities affiliate, an insurance affiliate, or an affiliate engaged in securities or insurance activities authorized pursuant to subsection (c)(8) shall each—

"(A) prominently disclose in writing to its customers that such affiliates are not insured depository institutions and are separate from any affiliated depository insured institution;

"(B) prominently disclose in writing to its customers that securities or insurance products sold, offered, or recommended by such affiliates are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by any affiliated insured depository institutions, and are not otherwise obligations of such insured depository institutions unless such is the case; and

"(C) obtain in acknowledgement of receipt of the disclosures including the date of receipt and the customer's name, address, and account number.

"(2) REGULATIONS.—

"(A) The Securities and Exchange Commission is authorized to adopt regulations in consultation with the appropriate Federal banking agencies pursuant to this subsection regarding disclosures by securities affiliates and affiliates engaged in securities activities pursuant to subsection (c)(8);

"(B) The appropriate Federal banking agencies are authorized to adopt regulations pursuant to this subsection regarding disclosures by insurance affiliates or by any affiliates engaged in activities pursuant to subsection (c)(8) (other than securities activities).

"(3) DISCLOSURE OF CUSTOMER INFORMATION.—The appropriate Federal banking agency is authorized to issue regulations limiting disclosures of nonpublic customer information between an insured depository institution and affiliates thereof, including an evaluation of the creditworthiness of an issuer or other customer of that insured depository institution or subsidiary thereof or financial, securities, or insurance affiliate.

"(4) AUTHORITY TO IMPOSE ADDITIONAL SAFEGUARDS.—The appropriate Federal banking agency may by regulation or order adopt limitations or restrictions on the extension of credit or other similar financial support, the purchase or sale of assets, or the issuance of guarantees, letters of credit, or other credit facilities to or for the benefit of an affiliate engaged in any new financial activity or to customers of such affiliate by an affiliate that is an insured depository institution controlled by the financial services holding company. Such restrictions and limitations shall be adopted as the agency deems appropriate to address potential adverse effects, including unfair competition, conflicts of interest, and unsafe banking practices. Transactions or similar arrangements between an insured depository institution and the customers of an affiliate engaged in such activities that are both controlled by the same financial services holding company shall not be used to evade any restrictions or limitations imposed under this paragraph.

"(m) EXCEPTION FOR CERTAIN NONBANKING INVESTMENTS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a financial services holding company may own or control shares of any company engaged in activities not authorized pursuant to this section if—

"(A) the shares were acquired before January 1, 1993, and the aggregate investment in all such shares does not exceed 5 per centum of the financial services holding company's capital and surplus on a consolidated basis; or

"(B) the shares are acquired and held by a securities affiliate as part of a bona fide underwriting or investment banking activity if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis consistent with the nature of such investment banking activity.

"(2) LIMITATIONS.—The limitations in section 5(c) shall apply to the companies described in paragraphs (1)(A) and (1)(B).

"(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—

"(A) If any financial services holding company loses the exemption provided in paragraph (1)(A), such company shall divest ownership and control of all of the shares of such company within 180 days after the loss of such exemption.

"(B) If any financial services holding company loses the exemption provided in paragraph (1)(B) the financial services holding company shall divest ownership and control of such shares within 15 days of the loss of the exemption.

"(b) CONFORMING AMENDMENTS.—Section 4 of the Bank Holding Company Act (12 U.S.C. 1843), as amended by this section, is further amended—

"(1) by striking "bank holding company" wherever it appears except in subsections (c)(1), (c)(8)(A)(ii), and (c)(8)(B)(vii) and inserting instead "financial services holding company";

"(2) by striking "Board" wherever it appears except in subsections (c)(8)(A)(ii), (c)(8)(B)(iv), (c)(8)(B)(vii) and (c)(13) and inserting instead "appropriate Federal banking agency";

"(3) in subsection (c)(1)(A), by striking "banking subsidiary" and inserting instead "insured depository institution";

(4) in subsections (c)(1)(C) and (c)(1)(D), by striking "banking subsidiaries" wherever it appears and inserting instead "insured depository institution"; and

(5) in subsection (c)(4), by striking "acquired by a bank" and inserting instead "acquired by an insured depository institution".

SEC. 204. DIVERSIFIED HOLDING COMPANIES

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended to read as follows:

"SEC. 5. DIVERSIFIED HOLDING COMPANIES.

"(a) CAPITAL REQUIREMENTS FOR ACQUISITION OF FINANCIAL SERVICES HOLDING COMPANIES.—No diversified holding company may acquire control of a financial services holding company unless, after the acquisition, such company is a Zone 1 financial services holding company.

"(b) NOTICE PROVISION FOR DIVERSIFIED HOLDING COMPANIES.—A diversified holding company that acquires the shares of a financial affiliate, shall file notice with the appropriate Federal banking agency 30 days after the commencement of such activity or the acquisition of such shares.

"(c) LIMITATIONS ON DIVERSIFIED HOLDING COMPANIES AND THEIR AFFILIATES.—

"(1) Except in the case of a foreign bank, no financial services holding company or any of its subsidiaries shall—

"(A) extend credit in any manner to an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company;

"(B) purchase for its own account financial assets or any securities of an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company;

"(C) issue a guarantee, acceptance or letter of credit, including an endorsement or standby letter of credit, to an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company; or

"(D) extend credit to any customer of the diversified holding company or any of its affiliates except on an arms-length basis in compliance with section 23B of the Federal Reserve Act (12 U.S.C. 371c-1).

"(2) To the extent that activities are not prohibited under paragraph (1), the restrictions and limitations issued by the appropriate Federal banking agencies pursuant to section 4(*l*) shall apply to diversified holding companies and their financial affiliates that are not otherwise controlled by an affiliated financial services holding company in the same manner and to the same extent as if the diversified holding company were a financial services holding company.

"(3) A diversified holding company and any of its affiliates that are engaged in the purchase and sale of real property, as principal, agent or broker, may not market such service jointly with any affiliated insured depository institution unless such insured depository institution is permitted under State law to engage in such purchase or sale of property.

"(4) A diversified holding company that either directly or through an affiliate (not oth-

erwise under the control of an affiliated financial services holding company) provides insurance as principal, agent or broker, may not permit an affiliated insured depository institution or a subsidiary thereof to provide insurance as agent or broker, including insurance in which the diversified holding company or such affiliate acts as principal, agent or broker, unless the laws of the State in which the insured depository institution is located permit depository institutions chartered by such State to provide insurance as agent or broker in that State and as permitted for national banks.

"(5) In the case of a foreign bank that is a financial services holding company, the appropriate Federal banking agency shall apply the restrictions in paragraph (1) to the United States affiliates of such foreign bank and the foreign bank in the same manner and to the same extent as they apply to domestic financial services holding companies and their affiliates.".

SEC. 205. ADMINISTRATION.

The Bank Holding Company Act of 1956, is amended by inserting after section 5 the following new section:

"SEC. 6. ADMINISTRATION.

"(a) REGISTRATION OF FINANCIAL SERVICES HOLDING COMPANY.—Within 180 days after becoming a financial services holding company, each financial services holding company shall register with the appropriate Federal banking agency on forms prescribed by the appropriate Federal banking agency, which shall include such information with respect to the financial condition and operations, management, and inter-company relationships of the financial services holding company and its subsidiaries, and related matters, as the appropriate Federal banking agency may deem necessary or appropriate to carry out the purposes of this Act. The appropriate Federal banking agency may, in its discretion, extend the time within which a financial services holding company shall register and file the requisite information.

"(b) REGULATIONS AND ORDERS.—

"(1)(A) Except as provided in subparagraph (B), the appropriate Federal banking agency is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof: *Provided, however*, That any capital requirements for diversified holding companies or financial services holding companies shall only be imposed pursuant to subsection (e) of this section or section 35 of the Federal Deposit Insurance Act.

"(B) Any capital requirements for diversified holding companies or financial services holding companies shall be imposed only pursuant to subsection (c) or section 35 of the Federal Deposit Insurance Act.

"(2) NOTICE AND OBJECTION.—

"(A) The appropriate Federal banking agencies shall jointly propose and issue regulations for the purpose of implementing this Act. Such regulations shall be adopted and published as final before January 1, 1993.

"(B) Following issuance of the regulations described in subparagraph (A), the appropriate Federal banking agencies shall provide at least 60 days notice to each other with respect to the proposed adoption, modification, or rescission of any rule, interpretation, or policy statement relating to diversified or financial services holding companies and their nonbank affiliates.

"(C)(i) The reviewing appropriate Federal banking agency may, within 60 days, submit comments or written objection to the proposing appropriate Federal banking agency.

(ii) The proposing appropriate Federal banking agency may not proceed to adopt, modify, or rescind any such rule, interpretation, or policy statement if such agency receives written objection from the reviewing appropriate Federal banking agency within 60 days after providing notice to such agency and such objection is not subsequently withdrawn by the reviewing agency.

(c) RECORDS, REPORTS AND EXAMINATIONS.—

"(1) RECORDS AND REPORTS.—

"(A) RECORDS RELATING TO DIVERSIFIED HOLDING COMPANIES.—A financial services holding company shall obtain such information and make and keep such records as the appropriate Federal banking agency may prescribe concerning the financial services holding company's policies and procedures for monitoring and controlling financial and operational risks to its insured depository institution subsidiaries from the activities of the diversified holding company or its financial affiliates that are not controlled by the financial services holding company. Such records shall describe the activities conducted by the diversified holding company and such financial affiliates that are likely to have a material impact on the financial or operational condition of the insured depository institution subsidiaries of the financial services holding company, and the customary sources of capital and funding of such activities.

"(B) REPORTS OF FINANCIAL SERVICES HOLDING COMPANY AND DEPOSITORY INSTITUTIONS.—The appropriate Federal banking agency from time to time may require the financial services holding company and its insured depository institution subsidiaries to file reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with. With regard to insured depository institutions controlled by a financial services holding company, the appropriate Federal banking agency shall consult with and, to the extent possible, use reports obtained by, the other appropriate Federal banking agency for such institutions.

"(C) REPORTS OF FINANCIAL SERVICES HOLDING COMPANIES AND AFFILIATES.—The appropriate Federal banking agency may require a financial services holding company, and any affiliate it controls, to file reports if such agency reasonably believes that the activities or financial condition of such holding company or affiliate is likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary (and a subsidiary thereof) of the financial services holding company. The appropriate Federal banking agency shall consult with and, to the extent possible, use reports obtained by, the functional regulator of the financial services holding company or affiliate to obtain the necessary information.

"(D) REPORTS OF DIVERSIFIED HOLDING COMPANIES AND FINANCIAL AFFILIATES.—The appropriate Federal banking agency may require a diversified holding company and any financial affiliate not controlled by a financial services holding company to file reports if such agency reasonably believes that the activities or financial condition of such diversified holding company or financial affiliate is likely to have a material impact on the financial or operational condition of the insured depository institution subsidiaries (and subsidiaries thereof) of the financial services holding company. The appropriate Federal banking agency shall consult with and, to the extent possible, use reports obtained by, the functional regulator of the diversified holding company or financial affiliate to obtain the necessary information.

"(E) RECIPROCAL ACCESS.—The functional regulator of a diversified holding company or a financial affiliate may have access on a reciprocal basis to reports, other than examination reports, obtained by the appropriate Federal banking agency under this subsection with respect to an affiliated insured depository institution or financial services holding company, if the functional regulator reasonably believes that the activities or financial condition of such institution or financial services holding company is likely to have a material impact on the financial or operational condition of the financial affiliate. The other appropriate Federal banking agency of an insured depository institution may have access on a reciprocal basis to reports, other than examination reports, obtained by the appropriate Federal banking agency under this subsection with respect to any affiliate of the insured depository institution, if the other appropriate Federal banking agency reasonably believes that the activities or financial condition of such affiliate or company is likely to have a material impact on the insured depository institution.

"(F) RESTRICTION ON DISCLOSURE.—Any reports obtained from another agency or regulator under this subsection shall not be disclosed to the public by the recipient agency or regulator and shall not be disclosed to any other governmental agency or to the Congress except as otherwise permitted by law. Reports obtained from another agency or regulator under this subsection may be used only to carry out the purposes of this subsection or as otherwise permitted by law.

"(2) EXAMINATIONS.—

"(A) FINANCIAL SERVICES HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS.—The appropriate Federal banking agency may make on-site examinations of each financial services holding company, its insured depository institution subsidiaries (and subsidiaries thereof) and, subject to subparagraphs (8) through (E), any of its other affiliates. where appropriate, the appropriate Federal banking agency shall consult with, and to the extent possible, use the report of examination made by the other appropriate Federal banking agency or the appropriate State bank supervisory authority.

"(B) FINANCIAL SERVICES HOLDING COMPANIES AND AFFILIATES.—The appropriate Federal banking agency may examine the financial services holding company and any affiliate it controls—

"(i) to determine whether such holding company or affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in sections 4(1) and 5(c);

"(ii) to determine compliance with sections 35(f) and 35(g) of the Federal Deposit Insurance Act, as applicable; or

"(iii) if the agency reasonably believes that such holding company or affiliate is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to any insured depository institution subsidiary (or a subsidiary thereof).

The appropriate Federal banking agency shall consult with and, to the extent possible, use the report of examinations made by the functional regulator, if any, of an affiliate to obtain the necessary information. If such reports do not contain the necessary information, the appropriate Federal banking agency shall request the functional regulator to conduct an examination to obtain such information. In the event the func-

tional regulator does not conduct an examination within a reasonable period of time, the appropriate Federal banking agency may conduct the examination, but shall notify the functional regulator before doing so.

"(C) DIVERSIFIED HOLDING COMPANIES AND FINANCIAL AFFILIATES.—The appropriate Federal banking agency may examine the diversified holding company and any financial affiliate not controlled by a financial services holding company—

"(i) to determine whether such holding company or affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in sections 4(l) and 5(c);

"(ii) to determine compliance with sections 35(f) and 35(g) of the Federal Deposit Insurance Act, as applicable; or

"(iii) if the agency reasonably believes that such holding company or affiliate is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to any insured depository institution subsidiary (or a subsidiary thereof).

The appropriate Federal banking agency shall consult with and, to the extent possible, use the report of examinations made by the functional regulator, if any, of the diversified holding company or financial affiliate to obtain the necessary information. If such reports do not contain the necessary information, the appropriate Federal banking agency shall request the functional regulator to conduct an examination to obtain such information. In the event the functional regulator does not conduct an examination within a reasonable period of time, the appropriate Federal banking agency may conduct the examination, but shall notify the functional regulator before doing so.

"(D) RECIPROCAL EXAMINATION OF INSURED DEPOSITORY INSTITUTION AFFILIATES CONTROLLED BY FINANCIAL SERVICES HOLDING COMPANIES.—The functional regulator for a financial affiliate may examine an insured depository institution affiliate if the regulator reasonably believes that such institution is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to the financial affiliate. The functional regulator shall consult with, and, to the extent possible, use the report of examinations made by, the appropriate Federal banking agency to obtain the necessary information. If such report does not contain the necessary information, the functional regulator shall request the appropriate Federal banking agency to conduct an examination to obtain such information. In the event the appropriate Federal banking agency does not conduct an examination within a reasonable period of time, the functional regulator may conduct the examination and shall notify the appropriate Federal banking agency before doing so.

"(E) NONFINANCIAL AFFILIATES OF A DIVERSIFIED HOLDING COMPANY.—The appropriate Federal banking agency may examine any of the nonfinancial affiliates of a diversified holding company in order to determine whether such affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in section 5(c).

"(F) COST OF EXAMINATIONS.—The cost of examinations of a diversified holding company and any affiliate of a diversified holding company not controlled by a financial services holding company shall be assessed against, and paid by, the diversified holding company or the affiliate, whichever is the subject of the examination. The cost of examinations of a financial services holding company and its subsidiaries shall be assessed against, and paid by, the financial services holding company.

"(d) TRANSFER OF RECORDS.—No agency or department transferring records as provided by this section shall be deemed to have waived any privilege applicable to those records under law.

"(e) REPORT TO THE CONGRESS; RECOMMENDATIONS.—Each appropriate Federal banking agency shall include in its annual report to the Congress, the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

"(f) Cease and desist authority; termination of activities or ownership or control of nonbank subsidiaries constituting serious risk.—

"(1) In addition to any other authority of the appropriate Federal banking agency, the appropriate Federal banking agency may take any action described in paragraph (2) if it has reasonable cause to believe that—

"(A) any financial affiliate of an insured depository institution, or any other affiliate controlled by a financial services holding company, is engaged in activities in such a manner as to constitute a serious risk to the financial safety, soundness, or stability of such insured depository institution; or

"(B) the diversified holding company, the financial services holding company controlled by the diversified holding company, or any affiliate is in significant danger of default and either poses a significant risk to the liquidity or solvency of an affiliated insured depository institution or is likely to cause a significant dissipation of its assets or earnings.

"(2) Subject to paragraph (1), the appropriate Federal banking agency—

"(A) may institute cease and desist proceedings or issue a temporary order requiring the diversified holding company or financial services holding company controlled by the diversified holding company or affiliate thereof engaged in qualified financial activities to cease and desist from such activity and take affirmative action to prevent significant dissipation of assets or earnings, of an insured depository institution as prescribed in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818);

"(B) may institute cease and desist proceedings or issue a temporary order requiring a financial services holding company described in paragraph (1)(B) to increase its capital; and

"(C) in the event the diversified holding company or the financial services holding company controlled by the diversified holding company or the affiliate thereof does not comply with the order issued pursuant to subparagraph (A) or (B), may order the diversified holding company or such financial services holding company or any such affiliate, after due notice and opportunity for hearing and after considering the views of the insured depository institution's associated Federal banking agency and the appropriate State authority in the case of a State-insured depository institution, to terminate (within 120 days, or such longer period as the appropriate Federal banking agency may direct in unusual circumstances) its ownership or control of any such affiliate either by sale to any third party or by distribution of the shares of the affiliate to the shareholders of the diversified holding company or financial services holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing diversified holding company or financial services holding company, and such holding company shall not make any charge to its shareholders arising out of such a distribution.

"(3) The appropriate Federal banking agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(g)(1) In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the appropriate Federal banking agency, 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 cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas including witness subpoenas and subpoenas duces tecum; and the appropriate Federal banking agency is empowered to make rules and regulations to effectuate the purposes of this subsection.

"(2) The attendance of witnesses and the production of documents provided for in this subsection may be required 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. A subpoena issued under this section may be served upon any person who is not found within the territorial jurisdiction of any court in the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found in the United States may be issued only on the prior approval of the appropriate Federal banking agency. 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 court shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

"(3) Any service required under this subsection in any State or in any territory or other place subject to the jurisdiction of the United States may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the appropriate Federal banking agency may by regulation or otherwise provide, and all process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party

such reasonable expenses and attorneys' fees as it deems just and proper.

"(4) Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in obedience to the subpoena of the appropriate Federal banking agency shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.".

SEC. 206. RESERVATION OF RIGHTS TO STATES; PRE-EMPTION OF ANTI-AFFILIATION PROVISIONS.

Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended to read as follows:

"SEC. 7. RESERVATION OF RIGHTS TO STATES; ANTI-AFFILIATION PROVISIONS.

"(a) No provision of this Act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, diversified holding companies, financial services holding companies, and subsidiaries thereof.

"(b)(1) Notwithstanding subsection (a), no provision of law of any State, including, without limitation, any provision relating to the business of insurance, banking (including any law relating to savings associations as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), real estate, securities, finance, retail or other law regulating the provisions of financial or other services, shall prevent or impede or shall be interpreted or applied by any administrative, executive, or judicial authority with the purpose or effect of preventing or impeding—

"(A) any insured depository institution, any affiliate thereof or any representative of any such institution or affiliate thereof from being acquired, owned or controlled by, or from being affiliated in any manner with, any company which is or becomes a financial services holding company or with any affiliate of such company because of the types of activities engaged in directly or indirectly by such insured depository institution or any affiliate thereof, or by any representative of any such institution or affiliate thereof or because of the types of activities engaged in directly or indirectly by any such company or affiliate thereof, or by any representative of any such company or affiliate thereof;

"(B) any company which is or becomes a financial services holding company or affiliate thereof, or any representative of any such company or affiliate thereof, from acquiring, owning, or controlling or being affiliated in any way with any insured depository institution or affiliate thereof because of the types of activities engaged in directly or indirectly by any such company or affiliate thereof, or any representative of any such company or affiliate thereof, or because of the types of activities engaged in directly or indirectly by any such insured depository institution or affiliate thereof, or by any representative of such institution or affiliate thereof; or

"(C) any insured depository institution or any affiliate thereof, or any representative of any such institution or affiliate thereof, from offering or marketing products or services of any affiliated financial services holding company or affiliate thereof or from having its products or services offered or marketed by any affiliate thereof, or by any representative of such company or affiliate—

"(i) except as provided in sections 4(c)(16)(B) and 5(c)(3) and 5(c)(4); and

"(ii) except with regard to offering and marketing insurance pursuant to section 4(c)(8).

Nothing in this subparagraph shall exempt any company which is or becomes a financial services holding company or an affiliate thereof, or any representative of any such company or affiliate, from complying with, or shall annul, alter, or affect the application of, the laws of any State relating to the examination, supervision, or regulation of providers of financial services or the protection of consumers, except to the extent that the intent, purpose or effect of those laws is inconsistent with this subsection or with the purposes of this Act and then only to the extent of the inconsistency.

"(2) For purposes of this subsection, an insured depository institution includes a branch, agency, or commercial lending company subsidiary of a foreign bank, as those terms are defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

SEC. 207. PENALTIES.

Section 8 of the Banking Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) by striking "the Board" wherever it appears and inserting instead "an appropriate Federal banking agency";

(2) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company";

(3) in subsection (a)(2), by striking "profit significantly" and inserting instead "obtain anything of value";

(4) in section (a), by striking "Every officer, director, agent" and all that follows in the undesignated last paragraph;

(5) in subsection (b)(1), by striking "forfeit and"; and

(6) in paragraphs (1) through (4) of subsection (d), by inserting "civil" before "penalty".

SEC. 208. CONFORMING AMENDMENTS TO JUDICIAL REVIEW PROVISION.

Section 9 of the Bank Holding Company Act of 1956 (12 U.S.C. 1848) is amended—

(1) by striking "the Board" wherever it appears and inserting instead "an appropriate Federal banking agency"; and

(2) by striking "Board's order" and inserting instead "order of an appropriate Federal banking agency".

SEC. 209. ANTITRUST REVIEW.

(a) ANTITRUST REVIEW.—Section 11(b) (1) of the Bank Holding Company Act (12 U.S.C. 1849(b) (1)) is amended by inserting ", except that such period may be eliminated or reduced with the concurrence of the Attorney General" before the period at the end of the third sentence.

(b) CONFORMING AMENDMENTS.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is further amended—

(1) by striking "Board" wherever it appears and inserting instead "appropriate Federal banking agency";

(2) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(3) in subsection (b)(1)—

(A) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) by striking "Board's approval" and inserting instead "approval of the appropriate Federal banking agency"; and

(C) by striking "failure of a bank" and inserting instead "failure of an insured depository institution".

(c) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by inserting ", except that such period may be eliminated or reduced with the concurrence of the Attorney General" before the period at the end of the third sentence.

SEC. 210. TECHNICAL AMENDMENT.

Section 1 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 note) is amended by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991".

SEC. 211. EFFECTIVE DATE.

Sections 201 through 210 shall become effective on January 1, 1993, except that section 4(c)(8)(A)(ii) of the Bank Holding Company Act of 1956, as added by section 203(a)(3) of this title, shall be effective on the date of enactment of this Act.

SEC. 212. APPLICATION OF THE LIMITATIONS ON TYING ARRANGEMENTS AND INSIDER LENDING TO FINANCIAL SERVICES HOLDING AND DIVERSIFIED HOLDING COMPANIES.

(a) DEFINITIONS.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971) is amended by deleting "bank holding company" and inserting instead "financial services holding company and diversified holding company".

(b) CERTAIN TYING ARRANGEMENTS PROHIBITED.—Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

"(2) (A) A financial services holding company and any subsidiary (other than a bank) of such holding company and a diversified holding company and any subsidiary (other than a bank) of such holding company shall not in any manner extend credit, lease, or sell property of any kind, or furnish any service or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer shall obtain credit, property or service from an affiliated bank except as provided in subparagraph (B).

"(B) A financial services holding company and any subsidiary (other than a bank) of such holding company and a diversified holding company and any subsidiary (other than a bank) of such holding company may vary the consideration—

"(i) for any extension of credit, lease or sale of property of any kind, or the furnishing of any service on the condition or requirement that the customer shall obtain some credit, property, or service from an affiliated bank provided that the products or services offered to and obtained by the customer are also separately available to such customer on substantially the same terms, including interest rate, collateral, and cost, as those prevailing at the time for comparable transactions that are not subject to such conditions or requirements; or

"(ii) for any loan, discount, deposit, or trust service on the condition or requirement that the customer shall obtain a loan, discount, deposit or trust service from an affiliated bank provided that such products or services described in this subparagraph are also separately available to such customer.

"(C) The Board may adopt such regulations to carry out the purposes of this paragraph which may include such restrictions or limitations regarding subparagraph (B) as it deems necessary or appropriate in the public interest.".

(c) INSIDER LOANS.—Sections 22(h)(6)(C) and (D) of the Federal Reserve Act (12 U.S.C. 375b(6)(C) and (D)) are each amended—

(1) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company and diversified holding company"; and

(2) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting instead "Financial Services Holding Company Act of 1991".

SEC. 213. PROVISIONS EXEMPTING FINANCIAL SERVICES HOLDING COMPANIES FROM THE SAVINGS AND LOAN HOLDING COMPANY ACT.

Section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) is amended—

(1) in paragraph (1), by amending subparagraph (D) to read as follows:

"(D) SAVINGS AND LOAN HOLDING COMPANY.—

"(i) Except as provided in clause (ii), the term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(ii) No company which is a financial services holding company or a diversified holding company registered under and subject to the provisions of the Financial Services Holding Company Act of 1991, other than a company described in section 4(f) of such Act (12 U.S.C. 1843(f)), and no company controlled by such company, shall be deemed to be a savings and loan holding company."; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) EXEMPTION FOR FINANCIAL SERVICES HOLDING COMPANIES AND DIVERSIFIED HOLDING COMPANIES.—The provisions of this section shall not apply to any company that is a financial services holding company or a diversified holding company registered under, and subject to, the provisions of the Financial Services Holding Company Act of 1991, other than companies described in section 4(f) of such Act (12 U.S.C. 1843(f)), or to any company directly or indirectly controlled by such company (other than a savings association).".

Subtitle B—Financial Activities of National Banks

SEC. 221. AMENDMENTS TO THE BANKING ACT OF 1933.

(a) Paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by adding at the end thereof the following:

"If an association is not an affiliate of a securities affiliate (as the terms 'affiliate' and 'securities affiliate' are defined in section 2 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841)), the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing securities for its own account shall not apply to the distribution of securities issued by investment companies (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)): *Provided*, That, notwithstanding any other provision of law (including this section), an association shall not in the United States, pursuant to any express or incidental power, underwrite, distribute, or sell interests in a pool of assets originated or purchased by the association or its affiliate, and an association shall not continue to engage in such activity pursuant to any order issued by the Comptroller of the Currency: *Provided further*, That no association shall sponsor, organize or control an investment company registered under the Investment Company Act of 1940: *Provided further*, That no association shall engage in the United States in any securities activity except to the extent that such activity is specifically authorized by statute, or authorized by regulation, order, or interpretation issued by the Office of the Comptroller of the Currency or its successor pursuant to that statute, on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, provided that this shall not authorize the underwriting or distributing by an association of securities backed by or representing an interest in mortgages or other assets originated or purchased by the association or its affiliate.".

(b) Section 20 (12 U.S.C. 377) and section 32 (12 U.S.C. 78) of the Banking Act of 1933 are repealed.

SEC. 222. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a)(1) In addition to the powers vested by law in national banking associations, any such association located in a place that has a population not exceeding 5,000 (as shown by the preceding decennial census) may sell insurance so long as such insurance activities are confined to that place, and the insurance is sold only to residents of the State in which the association is located or to natural persons employed in that State: *Provided*, That no such association shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *Provided further*, That the association shall not guarantee the truth of any statement made in any application made for such insurance.

(2) For purposes of this subsection, the term 'residents of that State' includes—

(A) companies incorporated in, or organized under the laws of, the State;

(B) companies licensed to do business in the State; and

(C) companies having an office in the State.

(b) Notwithstanding the limitations in subsection (a), a national banking association organized under the laws of the United States may act as agent in soliciting and selling insurance and collecting premiums in one or more States in which such association or any of its branches is located to the extent to which such activities are permitted by such States for banks located in those States.

(c) 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 now vested by law in national banking associations" and all that follows through "filing his application for insurance.".

SEC. 223. AMENDMENTS TO SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (a)—

(i) in paragraph (2), by striking the period at the end thereof and inserting instead ": Provided, however, That notwithstanding the foregoing, a loan or extension of credit shall not be deemed to be made to any affiliate if—

"(A) the member bank approves such loan or extension of credit in accordance with substantially the same standards, procedures, and terms that it has applied to similar loans or extensions of credit the proceeds of which are not transferred to or for the benefit of an affiliate; and

"(B) such loan or extension of credit is not made for purposes of evading any of the requirements of this section."; and

(ii) by inserting at the end thereof the following new paragraph:

"(5) No financial services holding company shall permit an insured depository institution that it controls to engage in any covered transaction if such covered transaction exceeds 5% of the capital stock and surplus of the insured depository institution unless 5 days prior notice is provided to the appropriate Federal banking agency for the financial services holding company and for the insured depository institution, if different;"

(2) 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 with respect to which a member bank or any affiliate is an investment advisor as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(20)), commodity trading advisor as defined in section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)), or performs substantially equivalent activities which are substantially equivalent to those of an investment advisor or commodity trading advisor; and";

(3) in subsection (b)(2)(A), by inserting "and of which the member bank owns at least 80 per centum of the voting stock" after "member bank";

(4) in subsection (b)(5), by inserting "principally engaged in deposit taking or lending activities" after "trust company";

(5) in subsection (b)(7)—

(A) in subparagraph (D), by striking "or" at the end thereof;

(B) in subparagraph (E)—

(i) by inserting "to, or" after "standby letter of credit,"; and

(ii) by striking "or" at the end thereof; 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 such liability to the member bank of any affiliate;

"(G) a loan or extension of credit to any company, or the issuance of or participation in a standby letter of credit, asset purchase agreement, indemnification, guarantee, insurance or other facility with any company, the purpose of which is to enhance the marketability of securities or other obligations or assets, other than those securities that a member bank may underwrite pursuant to section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), that are underwritten or distributed by the affiliate, unless there is substantial participation by other lenders in such loan, extension of credit, letter of credit, agreement, indemnification, guarantee, insurance or other facility; or

"(H) any other financial arrangement that is determined by the Board by regulation to be substantially equivalent to a transaction described in this paragraph;";

(6) in subsection (c)(1)—

(A) by inserting "to, or" after "letter of credit issued"; and

(B) by striking "at the time of the transaction"; (7) in subsection (c)(4)—

(A) by inserting "the member bank or" after "issued by"; and

(B) by inserting "to, or" after "letter of credit"; and

(8) in subsection (d)(5), by inserting "provided that the company provides services solely to affiliated member banks" before the semicolon;

(b) Section 23B(a)(2)(E) of the Federal Reserve Act (12 U.S.C. 371c-1(a)(2)(E)) is amended—

(1) in clause (i), by striking ", or" and inserting instead a semicolon;

(2) in clause (ii), by striking the period and inserting instead "; or"; and

(3) by inserting at the end thereof the following new clause:

"(iii) if the third party is a customer of an affiliate (as defined in section 2 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841) unless—

"(I) the member bank approves such transaction in accordance with substantially the same standards, procedures, and terms that it has applied to similar transactions with persons who are not customers of an affiliate; and

"(II) such transaction or series of transactions is not made for the purpose of evading any of the requirements of this section.".

(c) 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. 224. CUSTOMER DISCLOSURE.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

"(o) CUSTOMER DISCLOSURE REGARDING SECURITIES, INSURANCE AND OTHER NONBANKING PRODUCTS.—

"(1) PRODUCTS OFFERED, RECOMMENDED OR SOLD BY DEPOSITORY INSTITUTIONS.—An insured depository institution shall prominently disclose in writing to its customers pursuant to regulations adopted by the appropriate Federal banking agencies, that securities or insurance products offered, recommended, or sold by the insured depository institution are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the insured depository institution or an affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution unless such is the case.

"(2) PRODUCTS OFFERED, RECOMMENDED OR SOLD ON BANK PREMISES OR THROUGH JOINT MARKETING ACTIVITIES.—An insured depository institution shall not permit securities or insurance products to be offered, recommended, or sold on bank premises, or to bank customers as part of joint marketing activities with another entity; unless the entity prominently discloses in writing that it is not an insured institution and is separate from the insured depository institution in addition to the disclosures required in paragraph (1).

"(3) CUSTOMER ACKNOWLEDGEMENT OF DISCLOSURES.—No insured depository institution shall permit the sale of securities or insurance products to be consummated unless an acknowledgement of receipt of the disclosures described in paragraphs (1) and (2) including the date of receipt and the customer's name, address and account number is obtained from the customer.

"(4) REGULATIONS.—The appropriate Federal banking agencies may adopt regulations implementing this subsection and applying these provisions to nonbank products sold in a similar manner.".

SEC. 225. BANKERS' BANKS.

(a) Section 5136 (Seventh) of the Revised Statutes (12 U.S.C. 24(Seventh)), as amended by section 221(a), is further amended by inserting "or their holding companies" after "providing services for other depository institutions".

(b) Section 5169(b)(1) of the Revised Statutes (12 U.S.C. 27(b)(1)) is amended by inserting "or their holding companies" after "other depository institutions" the second time it appears.

Subtitle C—Non-Banking Activities of Foreign Banks in the United States

SEC. 231. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) Section 8 of the International Banking Act of 1978 (12 U.S.C. 3106) is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1)(A) Except as otherwise provided in this section, any foreign bank—

"(i) that maintains a branch or agency in the United States, or

"(ii) that directly or indirectly owns or controls a commercial lending company organized under State law,

shall be subject to the provisions of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 *et seq.*) and to sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850, 1971 *et seq.*) in the same manner and to the same extent as a financial services holding company.

"(B) Any company that directly or indirectly owns or controls a foreign bank described in subparagraph (A) shall be subject to the provisions of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 *et seq.*) in the same manner and to the same extent as a company that owns or controls a financial services holding company.

"(C)(i) Notwithstanding subparagraphs (A) and (B), no foreign bank or company described in this subsection shall, by reason of this subsection alone, be deemed to be a financial services holding company or a company that controls a financial services holding company for purposes of section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842).

"(ii) Notwithstanding clause (i), a foreign bank or company described in this subsection that seeks to acquire, directly or indirectly, more than five percent of the shares of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) other than a foreign bank, must obtain the prior approval of such acquisition by the appropriate Federal banking agency under section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842) as if the foreign bank or company were a financial services holding company or a company that owns or controls a financial services holding company.

"(2) Except as provided in paragraph (3), after January 1, 1993, no foreign bank or company referred to in paragraph (1) shall, directly or indirectly, maintain in the United States a branch, an agency, an insured depository institution, or a commercial lending company, if such foreign bank or company also directly or indirectly engages in the United States in—

"(A) any activity authorized under section 4(c)(8) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843(c)(8)) after the date of enactment of that Act, other than any activity that, prior to the date of enactment of that Act, had been determined by the Board to be closely related to banking and a proper incident thereto by an order or regulation that was valid on the date of enactment of that Act, or

"(B) any activity authorized under section 4(c)(15) or 4(c)(16) of such Act (12 U.S.C. 1843(c)(15) or (c)(16)).

"(3) A foreign bank or company subject to the prohibition in paragraph (2) may engage in banking in the United States indirectly through direct or indirect subsidiaries of a single financial services holding company organized under the laws of a State or the District of Columbia, provided that all activities of the foreign bank or company in the United States conducted under the authority of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 et seq.), other than those authorized by sections 2(h) or 4(c) (9) of such Act, are carried out directly or indirectly by that financial services holding company."; and (2) in subsection (c)(1)—

(A) by striking the second sentence and inserting instead "Notwithstanding the preceding sentence, no foreign bank or other company referred to in this subsection may retain, pursuant to this subsection, the ownership or control of any company engaged in the business of underwriting, distributing or otherwise buying or selling stocks, bonds, and other securities in the United States after three years from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991.";

(B) in the third sentence, by striking "Except in the case of affiliates described in the preceding sentence, nothing" and inserting instead "Nothing";

(C) in' the fifth sentence, by striking "the term 'domestically-controlled affiliate covered in 1978'" and all that follows in such sentence and inserting instead a period; and

(D) by striking the sixth sentence.

(b) The amendments made by subsection (a) shall become effective on January 1, 1993.

SUBTITLE D—AMENDMENTS TO THE SECURITIES ACTS

SEC. 241. AMENDMENTS TO THE SECURITIES ACT OF 1933.

(a) BANK-ISSUED SECURITIES.—Section 3 (a) (2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)), is amended—

(1) by striking out "or any security issued or guaranteed by any bank;" and

(2) by striking "a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank".

(b) SAVINGS ASSOCIATION-ISSUED SECURITIES.—Section 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)) is amended to read as follows:

"(5) Any security issued by—

"(A) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1986 (26 U.S.C. 521);

"(B) a corporation described in section 501(c) (16) of such Code and exempt from tax under section 501(a) of such Code;

"(C) a corporation described in section 501(c)(2) of such Code and organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in subparagraph (A) or (C); or

"(D) a savings and loan association of Federal savings bank issued or exchanged in connection with a transaction pursuant to which a savings and loan association or Federal savings bank converts from the mutual stock form of ownership under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) or section 402 of the National Housing Act (12 U.S.C. 1725(j))

(c) TREATMENT OF CERTAIN BANK AND SAVINGS ASSOCIATION INSTRUMENTS.—Section 3 of the Securities Act of 1933 (15 U.S.C. 77c) is amended by adding at the end thereof the following new subsection:

"(d) (1) Except as hereinafter expressly provided, in those circumstances in which an interest in any of the following is otherwise deemed to be a 'security' within the meaning of section 2, the provisions of this Act shall not apply to—

"(A) a deposit account, savings account, certificate of deposit, or other deposit in-

strument issued by a bank or savings association,

"(B) a share account issued by a savings association if such account is insured by the Federal Deposit Insurance Corporation,

"(C) a banker's acceptance,

"(D) a letter of credit issued by a bank or savings association, or

"(E) a debit account at a bank or savings association arising from a credit card or other similar arrangement,

except that this paragraph shall not exempt from the provisions of this Act any participation in such an interest, account, certificate, instrument, acceptance, or letter of credit, other than a participation that is a direct obligation of a bank or savings association.

"(2) For purposes of this subsection, the term 'deposit' means the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business—

"(A) for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account;

"(B) which is evidenced by its certificate of deposit, a check or draft drawn against a deposit account and certified by a bank or savings association, a letter of credit or a traveler's check, or by any other similar instrument on which the bank is liable;

"(C) which consists of nonpooled assets of individual trust funds received or held by such bank or savings association whether held in the trust department or deposited in any other department of such bank or savings association;

"(D) which is received or held by a bank or savings association for a special or specific non-investment purpose, including, without being limited to, escrow funds, funds held in security for any obligation due to the bank or savings association or others (including funds held as dealers' reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing subscriptions to United States Government securities, funds held to meet its acceptances or letters of credit, and withheld taxes; or

"(E) which is insured by the Federal Deposit Insurance Corporation, is subject to deposit reserve requirements adopted by the Board of Governors of the Federal Reserve System, or is regulated by the Office of Depository Institution Supervision or Board of Governors of the Federal Reserve System as a deposit.".

"(3) For purposes of this subsection, the term 'savings association' shall have the meaning given in section 3 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813).".

(d) EXEMPTION OF CERTAIN HOLDING COMPANY FORMATIONS FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end thereof the following new paragraph:

"(7) transactions involving offers or sales of equity securities, in connection with the acquisition, under section 3(a) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842(a)), of a bank by a financial services holding company, or a financial services holding company by a diversified holding company if—

"(A) the acquisition occurs solely as part of a reorganization in which a person or group of persons—

"(i) exchanges shares of a bank for shares of a newly formed financial services holding company, or shares of a financial services holding company for shares of a newly formed diversified holding company; and

"(ii) receives, after such reorganization, substantially the same proportional share interests in the newly formed financial services holding company as they held in the bank or financial services holding company, as the case may be, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law; and

"(B) the newly formed company has substantially the same assets as its predecessor.".

(e) Technical Amendments.—

(1) Section 12(2) of the Securities Act of 1933 (15 U.S.C. 771(2)) is amended by inserting "or subsection (d)" after "subsection (a)".

(2) Section 304(a) (4) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd (a)(4)) is amended by inserting "or by section 3(d)" after "section 3(a)".

SEC. 242. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) REGULATION OF BANK BROKER ACTIVITIES.—Section 3 (a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4) Broker.—

"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of others.

"(8) EXCLUSION OF BANKS.—Such term does not include a bank unless the bank publicly solicits such business or is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities, excluding fees calculated as a percentage of assets under management (hereinafter referred to as 'incentive compensation').

"(C) BANK ACTIVITIES.—A bank shall not be deemed to be a broker because it engages in one or more of the following activities:

"(i) Enters into contractual or other arrangements with a broker or dealer registered under this Act pursuant to which the broker or dealer will offer brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) bank employees perform only clerical or ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization;

"(III) bank employees do not receive incentive compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization; and

"(IV) such services are provided by the broker or dealer on a basis in which all customers are fully disclosed.

"(ii) Engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under section 1 of Public Law 87-722 (12 U.S.C. 92a) or for State banks under relevant State trust statutes or law (excluding securities safekeeping, self- directed individual retirement accounts, or managed agency or other functionally equivalent accounts of a bank) unless the bank—

"(I) publicly solicits brokerage business other than by advertising, in conjunction with advertising its other trust activities, that it effects transactions in securities; and

"(II) receives incentive compensation.

"(iii) Effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers' acceptances, or commercial bills.

"(iv) Effects transactions in municipal securities and does not have a securities affiliate as provided in section 4(c)(15) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843(c)(15)).

"(v) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

"(vi) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that attempts to maintain a constant net asset value per share and has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less.

"(vii) Effects transactions for the account of any affiliate of the bank, as the term 'affiliate' is defined in section 2 of the Banking Act of 1933 (12 U.S.C. 221a), treating all banks as member banks for purposes of such definition.

"(viii) Effects sales—

"(I) as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; and

"(II) exclusively to: a bank as defined in section 3(a)(2) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Securities Act of 1933; an investment company registered under the investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; an insured institution, as defined in section 401 of the National Housing Act; an employee benefit plan within the meaning of title 1 of the Employee Retirement Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, that is a bank as defined in section 3(a)(2) of the Securities Act of 1933, or an insurance company as defined in section 2(17) of the Investment Company Act of 1940, or an investment adviser registered under the Investment Advisers Act of 1940, or if the employee benefit plan has total assets in excess of $5,000,000; an employee benefit plan as defined in section 3 of the Employee Retirement Income Security Act of 1974, established and maintained by a State, its political subdivisions, or any agency or instrumentality of a State or its political subdivisions exclusively for the benefit of its employees or their beneficiaries that is governed by fiduciary principles comparable to those contained in such Act, if (i) the plan has total assets in excess of $25,000,000, and (ii) investment decisions for the plan are made by a plan fiduciary, as defined in Section 3(21) of such Act, that is a bank as defined in section 3(a)(2) of the Securities Act of 1933, an insurance company as defined in section 2(17) of the Investment Company Act of 1940, or an investment adviser registered under the Investment Advisers Act of 1940; a corporation with total assets in excess of $50,000,000 and net worth in excess of $5,000,000, as reflected on financial

statements prepared in accordance with general accepted accounting principles; an organization described in section 501(c)(3) of the Internal Revenue Code with total assets in excess of $5,000,000; a foreign bank, broker, dealer, insurance company, or government or government agency; or a natural person with a net worth exceeding $5,000,000. The dollar limitations in this clause shall be adjusted annually after December 31, 1991, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics.

"(ix) Effects fewer than 1,000 transactions per year in securities other than transactions described in clauses (i) through (viii), if the bank does not have a subsidiary or affiliate registered as a broker or dealer under this Act.".

(b) REGULATION OF BANK DEALER ACTIVITIES.—Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5)(A) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

"(B) Such term does not include—

"(i) any person insofar as that person buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

"(ii) any bank insofar as the bank—

"(I) buys and sells commercial paper, bankers' acceptances, or commercial bills, or exempted securities other than municipal securities;

"(II) buys and sells municipal securities and does not have a securities affiliate as provided in section 4(c)(15) of the Financial Services Holding Company Act of 1991; or

"(III) buys and sells securities for investment purposes for the bank or for accounts for which the bank, acting as a trustee or fiduciary, is authorized to determine the securities to be purchased or sold.".

(c) POWER TO EXEMPT FROM THE DEFINITIONS OF BROKER OR DEALER.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by inserting after subsection (d) the following new subsection:

"(e) The Commission, by rule, regulation, or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or class of persons from the definitions of 'broker' or 'dealer', if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this Act.".

(d) REQUIREMENT THAT BANKS FALLING WITHIN THE DEFINITIONS OF BROKER OR DEALER PLACE THEIR SECURITIES ACTIVITIES IN A SEPARATE CORPORATE ENTITY.—Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended to read as follows:

"(a)(1) It shall be unlawful for any broker or dealer that is either a person other than a natural person or a natural person not associated with a broker or dealer that is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b).

"(2) It shall be unlawful for any bank to act as a broker or dealer, except in the course of an exclusively intrastate business. This section shall not preclude a subsidiary of a bank or an affiliate of a financial services holding company other than a bank, as those terms are defined in the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 et seq.), that is registered in accordance with subsection (b) from acting as a broker or dealer to any extent otherwise permissible by law.

"(3) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraphs (1) and (2) any broker or dealer or class of brokers or dealers specified in such rule or order.".

(e) REGULATION OF TRANSACTIONS IN CERTAIN SECURITIES ON BANK PREMISES.—Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) No bank may permit any evidence of indebtedness of, or ownership interest in, any affiliate of such bank to be sold or offered for sale to the general public in any part of any office (other than an office which is not located within any State) of such bank which is commonly accessible to the general public for the purpose of accepting deposits.

"(2) No bank may permit any evidence of indebtedness of, or ownership interest in, such bank to be sold or offered for sale to the general public in any part of any office (other than an office which is not located within any State) of such bank which is commonly accessible to the general public for the purpose of accepting deposits.

"(3) EXCEPTIONS.—

"(A) REGISTERED BROKERS AND DEALERS.—This subsection shall not apply to transactions in shares of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that are affiliated with the bank by or through a broker or dealer registered under this Act, if sales by or through such broker or dealer are subject to sales practice standards of a self-regulatory organization, provided the transactions—

"(i) are consistent with the purposes of this subsection; and

"(ii) are in the public interest.

"(B) DEPOSITS, CERTAIN MEANS OF PAYMENT TO THIRD PARTIES AND CERTAIN OTHER INSTRUMENTS.—This subsection shall not apply to any evidence of indebtedness or ownership interest which—

"(i) is a deposit in an insured depository institution; or

"(ii) constitutes a means of payment to a third party, such as a traveler's check, cashier's check, teller's check or money order.".

(f) SECURITIES EXCHANGE ACT ADMINISTRATION TRANSFER.— Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i)) is repealed.

SEC. 243. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.

(a) CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATE BANKS.—

(1) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended by striking "trusts" the first place it appears and inserting instead "trusts, but where any such bank or an affiliated person thereof is an affiliated person, promoter, sponsor, or organizer of, or principal underwriter for, such registered company, only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, after consulting in writing with the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)),".

(2) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(a)(1)) is amended by inserting "not affiliated with such underwriter or depositor, or where such bank is so affiliated, only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors after consulting in writing with the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)),'' after "bank".

(b) Independent Directors.—

(1) INTERESTED PERSONS.—Section 2(a)(19)(A)(v) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)(v)) is amended by striking "1934 or any affiliated person of such a broker or dealer" and inserting instead "1934 or any person that, at any time during the preceding 6 months, has acted as custodian or transfer agent or has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company, or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person".

(2) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)) is amended by striking "bank, except" and inserting instead "bank and its subsidiaries or any financial services holding company and its affiliates and subsidiaries, as those terms are defined in the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842 et seq.),".

(c) ADDITIONAL SEC RULEMAKING AUTHORITY REGARDING BANK AFFILIATED MUTUAL FUNDS.—Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-37) is amended by inserting after subsection (c) the following new subsection:

"(d) The Commission shall have the authority to promulgate such rules regarding loans, purchases or sales of assets, and other transactions involving a bank, an affiliated person, and an affiliated registered investment company.".

(d) ADDITIONAL DISCLOSURE AUTHORITY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-35(a)) is amended to read as follows:

"(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof or has been insured by the Federal Deposit Insurance Corporation or is guaranteed by or is otherwise an obligation of any bank or insured institution. If a financial services holding company, bank, or separately identifiable division or department of a bank, or any affiliate or subsidiary thereof, is an investment adviser, organizer, sponsor, promoter, principal underwriter, or an affiliated person of a registered investment company, or a bank or an affiliated person of a bank if offering or selling securities of a registered investment company, or the name of an investment company is that of, or similar to that of, a bank, pursuant to regulations adopted by the Commission, after consultation in writing with the appropriate federal banking agency as defined in section 3(q) of

the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), any person in issuing or selling securities of such investment company may be required to disclose prominently that the investment company and any security issued by it are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated bank or insured institution, and are not otherwise an obligation of such a bank or insured institution. The Commission may determine by order as provided for in subsection (d), after consultation with the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) that use of a name similar to that of a bank is deceptive and misleading. In that event, use of such name shall be unlawful as provided in subsection (d) and the Commission shall have the authority to take such actions as provided in that subsection.".

(e) DEFINITION OF BROKER.—Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

"(6) 'Broker' has the same meaning as in the Securities Exchange Act of 1934, but does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".

(f) DEFINITION OF DEALER.—Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(11) is amended to read as follows:

"(11) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 244. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended—

(1) in subparagraph (A), by striking "investment company" and inserting instead "investment company, except that the term 'investment adviser' includes any bank or financial services holding company to the extent such bank acts as an investment adviser to a registered investment company unless the bank performs such services through a separately identifiable department or division of the bank, in which case the department or division and not the bank shall be deemed to be the investment adviser"; and

(2) by adding at the end thereof the following: "For purposes of this paragraph, a separately identifiable department or division of a bank shall mean a unit that—

"(A) is under the direct supervision of an officer or officers designated by appropriate Federal banking agency or directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) there are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, all of the records relating to such investment adviser activities and such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of the Act and rules and regulations thereunder.".

(b) DEFINITION OF BROKER.—Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) 'Broker' has the same meaning as in the Securities Exchange Act of 1934.".

(c) DEFINITION OF DEALER.—Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

(d) NOTIFICATION AND CONSULTATION.—The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting after section 210 the following new section:

"SEC. 210A. NOTIFICATION AND CONSULTATION.

"(a) IN GENERAL.—The Commission, prior to the examination of, the entry of an order of investigation of, or the commencement of any disciplinary or law enforcement proceedings against, any financial services holding company, bank, or department or division of a bank that is a registered investment adviser shall give notice to the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), of the identity of such financial service holding company, bank, department or division and the nature of the proposed actions and shall consult in writing with such appropriate Federal banking agency concerning any such proposed action, unless the protection of investors requires immediate action by the Commission and prior notice or consultation is not practical under the circumstances, in which case notice shall be given and the appropriate Federal banking agency shall be notified and consulted as promptly as possible thereafter.

"(b) EXAMINATION RESULTS.—The Commission and the appropriate Federal banking agency shall exchange the results of any examination of any financial services holding company, bank, department or division of a bank that is a registered investment adviser concerning activities subject to this Act.

"(c) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such financial services holding company, bank, or department or division under any provision of law.".

SEC. 245. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by a bank in its capacity as trustee, executor, administrator, or guardian" and inserting instead "or any interest or participation in any common trust fund or similar fund excepted from the definition of the term 'investment company' by section 3(c)(3) of the Investment Company Act (15 U.S.C. 80a-3(c)(3))".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

"(iii) any interest or participation in any common trust fund or similar fund excepted from the definition of the term 'investment company' by section 3(c)(3) of the Investment Company Act.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by deleting the period at the end thereof and inserting the following: "so long as—

"(A) such fund is employed by the bank solely as an aid to the administration of trust, estates, and other accounts created and maintained for a fiduciary purpose;

"(B) except in connection with generic advertising of the bank's fiduciary services, interests in such fund are not—

"(i) advertised; or

"(ii) offered for sale to the general public; and

"(C) a fund is not charged any fees or expenses which, when added to any other compensation charged by the bank to a participant account, exceeds the total amount of compensation which would have been charged to such participant account if no assets of such participant account had been invested in interests in the fund, except that any reasonable and necessary expenses related to the prudent operation of the fund, as determined by the Office of Depository Institutions Supervision shall be permitted to be charged directly to the fund.".

(d) TAX EFFECT.—Section 584 of the Internal Revenue Code of 1986 (26 U.S.C. 584) is amended by inserting after subsection (g) the following new subsection:

"(h) Conversion, Mergers, or Reorganization of Common Trust Funds.—Notwithstanding any other provision of the Internal Revenue Code, any transfer of all or substantially all of the assets of a common trust fund taxable under this section to a registered investment company taxable under subchapter M shall not result in a gain or loss to the participants in such common trust fund where the transfer is a result of a merger, conversion, reorganization, transfer, or other similar transaction or series of transactions.".

SEC. 246. SECURITIES AND EXCHANGE COMMISSION STUDY OF BANK AND INSURANCE POOLED INVESTMENT VEHICLES.

(a) IN GENERAL.—The Securities and Exchange Commission, in consultation with the Secretary of Labor, shall examine—

(1) the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.); and

(2) the appropriate treatment of common trust funds under the securities laws.

(b) REPORT.—Not later than six months after the date of enactment of this Act, the Securities and Exchange Commission shall transmit to the Congress a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Commission deems advisable.

SEC. 247. EFFECTIVE DATE.

This subtitle shall become effective on January 1, 1993, except that section 246 shall become effective on the date of enactment of this Act.

Subtitle E—Prompt Corrective Action

SEC. 251. PROMPT CORRECTIVE ACTION.

(a) SYSTEM OF PROMPT CORRECTIVE ACTION.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 35. PROMPT CORRECTIVE ACTION.

"(a) DEFINITIONS.—

"(1) BANKING LAWS DEFINED.—For the purposes of this section, the term 'banking laws' means this Act, the National Bank Act, the Federal Reserve Act, the Financial Services Holding Company Act of 1991, the Change in Bank Control Act, the Bank Merger Act, the International Banking Act of 1978, any other law codified in title 12 of the United States Code that is applicable to or affects insured banks or persons that own or control insured banks, and any regulations promulgated thereunder.

"(2) CAPITAL DISTRIBUTION DEFINED.—For purposes of this section, the term 'capital distribution' means—

"(A) A dividend or other distribution in cash or in kind made with respect to any shares or other ownership interest of any insured bank, except a dividend consisting only of shares of the bank or any amount paid on the deposits of a mutual savings bank that is determined by the appropriate Federal banking agency not to constitute a dividend;

"(B) A payment made by an insured bank to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an affiliated company's acquisition of such shares; or

"(C) A transaction that the appropriate Federal banking agency determines by order or regulation to be in substance the distribution of capital.

"(3) COMPANY DEFINED.—The term 'company' shall have the same meaning as provided in section 2(b) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841(b)).

"(4) COMPENSATION DEFINED.—The term 'compensation' means any payment of money or provision of any other thing of current or potential value in connection with employment.

"(5) DIVERSIFIED HOLDING COMPANY DEFINED.—The term 'diversified holding company' shall have the same meaning as provided in section 2(a)(2) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841(a)(2)).

"(6) EXECUTIVE OFFICER DEFINED.—The term 'executive officer' shall have the same meaning as provided in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

"(7) FINANCIAL SERVICES HOLDING COMPANY DEFINED.—The terms 'financial services holding company' and 'financial affiliate' shall have the same meaning as provided in section 2 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841).

"(8) NEW FINANCIAL ACTIVITY DEFINED.—The term 'new financial activity' means any activity authorized pursuant to subsections (c)(8), (c)(15), or (c)(16) of section 4 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843) other than any activity that, prior to the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, the Board of Governors of the Federal Reserve System had determined, by any order or regulation that continued to be in effect on December 31, 1992, to be closely related to banking and a proper incident thereto.

"(9) QUALIFIED FINANCIAL ACTIVITY DEFINED.—The term 'qualified financial activity' means any activity authorized pursuant to subsections (c)(8), (c)(15), or (c)(16) of section 4 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843).

"(b) CLASSIFICATION ACCORDING TO CAPITAL SUFFICIENCY.—

"(1) RELEVANT CAPITAL MEASURES.—

"(A) IN GENERAL.—Unless otherwise provided pursuant to subparagraph (B), relevant capital measures for purposes of this section shall include—

"(i) a risk-based capital ratio; and

"(ii) a leverage limit.

"(B) OTHER CAPITAL MEASURES.—The appropriate Federal banking agency may, by regulation or guideline, establish any additional relevant capital measure or measures that are consistent with the purposes of this section, and may determine to eliminate any relevant capital measure established in subparagraph (A) upon a finding, after notice and opportunity for comment, that the measure is no longer an appropriate means for carrying out the purposes of this section.

"(2) CONTENT OF RELEVANT CAPITAL MEASURES.—

"(A) RISK-BASED CAPITAL RATIO.—The risk-based capital ratio shall be the risk-based capital standard adopted by the appropriate Federal banking agency.

"(B) LEVERAGE LIMIT.—The leverage limit shall be the leverage limit adopted by the appropriate Federal banking agency.

"(3) DEFINITIONS RELATING TO RELEVANT CAPITAL MEASURES.—For purposes of this section 'total assets' and 'Tier 1 capital' shall have the meaning given those terms by the appropriate Federal banking agencies in the risk-based capital standards adopted by such agencies.

"(4) DEFINITION OF CAPITAL ZONES.—Unless otherwise reclassified pursuant to paragraph (7), for purposes of this section—

"(A) ZONE 1.—Zone 1 includes any insured bank that—

"(i)(I) maintains a risk-based capital ratio that is significantly in excess of the required minimum ratio and Tier 1 capital that is significantly in excess of the required minimum for Tier 1 capital; or

"(II) meets the required minimum risk-based capital ratio and maintains Tier 1 capital that is substantially in excess of the required minimum for Tier 1 capital; and

"(ii) maintains capital that meets or exceeds the required minimum ratio for each other relevant capital measure.

"(B) ZONE 2.—Zone 2 includes any insured bank that—

"(i) maintains capital in an amount that meets or exceeds the required minimum ratio for each relevant capital measure; and

"(ii) is not within Zone 1.

"(C) ZONE 3.—Zone 3 includes any insured bank—

"(i) that maintains capital that is below the required minimum ratio for any relevant capital measure; and

"(ii) that is not within Zone 4 or Zone 5.

"(D) ZONE 4.—Zone 4 includes any insured bank—

"(i) that maintains capital that is significantly below the required minimum ratio for any relevant capital measure, but that exceeds the applicable critical capital level; or

"(ii) that is otherwise classified within Zone 4 under the provisions of this section.

"(E) ZONE 5.—Zone 5 includes any insured bank that maintains capital at or below the applicable critical capital level.

"(5) REQUIRED MINIMUM RATIO.—For purposes of this section, the required minimum ratio shall be the minimum acceptable capital level adopted by the appropriate Federal banking agency by regulation or guideline for each relevant capital measure.

"(6) CRITICAL CAPITAL LEVEL.—

"(A) IN GENERAL.—The critical capital level shall be a level of capital that will, as a general matter, permit resolution of an insured bank's problems without significant financial loss to the Bank Insurance Fund. The critical capital level shall equal or exceed a ratio of Tier 1 capital to total assets of one and one-half percent.

"(B) SEPARATE CRITICAL CAPITAL LEVELS.—Consistent with subparagraph (A), separate critical capital levels may be established by the appropriate Federal banking agencies for different classes of insured banks according to size, activities, condition of assets, local economic conditions, or any other relevant factor consistent with the purposes of this section.

"(7) RECLASSIFICATION.—Notwithstanding paragraph (1), any insured bank that otherwise falls within Zone 1 or Zone 2 shall be deemed to be within Zone 3 if the appropriate Federal banking agency determines that the bank is in an unsafe and unsound condition. Any such bank, and any other bank within Zone 3 which the appropriate Federal banking agency determines to be in an unsafe and unsound condition, may be reclassified to Zone 4 by the appropriate Federal banking agency.

"(c) REGULATIONS AND OTHER AUTHORITY.—

"(1) IN GENERAL.—Each appropriate Federal banking agency, in consultation with the other appropriate Federal banking agency, shall promulgate regulations and take such other actions as are necessary to implement the provisions of this section. Each appropriate Federal banking agency is authorized to issue orders and take such other actions as are necessary or appropriate to carry out the purposes of this section.

"(2) CAPITAL ZONES.—Consistent with the purposes of this section, each appropriate Federal banking agency shall by regulation specify the applicable minimum capital ratios for each relevant capital measure in each capital zone established by this section.

"(3) CRITICAL CAPITAL LEVEL.—Consistent with subsection (b)(6), each appropriate Federal banking agency shall by regulation specify the critical capital level for each relevant capital measure consistent with the purposes and provisions of this section.

"(4) CONSULTATION.—In promulgating the regulations described in paragraphs (2) and (3), each appropriate Federal banking agency shall consult with the Corporation.

"(d) PROVISIONS APPLICABLE TO BANKS AND COMPANIES WITHIN ZONE 1.—

"(1) EXPANSION BY ZONE 1 BANKS.—

"(A) IN GENERAL.—Notwithstanding any other provision of the banking laws, any insured bank that qualifies under subparagraph (B) may—

"(i) DE NOVO BRANCHES.—Subject to the notice requirement of paragraph (3)(A), establish and maintain a new branch office at any location permitted under the banking laws, so long as the branch office is not the first branch office of the bank in a given State and the bank has an outstanding or satisfactory record of meeting community credit needs as determined pursuant to section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906);

"(ii) COMMENCEMENT OF PERMISSIBLE ACTIVITIES DE NOVO.—Subject to the notice requirement of paragraph (3)(A), commence, either directly or through a subsidiary, any activity that has been determined by the appropriate Federal banking agency under the banking laws to be permissible for such insured bank or such subsidiary; and

"(iii) MERGERS AND ACQUISITIONS BY BANKS.— Subject to any applicable notice, application, and approval requirement of the banking laws as modified by paragraph (3)(B)—

"(I) merge or consolidate with any other insured bank, acquire directly or indirectly the assets of any other insured bank, or assume liability directly or indirectly to pay any deposits made in any other insured bank; or

"(II) acquire, directly or indirectly, the assets (other than assets acquired in the ordinary course of business), or all of the voting shares or control, of any company (other than an insured bank) that is engaged solely in activities that have been determined by regulation by the appropriate Federal banking agency under the banking laws to be permissible for an insured bank.

"(B) QUALIFYING BANKS.—An insured bank qualifies under this subparagraph if, both

prior to and following consummation of the transaction or other expansion—

"(i) the insured bank is within Zone 1; and

"(ii) in the event the insured bank is controlled by a financial services holding company, the company qualifies as a Zone 1 financial services holding company as described in paragraph (2).

"(2) FINANCIAL SERVICES HOLDING COMPANIES WITHIN ZONE 1.—

"(A) A financial services holding company qualifies as a Zone 1 financial services holding company if insured depository institutions representing at least 80 percent of the assets of all insured depository institutions controlled by the company are within Zone 1, and the balance of the insured depository institutions controlled by the company are within Zone 2.

"(B) For purposes of subparagraph (A), an insured depository institution other than an insured bank shall be deemed to be within Zone 1 if, based upon the risk-based capital rule and leverage limit applicable to the institution, it meets the capital ratios adopted by the appropriate Federal banking agency of the financial services holding company for purposes of subsection (b)(4)(A).

"(3) PROCEDURES AND STANDARDS FOR REVIEW.—

"(A) SUBSEQUENT NOTICE FOR CERTAIN ACTIONS.—For actions described in paragraphs (1)(A)(i) and (1)(A)(ii), the insured bank shall provide the appropriate Federal banking agency with written notice no later than 30 days following such action.

"(B) LIMITATION ON REVIEW PERIOD FOR PROPOSED TRANSACTIONS.—Notwithstanding any other provision of the banking laws, the appropriate Federal banking agency shall make a decision to approve or disapprove any proposed transaction described in paragraph (1)(A)(iii) no later than 45 days after the date of receipt of the completed notice or application.

"(C) REVIEW STANDARDS.—The appropriate Federal banking agency may disapprove any proposed transaction described in subsection (c)(1)(A)(iii) involving an insured bank within Zone 1 only—

"(i) pursuant to section 18(c)(5)(A) or (B); or

"(ii) if the appropriate Federal banking agency determines—

"(I) that the insured bank or any other insured bank controlled by the same financial services holding company is engaging in an unsafe and unsound practice or will be in an unsafe and unsound condition following the transaction; or

"(II) that the proposed transaction is inconsistent with the convenience and needs of the community to be served.

"(D) FORM OF NOTICES.—Each appropriate Federal banking agency shall by regulation establish the form and content of the notice required under subparagraph (A).

"(4) EFFECT OF NOTICE UNDER THIS SUBSECTION.—

"(A) SUBSEQUENT NOTICE.—Any notice required under paragraph (3)(A) shall supersede any other notice or application requirement under the banking laws imposed on the insured bank in connection with the proposed transaction or other expansion.

"(B) OTHER REQUIREMENTS CONTINUE TO APPLY TO ACTIVITY.—Except as provided in this subsection, nothing in this subsection shall relieve any insured bank or any subsidiary thereof from the provisions of any law or regulation applicable to that institution or subsidiary.

"(5) RESTRICTIONS ON EXPANSION RESULTING IN RECLASSIFICATION BELOW ZONE 2.—

"(A) The appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition, or other proposal subject to review under any provision of the banking laws that would result in reclassification of an insured bank from Zone 1 to Zone 3 or 4, unless the agency finds that the transaction substantially improves the financial condition of an insured bank involved in the transaction or is consistent with a capital restoration plan approved by the agency and meets the other standards required to be reviewed by the agency in considering such proposals under the banking laws.

"(B) The appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition, or other proposal subject to review under any provision of the banking laws that would result in reclassification of an insured bank to Zone 5.

"(6) LOSS OF ZONE 1 STATUS AFTER EXPANSION.—

"(A) CAPITAL MUST BE PROMPTLY RESTORED.—Any financial services holding company that—

"(i) engages, directly or indirectly, in any new financial activity, directly or indirectly controls any company engaged in any new financial activity, or is controlled by a diversified holding company, and

"(ii) does not continue to qualify under subsection (d)(2), or does not qualify under such subsection within such time period as is specified by the appropriate Federal banking agency pursuant to section 4(k) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1843(k)),

must either restore the capital of insured banks controlled by such financial services holding company to at least the levels required for the company to requalify under subsection (d)(2) or take the actions required in subparagraph (B). A financial services holding company shall be given a period of at least 45 days within which to restore such capital.

"(B) REQUIRED ACTIONS.—Any financial services holding company that does not requalify under subsection (d)(2) within the applicable period under subparagraph (A) must—

"(i) immediately post a bond in an amount equal to the amount necessary to restore the capital of the insured depository institutions controlled by such company to at least the level required to permit the company to requalify under subsection (d)(2) as of the date the bond is posted, which bond shall be subject to forfeiture as necessary to reimburse the Corporation for any funds expended for resolution of the insured depository institutions controlled by such company; and

"(ii)(I) within the time period provided in subsection (i), submit to the appropriate Federal banking agency and, after its acceptance, implement a capital plan that meets the requirements of such subsection and will restore the relevant capital measures to the level necessary to requalify under subsection (d)(2); or

"(II) within one year from the date the company originally failed to meet the requirements of subsection (d)(2)—

"(aa) divest any interest in any insured depository institution; or

"(bb) terminate all direct or indirect new financial activities and divest any interest in any company engaged in any such activity.

"(C) If the financial services holding company does not complete the actions required by either clause (i) or (ii) of subparagraph (B), the appropriate Federal banking agency may appoint a conservator for any insured depository institution controlled by such company that maintains capital below the level necessary for the company to requalify under subsection (d)(2).

"(D) ALTERATION OF COMPLIANCE PERIOD.—

"(i) EXTENSION OF COMPLIANCE PERIOD.—The appropriate Federal banking agency may extend the period provided in subparagraph (B)(ii)(II) for up to one year if the agency finds that the financial services holding company has taken significant steps toward restoring the capital of the insured depository institutions controlled by that company to at least the levels required for the company to requalify under subsection (d)(2).

"(ii) SHORTENING OF COMPLIANCE PERIOD FOR FAILURE TO MAINTAIN CAPITAL IN ZONE 1.—The appropriate Federal banking agency may, by regulation, establish shorter divestiture and termination periods under subparagraph (B)(ii)(II) applicable to any financial services holding company that fails to continue to qualify under subsection (d)(2) after having once fallen out of qualification from subsection (d)(2).

"(E) APPLICABILITY TO DIVERSIFIED HOLDING COMPANIES.—If a financial services holding company to which this paragraph applies is controlled by a diversified holding company, and the financial services holding company does not complete the actions under either subparagraph (A) or (B) (other than clause (ii)(II)(bb) of subparagraph (B)), then the diversified holding company must, within the same time period specified in subparagraph (B)(ii)(II), divest any interest in the financial services holding company or terminate all direct or indirect activities not permitted for a financial services holding company.

"(e) MANDATORY SUPERVISORY ACTIONS APPLICABLE TO INSURED BANKS WITHIN ZONE 2.—

"(1) RESTRICTIONS ON EXPANSION.—

"(A) EXPANSION RESULTING IN RECLASSIFICATION.—

"(i) The appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition, or other proposal subject to review under the banking laws that would result in reclassification of an insured bank to Zone 3 or 4, unless the agency finds that the transaction substantially improves the financial condition of an insured bank involved in the transaction or is consistent with a capital restoration plan approved by the agency and meets the other standards required to be reviewed by the agency in considering such proposals under the banking laws.

"(ii) The appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition, or other proposal subject to review under the banking laws that would result in reclassification to Zone 5.

"(B) UNSAFE AND UNSOUND PRACTICES OR CONDITION.— The appropriate Federal banking agency shall not approve any investment, expansion, acquisition, or other proposal involving an insured bank within Zone 2 or a financial services holding company which controls an insured bank within Zone 2 if the appropriate Federal banking agency determines that the insured bank involved in the investment, expansion, acquisition, or other proposal, or any other insured bank controlled by the same financial services holding company is engaging in an unsafe and unsound practice or is in an unsafe and unsound condition.

"(2) CAPITAL DISTRIBUTIONS.—

"(A) LIMITATION.—No insured bank within Zone 2 shall make any capital distribution

that would cause the bank to be reclassified within Zone 4 or Zone 5. An insured bank within Zone 2 may make a capital distribution that would cause the bank to be reclassified within Zone 3, if the bank provides the appropriate Federal banking agency with 30 days written notice of such distribution and the agency has not issued a notice of disapproval.

"(B) STANDARDS FOR DISAPPROVAL.—The appropriate Federal banking agency shall not disapprove payment of a capital distribution by an insured bank under this subparagraph unless the appropriate Federal banking agency determines that the capital distribution will not enhance the bank's ability to restore its capital to Zone 2 or otherwise determines that the distribution is not in the public interest.

"(3) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action applicable under this section to an insured bank within Zone 2 or a company that controls an insured bank within Zone 2 if the agency determines in writing that such action is in the public interest.

"(f) PROVISIONS APPLICABLE TO INSTITUTIONS WITHIN ZONE 3.—

"(1) MANDATORY SUPERVISORY ACTIONS.—In addition to the supervisory actions applicable under Zones 1 and 2, the following mandatory supervisory actions shall apply with respect to any insured bank within Zone 3:

"(A) CAPITAL RESTORATION PLAN.—Every insured bank within Zone 3 shall, within the time period provided in subsection (i), submit to the appropriate Federal banking agency and, after its acceptance, implement a capital plan that meets the requirements of subsection (i) and will restore the relevant capital measures of the bank to at least the levels required for classification within Zone 2.

"(B) RESTRICTION ON CAPITAL DISTRIBUTIONS.

"(i) PRIOR AGENCY APPROVAL REQUIRED.—No insured bank within Zone 3 shall make any capital distribution, or pay any management fee to a person or affiliate controlling such bank, that would cause the bank to be reclassified within Zone 4 or Zone 5. No insured bank within Zone 3 shall make any other capital distribution or pay any other such management fee unless the bank receives the prior approval of the appropriate Federal banking agency.

"(ii) STANDARDS FOR APPROVAL.—The appropriate Federal banking agency may approve payment of a capital distribution or management fee by an insured bank within Zone 3 only if the agency determines that the capital distribution will enhance the ability of the bank promptly to restore its capital to Zone 2 or is otherwise in the public interest.

"(C) RESTRICTION ON EXPANSION.—The appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition or other similar action subject to review under the banking laws by an insured bank within Zone 3, by a financial services holding company that controls an insured bank within Zone 3, or by any affiliate of the insured bank unless the agency finds that the transaction furthers achievement of the capital restoration plan approved by the agency for the insured bank and meets the other standards required to be reviewed by the agency in considering such proposals under the banking laws.

"(D) EFFECT ON FINANCIAL SERVICES AND DIVERSIFIED HOLDING COMPANIES.—Any financial services holding company and any diversified holding company that controls an insured bank within Zone 3 shall, after 45 days after the latest of the date on which the bank becomes a Zone 3 bank, the date on which the financial services holding company acquires the bank, or the effective date of this provision, become subject to the following requirements and shall remain subject to such requirements until such time as the capital of the bank is restored to at least Zone 2 or the company divests any interest in the bank:

"(i) CONSOLIDATED CAPITAL REQUIREMENTS.—The financial services holding company and diversified holding company shall maintain capital, for each relevant capital measure, on a consolidated basis, at least equal to the required minimum capital ratio applicable to the principal bank subsidiary of the financial services holding company as defined in section 3(q)(2).

"(ii) RESTRICTION ON CAPITAL DISTRIBUTION.—The diversified holding company may make a capital distribution only with the prior approval of the appropriate Federal banking agency.

"(iii) OTHER PROVISIONS OF THIS SECTION.—The financial services holding company (and any affiliate it controls) and each financial affiliate controlled by the diversified holding company shall be subject to the mandatory supervisory actions of this paragraph as if the company were an insured bank within Zone 3.

"(E) RECLASSIFICATION OF ZONE 3 INSTITUTIONS TO ZONE 4.—Without being relieved of any of the requirements applicable to insured banks within Zone 3, an insured bank within Zone 3 shall immediately be reclassified as within Zone 4, and shall be subject to all of the provisions applicable to insured banks within Zone 4, if—

"(i) the bank does not submit the capital restoration plan required in subparagraph (A) within the time required by the appropriate Federal banking agency; or

"(ii) the appropriate Federal banking agency is not satisfied that the bank is making every effort in good faith to fulfill completely the capital plan within the schedule approved by the agency.

"(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action applicable under this section to an insured bank within Zone 3 or a company that controls an insured bank within Zone 3 if the agency determines in writing that such action is in the public interest.

"(3) DISCRETIONARY SUPERVISORY ACTIONS.—Without limiting in any way the existing authority of any appropriate Federal banking agency, the appropriate Federal banking agency may, at any time, based upon a finding that the insured bank is within Zone 3—

"(A) RESTRICT GROWTH.—Restrict or eliminate growth of the bank's assets, or require contraction of the assets of the bank.

"(B) RESTRICT DISTRIBUTIONS.—Restrict the insured bank and any company that controls the insured bank from making any capital distribution.

"(C) LIMIT INCREASE IN LIABILITIES.—Limit any increase in, or order the reduction of, any liabilities of the bank.

"(D) REQUIRE ISSUANCE OF NEW CAPITAL.—Require the bank to issue new capital in any form and in any amount sufficient to restore the bank to at least the capital levels required for Zone 2.

"(E) RESTRICT ACTIVITIES.—Require the bank to terminate, reduce or alter any activity, if the agency determines that the activity creates excessive risk to the bank.

"(F) DISMISS DIRECTORS OR CHIEF OFFICERS.—

"(i) For cause, require the bank to dismiss from office at the bank any or all of the following persons if the person accepted employment, accepted a new position, or renewed any contract for employment in the same position at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and the person has been employed in that position at the insured bank for at least 180 days—

"(I) any member of the institution's board of directors;

"(II) the chief executive officer;

"(III) the chief financial officer; or

"(IV) any other executive officer.

"(ii) Dismissal under clause (i) shall not be construed as removal under section 8 of this Act.

"(G) LIMIT EXECUTIVE COMPENSATION.—Require the bank to reduce or eliminate any or all of the following for any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991—

"(i) any bonus;

"(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months; and

"(iii) any payment that is or would be due under any employment severance contract.

"(H) REQUIRE NEW ELECTION OF DIRECTORS.—Require a new election of the board of directors of the bank and designate such individuals as the agency deems appropriate to serve on the board of directors.

"(I) REQUIRE DIVESTITURE, LIQUIDATION OR CLOSURE OF AFFILIATE.—The appropriate Federal banking agency may require any insured bank in Zone 3 or any company that controls an insured bank in Zone 3 to divest any affiliate (other than an insured bank) if the appropriate Federal banking agency determines that the affiliate is in danger of default and poses significant risk to the liquidity or solvency of the bank or is likely to cause a significant dissipation of its assets or earnings.

"(4) NOTICE TO THE CORPORATION.—The appropriate Federal banking agency shall give the Corporation prompt notice of any action under this subsection.

"(g) PROVISIONS APPLICABLE TO INSTITUTIONS WITHIN ZONE 4.—

"(1) MANDATORY SUPERVISORY ACTIONS.—In addition to the supervisory actions applicable under Zone 1, and the mandatory supervisory sections under Zones 2 and 3, the following mandatory supervisory actions shall apply with respect to any insured bank within Zone 4:

"(A) CAPITAL RESTORATION PLAN.—Unless an insured bank within Zone 4 has submitted a capital restoration plan acceptable to the appropriate Federal banking agency pursuant to subsection (f), it shall, within the time provided under subsection (i), submit to the appropriate Federal banking agency and, after its acceptance, implement a capital plan that meets the requirements of subsection (i) and will restore the relevant capital measures of the institution to at least the levels required for classification within Zone 2.

"(B) PROHIBITION ON CAPITAL DISTRIBUTIONS.—No insured bank within Zone 4 shall make any capital distribution or pay any

management fee to a person or affiliate controlling such bank.

"(C) PROHIBITION ON EXPANSION.—No insured bank within Zone 4, or financial services holding company controlling any insured bank within Zone 4, shall, directly or indirectly—

"(i) acquire any interest in any insured depository institution or any company that is not an insured depository institution;

"(ii) establish or acquire additional branch offices in any State; or

"(iii) engage in any new activity.

"(D) EFFECT ON FINANCIAL SERVICES AND DIVERSIFIED HOLDING COMPANIES.—Any financial services holding company and any diversified holding company that controls an insured bank within Zone 4 shall, until such time as the relevant capital measures of the insured bank are restored to at least the levels required for classification within Zone 2 or the company divests any interest in the bank, be subject to the requirements of clauses (i) and (ii) of subsection (f)(1)(D) and to the mandatory supervisory actions of this paragraph as if the company were an insured bank within the relevant zone.

"(E) LIMITATION ON ASSET GROWTH.—

"(i) An insured bank within Zone 4 shall not increase its total assets, except as permitted under clause (ii).

"(ii) Notwithstanding clause (i), the appropriate Federal banking agency may permit a bank within Zone 4 to increase its total assets by an amount not exceeding the amount of net interest credited to the bank's deposit liabilities, if—

"(I) the agency has accepted the bank's capital restoration plan;

"(II) any increase in assets is accompanied by an increase in capital in an amount not less than the increase in assets multiplied by the respective relevant capital measures for Zone 2 banks; and

"(III) the bank's capital levels increase at a rate sufficient to enable the bank to satisfy the bank's capital restoration plan within a reasonable time.

"(F) LIMITATION ON COMPENSATION.—An insured bank within Zone 4 may not pay to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991—

"(i) any bonus; or

"(ii) any compensation at a rate exceeding that officer's average rate of compensation during the previous 12 calendar months.

"(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action authorized by this section from an insured bank within Zone 4 or a company that controls an insured bank within Zone 4 if the agency determines in writing that such action is in the public interest.

"(3) DISCRETIONARY SUPERVISORY ACTIONS.—Without limiting in any way the existing authority of any appropriate Federal banking agency, the appropriate Federal banking agency may, at any time, take any of the following actions based upon a finding that the insured bank is within Zone 4—

"(A) DISCRETIONARY SUPERVISORY ACTIONS PERMITTED UNDER ZONE 2 OR ZONE 3.—Take any discretionary supervisory action authorized under subsection (f)(3) in connection with an insured bank within Zone 4 or a company that controls an insured bank within Zone 4.

"(B) RESTRICT INTERAFFILIATE TRANSACTIONS.—Restrict or eliminate any transaction between the insured bank and any affiliate.

"(C) REQUIRE DIVESTITURE OR LIQUIDATION OF AFFILIATE.—Require the bank or any company that controls the bank to divest any affiliate that is not an insured bank, if the appropriate Federal banking agency determines that the affiliate is in danger of default.

"(D) LIMIT EXECUTIVE COMPENSATION.—Require the bank to reduce or eliminate any compensation to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 if the appropriate Federal banking agency determines the compensation to be excessive.

"(E) REQUIRE DIVESTITURE OF BANK.—Require any company that controls a bank within Zone 4 to divest the bank, if the appropriate Federal banking agency determines that such divestiture would improve the financial condition and future prospects of the bank.

"(F) DISMISS DIRECTORS OR CHIEF OFFICERS.—

"(i) Require the insured bank to dismiss from office at the bank any or all of the following persons if the person accepted employment, accepted a new position, or renewed any contract for employment in the same position at the bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and the person has been employed in that position at the bank for at least 180 days—

"(I) any member of the bank's board of directors;

"(II) the chief executive officer;

"(III) the chief financial officer; or

"(IV) any other executive officer.

"(ii) Dismissal under clause (i) shall not be construed as removal under section 8 of this Act.

"(G) CONSERVATORSHIP.—Appoint a conservator for the bank.

"(4) NOTICE TO THE CORPORATION.—The appropriate Federal banking agency shall give the Corporation prompt notice of any action under this subsection.

"(h) PROVISIONS APPLICABLE TO BANKS WITHIN ZONE 5.—

"(1) MANDATORY SUPERVISORY ACTIONS.—The appropriate Federal banking agency shall, not later than 30 days after determining that an insured bank is within Zone 5—

"(A) require the sale or merger of the insured bank; or

"(B) appoint a conservator or receiver for the bank and any such conservator or receiver shall have full authority, in its sole discretion, to liquidate or sell the insured bank, to take any actions authorized under subsections (f) and (g) not inconsistent with the powers of the conservator or receiver, and to take any other actions authorized pursuant to the provisions applicable to conservators and receivers, respectively, under the banking laws.

"(2) EXCEPTIONS TO MANDATORY SUPERVISORY ACTIONS.—The appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action applicable under this section to an insured bank within Zone 5 or a company that controls an insured bank within Zone 5 if the agency determines in writing, with the concurrence of the Corporation, that such action is in the public interest.

"(i) CAPITAL RESTORATION PLANS.—

"(1) CONTENTS OF PLAN.—A capital restoration plan submitted under this section shall be a feasible plan for promptly restoring the levels of capital for all relevant capital measures of the insured bank to at least the levels required by the subsection pursuant to which the capital restoration plan is ordered. A capital restoration plan must—

"(A) specify the levels of capital the bank will achieve and maintain;

"(B) describe the steps the bank will take to restore each of the relevant capital measures for the bank to the required levels;

"(C) establish a schedule for promptly completing the capital restoration plan;

"(D) specify the types and levels of activities in which the bank will engage during the pendency of the capital restoration plan;

"(E) explain the steps that the bank will take to comply with any mandatory and discretionary requirements imposed under the banking laws; and

"(F) be acceptable to the appropriate Federal banking agency.

"(2) DEADLINES FOR SUBMISSION OF CAPITAL RESTORATION PLAN.—Each appropriate Federal banking agency shall by regulation establish deadlines that provide insured banks a reasonable period of time to submit a capital restoration plan acceptable to the agency. Unless the agency shall determine that a greater amount of time is necessary, the time allowed by regulation should be no greater than 30 days.

"(3) AGENCY REVIEW OF CAPITAL RESTORATION PLANS.—The appropriate Federal banking agency shall review and act on a capital restoration plan not later than 30 days after the plan is submitted, except that such period may be extended by the appropriate Federal banking agency.

"(j) Judicial Review of Agency Action.—

"(1) Jurisdiction.—

"(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, within ten days after receiving notice of the agency action, a written petition requesting that the action of the agency 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 in which the concerned bank maintains its home office. For purposes of this subparagraph, the 'concerned bank' shall mean the bank whose classification within a particular zone is the basis for the agency action of which the person aggrieved complains.

"(C) PERSON AGGRIEVED DEFINED.—A person aggrieved by the action of an appropriate Federal banking agency under this section shall mean—

"(i) the company ordered to make a divestiture or terminate activities, with respect to an order under this section directing a company to divest an insured bank or other company or to terminate activities pursuant to this section;

"(ii) the insured bank or company that is the subject of a mandatory or discretionary supervisory action and any company that controls such a bank, with respect to a mandatory or discretionary supervisory action taken under this section for banks within Zone 3, Zone 4 or Zone 5;

"(iii) the person dismissed, with respect to an order under this section for the dismissal of a director, chief executive officer, chief financial officer or other executive officer; and

"(iv) the person whose compensation, bonus or severance payment has been reduced or eliminated, with respect to an order

under this section reducing or eliminating such payments due an executive officer.

"(2) 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) ALTERNATE REVIEW OF CERTAIN AGENCY ACTIONS.—Notwithstanding the provisions of this subsection, a person aggrieved by an order of an appropriate Federal banking agency placing an insured bank into conservatorship or receivership may pursue any judicial review of such an order that is otherwise available under the banking laws.

"(3) UNAVAILABILITY OF INJUNCTIVE RELIEF.—The commencement of proceedings for judicial review pursuant to 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 pending judicial review of that action.

"(4) EXPEDITED REVIEW.—Petitions complaining of agency action under this section shall be given expedited review by the United States Circuit Courts of Appeals.

"(5) WITHDRAWAL OF JURISDICTION.—Except as provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or effectiveness of any action of the appropriate Federal banking agency under this section or to review, modify, suspend, terminate, or set aside such agency action.".

(b) ENFORCEMENT.—Revision of Enforcement Provisions.

Section 8(i) of the Federal Deposit Insurance Act is amended—

(1) in the first sentence of paragraph (1), by inserting "or under section 35" after "section"; and

(2) in paragraph (2)(A)(ii), by inserting ", or final order under section 35" after "section".

(c) JURISDICTION.—

(1) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—Chapter 91 of title 28 of the United States Code is amended—

(A) by adding at the end the following new section:

"SEC. 1510. JURISDICTION FOR CERTAIN CLAIMS AGAINST APPROPRIATE FEDERAL BANKING AGENCIES.

"The United States Claims Court shall have exclusive jurisdiction to render judgment upon any claim for damages against the United States by any person who has petitioned for judicial review of an action of an appropriate Federal banking agency pursuant to section 35 of the Federal Deposit Insurance Act, where such action has been, at the conclusion of judicial review proceedings, modified, terminated or set aside by a court of competent jurisdiction. The claim shall be limited to actual damages caused by the agency action that has been modified, terminated or set aside, and shall be filed within 10 days of the final order granting the relief sought in the petition."; and

(B) in the table of sections, by inserting after the item relating to section 1509 the following new item:

"1510. Jurisdiction for certain claims against appropriate Federal banking agencies.".

(2) WITHDRAWAL OF JURISDICTION.—Except as provided in section 1510 of title 28, United States Code, no court shall have jurisdiction to hear a claim for damages for agency action under section 35 of the Federal Deposit Insurance Act.

(d) ADDITIONAL GROUNDS FOR APPOINTMENT OF FDIC AS CONSERVATOR OR RECEIVER FOR STATE BANK.—Section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) is amended by adding at the end thereof the following new subparagraphs:

"(I) For appointment of the Corporation as a receiver, classification of the institution as a Zone 5 institution by the appropriate Federal banking agency pursuant to section 35 of this Act.

"(J) For appointment of the Corporation as a conservator, classification of the institution as a Zone 4 or Zone 5 institution by the appropriate Federal banking agency pursuant to section 35 of this Act.".

(e) ADDITIONAL GROUND FOR APPOINTING CONSERVATOR FOR NATIONAL BANKS.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended—

(1) by inserting "or was" after "there is" in paragraph (5);

(2) by striking "or" at the end of paragraph (7);

(3) by striking the period at the end of paragraph (8) and inserting instead "; or"; and

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

"(9) the bank is classified as a Zone 4 or Zone 5 institution by the appropriate Federal banking agency pursuant to section 35 of the Federal Deposit Insurance Act.".

(f) APPOINTMENT OF CONSERVATORS AND RECEIVERS BY THE BOARD OF GOVERNORS.—Section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.) is amended by adding at the end the following new paragraph—

"(24) APPOINTMENT OF CONSERVATOR OR RECEIVER.—

"(A) The Board of Governors of the Federal Reserve System may appoint a receiver for an insured State bank (except a District bank chartered by the Director of the Office of Depository Institutions Supervision) in the same manner and to the same extent that the Director of the Office of Depository Institutions Supervision may appoint a receiver for a national banking association pursuant to the first section of the Act of June 30, 1876 (12 U.S.C. 191).

"(B) The Board of Governors of the Federal Reserve System may appoint a conservator for an insured State bank (except a District bank chartered by the Director of the Office of Depository Institutions Supervision) in the same manner and to the same extent that the Director of the Office of Depository Institutions Supervision may appoint a conservator for a national banking association pursuant to section 203 of the Bank Conservation Act (12 U.S.C. 203).".

(g) APPOINTMENT OF CONSERVATORS AND RECEIVERS FOR DISTRICT BANKS.—Section 5(d)(2)(C) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)(C)) is amended—

(1) by inserting "a District bank chartered by the Director" after "State savings association";

(2) by striking "or" at the end of clause (v);

(3) in clause (vi)—

(A) by inserting "or was" after "there is"; and

(B) by striking the period and inserting instead "; or"; and

(4) by inserting after clause (vi) the following new clause:

"(vii) in the case of a District bank chartered by the Director—

"(I) for appointment of a receiver, classification of the bank as a Zone 5 institution by the Director pursuant to section 35 of the Federal Deposit Insurance Act; or

"(II) for appointment of a conservator, classification of the bank as a Zone 4 or a Zone 5 institution by the Director pursuant to section 35 of the Federal Deposit Insurance Act.".

(h) APPOINTMENT OF CONSERVATORS AND RECEIVERS FOR INSURED STATE BANKS.—Section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) is amended by inserting after paragraph (9) the following new paragraph:

"(10) The Board of Governors of the Federal Reserve System (the "Board") shall appoint the Corporation as receiver for any insured State bank (other than a District bank chartered by the Office of Depository Institutions Supervision) that the Board classifies as within Zone 5 and for which the Board determines to appoint a receiver authorized by section 35(h).".

(i) EFFECTIVE DATE.—The amendments made by this section shall become effective three years after the date of enactment of this Act, except that such amendments shall become effective January 1, 1993, with respect to financial services holding companies with bank subsidiaries meeting the requirements of Zone 1 or 2 as described in section 35 of the Federal Deposit Insurance Act that wish to engage in any new financial activity.

Subtitle F—Nationwide Banking and Branching

SEC. 261. NATIONWIDE BANKING.

(a) Section 3(f) of the Financial Services Holding Company Act (12 U.S.C. 1842(f)), as redesignated by section 202(a)(4), is amended to read as follows:

"(f) INTERSTATE ACQUISITIONS.—

"(1) IN GENERAL.—The appropriate Federal banking agency may approve an application under this section for a diversified holding company, financial services holding company, or foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of, the assets of any additional insured depository institution or financial services holding company located in any State.

"(2) STATE LAWS.—Any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring diversified holding company or financial services holding company or foreign bank or any subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such diversified holding company or financial services holding company or foreign bank; or

"(C) any factor that has the effect, directly or indirectly, of prohibiting or limiting the acquisition of shares or control of an insured depository institution or financial services holding company located in that State by an out-of-State diversified holding company or financial services holding company or foreign bank without such factor having a similar effect on such acquisitions by financial services holding companies located in that State.".

(b) The amendment made by this section shall become effective three years after the date of enactment of this Act.

SEC. 262. INTERSTATE BRANCHING BY NATIONAL BANKS.

(a) LOCATION OF BRANCHES.—Section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)) is amended—

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

(2) in paragraph (2), by striking the first period and inserting instead "; and";

(3) by inserting after "; and" as added by paragraph (2) the following new paragraph:

"(3) at an initial location within any State in which a financial services holding company having the same home State as such association could acquire a bank pursuant to section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842) or at an initial location within any State in which a State bank chartered in the home State of such association could establish a branch, and, thereafter, at any point within those States to the extent permitted in paragraph (1) and paragraph (2) for associations situated in those States."; and

(4) by inserting at the end thereof the following new sentence:

"A State, other than the State in which the principal office of a national banking association is a host State, may require any national banking association establishing a branch within the host State to comply with such filing requirements as are otherwise imposed on a corporation that is incorporated in another State and seeks to engage in business in the host State.".

(b) DEFINITIONS.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is further amended—

(1) by amending subsection (f) to read as follows:

"(f) The term 'branch' as used in this section shall mean any office, agency, or other place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, checks paid, or money lent."; and

(2) by inserting after subsection (h) the following new subsections:

"(i) For purposes of this section, the term 'home State' shall mean—

"(1) in the case of a national banking association, the State in which the principal place of business of such association is located; and

"(2) in the case of a financial services holding company, the State in which the total deposits of all bank subsidiaries of such company are largest.

"(j) For purposes of this section, the term 'State' shall include the District of Columbia.

"(k) For purposes of this section, the term 'host State' is the State in which a bank establishes or maintains a branch other than the State in which the bank is located.".

SEC. 263. INTERSTATE CONSOLIDATION OR MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.

(a) CONSOLIDATION OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Section I of the Act of November 7, 1918 (12 U.S.C. 215) is amended by inserting "or in any other State" after "located in the same State".

(b) MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Section 2(a) of the Act of November 7, 1918 (12 U.S.C. 215a(a)) is amended by inserting "or in any other State" after "located within the same State".

(c) DEFINITIONS.—Section 3(4) of the Act of November 7, 1918 (12 U.S.C. 215b(4)) is amended by striking ", located within the same State,".

(d) RETENTION OF BRANCHES FOLLOWING MERGER OR CONSOLIDATION WITH NATIONAL BANKS.—Section 5155(b)(2) of the Revised Statutes (12 U.S.C. 36(b)(2)) is amended to read as follows:

"(2)(A) A national bank resulting from the consolidation of a national bank under whose charter the consolidation is effected with another bank or banks may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as a main office or branch of any bank participating in the consolidation if the appropriate Federal banking agency approves its continued operation after the consolidation.

"(B) The appropriate Federal banking agency may not grant approval under subparagraph (A) for retention of a main office branch of any bank participating in the consolidation if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated branch of the State bank immediately prior to the consolidation.".

SEC. 264. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by inserting after paragraph (2) the following new paragraphs:

"(3) STATE LAW.—Except as otherwise provided in this subsection, no State may prohibit any insured bank chartered by another State, and engaged in a banking business in another State from establishing and maintaining one or more branches within the State. A host State may require any insured bank chartered by another State that wishes to establish a branch within the host State to comply with such filing requirements as are otherwise imposed on a corporation that is incorporated in another State and seeks to engage in business in the host State.

"(4)(A) LOCATION OF BRANCHES.—Any insured State bank may, if authorized by the law of the State in which the bank is chartered, establish and maintain:

"(i) a branch at an initial location within any other State or States in which a financial services holding company, whose principal place of operations is the same State in which the insured bank is chartered, could acquire an additional bank pursuant to section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842); and

"(ii) additional branches at locations within any State in which the bank has established an initial branch pursuant to clause (i) to the extent permitted for insured State banks located in such State as if the initial branch of the out-of-State insured bank were a State bank chartered in such State with its head office at the location of the initial branch.

"(B) For purposes of this paragraph, "principal place of operations' means the State in which the total deposits of all bank subsidiaries of such company are largest.

"(5) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection shall limit in any way the right of a State to determine the authority of State banks chartered in that State to establish and maintain branches, or to supervise, regulate, and examine State banks chartered by that State.

"(6) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (4) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(7) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) A host State bank supervisory or regulatory authority may examine branches established in the host State by banks chartered by another State for the purpose of determining compliance with the host State law regarding permissible activities and to ensure that the activities of the branch are conducted in a manner not inconsistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) In the event that a host State bank authority as described above determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law as if the branch were deemed to be a bank chartered by that host State.

"(C) The State bank authorities from one 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 as long as the participation in the examination of the branch of an out-of-State bank by a host State bank authority is limited as described in subparagraph (B).

"(8) For purposes of this subsection a 'host State' is the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.".

SEC. 265. INTERSTATE BRANCHING AND BANKING BY FOREIGN BANKS.

(a) Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) is amended to read as follows:

"(a) ESTABLISHMENT AND OPERATION OF FEDERAL BRANCHES AND AGENCIES.—

"(1) A foreign bank which engages directly in a banking business outside the United States may, with the approval of the Director, establish and operate a Federal branch or Federal agency at an initial location in the United States in any State in which it is not operating a branch or agency pursuant to State law; provided that during the three-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act 1991, the Director may only authorize such establishment of a branch or agency by a foreign bank, as the case may be, if such establishment is not prohibited by the law of the relevant State.

"(2) A foreign bank which engages directly in a banking business outside the United States may establish and operate additional Federal branches or Federal agencies in any State in accordance with the provisions of subsection (h).".

(b) Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(1) by striking the phrase "in the State in which such branch or agency is located"; and

(2) by adding at the end the following sentence:

"For purposes of section 36(c) of the National Bank Act (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5.".

(c) Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended to read as follows:

"(a) LIMITATIONS.—

"(1) No foreign bank may establish and operate a State branch in any State outside its home State unless a financial services holding company whose principal place of operation under section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842) is the same as the home State of the foreign bank would be permitted to acquire a bank in such other State.

"(2) No foreign bank may directly or indirectly establish and operate a State branch, State agency, or commercial lending company subsidiary outside of the foreign bank's home State unless its establishment and operation is approved by the Board and the bank regulatory authority of the State in which the new branch is to be located.

"(3) No foreign bank may directly or indirectly acquire more than five percent of the voting shares of, or all or substantially all of the assets of, a financial services holding company or bank located outside of the foreign bank's home State without the approval of the appropriate Federal banking agency under section 3 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1842) as if the foreign bank were a financial services holding company located in the foreign bank's home State.

"(4) Notwithstanding paragraph (2), effective three years after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, no State shall prohibit a foreign bank having a State branch or State agency licensed by another State and engaged in a banking business in that other State, from establishing and maintaining one or more branches or agencies of that foreign bank within the State after approval from the bank regulatory authority of such other State and the Board. Establishment, operation and supervision of any such branches or agencies shall be in accordance with the provisions applicable to an interstate branch of a State bank under section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) as if the branch in such other State were an insured State bank located in such other State.

"(5) Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Director, establish and operate a Federal branch or Federal agency, or with the approval of the Board and the bank regulatory authority of the State, a State branch or State agency, in any State outside of its home State if—

"(A) establishment and operation of a branch or agency is expressly permitted by the State in which it is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).".

(d) Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by inserting after subsection (d) the following new subsection:

"(e)(1) It shall be unlawful for any foreign bank to establish a State branch or State agency, or in the case of a foreign bank that is not subject to the provisions of the Financial Services Holding Company Act of 1991, to establish or acquire control of a commercial lending company in the United States, without obtaining the approval of the Board.

"(2) In acting on any application under paragraph (1), the Board may take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial prospects of the branch or agency and the applicant foreign bank, including whether such foreign bank engages directly in a banking business outside the United States, and the convenience and needs of the community to be served.".

SEC. 266. INTERSTATE ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.

Section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) is amended to read as follows:

"(3) INTERSTATE ACQUISITIONS.—

"(A) IN GENERAL.—The appropriate Federal banking agency may approve an application under this subsection for a savings and loan holding company or a foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all the assets of, any additional savings association located in any State.

"(B) STATE LAWS.—Any acquisition described in subparagraph (A) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of the location or size of the acquiring company or foreign bank or any subsidiary of such company or foreign bank, the number of insured depository institution subsidiaries of such company or foreign bank, or any other factor that has the effect directly or indirectly of prohibiting or limiting the acquisition of shares or control of a savings association or savings and loan holding company located in that State by an out-of-State savings and loan holding company or foreign bank without having a similar effect on such acquisitions by savings and loan holding companies located in that State.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'State' includes the District of Columbia; and

"(ii) the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act (12 U.S.C. 3101(7)).".

SEC. 267. EFFECTIVE DATES.

Except as provided in section 261(b), the provisions of this subtitle shall be effective upon enactment of this Act.

TITLE III—REGULATORY RESTRUCTURING

Subtitle A—Office of Depository Institutions Supervision

SEC. 301. ESTABLISHMENT OF THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION.

Effective January 1, 1992, there shall be established in the Department of the Treasury the Office of Depository Institutions Supervision which shall be a bureau within the Department.

SEC. 302. DEFINITIONS.

As used in this title—

(1) the term "Director" means the Director of the Office of Depository Institutions Supervision;

(2) the term "Office" means the Office of Depository Institutions Supervision; and

(3) the term "Secretary" means the Secretary of the Treasury.

SEC. 303. DIRECTOR OF THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION.

(a) IN GENERAL.—The Office shall have a Director who shall be the head of the Office.

(b) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(c) TERM.—The Director shall be appointed for a term of five years unless sooner removed by the President.

(d) VACANCY.—A vacancy in the position of Director which occurs before expiration of the term for which a Director was appointed shall be filled in the manner established in subsection (b), and the Director appointed to fill such vacancy shall be appointed only for the remainder of said term.

(e) SERVICE AFTER END OF TERM.—An individual may serve as Director after the expiration of the term for which appointed until a successor Director has been appointed.

(f) ACTING DIRECTOR.—

(1) Subject to subsection (d)—

(A) the Director may designate who shall act as Director if the Director dies, resigns, or is sick or absent; and

(B) in the event that the Director fails to make such a designation, or is unable to make such a designation due to death or disability, the Secretary shall designate who shall act as Director if the Director dies, resigns, or is sick or absent.

(2) An Acting Director designated under paragraph (1) shall possess the power to perform the duties vested in the Director.

(g) DEPUTY DIRECTORS.—The Secretary shall appoint two Deputy Directors. Each Deputy Director shall perform such duties as the Director may require.

(h) EFFECTIVE DATES.—

(1) Subsections (a) through (f) shall become effective January 1, 1992;

(2) Subsection (g) shall become effective January 1, 1993.

SEC. 304. AUTHORITY OF THE DIRECTOR.

(a) EXCLUSIVE AUTHORITY OF THE DIRECTOR.—The Director shall have the authority, without any prior review or approval by the Secretary, to make such determinations and to take such actions as are deemed necessary with respect to a specific institution or entity for which the Director is the appropriate Federal banking agency, as defined in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), regarding—

(1) a grant or denial of a charter or other application;

(2) an examination;

(3) a decision to appoint a conservator or receiver for a depository institution; and

(4) a final decision in a contested administrative enforcement proceeding.

Nothing in this subsection shall be construed to prohibit the Director from consulting with the Secretary on any matter.

(b) AUTHORITY OF THE SECRETARY.—All other authority vested in the Director shall be exercised by the Director subject to the review and approval of the Secretary.

(c) DELEGATION OF AUTHORITY.—The Director may delegate to any employee, representative or agent of the Office any authority of the Director.

(d) EFFECTIVE DATES.—

(1) Subsection (a) shall become effective January 1, 1993.

(2) Subsections (b) and (c) shall become effective January 1, 1992.

SEC. 305. PERSONNEL.

(a) APPOINTMENT.—The Director shall fix the number of, and appoint and direct, all employees of the Office except as provided in section 303(g).

(b) COMPENSATION AND BENEFITS.—

(1) COMPENSATION.—The Director shall fix the compensation of employees of the Office without regard to the provisions of laws (other than this title) applicable to officers and employees of the United States.

(2) ADDITIONAL BENEFITS.—The Director may provide additional benefits to employees of the Office if the same type of benefits are then being provided by the Board of Governors of the Federal Reserve System or the

Federal Deposit Insurance Corporation or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation.

(3) COMPARABILITY.—In setting and adjusting the compensation and benefits for employees of the Office, the Director shall consult with, and may seek to maintain comparability with, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

(c) EFFECTIVE DATE.—This section shall become effective January 1, 1993.

SEC. 306. REGULATIONS AND ORDERS.

The Director may prescribe such regulations and issue such orders as the Director may determine to be necessary or appropriate for carrying out any law within the Director's jurisdiction.

SEC. 307. FUNDING.

(a) AUTHORITY TO IMPOSE AND COLLECT ASSESSMENTS, FEES, AND OTHER CHARGES.—The Director shall have the authority to impose and collect assessments, fees, and other charges on any institution or entity (including subsidiaries and affiliates thereof) for which the Director is the appropriate Federal banking agency, as defined in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), as necessary or appropriate to carry out the responsibilities of the Office. Such assessments, fees, and other charges shall be set to meet the full cost to the Federal Government of the services provided by the Office.

(b) USE OF FUNDS.—The Director is authorized to use the funds obtained through assessments, fees, and other charges imposed pursuant to this title to pay the full cost to the Federal Government of the services provided by the Office.

(c) EFFECTIVE DATES.—This section shall become effective January 1, 1993.

Subtitle B—Interim Provisions; Transfer of Functions, Personnel, and Property

SEC. 311. INTERIM PROVISIONS FOR THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION.

(a) INTERIM AUTHORITY OF THE DIRECTOR.—Prior to the date upon which the functions of the Office of the Comptroller of the Currency and the Office of Thrift Supervision are transferred to the Director pursuant to this Act, the Director shall—

(1) consult and cooperate with the Director of the Office of Thrift Supervision and the Comptroller of the Currency to facilitate the orderly transfer of functions to the Office;

(2) pursuant to section 6(b)(2)(A) of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1845(b)(2)(A)), jointly issue regulations with the Board of Governors of the Federal Reserve System to be effective on January 1, 1993, to implement the Financial Services Holding Company Act of 1991; and

(3) take such actions as may be necessary to provide for the establishment of the Office and for the orderly implementation of this title.

(b) INTERIM STAFF.—Prior to the date upon which the Office of the Comptroller of the Currency and the Office of Thrift Supervision are abolished, each such Office shall detail to the Office such personnel as the Secretary deems appropriate to assist the Director in carrying out his duties.

(c) INTERIM ADMINISTRATIVE SERVICES.—The Secretary is authorized to provide all administrative services necessary to support the Office prior to the date upon which the Office of the Comptroller of the Currency and the Office of Thrift Supervision are abolished, and obtain reimbursement for the cost of such services pursuant to subsection (d).

(d) INTERIM FUNDING.—Prior to the date upon which the Office of the Comptroller of the Currency and the Office of Thrift Supervision are abolished, each such Office shall pay to the Secretary one-half of the total amount determined by the Secretary to be necessary to fund all direct and indirect salary and administrative expenses of the Office, including the salary of the Director, through January 1, 1993, from the funds obtained by such Offices through assessments, fees, and other charges which they are authorized to impose by law. The Secretary may credit to an appropriation and spend amounts received pursuant to this subsection.

(e) INTERIM AUTHORITY OF THE SECRETARY.—The Secretary is authorized to perform the functions of the Director under this section until the Director is appointed.

(f) EFFECTIVE DATE.—This section shall become effective January 1, 1992.

SEC. 312. OFFICE OF THRIFT SUPERVISION ABOLISHED.

(a) OFFICE OF THRIFT SUPERVISION ABOLISHED.—Effective January 1, 1993, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

(b) DISPOSITION OF AFFAIRS.—

(1) IN GENERAL.—In winding up the affairs of the Office of Thrift Supervision, the Director of the Office of Thrift Supervision shall consult and cooperate with the Director of the Office and the Comptroller of the Currency to facilitate the orderly transfer of functions to the Office. Any matter not resolved pursuant to such consultation and cooperation shall be resolved by the Secretary.

(2) CONTINUING AUTHORITY OF DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—Except as provided in paragraph (1) and section 311, nothing in this title shall affect the authority vested in the Director of the Office of Thrift Supervision before the date of enactment of this Act which is necessary to carry out the duties of his position until the date upon which the position of Director of the Office of Thrift Supervision is abolished.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor thereto, which was providing support services to the Office of Thrift Supervision on the day before the date the Office of Thrift Supervision is abolished shall—

(A) continue to provide such services on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until modified or terminated in accordance with such terms, except that effective January 1, 1993, the Office shall substitute for the Office of Thrift Supervision as a party to the arrangement; and

(B) consult with the Director to coordinate and facilitate a prompt and reasonable transition.

(c) SAVINGS PROVISIONS.

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall affect the validity of any right, duty, or obligation of the United States, the Office of Thrift Supervision, or any person, which existed on the day before the date upon which the Office of Thrift Supervision is abolished.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Office of Thrift Supervision shall abate by reason of enactment of this Act, except that, effective January 1, 1993, the Director shall be substituted as a party to any such action or proceeding.

(3) Continuation of Administrative Rules.—

(A) All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory material which—

(1) have been issued, made, prescribed, or permitted to become effective by the Office of Thrift Supervision, and

(2) are in effect on December 31, 1992, or become effective thereafter,

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures or other advisory material; shall be administered by the Director; and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, by any court of competent jurisdiction, or by operation of law.

(B) No provision of this Act or of any prior Act or agreement, other than agreements entered into after August 9, 1989, shall modify or limit any minimum level of capital established under section 5(s) of the Home Owners' Loan Act (12 U.S.C. 1464(s)) or any capital standard prescribed or maintained under section 5(t) of such Act (12 U.S.C. 1464(t)).

(4) STATUS OF ADMINISTRATIVE RULES.—

(A) Any proposed regulation or rule of the Office of Thrift Supervision which has not been published as a final regulation by the date that the Office of Thrift Supervision is abolished shall be deemed to be a proposed regulation or rule of the Office.

(B) Any final or interim rule published by the Office of Thrift Supervision prior to January 1, 1993, but which shall not become effective prior to such date, shall become effective according to its terms.

(5) APPLICATION.—The provisions of this subsection shall apply except as otherwise expressly provided in this Act.

(d) TRANSFER OF EMPLOYEES.

(1) IN GENERAL.—All employees of the Office of Thrift Supervision on the day before that Office is abolished by this Act shall be transferred to the Office.

(2) RIGHTS OF TRANSFERRED EMPLOYEES.—All employees transferred pursuant to paragraph (1) shall be entitled to the following rights:

(A) TRANSFER OF FUNCTION.—Notwithstanding any other provision of law, section 3503 of title 5, United States Code, shall be applicable to each such transfer.

(B) TRANSFERRED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade for 1 year after the date of transfer, except for cause. Nothing in this section shall be construed to limit the right of the Director to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(C) COMPENSATION.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, the same total compensation which such employee received immediately preceding the transfer. This paragraph shall only apply to a transferred employee while such employee remains with the Office.

(D) BENEFITS.—

(i) Each employee transferred under this section may retain for 1 year after the date such transfer occurs, membership in any employee benefit program of the Office of Thrift Supervision, other than a retirement program but including insurance, to which such employee belongs on the day immediately preceding the transfer if—

(I) the employee does not elect to give up the benefit or membership in the program; and

(II) the benefit or program is continued by the Director.

(ii) The difference in the costs between the benefits which would have been provided by the Office of Thrift Supervision and those provided by this section shall be paid by the Office.

(iii) If any employee elects to give up membership in a health or life insurance program or the health or life insurance program is not continued by the Director, such employee may elect to participate in the Office's health or life insurance program notwithstanding health conditions pre-existing at the time of election or enrollment and without regard to any other regularly scheduled open season. Such election shall be made within 120 days of the transfer or discontinuation of the program.

(3) REORGANIZATION OF THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION.—If the Director determines, not less than one year nor more than three years after the date the functions of the Director of the Office of Thrift Supervision are transferred to the Office, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code. The provisions of chapter 35 of title 5, United States Code, shall govern any reduction in force resulting from such a reorganization.

(4) EQUITABLE TREATMENT.—The Director may take such action as is necessary to ensure that employees transferring under this section continue to receive credit such employees received, if any, under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 for prior service with a Federal entity or instrumentality, or with a Federal Home Loan Bank or joint office of the Banks, with respect to the transferring employees' retirement accounts and the transferring employees' accrued leave or vacation time, in recognition of the transferring employees' service.

(e) TRANSFER OF PROPERTY.—Effective January 1, 1993, all property of the Office of Thrift Supervision shall be transferred to the Office.

SEC. 313. OFFICE OF THE COMPTROLLER OF THE CURRENCY ABOLISHED.

(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ABOLISHED.—Effective January 1, 1993, the Office of the Comptroller of the Currency and the position of the Comptroller of the Currency are abolished.

(b) DISPOSITION OF AFFAIRS.

(1) IN GENERAL.—In winding up the affairs of the Office of the Comptroller of the Currency, the Comptroller of the Currency shall consult and cooperate with the Director of the Office of Depository Institutions Supervision and the Director of the Office of Thrift Supervision to facilitate the or- derly transfer of functions to the Office. Any matter not resolved pursuant to such consultation and cooperation shall be resolved by the Secretary.

(2) CONTINUING AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and section 311, nothing in this Act shall affect the authority vested in the Comptroller of the Cur- rency before the date of enactment of this Act which is necessary to carry out the duties of his position until the date upon which the position of Comptroller is abolished.

(3) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor thereto, which was providing support services to the Office of the Comptroller of the Currency on the day before the date the Office of the Comptroller of the Currency is abolished shall—

(A) continue to provide such services, on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until modified or terminated in accordance with such terms, except that effective January 1, 1993, the Office shall substitute for the Office of the Comptroller of the Currency as a party to the arrangement; and

(B) consult with the Director to coordinate and facilitate a prompt and reasonable transition.

(c) SAVINGS PROVISIONS.

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall affect the validity of any right, duty, or obligation of the United States, the Office of the Comptroller of the Currency, or any person, which existed on the day before the date upon which the Office of the Comptroller of the Currency is abolished by this title.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Comptroller of the Currency or the Office of the Comptroller of the Currency shall abate by reason of enactment of this Act, except that effective January 1, 1993, the Director shall be substituted as a party to any such action or proceeding.

(3) CONTINUATION OF ADMINISTRATIVE RULES.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory material which—

(A) have been issued, made, prescribed, or permitted to become effective by the Comptroller of the Currency; and

(B) are in effect on December 31, 1992, or become effective thereafter,

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, guidelines, procedures or other advisory material; shall be administered by the Director; and shall be enforceable by or against the Director until modified, terminated, set aside, or superseded in accordance with applicable law by the Director, by any court of competent jurisdiction, or by operation of law.

(4) STATUS OF ADMINISTRATIVE RULES.—

(A) Any proposed regulation or rule of the Comptroller of the Currency which has not been published as a final regulation by the date that the Office of the Comptroller of the Currency is abolished shall be deemed to be a proposed regulation or rule of the Office.

(B) Any final or interim rule published by the Comptroller of the Currency prior to January 1, 1993, but which shall not become effective prior to such date, shall become effective according to its terms.

(5) APPLICATION.—The provisions of this subsection shall apply except as otherwise expressly provided in this Act.

(d) TRANSFER OF EMPLOYEES.—

(1) IN GENERAL.—All employees of the Office of the Comptroller of the Currency on the day before that Office is abolished by this Act shall be transferred to the Office.

(2) RIGHTS OF TRANSFERRED EMPLOYEES.—All employees transferred pursuant to paragraph (1) shall be entitled to the following rights:

(A) TRANSFER OF FUNCTION.—Notwithstanding any other provision of law, section 3503 of title 5, United States Code, shall be applicable to each such transfer.

(B) TRANSFERRED POSITION.—Each transferred employee shall be guaranteed a position with the same status and tenure as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade for 1 year after the date of transfer, except for cause. Nothing in this section shall be construed to limit the right of the Director to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(C) COMPENSATION.—Each employee transferred under this section shall be entitled to receive, during the one-year period immediately following the transfer, the same total compensation that employee received immediately preceding the transfer. This paragraph shall only apply to a transferred employee while such employee remains with the Office.

(D) BENEFITS.—

(i) Each employee transferred under this section may retain for 1 year after the date such transfer occurs, membership in any employee benefit program of the Office of the Comptroller of the Currency, other than a retirement program but including insurance, to which such employee belongs on the day immediately preceding the transfer if—

(I) the employee does not elect to give up the benefit or membership in the program; and

(II) the benefit or program is continued by the Director.

(ii) The difference in the costs between the benefits which would have been provided by the Office of the Comptroller of the Currency and those provided by this section shall be paid by the Office.

(iii) If any employee elects to give up membership in a health or life insurance program or the health or life insurance program is not continued by the Director, such employee may elect to participate in the Office's health or life insurance programs notwithstanding health conditions pre-existing at the time of election or enrollment and without regard to any other regularly scheduled open season. Such election shall be made within 120 days of the transfer or discontinuation of the program.

(3) REORGANIZATION OF THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION.—If the Director determines, not less than one year nor more than three years after the date the functions of the Comptroller of the Currency are transferred to the Office, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees retirement under section 8336(d) (2) or 8414(b) (1) (B) of title 5, United States Code. The provisions of chapter 35 of title 5, United States Code, shall govern any reduction in force resulting from such a reorganization.

(e) TRANSFER OF PROPERTY.—Effective January 1, 1993, all property of the Office of the Comptroller of the Currency shall be transferred to the Office.

Subtitle C—Regulatory and Supervisory Responsibility

SEC. 321. TRANSFER OF POWERS AND DUTIES.

(a) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—Effective January 1, 1993, all powers and duties which were vested in the Director of the Office of Thrift Supervision on December 31, 1992, are transferred to the Director, except as otherwise provided in this Act.

(b) COMPTROLLER OF THE CURRENCY.—Effective January 1, 1993, all powers and duties which were vested in the Comptroller of the Currency on December 31, 1992, are transferred to the Director, except as otherwise provided in this Act.

SEC. 322. APPROPRIATE FEDERAL BANKING AGENCY.

(a) Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended to read as follows—

"(q)(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' means—

"(A) the Director of the Office of Depository Institutions Supervision in the case of —

"(i) any national banking association and any subsidiary of a national banking association other than a subsidiary chartered or regulated by the Board of Governors of the Federal Reserve System under sections 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.);

"(ii) any District bank chartered by the Director;

"(iii) any Federal branch or Federal agency of a foreign bank;

"(iv) any savings association and any subsidiary of a savings association;

"(v) any savings and loan holding company;

"(vi) any financial services holding company, the principal bank subsidiary of which is a national banking association, a District bank chartered by the Director, or a savings association; and

"(vii) any diversified holding company that controls any financial services holding company, the principal bank subsidiary of which is a national banking association, a District bank chartered by the Director, or a savings association;

"(B) the Board of Governors of the Federal Reserve System in the case of—

"(i) any State member or State nonmember insured bank (except a District bank chartered by the Director) and any subsidiary of any such State bank;

"(ii) any State branch or State agency of a foreign bank;

"(iii) any subsidiary or branch of a depository institution established or operated pursuant to section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.);

"(iv) any commercial lending company;

"(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(b) (1) of the International Banking Act of 1978 (12 U.S.C. 3105(b) (1)), including such proceedings under the Depository Institutions Supervisory Act;

"(vi) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

"(vii) any financial services holding company, the principal bank subsidiary of which is a State member or State nonmember insured bank (except a District bank chartered by the Director); and

"(viii) any diversified holding company that controls any financial services holding company, the principal bank subsidiary of which is a State member or State nonmember insured bank (except a District bank chartered by the Director);

"(C) for a foreign bank that is not a financial services holding company, the appropriate Federal banking agency shall be the same as the appropriate Federal banking agency for the branch, agency, or commercial lending company controlled or operated by such foreign bank that has the greatest dollar amount of assets on average for the last day of each quarter of the preceding calendar year. Any foreign bank that is not a financial services holding company shall be evaluated by the appropriate Federal banking agency in accordance with paragraphs (3) through (6).

"(2) principal Bank Subsidiary.—The term 'principal bank subsidiary' means—

"(A) the single subsidiary depository institution of a financial services holding company that has the greatest dollar amount of assets on average for the last day of each quarter of the preceding calendar year; and

"(B) in the case of a foreign bank that is a financial services holding company, the single depository institution, branch, agency, or commercial lending company controlled or operated by a foreign bank in the United States that has the greatest dollar amount of assets on average for the last day of each quarter of the preceding calendar year. Paragraphs (3) through (6) shall apply to a foreign bank and its principal bank subsidiary in the same manner and to the same extent as they apply to a domestic financial services holding company and its principal bank subsidiary.

"(3) MULTIPLE BANK SUBSIDIARIES.—In any case in which there are two or more subsidiary depository institutions of a financial services holding company that have substantially equal dollar amounts of assets and such depository institutions are not regulated by the same appropriate Federal banking agency, then the principal bank subsidiary shall be the depository institution with the greatest dollar amount of deposits on average for the last day of each quarter of the preceding calendar year.

"(4) CALCULATION.—All determinations regarding equity capital or assets, as appropriate, shall be made based upon those amounts on the last day of each of the four quarters over the preceding calendar year.

"(5) EVALUATION.—The appropriate Federal banking agency shall evaluate the principal bank subsidiary as defined in paragraphs (2) and (3) every five years for the purpose of determining whether a transfer to the other appropriate Federal banking agency is necessary. The first evaluation shall occur by April 30, 1998.

"(6) TRANSFER.—In any case in which the appropriate Federal banking agency has changed after evaluation, notice shall be given to the new appropriate Federal banking agency within 30 days after evaluation. A copy of the examination reports and any other reports required to be filed by the financial services holding company pursuant to section 6 of the Financial Services Holding Company Act of 1991 (12 U.S.C. 1845) for the prior two years shall be provided to the new appropriate Federal banking agency when notice is provided to such agency. Regulation and supervision of the financial services holding company shall be transferred to the new appropriate Federal banking agency no later than 90 days after notice has been provided.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1993.

SEC. 323. EXAMINATIONS

(a) IN GENERAL.—The Director has the power to conduct examinations of the affairs of each institution or entity for which the Director is the appropriate Federal banking agency, as defined in section 3(q) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q) (1)), and such other institution or entity over which the Director has examination authority pursuant to the Financial Services Holding Company Act of 1991.

(b) ANNUAL EXAMINATIONS REQUIRED.—At least once during every 12-month period, the Director shall conduct an on-site examination of each depository institution and branch of a foreign bank for which the Director is the appropriate Federal banking agency, except annual examinations shall not be required for—

(1) any depository institution or foreign bank branch for which a conservator or receiver has been appointed; and

(2) any depository institution or foreign bank branch that has total assets of less than $1,000,000,000 as of December 31 of the year preceding a scheduled examination, and that is in compliance with the capital standards prescribed by the Director. Such depository institution shall be examined on-site at least once during the following 18-month period.

(c) SPECIAL EXAMINATIONS.—In addition to the examinations authorized or required under subsections (a) and (b), the Director may make any special examination of such institution or entity which the Director determines to be necessary.

(d) EXAMINATION OF AFFILIATES.—The Director may examine any affiliate (as defined in section 2 of the Banking Act of 1933 (12 U.S.C. 221a)) of a depository institution, and any other affiliate except those examined pursuant to the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 *et seq.*), as may be necessary to disclose fully—

(1) the relationship between the depository institution and its affiliate; and

(2) the effect of such relationship on the depository institution.

(e) ASSESSMENT IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

(1) IN GENERAL.—Subject to paragraph (2), if any affiliate of any depository institution, other than an affiliate examined pursuant to the Financial Services Holding Company Act of 1991—

(A) refuses to pay any assessment, or

(B) fails to pay any assessment before the end of the 60-day period beginning on the date of the assessment,

the Director may assess such cost against, and collect such cost from, such depository institution.

(2) AFFILIATE OF MORE THAN ONE DEPOSITORY INSTITUTION.— If any affiliate referred to in paragraph (1) is an affiliate of more than one depository institution, the assessment with respect to the affiliate may be assessed against, and collected from, any affiliated depository institution in such proportions as the Director may prescribe.

(f) CIVIL MONEY PENALTIES FOR AFFILIATE'S REFUSAL TO COOPERATE.—

(1) PENALTY IMPOSED.—If any affiliate of any depository institution referred to in subsection (e)—

(A) refuses to permit any examiner appointed by the Director to make an examination, or

(B) refuses to provide any information required to be disclosed in the course of examination,

the depository institution shall pay a civil penalty of not more than $5,000 for each day that such refusal continues.

(2) ASSESSMENT AND COLLECTION.—Any penalty imposed under paragraph (1) shall be assessed and collected by the Director in the manner provided in section 8(i) (2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i) (2)).

(g) POWER AND DUTY OF EXAMINERS.—Each examiner appointed by the Director shall have power to conduct—

(1) a thorough examination and prepare a full report of condition of any depository institution for which the Director is the appropriate Federal banking agency, and

(2) an examination pursuant to subsection (d) and prepare a full report of the findings.

(h) Administration of Oaths and Access to Records.—In connection with examinations of depository institutions and their affiliates, the examiner shall—

(1) have access to and power to administer oaths and examine any of the officers, directors, employees, or agents thereof under oath; and

(2) be given prompt and complete access to all relevant books, records or documents of any type.

(i) PUBLICATION OF REPORTS.—The Director is authorized to publish the report of his examination of any national bank or affiliate which, within 120 days after notification, fails to comply, to the satisfaction of the Director, with the recommendations or suggestions made in such examination. The national bank or affiliate shall be given 90 days notice prior to such publication.

(j) LIMITATION ON VISITORIAL POWERS.—

(1) No depository institution chartered under Federal law shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been, exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(2) Notwithstanding paragraph (1), lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a depository institution chartered under Federal law, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the depository institution has failed to comply with such laws.

(k) The provisions of subsections (a) through (j) shall become effective on January 1, 1993.

SEC. 324. CONFORMING AMENDMENTS.

(a) Section 5240 of the Revised Statutes, as amended (12 U.S.C. 481 through 485) is revised to read as follows—

"(a) In addition to the examinations made and conducted by the Director of the Office of Depository Institutions, every Federal reserve bank may, with the approval of the Federal reserve agent or the Board of Governors of the Federal Reserve System, provide for special examination of member banks within its district. The expense of such examinations may, in the discretion of the Board of Governors of the Federal Reserve System, be assessed against the banks examined, and, when so assessed, shall be paid by the banks examined. Such examination shall be so conducted as to inform the Federal reserve bank of the condition of its member banks and of the lines of credit which are being extended by them. Every Federal reserve bank shall at all times furnish to the Board of Governors of the Federal Reserve System such information as may be demanded concerning the condition of any member bank within the district of the said Federal reserve bank.

"(b) The Board of Governors of the Federal Reserve System shall, at least once each year, order an examination of each Federal reserve bank, and upon joint application of ten member banks the Board of Governors of the Federal Reserve System shall order a special examination and report of the condition of any Federal reserve bank.".

(b) The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended—

(1) in section 4(d)(1)(B) (12 U.S.C. 1463(d)(1)(B))—

(A) by striking clauses (i) and (ii); and

(B) by redesignating clauses (iii) through (vii) as clauses (i) through (v), respectively;

(2) in section 10(b)(4) (12 U.S.C. 1467a(b)(4)), by striking the first two sentences; and

(3) by repealing section 13 (12 U.S.C. 1486b).

(c) The amendments made by subsections (a) and (b) shall become effective on January 1, 1993.

SEC. 325. APPOINTMENT OF A RECEIVER.

(a) Section 1 of the Act of June 30, 1876 (12 U.S.C. 191), is amended to read as follows:

"(1) General Grounds for Appointment of a Receiver.—A receiver may be appointed by the Director of the Office of Depository Institutions Supervision for any national banking association whenever the Director of the Office of Depository Institutions Supervision determines that one or more of the following circumstances exist:

"(A) Whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section 5239 of the Revised Statutes, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for thirty days, or whenever the Director of the Office of Depository Institutions Supervision shall become satisfied of the insolvency of a national banking association;

"(B) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business;

"(C) the bank is in an unsafe or unsound condition to transact business, including having substantially insufficient capital or otherwise;

"(D)(i) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

"(ii) there is no reasonable prospect for the bank's capital to be replenished without Federal assistance;

"(E) there is or was a violation of laws, rules, or regulations, or any unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the bank's condition or otherwise seriously prejudice the interests of its depositors;

"(F) there is concealment of books, papers, records, or assets of the bank, or refusal to submit books, papers, records, or affairs of the bank for inspection to any examiner or to any lawful agent of the Director of the Office of Depository Institutions Supervision;

"(G) there is a willful or continuing violation of an order enforceable against the bank under section 18(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i));

"(H) the bank's board of directors consists of fewer than 5 members; or

"(I) the national banking association is classified as a Zone 5 institution by the Director of the Office of Depository Institutions Supervision pursuant to section 35 of the Federal Deposit Insurance Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1993.

Subtitle D—Transfer of Federal Deposit Insurance Corporation Authority

SEC. 331. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

(a) INSURED DEPOSITORY INSTITUTION.—Section 3(c)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(3)) is amended by striking "any uninsured" and inserting instead "any insured or uninsured".

(b) APPLICATION FOR INSURANCE.—Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended—

(1) in subsection (a), by amending paragraph (1) to read as follows:

"(1) National and State nonmember banks; State savings associations and State savings banks.—

"(A) Any national nonmember bank which is engaged in the business of receiving deposits, other than trust funds as herein defined, upon application by the bank and certification by the Director of the Office of Depository Institutions Supervision in the manner prescribed in subsection (b) of section 4 of this Act, any State nonmember bank, State savings association, and State savings bank, upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

"(B) Before approving the application of any such State nonmember bank, State savings association, and State savings bank, the Board of Directors shall give consideration to the factors enumerated in section 6 of this Act, and shall determine, upon the basis of a thorough examination of such bank or savings association, that its assets in excess of its capital requirements are adequate to enable it to meet all of its liabilities to depositors and other creditors as shown by the books of the bank or savings association.

"(C) In the case of an application by a State savings association, the Board of Directors shall obtain the views of the Director of the Office of Depository Institutions Supervision. In the case of an application by a State nonmember bank or State savings bank, the Board of Directors shall obtain the views of the Board of Governors of the Federal Reserve System.

"(D) The Corporation shall notify the Director of the Office of Depository Institutions Supervision or the Board of Governors of the Federal Reserve System, as appropriate, of its determination with respect to any such application.

"(E) Before approving the application of any industrial bank or similar financial institution, the Board of Directors shall determine that it is chartered and operating under laws providing for examination, supervision, and liquidation substantially comparable to those applicable to banks operating in the same State."; and

(2) in subsection (b), by inserting "shall obtain the views of the Board of Governors of the Federal Reserve System and" before "shall give consideration".

(c) REPORTS OF CONDITION.—Section 7(a)(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(1)) is amended by striking the terms "Corporation" and "Board of Directors" wherever they appear and insert-

ing instead "Board of Governors of the Federal Reserve System".

(d) ENFORCEMENT PROCEEDINGS.—Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended to read as follows:

"(3) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply—

"(A) to any financial services holding company, and to any subsidiary (other than a bank) of a financial services holding company, as those terms are defined in the Financial Services Holding Company Act of 1991 (12 U.S.C. 1841 et seq.)—

"(i) in the same manner as they apply to a State member or State nonmember insured bank, in the case of a financial services holding company, the principal bank subsidiary of which is a State member or State nonmember insured bank (except a District bank chartered by the Director); or

"(ii) in the same manner as they apply to a national banking association, in the case of a financial services holding company, the principal bank subsidiary of which is a national banking association, a District bank chartered by the Director or a savings association; and

"(B) to any organization organized and operated under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.) or operating under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.), in the same manner as they apply to a State member insured depository institution.".

(e) EXAMINATIONS.—Section 10(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(2)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(f) AMENDMENTS TO SECTION 18 OF THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended—

(1) in subsection (c)—

(A) by striking "responsible agency" wherever it appears and inserting instead "appropriate Federal banking agency";

(B) by striking "responsible agencies" wherever it appears and inserting instead "appropriate Federal banking agencies";

(C) by striking "the other two banking agencies referred to in this subsection" wherever it appears and inserting instead "the other appropriate Federal banking agency";

(D) by striking "the other two banking agencies" wherever it appears and inserting instead "the other appropriate Federal banking agency"; and

(E) in paragraph (2), by striking "written approval" and all that appears thereafter and inserting instead "written approval of the appropriate Federal banking agency for the acquiring, assuming, or resulting institution.";

(2) in subsection (d), by striking "Corporation" wherever it appears and inserting instead "Board of Governors of the Federal Reserve System";

(3) in subsection (g)—

(A) by striking "Board of Directors" wherever it appears and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (1)—

(i) in the first sentence, by striking ", or by regulation of the Board of Governors of the Federal Reserve System";

(ii) in the second sentence, by striking "Board of Governors of the Federal Reserve System and Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(iii) in the fifth sentence, by striking ", except that the term 'member bank', as used in such section 2(b), shall be deemed to refer to an insured nonmember bank";

(4) in subsection (i)—

(A) in paragraph (1)—

(i) by striking "(except a District bank)" and inserting instead "(except a District bank chartered by the Director of the Office of Depository Institutions Supervision)";

(ii) by striking "Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (2), by striking "written consent" and all that appears thereafter in such paragraph and inserting instead "written consent of the appropriate Federal banking agency for the acquiring, assuming or resulting institution.";

(5) by repealing subsection (j); and

(6) in subsection (l)—

(A) by striking the terms "Corporation" and "Board of Directors" wherever they appear and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) by striking "subsection (j) of this section" and inserting instead "sections 23A (12 U.S.C. 371c et seq.), 23B (12 U.S.C. 371c-1 et seq.), and 22(h) (12 U.S.C. 375b et seq.) of the Federal Reserve Act, as amended".

(g) Participation by State Nonmember Insured Banks in Lotteries and Related Activities.—Section 20 of the Federal Deposit Insurance Act (12 U.S.C. 1829a) is repealed.

(h) EFFECTIVE DATE.—The amendments made by subsections (a) through (g) shall become effective on January 1, 1993.

SEC. 332. AMENDMENTS TO THE FEDERAL RESERVE ACT.

(a) The Federal Reserve Act is amended—

(1) in section 1 (12 U.S.C. 221), by inserting at the end of the second undesignated paragraph the following:

"The term 'insured State bank' shall mean a bank for which the Board of Governors of the Federal Reserve System is the appropriate Federal banking agency under the Federal Deposit Insurance Act. The term 'insured nonmember bank' shall mean an insured State bank that has not become a member of one of the reserve banks created under this Act.";

(2) in section 9A (12 U.S.C. 339), by striking "State member bank" wherever it appears and inserting instead "insured State bank";

(3) in section 22(h) (12 U.S.C. 375b), by inserting "or insured nonmember bank" after "member bank" wherever it appears;

(4) in section 23A (12 U.S.C. 371c), by inserting after subsection (e) the following new subsection:

"(f) Applicability to Insured Nonmember Banks.—The provisions of this section shall apply to an insured nonmember bank and any subsidiary thereof in the same manner and to the same extent as such section applies to a member bank and any subsidiary thereof.";

(5) in section 23B (12 U.S.C. 371c-1), by inserting after subsection (e) the following new subsection:

"(f) Applicability to Insured Nonmember Banks.—The provisions of this section shall apply to an insured nonmember bank and any subsidiary thereof in the same manner and to the same extent as such section applies to a member bank and any subsidiary thereof."; and

(6) in section 29 (12 U.S.C. 504)—

(A) by inserting "and any subsidiary thereof" after "member bank" wherever it appears; and

(B) by inserting "and any insured nonmember bank and subsidiary thereof, and any institution-affiliated party with respect to such insured nonmember bank, which violates any provision of section 22(h), 23A, or 23B of this Act, or any regulation issued pursuant thereto," before "shall forfeit".

(b) Effective Date.—The amendments made by subsection (a) shall become effective on January 1, 1993.

SEC. 333. SAVINGS PROVISIONS.

(a) Existing Rights, Duties, and Obligations Not Affected.—No provision of this Act shall affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, or any person, which existed on December 31, 1992.

(b) Continuation of Suits.—No action or other proceeding commenced by or against the Federal Deposit Insurance Corporation or the Board of Directors of the Federal Deposit Insurance Corporation with respect to any power or duty of the Corporation that is transferred by this Act to the Board of Governors of the Federal Reserve System shall abate by reason of enactment of this Act, except that effective January 1, 1993, the Board of Governors of the Federal Reserve System shall be substituted as a party to any such action or proceeding.

(c) Continuation of Orders, Resolutions, and Regulations.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory material which—

(1) have been issued, made, prescribed, or permitted to become effective by the Federal Deposit Insurance Corporation with respect to any power or duty of the Corporation that is transferred by this Act to the Board of Governors of the Federal Reserve System, and

(2) are in effect on December 31, 1992, or become effective thereafter,

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures or other advisory material; shall be administered by the Board of Governors of the Federal Reserve System; and shall be enforceable by or against the Board of Governors of the Federal Reserve System until modified, terminated, set aside, or superseded in accordance with applicable law by the Board of Governors of the Federal Reserve System, by a court of competent jurisdiction, or by operation of law.

(d) Status of Administrative Rules.—

(1) Any proposed regulation or rule of the Federal Deposit Insurance Corporation with respect to any power or duty of the Corporation that is transferred to the Board of Governors of the Federal Reserve System which has not been published as a final regulation by January 1, 1993, shall be deemed to be a proposed regulation or rule of the Board of Governors of the Federal Reserve System.

(2) Any final or interim rule published by the Corporation prior to January 1, 1993, but which shall not become effective prior to such date, shall become effective according to its terms.

(e) Application.—The provisions of this section shall apply except as otherwise expressly provided in this Act.

SEC. 334. TRANSFER OF PERSONNEL AND PROPERTY.

(a) Employees Transferred.—The Chairman of the Board of the Federal Deposit Insurance Corporation and the Chairman of the

Board of Governors of the Federal Reserve System shall jointly determine the employees of the Federal Deposit Insurance Corporation necessary to perform or support the functions or activities which are transferred from the Federal Deposit Insurance Corporation to the Board of Governors of the Federal Reserve System by this Act, and such employees shall be transferred to the Board of Governors of the Federal Reserve System in accordance with this section.

(b) Rights of Transferred Employees.—All employees identified for transfer under subsection (a) shall be entitled to the following rights:

(1) Each employee so identified shall be transferred to the Board of Governors of the Federal Reserve System for employment no later than January 1, 1993. Notwithstanding any other provision of law, section 3503 of title 5, United States Code, shall be applicable to each such transfer.

(2) Each transferred employee shall be guaranteed a position with the Board of Governors of the Federal Reserve System with comparable creditable service, and with pay no lower than the pay to which such employee was entitled on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for one year after the date of transfer, except for cause.

(3) If the Board of Governors of the Federal Reserve System determines after December 31, 1993, but before December 31, 1995, that a reorganization of the combined work force is required, that reorganization shall be deemed a "major reorganization" for purposes of affording affected employees' retirement under section 8336(d) (2) or 8414(b)(1)(B) of title 5, United States Code, or under any other retirement plan for government employees to which such employees may belong.

(4) Any transferred employee accepting employment with the Board of Governors of the Federal Reserve System as a result of such transfer may retain for one year after the date such transfer occurs membership in any employee benefit program of the Federal Deposit Insurance Corporation, other than a retirement program but including insurance, to which that employee belongs on the day immediately preceding the transfer if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Board of Governors of the Federal Reserve System. The excess of the costs of the benefits provided by this section over the costs of benefits which would have been provided by the Board of Governors of the Federal Reserve System shall be paid by the Federal Deposit Insurance Corporation. If any transferred employee elects to give up membership in a health insurance program of the Federal Deposit Insurance Corporation or the health insurance program is not continued by the Federal Deposit Insurance Corporation, such employee may elect to participate in a health insurance program offered by the Board of Governors of the Federal Reserve System within one year after the date of such transfer.

(5) Except as provided in paragraph (6), any transferred employee accepting employment with the Board of Governors of the Federal Reserve System shall remain in any retirement plan established by Chapter 83 of title 5, United States Code, or the retirement plan established by chapter 84 of title 5, United States Code, to which the employee belongs immediately preceding the transfer if—

(A) the employee does not elect to give up membership in the program; and

(B) the program is continued.

After their transfer, the Board of Governors of the Federal Reserve System will make all contributions to such program concerning such transferred employees that would have been made by the Federal Deposit Insurance Corporation if the employee had remained an employee of the Federal Deposit Insurance Corporation.

(6) Any transferred employee accepting employment with the Board of Governors of the Federal Reserve System who, immediately prior to such transfer, is an employee within the meaning of section 8401(11) of title 5, United States Code, may elect to remain in the Federal Employees' Retirement System established under Chapter 84 of title 5, United States Code, in accordance with paragraph (5), or may elect, within one year after the date of transfer, to transfer to the retirement program offered by the Board of Governors of the Federal Reserve System generally to employees whose service with the Board commenced after December 31, 1983. Any transferring employee making such an election shall forego all benefits under the retirement programs established under Subchapters I, II, IV, V and VI of Chapter 84 of title 5, United States Code, but shall receive benefits under the program offered by the Board of Governors of the Federal Reserve System as though such employee had enrolled in the Board of Governors of the Federal Reserve System's retirement program on the same date that such employee enrolled in the retirement programs established under such Subchapters.

(7) All transferring employees shall be placed in positions at the Board of Governors of the Federal Reserve System comparable to the positions from which such employees were transferred.

(8) The Board of Governors of the Federal Reserve System shall take such action as is necessary on a case-by-case basis so that employees transferring under this section receive equitable treatment regarding credit for prior service with a Federal entity or instrumentality, with respect to the transferred employees' retirement accounts, and accrued leave or vacation time, in recognition of the transferring employees' service.

(9) Transferring employees shall receive notice of their position assignments not later than 120 days after the effective date of their transfer.

(10) Except as specifically set forth herein, transferred employees shall have the same rights and entitlements as other similarly situated employees of the Board of Governors of the Federal Reserve System pursuant to sections 10 and 11(l) of the Federal Reserve Act (12 U.S.C. 244 and 248(l)).

(c) TRANSFER OF PROPERTY.—Not later than January 1, 1993, the Chairman of the Board of the Federal Deposit Insurance Corporation and the Chairman of the Board of Governors of the Federal Reserve System shall jointly determine the property of the Federal Deposit Insurance Corporation used to perform the functions and activities transferred from the Federal Deposit Insurance Corporation to the Board of Governors of the Federal Reserve System by this Act, and such property shall then be transferred promptly to the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System may hold such property and acquire any such other property as is necessary to perform the transferred functions and activities or related functions or activities with respect to State member banks or financial services holding companies.

(d) CONTINUATION OF AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, or any successor to any such agency, department or instrumentality, which was providing support services to the Federal Deposit Insurance Corporation immediately before the date of any transfer of functions to the Board of Governors of the Federal Reserve System under this section in connection with such transferred functions shall—

(1) continue to provide such service, on a reimbursable basis, in accordance with the terms of the arrangement pursuant to which such services were provided until modified or terminated in accordance with such terms except that the Board of Governors of the Federal Reserve System shall substitute for the Board of Directors of the Federal Deposit Insurance Corporation as a party to the arrangement; and

(2) consult with the Board of Governors of the Federal Reserve System to coordinate and facilitate a prompt and reasonable transition.

(e) CONFORMING AMENDMENTS TO THE FEDERAL RESERVE ACT.—

(1) Section 10(3) of the Federal Reserve Act, as amended (12 U.S.C. 243), is amended—

(A) by striking "site or building in the District of Columbia" and inserting instead "such sites or buildings"; and

(B) by striking the terms "any sites" and "building" wherever they appear and inserting instead "building or buildings".

(2) Section 10(9) of the Federal Reserve Act, as amended (12 U.S.C. 522), is repealed.

Subtitle E—Litigation Authority

SEC. 341. LITIGATION AUTHORITY.

(a) Notwithstanding any other provision of this Act, the Director, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration may employ attorneys to conduct litigation brought by or against their respective agencies, officers, or employees, in matters affecting such agencies, but such litigation may be conducted only with the prior consent of the Attorney General, and subject to the Attorney General's direction and control.

(b) Section 5(d)(1)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(1)(A)) is amended by striking the second sentence.

(c) Subsections (a) and (b) shall become effective on January 1, 1993.

Subtitle F—Reorganization of Boards of Directors

SEC. 351. FEDERAL DEPOSIT INSURANCE CORPORATION BOARD OF DIRECTORS.

(a) REORGANIZATION.—Section 2 of the Federal Deposit Insurance Act (12 U.S.C. 1812) is amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) by striking "Director of the Office of Thrift Supervision" wherever it appears and inserting instead "Chairman of the Board of Governors of the Federal Reserve System"; and

(3) in subsection (a), by striking paragraph (2).

(b) Conforming Amendment to the Federal Reserve Act.—Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) is amended by adding at the end thereof the following:

"The Chairman may delegate the authority of the Chairman to serve as a member of

the Board of Directors of the Federal Deposit Insurance Corporation to any member or employee of the Board or to any officer of a Federal Reserve bank.".

(c) EFFECTIVE DATE.—The amendments made by this subsection shall become effective January 1, 1993.

SEC. 352. REORGANIZATION OF NATIONAL CREDIT UNION ADMINISTRATION BOARD OF DIRECTORS.

(a) Section 102(b) of the Federal Credit Union Act (12 U.S.C. 1752a(b)) is amended—

(1) in the first sentence—

(A) by inserting "two of whom shall be independent members" after "members,"; and

(B) by inserting ", and one of whom shall be the Director of the Office of Depository Institutions Supervision" after "Senate";

(2) in the second sentence, by inserting "independent" before "members"; and

(3) by striking the third sentence.

(b) The amendments made by subsection (a) shall become effective January 1, 1993.

Subtitle G—Savings Provisions for the Transfer of Authority from the Board of Governors of the Federal Reserve System to the Director

SEC. 361. SAVINGS PROVISIONS.

(a) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—No provision of this title shall affect the validity of any right, duty, or obligation of the United States, the Board of Governors of the Federal Reserve System, or any person, which existed on December 31, 1992.

(b) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board of Governors of the Federal Reserve System with respect to any authority transferred from the Board to the Director pursuant to this Act shall abate by reason of enactment of this Act, except that, effective January 1, 1993, the Director shall be substituted, as appropriate, as a party to any such action or proceeding.

(c) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—All orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures and other advisory material which—

(1) have been issued, made, prescribed, or permitted to become effective by the Board of Governors of the Federal Reserve System with respect to any function transferred from the Board to the Director pursuant to this Act; and

(2) are in effect on December 31, 1992, or become effective thereafter.

shall continue in effect according to the terms of such orders, resolutions, determinations, regulations, interpretative rules, other interpretations, guidelines, procedures or other advisory material; shall be administered by the appropriate Federal banking agency; and shall be enforceable by or against the appropriate Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by the appropriate Federal banking agency, by any court of competent jurisdiction, or by operation of law.

(d) STATUS OF ADMINISTRATIVE RULES.—

(1) Any proposed regulation or rule of the Board of Governors of the Federal Reserve System relating to any function transferred from the Board to the Director pursuant to this Act, which has not been published as a final regulation by the date that the supervisory and regulatory authority of the Board of Governors of the Federal Reserve System is transferred to the Director pursuant to this Act, shall be deemed to be a proposed regulation of the appropriate Federal banking agency.

(2) Any final or interim rule that would be transferred pursuant to paragraph (1) if it were effective prior to January 1, 1993, but which will become effective subsequent to such date, shall become effective according to its terms.

(e) APPLICATION.—The provisions of this section shall apply except as otherwise expressly provided in this Act.

TITLE IV—BANK INSURANCE FUND RECAPITALIZATION

Subtitle A—Federal Deposit Insurance Corporation Borrowing

SEC. 401. FEDERAL DEPOSIT INSURANCE CORPORATION BORROWING.

Section 15 of the Federal Deposit Insurance Act (12 U.S.C. 1825) is amended—

(1) by inserting after subsection (d) the following new subsection:

"(e) CORPORATION BORROWINGS.—

"(1) AUTHORITY.—The Corporation shall have the authority to borrow funds from any Federal Reserve bank, provided that the Corporation shall have no more than $25,000,000,000 in borrowings outstanding at any one time from all Federal Reserve banks.

"(2) LIMITATIONS.—Any borrowing undertaken by the Corporation pursuant to paragraph (1) shall be undertaken only for the following purposes:

"(A) to maintain or improve the liquidity of the Bank Insurance Fund; or

"(B) to provide financial assistance with respect to any insured depository institution, or receivership or conservatorship of an insured depository institution, pursuant to section 11 or section 13."; and

(2) by amending subsection (c)(6) to read as follows:

"(6) EXCEPTIONS.—

"(A) With the prior approval of the Secretary of the Treasury, the Corporation may issue or incur up to $5,000,000,000 in the aggregate of additional liabilities in excess of the limitations of paragraph (5). The amount which the Corporation may borrow from the Secretary of the Treasury under section 14 shall be reduced by the amount of additional liabilities issued or incurred pursuant to this paragraph.

"(B) Obligations issued and funds received by the Corporation pursuant to section 15(e) shall not be subject to, and shall not be counted in calculating compliance with, the limitations of paragraph (5).

"(C) In calculating compliance with the limitations of paragraph (5), an amount equal to $5,000,000,000 less the amount of outstanding borrowing by the Corporation from the Secretary of the Treasury under section 14, or otherwise borrowed under subparagraph (A) included in net worth.".

SEC. 402. AMENDMENT TO THE FEDERAL RESERVE ACT.

Section 13 of the Federal Reserve Act (12 U.S.C. 342–347d) is amended by adding at the end thereof the following:

"Subject to such restrictions, limitations and regulations as the Board of Governors of the Federal Reserve System shall prescribe, any Federal Reserve bank is authorized to make advances to the Federal Deposit Insurance Corporation, upon its request. Such advances shall bear interest at the current market yield on outstanding marketable obligations of the United States of comparable maturities, as of the date of advance.".

Subtitle B—Federal Deposit Insurance Corporation Assessments

SEC. 411. MAXIMUM AGGREGATE ASSESSMENT.

Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C) is amended—

(1) by amending clause (iii) to read as follows:

"(iii) MAXIMUM AGGREGATE ASSESSMENT.—Notwithstanding clause (i), the maximum aggregate assessment charged to the members of the Bank Insurance Fund for any semiannual period, shall not exceed 0.15 percent of aggregate assessment base for such semiannual period."; and

(2) by inserting after clause (iii) the following:

"The Corporation shall have the authority to make such estimates and projections as may be appropriate for the purpose of computing assessment rates and aggregate assessment target amounts, and such estimates and projections shall not be subject to review by any court, nor shall any court have authority to stay or enjoin the Corporation from collecting assessments so computed. No action seeking repayment of an assessment collected by the Corporation may be brought later than 60 days after the date on which such assessment is due.".

SEC. 412. BANK INSURANCE FUND BORROWING ASSESSMENT.

Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) is further amended by inserting after subparagraph (F) the following new subparagraph:

"(G) DEDICATION OF BANK INSURANCE FUND ASSESSMENTS FOR THE REPAYMENT OF BANK INSURANCE FUND BORROWING FROM THE FEDERAL RESERVE BANK.—Subject to the provisions of this paragraph, if the Corporation has borrowed funds from a Federal Reserve bank as authorized by section 15(e), and so long as any such borrowing remains outstanding, the Board of Directors is authorized and directed—

"(i) to determine the amount of semiannual Bank Insurance Fund assessments received by the Corporation necessary to pay interest and principal on such borrowings pursuant to their terms; and

"(ii) to take whatever actions are necessary to dedicate that portion of the semiannual assessments received, determined pursuant to clause (i), to pay interest and principal on such borrowings pursuant to their terms. The amounts so dedicated shall not be available for any purpose other than payment of interest and principal of such borrowings.".

TITLE V—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

SEC. 501. 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 such transactions is essential to a smoothly functioning economy;

(3) Such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;

(4) Such netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) The effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

SEC. 502. DEFINITIONS.

For Purposes of this subtitle—

(1) "Broker/dealer" means a company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States.

(2) "Clearing organization" means a clearing house, clearing association, clearing corporation or a similar organization that provides clearing or settlement services for its members and in which all members other than the clearing organization itself are financial institutions.

(3) "Covered clearing obligation" means an obligation of a member of a clearing organization to make payment to another member of that clearing organization.

(4) "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 of a covered clearing obligation.

(5) "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" means—

(A) a depository institution as defined in Section 19(b)(1)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi));

(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" means a financial institution that fails to satisfy a covered contractual payment obligation when due, that has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), a conservatorship or similar proceedings, or that has generally ceased to meet its obligations when due.

(8) "Failed member" means any member that fails to satisfy a covered clearing obligation when due, that has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship or similar proceedings, or that has generally ceased to meet its obligations when due.

(9) "Financial institution" means a broker/dealer, a depository institution, or a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) "Futures commission merchant" means a company that is registered or licensed under Federal or State law to engage in the business of selling futures and options in commodities.

(11) "Members" means a member of or participant in a clearing organization and includes the clearing organization.

(12) "Net entitlement" means the amount by which a financial institution's covered contractual payment entitlements exceeds its covered contractual payment obligations after netting under a contract.

(13) "Net obligation" means the amount by which a financial institution's covered contractual payment obligations exceed its covered contractual payment entitlements after netting under a netting contract.

(14) "Netting contract" means a contract or agreement, including the rules of a clearing organization, between two or more financial institutions that is governed by the laws of the United States or any subdivision thereof or any State thereof and provides that covered contractual payment obligations between and among financial institutions shall be netted and set off against each other.

SEC. 503. BILATERAL NETTING.

(a) Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any two financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.

(b) The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institutions (and no such obligation shall exist if there is no net obligation).

(c) The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution (and no such right shall exist if there is no net entitlement).

(d) The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract. The provisions of this section shall be given effect notwithstanding that a financial institution is a failed financial institution.

SEC. 504. CLEARING ORGANIZATION NETTING.

(a) 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 the clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.

(b) The net entitlement of any failed member, if any, shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract. Such failed member shall have no recognizable claim against any member of such clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

SEC. 505. PREEMPTION.

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of the netting in accordance with sections 503 and 504.

Subtitle B—Right to Financial Privacy Act Amendments

SEC. 511. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 is amended—

(1) in section 1112(f)(2) (12 U.S.C. 3412(f)(2))—

(A) by inserting "for civil actions under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a), or for forfeiture under sections 981 or 982 of title 18, United States Code" after "purposes"; and

(B) by inserting at the end thereof "No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law."; and

(2) in section 1113(*l*) (12 U.S.C. 3413(*l*)), by inserting at the end thereof "No supervisory agency so transferring such record shall be deemed to have waived any privilege applicable to that record under law.".

Subtitle C—Reduction in Regulatory Burden

SEC. 521. HOME MORTGAGE DISCLOSURE ACT.

The Home Mortgage Disclosure Act is amended—

(1) in section 304 (12 U.S.C. 2803), by striking subsection (i); and

(2) in section 309 (12 U.S.C. 2808)—

(A) by striking $10,000,000" and inserting instead "$50,000,000"; and

(B) by inserting at the end thereof the following new sentence:

"The amount of total assets in the preceding sentence shall be adjusted yearly on January 1 by the annual percentage change in the Consumer Price Index reported for the previous June 1.".

SEC. 522. REGULATORY BURDEN STUDY.

(a) IN GENERAL.—The Secretary of the Treasury, and the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) shall each conduct a review of all laws primarily under their respective jurisdictions and all regulations prescribed by them (except with respect to the Internal Revenue Code of 1986, and all regulations, rules and orders issued thereunder) with respect to such laws to determine whether such laws and regulations adversely affect the capital position and profitability of insured depository institutions.

(b) ADDITIONAL REVIEW REQUIRED.—The review required by subsection (a) shall include an evaluation to determine whether such laws and regulations impose duplicative paperwork and compliance requirements.

(c) REPORT REQUIRED.—Not later than one year after the date of enactment of this Act, the Secretary of the Treasury, and the head of each appropriate Federal banking agency shall each submit a report to the Congress containing—

(1) a description of the laws and regulations that should be revised, simplified, repealed or rescinded in order to enhance the capitalization and profitability of insured depositary institutions without adversely affecting safety and soundness and consumer protection;

(2) to the extent practicable, a cost/benefit analysis of such laws and regulations, including those pertaining to corporate applications and filings and other reporting and recordkeeping requirements;

(3) an analysis of the cost impact and effect on safety and soundness of reducing the number of items to be reported on reports of condition of depository institutions with assets of under $50,000,000; and

(4) an evaluation of the appropriateness of "sunsetting" recordkeeping and reporting requirements not directly related to safety and soundness.

SEC. 523. FAIR HOUSING REPORTING.

Effective one year after the date of enactment of this Act, no appropriate Federal banking agency shall require any institution for which it is the appropriate Federal banking agency (as defined in section 3(q) of the

Federal Deposit Insurance Act (12 U.S.C. 1813(q)) to prepare, file, or maintain any form for the purpose of collection, analysis, or maintenance of appropriate data to further the purposes of, or to fulfill the requirements of, the Fair Housing Act (42 U.S.C. 3601 et seq.), other than a form for data collection, analysis, or maintenance prescribed pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

Subtitle D—Expedited Funds Availability

SEC. 531. AMENDMENT OF THE EXPEDITED FUNDS AVAILABILITY ACT.

Section 604(f)(2) of the Expedited Funds Availability Act (12 U.S.C. 4003(f)(2)) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) After a depository institution has provided notice as required under subparagraphs (A), (B) and (C), no further notice shall be required until the earlier of one year after notice has been provided or such other time as the exception for which the notice was provided ceases to apply.".

Subtitle E—Final Settlement Payment Procedure

SEC. 541. FINAL SETTLEMENT PAYMENT PROCEDURE.

Section 11(d) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)) is amended by redesignating paragraphs (4) through (16) as paragraphs (5) through (17), respectively, and inserting after paragraph (3) the following new paragraph:

"(4) FINAL SETTLEMENT PAYMENT PROCEDURE.—

"(A) IN GENERAL.—In the handling of receiverships of insured institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an insured institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

"(B) FINAL SETTLEMENT PAYMENT.—A 'final settlement payment' is the amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership.

"(C) FINAL SETTLEMENT PAYMENT RATE.—The 'final settlement payment rate' shall be—

"(i) a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership; and

"(ii) determined and announced annually by the Corporation.

"(C) CORPORATION AUTHORITY.—The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured institution in the event of its insolvency.".

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS

Subtitle A—Severability; Transition References

SEC. 601. SEVERABILITY.

If any provision of this Act, or application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of any remaining provision to other persons or circumstances, shall not be affected thereby.

SEC. 602. TRANSITION REFERENCES.

Effective on the date of enactment of this Act, and until January 1, 1993, any reference to a financial services holding company or to the Financial Services Holding Company Act of 1991 in any amendment made by, or provision of, this Act that becomes effective prior to such date shall be deemed to include a reference to a bank holding company and the Bank Holding Company Act of 1956, respectively.

Subtitle B—Technical and Conforming Amendments

SEC. 611. AMENDMENT TO ACTS CODIFIED IN TITLE 2, UNITED STATES CODE.

(a) The Federal Election Campaign Act of 1971.—The Federal Election Campaign Act of 1971 is amended effective on the date of enactment of this Act—

(1) in section 301(8)(B)(vii) (2 U.S.C. 431(8)(B)(vii)), by striking ", Federal Savings and Loan Insurance Corporation,"; and

(2) in section 302(h)(1) (2 U.S.C. 432(h)(1)), by striking ", the Federal Savings and Loan Insurance Corporation,".

(b) THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—The Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in section 255(g)(1)(A) (2 U.S.C. 905(g)(1)(A))—

(A) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(B) by striking "Director of the Office of Thrift Supervision"; and

(2) in section 256(b)(4) (2 U.S.C. 906(b)(4))—

(A) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) by striking subparagraphs (C) and (D); and

(C) by redesignating subparagraphs (E) through (I) as subparagraphs (C) through (G), respectively.

SEC. 612. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

Title 5, United States Code, is amended—

(1) in section 3132(a)(1)(D), by striking "Office of the Comptroller of the Currency, the Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(2) in section 5314—

(A) by striking "Comptroller of the Currency";

(B) by striking "Director of the Office of Thrift Supervision"; and

(C) by inserting at the end thereof "Director of the Office of Depository Institutions Supervision.";

(3) in section 5373(2)—

(A) by sriking "482,"; and

(B) by striking "2A(i) of the Home Owners' Loan Act" and inserting instead "305 of the Financial Institutions Safety and Consumer Choice Act of 1991;";

(4) in section 8438(a)(7)(B), effective on the date of enactment of this Act, by striking "Federal Savings and Loan Insurance Corporation" and inserting instead "Federal Deposit Insurance Corporation"; and

(5) in section 8478(a)(2)(B)(iii), by striking "or the Federal Savings and Loan Insurance Corporation".

SEC. 613. AMENDMENT TO ACT CODIFIED IN TITLE 7, UNITED STATES CODE.

THE FOOD STAMP ACT OF 1977.—Section 10 of the Food Stamp Act of 1977 (7 U.S.C. 2019) is amended effective on the date of enactment of this Act—

(1) by striking "the Federal Savings and Loan Insurance Corporation, or"; and

(2) by striking "the Federal Savings and Loan Insurance Corporation or".

SEC. 614. AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Title 11, United States Code, is amended—

(1) in section 365(o)—

(A) by striking "the Director of the Office of Thrift Supervision, the Comptroller of the Currency," and inserting instead "the Director of the Office of Depository Institutions Supervision,"; and

(B) by striking "its" and inserting instead "their"; and

(2) in section 507(a)(8), by striking "the Director of the Office of Thrift Supervision, the Comptroller of the Currency," and inserting instead "the Director of the Office of Depository Institutions Supervision,".

SEC. 615. AMENDMENTS TO ACTS CODIFIED IN TITLE 12, UNITED STATES CODE.

(a) THE ACT OF JANUARY 3, 1923.—Chapter 22 of the Act of January 3, 1923 (12 U.S.C. 7), is amended by striking "The Comptroller of the Currency may designate a national bank examiner to act as chief of the examining division in his office.".

(b) THE ACT OF MARCH 4, 1923.—The Act of March 4, 1923, is amended—

(1) in section 209(b), as amended (12 U.S.C. 9), by striking "The Comptroller of the Currency is hereby authorized to employ such additional examiners" and all that follows through "the performance of the work of that bureau."; and

(2) in section 209(b), as amended (12 U.S.C. 10), by striking "The salaries of the Deputy Comptrollers and of all national bank examiners and assistant examiners assigned to duty in the office of the bureau in Washington in connection with the supervision of national banks shall be considered part of the expenses of the examinations provided for by section 5240 of the Revised Statutes as amended.".

(c) THE BANK CONSERVATION ACT.—The Bank Conservation Act (12 U.S.C. 201 et seq.) is amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

(d) THE ACT OF OCTOBER 28, 1974.—Section 111 of the Act of October 28, 1974, Public Law 93-495 (12 U.S.C. 250), is amended by striking "the Director of the Office of Thrift Supervision,".

(e) THE FEDERAL RESERVE ACT.—The Federal Reserve Act is amended—

(1) in section 11, as amended (12 U.S.C. 248)—

(A) in subsection (a)(3)(A) (as redesignated by section 106(a)(1)(A) of this Act), by striking "member" and inserting instead "State"; and

(B) in subsection (d)—

(i) by striking "the bureau under the charge of the Comptroller of the Currency" and inserting instead "the Secretary of the Treasury"; and

(ii) by striking "the Comptroller" after "such notes may be delivered by", and inserting instead "the Secretary of the Treasury";

(2) in section 6, as amended (12 U.S.C. 288), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(3) in the third undesignated paragraph of section 9, as amended (12 U.S.C. 321, third paragraph), by striking "Comptroller of the

Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(4) in the sixth undesignated paragraph of section 9, as amended (12 U.S.C. 324), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(5) in the fourth and fifth undesignated paragraphs of section 4, as amended (12 U.S.C. 341), by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(6) in section 24(a), as amended (12 U.S.C. 371(a)), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(7) in section 23A(d)(5), as amended (12 U.S.C. 371c(d)(5)), by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991";

(8) in section 24A, as amended (12 U.S.C. 371d), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(9) in section 16—

(A) in the eighth paragraph, as amended (12 U.S.C. 418), by striking "the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury," and inserting instead "the Secretary of the Treasury shall";

(B) in the ninth paragraph, as amended (12 U.S.C. 419), by striking "shall be deposited in the Treasury, or in the subtreasury or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency" and inserting instead "shall be delivered to the Board of Governors of the Federal Reserve System subject to the order of the Secretary of the Treasury"; and

(C) in the tenth paragraph, as amended (12 U.S.C. 420)—

(i) by striking "Comptroller of the Currency" and inserting instead "Secretary of the Treasury"; and

(ii) striking "Federal Reserve Board" and inserting instead "Board of Governors of the Federal Reserve System";

(10) in section 19 (12 U.S.C. 461)—

(A) in subsection (b)(1)(F)—

(i) by striking "Board of Directors of the Federal Deposit Insurance Corporation,"; and

(ii) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(B) in subsection (b)(4)(B)—

(i) by striking "Board of Directors of the Federal Deposit Insurance Corporation," and

(ii) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(11) in the sixth paragraph of section 21, as amended (12 U.S.C. 486), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(12) in the sixth paragraph of section 2, as amended (12 U.S.C. 501a), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(13) in section 29, as amended (12 U.S.C. 504), by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(14) in the fourth undesignated paragraph of section 25, as amended (12 U.S.C. 602), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(15) in the tenth undesignated paragraph of section 25(a), as amended (12 U.S.C. 619), by—

(A) striking "Bank Holding Company Act of 1956" wherever it appears and inserting instead "Financial Services Holding Company Act of 1991";

(B) striking "bank holding companies" and inserting instead "financial services holding companies"; and

(C) striking "bank holding company" and inserting instead "financial services holding company"; and

(16) in the fifteenth undesignated paragraph of section 25(a) (12 U.S.C. 624), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(f) REVISED STATUTES.—Section 5208 of the Revised Statutes (12 U.S.C. 501) is amended by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(g) THE HOME OWNERS' LOAN ACT.—The Home Owners' Loan Act, as amended (12 U.S.C. 1461 et seq.), is amended—

(1) in section 2 (12 U.S.C. 1462)—

(A) in paragraph (1), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(B) by amending paragraph (3) to read as follows:

"(3) Office—

"The term 'Office' means the Office of Depository Institutions Supervision."; and

(C) in paragraph (7), by striking "Office of the Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) by repealing section 3 (12 U.S.C. 1462a);

(3) in section 4 (12 U.S.C. 1463)—

(A) in subsection (a)(2), by striking "Office" and inserting instead "Office of Depository Institutions Supervision"; and

(B) in subsection (c), by striking "by the Comptroller of the Currency";

(4) in section 5(t) (12 U.S.C. 1464(t))—

(A) in paragraph (9)—

(i) by striking the phrase "by the Comptroller of the Currency" wherever it appears; and

(ii) in subparagraph (A)—

(I) by striking "Comptroller's"; and

(II) by inserting "for national banks" after "definition of capital"; and

(B) by amending paragraph (10) to read as follows:

"(10) Use of definitions for national banks.—

"The standards prescribed under paragraph (1) shall include all relevant substantive definitions established for national banks.";

(5) by repealing section 9 (12 U.S.C. 1467); and

(6) in section 10 (12 U.S.C. 1467a)—

(A) in subsection (a)(1)(I)—

(i) by striking "bank holding company" and inserting instead "financial services holding company"; and

(ii) by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991";

(B) in subsection (c)—

(i) in paragraph (2)(F)(i)—

(I) by striking "bank holding company" and inserting instead "financial services holding company"; and

(II) by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991"; and

(ii) in paragraph (8)—

(I) by striking "bank holding company" and inserting instead "financial services holding company"; and

(II) by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991";

(C) in subsection (m)(3)(C)—

(i) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(ii) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting instead "Financial Services Holding Company Act of 1991";

(D) in subsection (q)(1)(A)(ii), by striking "bank holding company" and inserting instead "financial services holding company"; and

(7) in section 11(c) (12 U.S.C. 1468(c))—

(A) by striking "or 18(j)"; and

(B) by striking ", as appropriate" after "the Federal Deposit Insurance Act".

(h) THE NATIONAL HOUSING ACT.—The National Housing Act is amended—

(1) in section 203(s) (12 U.S.C. 1709(s))—

(A) in paragraph (5), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in paragraph (6), by striking "or a bank holding company, or a subsidiary of or affiliate of such a company,";

(C) in paragraph (7), by striking "Board of Directors of the Federal Deposit Insurance Corporation; and" and inserting instead "Board of Governors of the Federal Reserve System;";

(D) in paragraph (8), by striking "Director of the Office of Thrift Supervision." and inserting instead "Director of the Office of Depository Institutions Supervision; and"; and

(E) by adding at the end thereof the following new paragraph:

"(9) if the mortgagee is a financial services holding company, or a subsidiary of our affiliate of such a company, the appropriate Federal banking agency as defined by section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).";

(2) in section 255(k)(3), as amended (12 U.S.C. 1715z-20(k)(3))—

(A)(i) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision"; and

(ii) effective January 1, 1993, by striking "the Director of the Office of Thrift Supervision,"; and

(B) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(3) in section 303(f) (12 U.S.C. 1718(f)), by striking "State member bank of the Federal Reserve System or any member of the Federal Deposit Insurance Corporation" and inserting instead "State bank"; and

(4) in section 502(12 U.S.C. 1701c)—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision"; and

(B) effective January 1, 1993, by striking "The Director of the Office of Thrift Supervision, in consultation with the Comptroller of the Currency and" and inserting instead "The Director of the Office of Depository Institutions Supervision, in consultation with".

(i) THE ACT OF OCTOBER 15, 1982.—Section 341 of the Act of October 15, 1982, as amended (12 U.S.C. 1701j-3), is amended—

(1) in subsection (c)(1)(B), by striking "Comptroller of the Currency" and inserting

instead "Director of the Office of Depository Institutions Supervision"; and

(2) in subsection (e)(1)—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision"; and

(B) effective January 1, 1993, by striking "The Director of the Office of Thrift Supervision, in consultation with the Comptroller of the Currency and" and inserting instead "The Director of the Office of Depository Institutions Supervision, in consultation with".

(j) THE DOMESTIC HOUSING AND INTERNATIONAL RECOVERY AND FINANCIAL STABILITY ACT.—Section 469 of the Domestic Housing and International Recovery and Financial Stability Act (12 U.S.C. 1701p-1) is amended—

(1)(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision"; and

(B) effective January 1, 1993, by striking "the Director of the Office of Thrift Supervision,"; and

(2) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(k) THE FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3 (12 U.S.C. 1813)—

(A) in subsection (1)(5), by striking "Comptroller of the Currency, Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in subsection (u), by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(C) in subsection (w) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(ii) in paragraph (2), by striking "bank holding company" and inserting instead "financial services holding company";

(2) in section 4(b) (12 U.S.C. 1814(b)), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(3) in section 5 (12 U.S.C. 1815)—

(A) in subsection (a)—

(i) in paragraph (3), by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(ii) in paragraph (6), by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(iii) in paragraph (7), by striking "(excluding the Director of the Office of Thrift Supervision)"; and

(B) in subsection (d)(3)—

(i) in subparagraph (A)—

(I) by striking "bank holding company" and inserting instead "financial services holding company"; and

(II) by striking "and the Board of Governors of the Federal Reserve System"; and

(ii) in subparagraph (E)—

(I) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company";

(II) by striking "Board of Governors of the Federal Reserve System" and inserting instead "appropriate Federal banking agency"; and

(III) by striking "Board" and inserting instead "appropriate Federal banking agency";

(4) in section 7 (12 U.S.C. 1817)—

(A) in subsection (a)(2)

(i) in subparagraph (A), by striking "the Comptroller of the Currency, the Director of the Office of the Thrift Supervision" wherever it appears and inserting instead "the Director of the Office of Depository Institutions Supervision"; and

(ii) in subparagraph (B)—

(I) by striking "the Comptroller of the Currency,"; and

(II) by striking ", and the Director of the Office of Thrift Supervision" and inserting instead "and the Director of the Office of Depository Institutions Supervision";

(B) in subsection (a)(3)—

(i) by striking "Comptroller of the Currency,"; and

(ii) by striking "Chairman of the Director of the Office of Thrift Supervision" and by inserting instead "Director of the Office of Depository Institutions Supervision";

(C) in subsection (a)(6) by striking "the Comptroller of the Currency, the Director of the Office of Thrift Supervision" and inserting instead "the Director of the Office of Depository Institutions Supervision";

(D) in subsection (a)(7) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(E) in subsection (n)—

(i) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision,"; and

(ii) by striking "under section 1467 of this Act";

(5) in section 8 (12 U.S.C. 1818)—

(A) in subsection (a)(2)(A), by striking "(if the Corporation is the appropriate Federal banking agency)";

(B) in subsection (a)(8)(B)(ii), by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(C) in subsection (b)(4), by striking "bank holding company" and inserting instead "financial services holding company";

(D) in subsection (b)(5), by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(E) in subsection (e)(4), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(F) in subsection (g)(2), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(G) in subsection (o)—

(i) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(ii) by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(H) in subsection (t), by striking "Director of the Office of Thrift Supervision" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(6) in section 11 (12 U.S.C. 1821)—

(A) in subsection (n)(1)(A), by striking "Office of the Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(C) by striking "Office of Thrift Supervision" wherever it appears and inserting instead "Office of Depository Institutions Supervision";

(7) in section 13 (12 U.S.C. 1823)—

(A) in subsection (i)(1)(C), by striking "Director of the Office of Thrift Supervision or the Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(B) in subsection (k)(1)(A)(iv), by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(8) in section 18 (12 U.S.C. 1828), by striking "Director of the Office of Thrift Supervision" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(9) by repealing section 26 (12 U.S.C. 1831c).

(l) THE FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989.—The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is amended—

(1) in section 918(b) (12 U.S.C. 1833(b))—

(A) by amending paragraph (1) to read as follows:

"(1) The Director of the Office of Depository Institutions Supervision.";

(B) by striking paragraph (5); and

(C) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively;

(2) in section 1206 (12 U.S.C. 1833b), by striking "Comptroller of the Currency," and "and the Office of Thrift Supervision," and inserting "and" before "the Farm Credit Administration"; and

(3) in section 1216 (12 U.S.C. 1833e)—

(A) in subsection (a)—

(i) by amending paragraph (1) to read as follows:

"(1) the Director of the Office of Depository Institutions Supervision";

(ii) by striking paragraph (2); and

(iii) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively;

(B) in subsection (c) by striking "Comptroller of the Currency, the Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(C) in subsection (d)—

(i) by amending paragraph (2) to read as follows:

"(2) the Director of the Office of Depository Institutions Supervision;";

(ii) by striking paragraph (3); and

(iii) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(m) THE BANK PROTECTION ACT OF 1968.—Section 2 of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended—

(1) in paragraph (1), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in paragraph (2), by adding "and insured nonmember banks" after "Federal Reserve System" the second time that it appears;

(3) by striking paragraph (3);

(4) by redesignating paragraph (4) as paragraph (3); and

(5) in paragraph (3) (as redesignated)—

(i) by striking "Office of Thrift Supervision" and inserting instead "the Office of Depository Institutions Supervision"; and

(ii) by inserting "associations" after "savings".

(n) THE FARM CREDIT ACT OF 1971.—The Farm Credit Act of 1971, as amended, is amended—

(1) in section 5.20 (12 U.S.C. 2255), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) in section 5.22 (12 U.S.C. 2257), by strinking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(o) THE REAL ESTATE SETTLEMENT PROCEDURES ACT.—The Real Estate Settlement Procedures Act is amended—

(1) in section 4(a) (12 U.S.C. 2603(a))—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision; and

(B) effective January 1, 1993, by striking "Director of the Office Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in section 8, as amended (12 U.S.C. 2607)—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" wherever it appears and inserting instead "Director of the Office of Thrift Supervision"; and

(B) effective on January 1, 1993, by striking "Director of the Office of Thrift Supervision" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

(p) THE HOME MORTGAGE DISCLOSURE ACT OF 1975.—The Home Mortgage Disclosure Act of 1975 is amended—

(1) in sectin 304(h) (12 U.S.C. 2803(h))—

(A) in paragraph (1), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(C) in paragraph (3), by striking "Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System";

(2) in section 305(b) (12 U.S.C. 2804(b))—

(A) in paragraph (1)(A), by striking "Comptroller of the Currency" and inserting instead "Office of Depository Institutions Supervision";

(B) in paragraph (1)(C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(C) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "the Office of Depository Institutions Supervision";

(3) in section 306(b) (12 U.S.C. 2805(b))—

(A) by amending the second sentence to read as follows: "Notwithstanding any other provision of this subsection, compliance with the requirements imposed by this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by the Director of the Office of Depository Institutions Supervision in the case of national banks and savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation."; and

(B) by striking paragraphs (1) and (2); and

(4) in section 307 (12 U.S.C. 2806)—

(A) in subsection (a)(1)—

(i) by striking "Office of Thrift Supervision" wherever it appears and inserting instead "Office of Depository Institutions Supervision";

(ii) by striking "Comptroller of the Currency,"; and

(iii) by striking "the Federal Deposit Insurance Corporation";

(B) in subsection (a)(3), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(C) in subsection (b), by striking "Office of Thrift Supervision" wherever it appears and inserting instead "Office of Depository Institutions Supervision".

(q) THE COMMUNITY REINVESTMENT ACT OF 1977.—Section 803(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(1)) is amended—

(1) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in subparagraph (B), by striking "which are members of the Federal Reserve System and bank holding companies";

(3) by striking subparagraph (C);

(4) by redesignating subparagraph (D) as subparagraph (C) and amending such subparagraph—

(A) by striking "section 8 of this Act, by"; and

(B) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(5) by adding at the end of paragraph (1) a new subparagraph to read as follows:

"(D) the appropriate Federal banking agency, as defined by section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to a financial services holding company;".

(r) THE INTERNATIONAL BANKING ACT OF 1978.—The International Banking Act of 1978 is amended—

(1) in section 1(b) (12 U.S.C. 3101)—

(A) by amending paragraph (4) to read as follows:

"(4) 'Director' means the Director of the Office of Depository Institutions Supervision";

(B) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively;

(C) by inserting after paragraph (12) the following new paragraph:

"(13) the term 'appropriate Federal banking agency' shall have the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));"; and

(D) by amending paragraph (14) (as redesignated) to read as follows:

"(14) the terms 'bank', 'financial services holding company', 'company', 'control', and 'subsidiary' have the same meanings assigned to those terms in the Financial Services Holding Company Act of 1991 and the terms 'controlled' and 'controlling' shall be construed consistently with the term 'control' as defined in section 2 the Financial Services Holding Company Act of 1991;";

(2) in section 4 (12 U.S.C. 3102), by striking "Comptroller" wherever it appears and inserting instead "Director";

(3) in section 6(a) (12 U.S.C. 3104(a)), by striking "Comptroller" and inserting instead "Director";

(4) in section 5(c) (12 U.S.C. 3103(c)), by striking "Board" and inserting instead "appropriate Federal banking agency";

(5) in section 7(c) (12 U.S.C. 3105(b)), by striking "Comptroller" and inserting instead "Director";

(6) in section 8 (12 U.S.C. 3106)—

(A) in subsection (c)—

(i) by striking "Board" wherever it appears and inserting instead "appropriate Federal banking agency";

(ii) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting instead "Financial Services Holding Company Act of 1991"; and

(iii) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(B) in subsection (d), by striking "bank holding company" wherever it appears and inserting instead "financial services holding company".

(7) in section 9(b)(2) (12 U.S.C. 3106a(2)), by striking "Comptroller" and inserting instead "appropriate Federal banking agency"; and

(8) in section 13(a) (12 U.S.C. 3108(a)), by striking "Comptroller, the Board, and the Federal Deposit Insurance Corporation," and inserting instead "appropriate Federal banking agencies".

(s) THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT OF 1978.—The Depository Institution Management Interlocks Act of 1978 is amended—

(1) in section 202 (12 U.S.C. 3201), by striking "bank holding company" wherever it appears and inserting instead "financial services holding company";

(2) in section 205(9) (12 U.S.C. 3204(9)), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(3) in section 207 (12 U.S.C. 3206)—

(A) by amending paragraph (1) to read as follows:

"(1) the Director of the Office of Depository Institutions Supervision with respect to national banks and banks located in the District of Columbia,";

(B) in paragraph (2), by striking "which are members of the Federal Reserve System, and bank holding companies";

(C) by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(D) in paragraph (3) (as redesignated) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(E) by inserting after paragraph (4) (as redesignated) the following new paragraph:

"(5) the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of a financial services holding company;";

(4) in section 208 (12 U.S.C. 3207)—

(A) in paragraph (1) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in paragraph (2)—

(i) by inserting "and insured nonmember banks" after "Federal Reserve System" the second time it appears; and

(ii) by striking "and bank holding company,";

(C) in paragraph (4)—

(i) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting instead "Director of the Office of Thrift Supervision with respect to institutions the accounts of which are insured by the Federal Deposit Insurance Corporation"; and

(ii) effective January 1, 1933, by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(D) by striking paragraph (3) and redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(E) by inserting a new paragraph (5) to read as follows:

"(5) the appropriate Federal banking agency, as defined in section 3(q) of the Federal

Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of a financial services holding company.".

(t) THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—The Federal Financial Institutions Examination Council Act of 1978 is amended—

(1) in section 1002 (12 U.S.C. 3301)—

(A) by striking "Comptroller of the Currency"; and

(B)(i) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Office of Thrift Supervision"; and

(ii) effective January 1, 1993, by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(2) in section 1003(1) (12 U.S.C. 3302(1))—

(A) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(B) by striking "the Office of Thrift Supervision";

(3) in section 1004(a) (12 U.S.C. 3303(a))—

(A) in paragraph (1), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(B) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4);

(4) in section 1005 (12 U.S.C. 3304), by striking "One-fifth" and inserting instead "One-fourth";

(5) in section 1121(6) (12 U.S.C. 3350(6))—

(A) effective on the date of enactment of this Act, by striking "Corporations" and inserting instead "Corporation";

(B) by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(C) by striking "the Office of Thrift Supervision,".

(u) THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1101 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) in paragraph (6)—

(A) in subparagraph (A), by striking "bank holding company" and inserting instead "financial services holding company"; and

(B) in subparagraph (B), by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991"; and

(2) in paragraph (7)—

(A) in subparagraph (B), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(B) by striking subparagraph (E) and redesignating subparagraphs (F) through (H) as subparagraphs (E) through (G), respectively; and

(C) in subparagraph (G) (as redesignated), by inserting "or insurance" after "securities".

(v) THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.—The Alternative Mortgage Transaction Parity Act of 1982 is amended—

(1) in section 802(a)(3) (12 U.S.C. 3801(a)(3))—

(A) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(B) by striking "Comptroller of the Currency"; and (2) in section 804(a) (12 U.S.C. 3803(a))—

(A) in paragraph (1), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions"; and

(B) in paragraph (3), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision".

(w) THE INTERNATIONAL LENDING SUPERVISION ACT OF 1983.—The International Lending Supervision Act of 1983 is amended—

(1) in section 903 (12 U.S.C. 3902), by striking ", except" and all that follows through subparagraph (C) and inserting instead "; and"; and

(2) in section 912 (12 U.S.C. 3911)—

(A) by striking "one of three Federal banking regulatory and supervisory agencies, and as"; and

(B) by striking "Office of the Comptroller of the Currency" and inserting instead "Office of Depository Institutions Supervision".

(x) THE EXPEDITED FUNDS AVAILABILITY ACT OF 1987.—The Expedited Funds Availability Act of 1987 is amended—

(1) in section 609(e) (12 U.S.C. 4008(e))—

(A) by striking "Comptroller of the Currency"; and

(B)(i) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Office of Thrift Supervision"; and

(ii) effective January 1, 1993, by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(2) in section 610(a)(1) (12 U.S.C. 4009(a)(1))—

(A) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) by amending subparagraph (B) to read as follows:

"(B) State insured banks (other than national banks), by the Board of Governors of the Federal Reserve System."; and

(C) by striking subparagraph (C); and

(3) in section 610(a)(2) (12 U.S.C. 4009(a)(2)), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision".

(y) THE NATIONAL BANK ACT.—The National Bank Act (12 U.S.C. 38 note) is amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) by striking "Comptroller" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

(z) REVISED STATUTES.—Sections 5155 (12 U.S.C. 36), 5138 (12 U.S.C. 51), 5205 (12 U.S.C. 55), 5174 (12 U.S.C. 108), 5185 (12 U.S.C. 151), 5186 (12 U.S.C. 152), and 5213 (12 U.S.C. 164) of the Revised Statutes are each amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) by striking "Comptroller" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

(aa) MISCELLANEOUS PROVISIONS.—Section 13 of the Act of September 8, 1959 (12 U.S.C. 21a); section 2 of the Act of May 1, 1886 (12 U.S.C. 30); section 345 of the Act of August 23, 1935 (12 U.S.C. 51b-1); chapter 58 of the Act of February 25, 1930 (12 U.S.C. 67); section 1 of the Public Law 87-722 (12 U.S.C. 92a); section 12 of the Act of March 14, 1900 (12 U.S.C. 101); section 3 of the Act of October 5, 1917 (12 U.S.C. 103); sections 3 and 5 of the Act of June 20, 1874 (12 U.S.C. 121, 105); section 1 of the Act of June 13, 1933 (12 U.S.C. 121a); section 9 of the Act of July 12, 1882 (12 U.S.C. 178); section 3 of the Act of June 30, 1876 (12 U.S.C. 197); sections 1, 2, and 3 of the Act of March 29, 1886 (12 U.S.C. 198-200); the Act of August 17, 1950 (12 U.S.C. 214 et seq.); the Act of November 7, 1917 (12 U.S.C. 215-215b); and sections 731-735 of Public Law 96-221 (12 U.S.C. 216-216d) are each amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) by striking "Comptroller" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

(bb) The Emergency Banking and Bank Conservation Act.—Sections 301 and 302 of the Emergency Banking and Bank Conservation Act (12 U.S.C. 51a, 51b) are amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institution Supervision", and

(2) by striking "Comptroller" wherever it appears and inserting instead "Director of the Office of Depository Institution Supervision".

(cc) THE BANKING ACT OF 1933.—Sections 22, 29, and 31 of the Banking Act of 1933 (12 U.S.C. 64a, 71a, and 197a) are amended—

(1) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) by striking "Comptroller" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision".

SEC. 616. AMENDMENTS TO ACTS CODIFIED IN TITLE 15, UNITED STATES CODE.

(a) THE ACT OF SEPTEMBER 26, 1914.—Section 18 of the Act of September 26, 1914, as amended (15 U.S.C. 57a), is amended—

(1) in subsection (f)(1)—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and inserting instead "Director of the Office of Thrift Supervision";

(B) effective January 1, 1993, by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(C) effective on the date of enactment of this Act, by striking "each such Board" and inserting instead "the appropriate Board or the Director";

(D) effective on the date of enactment of this Act, by striking "any such Board" and inserting instead "the appropriate Board or the Director"; and

(E) effective on the date of enactment of this Act, by striking "such Board" and inserting instead "the appropriate Board or the Director";

(2) in subsection (f)(2)—

(A) by striking "Comptroller of the Currency" and inserting instead "Office of Depository Institutions Supervision";

(B) by inserting "and" at the end of subparagraph (A);

(C) by amending subparagraph (B) to read as follows:

"(B) member banks of the Federal Reserve System and banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A)), by the division of consumer affairs established by the Board of Governors of the Federal Reserve System."; and

(D) by striking subparagraph (C).

(b) THE TRUST INDENTURE ACT OF 1939.—Section 321(h) of the Trust Indenture Act of

1939, as amended (15 U.S.C. 77uuu), is amended by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(c) THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934, as amended, is amended—

(1) in section 3(a)(6) (15 U.S.C. 78c(a)(6)), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in section 3(a)(34) (15 U.S.C. 78c(a)(34))—

(A) by striking "Comptroller of the Currency" wherever it appears and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(C) by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(D) in subparagraph (A)—

(i) in clause (ii), by striking ", a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a subsidiary or a department or division of such subsidiary";

(ii) in clause (iii)—

(I) by striking "Federal Deposit Insurance Corporation" where it first appears and inserting instead "Board of Governors of the Federal Reserve System"; and

(II) by striking "and" at the end thereof; and

(iii) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (q)), in the case of a financial services holding company; and";

(E) in subparagraph (B)—

(i) in clause (ii), by striking ", a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph";

(ii) in clause (iii)—

(I) by striking "Federal Deposit Insurance Corporation" where it first appears and inserting instead "Board of Governors of the Federal Reserve System"; and

(II) by striking "and" at the end thereof; and

(iii) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of a financial services holding company; and' "

(F) in subparagraph (C)—

(i) in clause (ii), by striking ", a bank holding company, or a subsidiary of a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph when the appropriate regulatory agency for such clearing agency is not the Commission";

(ii) in clause (iii)—

(I) by striking "Federal Deposit Insurance Corporation" where it first appears and inserting instead "Board of Governors of the Federal Reserve System"; and

(II) by striking "and" at the end thereof; and

(iii) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) the appropriate Federal banking agency, as defined by section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), in the case of a financial services holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and";

(G) in subparagraph (D)(iii), by striking "Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System";

(H) in subparagraph (F)(iii), by striking "Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System";

(I) in subparagraph (G)—

(i) in clause (iii), by striking "Federal Deposit Insurance Corporation" where it first appears and inserting instead "Board of Governors of the Federal Reserve System"; and

(ii) in clause (iv), by striking "Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(J) in the last sentence by striking "bank holding company" wherever it appears and inserting instead "financial services holding company";

(3) in section 15C—

(A) in subsection (b)(2)(C)(ii) (15 U.S.C. 78o-5(b)(2)(C)(ii)), by striking "section 8 of the Bank Holding Company Act of 1956" and inserting instead "section 8 of the Financial Services Holding Company Act of 1991"; and

(B) in subsection (f)(1) (15 U.S.C. 78o-5(f)(1))—

(i) by striking "Comptroller of the Currency," and inserting instead "Director of the Office of Depository Institutions Supervision,";

(ii) by striking "the Director of the Office of Thrift Supervision,"; and

(iii) effective on the date of enactment of this Act, by striking "the Federal Savings and Loan Insurance Corporation,"; and

(4) in section 17 (15 U.S.C. 78q)—

(A) in subsection (f)(4)—

(i) in clause (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(ii) in clause (C), by striking "Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in subsection (h)(3)(B), by striking "section 8 of the Bank Holding Company Act of 1956" and inserting instead "section 8 of the Financial Services Holding Company Act of 1991".

(d) THE INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 *et seq.*), is amended—

(1) in section (2)(a)(5) (15 U.S.C. 80a-2(a)(5)), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) in section 6(a)(3) (15 U.S.C. 80a-6(a)(3)), effective on the date of enactment of this Act, by inserting "or successor thereto" after "Federal Savings and Loan Insurance Corporation".

(e) THE INVESTMENT ADVISORS ACT OF 1940.—Section 202 of the Investment Advisors Act of 1940, as amended (15 U.S.C. 80b-2), is amended—

(1) in subsection (a)(2), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) in subsection (a)(11)—

(A) by striking "bank holding company" and inserting "financial services holding company"; and

(B) by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991".

(f) THE SMALL BUSINESS INVESTMENT ACT OF 1958.—The Small Business Investment Act of 1958, as amended (15 U.S.C. 661), is amended—

(1) in section 302(b) (15 U.S.C. 682(b)), effective on the date of enactment of this Act, by striking "Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Act of 1956, shares" and inserting instead "Shares"; and

(2) in section 308(b) (15 U.S.C. 687(b)), by striking "or the Federal Savings and Loan Insurance Corporation".

(g) THE CONSUMER CREDIT PROTECTION ACT.—The Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.), is amended—

(1) in section 108 (15 U.S.C. 1607)—

(A) in subsection (a)(1)(A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in subsection (a)(1)(C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting "Board of Governors of the Federal Reserve System"; and

(C) in subsection (a)(2), by striking "the Director of the Office of Thrift Supervision" and inserting "the Director of the Office of Depository Institutions Supervision";

(2) in section 620(b) (15 U.S.C. 1681s(b))—

(A) in paragraph (1)(A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(B) in paragraph (1)(C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(C) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(3) in section 704(a) (15 U.S.C. 1691c(a))—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(ii) in subparagraph (C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(4) in section 814(b) (15 U.S.C. 1692*l*(b))—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(ii) in subparagraph (C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(5) in section 917(a) (15 U.S.C. 1693o(a))—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(ii) in subparagraph (C), by striking "Board of Directors of the Federal Deposit Insurance Corporation" and inserting instead "Board of Governors of the Federal Reserve System"; and

(B) in paragraph (2), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision".

(h) THE EXPORT TRADING COMPANY ACT OF 1982.—Section 102(b) of the Export Trading Company Act of 1982 (15 U.S.C. 4001(b)) is amended by striking "bank holding companies" wherever it appears and inserting instead "financial services holding companies".

SEC. 617. AMENDMENT TO ACT CODIFIED IN TITLE 16, UNITED STATES CODE.

THE FEDERAL POWER ACT.—Section 305(c)(2)(A) of the Federal Power Act (16 U.S.C. 825d(c)(2)(A)) is amended by striking "bank holding company" and inserting instead "financial services holding company".

SEC. 618. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

Title 18, United States Code, is amended—

(1) in section 212—

(A) by striking "by the Comptroller of the Currency,";

(B) by striking "by the Office of Thrift Supervision,"; and

(C) by striking "Federal Deposit Insurance Corporation" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in section 655, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(3) in section 657, by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(4) in section 981(a)(1)(D), by striking "Office of the Comptroller of the Currency or the Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(5) in section 982(a)(3), by striking "Office of the Comptroller of the Currency or the Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(6) in section 1005—

(A) in the third paragraph, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(B) in the sixth paragraph, by inserting in the last sentence ", as amended by the Financial Services Holding Company Act of 1991" before the period.

(7) in section 1006, by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(8) in section 1014, by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(9) in section 1032, by striking "Comptroller of the Currency or the Director of the Office of Thrift Supervision" and inserting instead "Director of the Office of Depository Institutions Supervision";

(10) in section 1114, by striking "Comptroller of the Currency, the Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision";

(11) in section 1906, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(12) in section 1908, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

SEC 619. AMENDMENT TO ACT CODIFIED IN TITLE 22, UNITED STATES CODE.

THE FINANCIAL REPORTS ACT OF 1988.—Section 3602 of the Financial Reports Act of 1988 (22 U.S.C. 5352) is amended by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

SEC. 620. AMENDMENT TO ACT CODIFIED IN TITLE 25, UNITED STATES CODE.

THE ACT OF JUNE 24, 1938.—Subsection (a) of the first section of the Act of June 24, 1938 (25 U.S.C. 162a(a)) is amended by striking "in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks".

SEC. 621. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

The Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) is amended—

(1) in section 149(b)(4)(B), effective on the date of enactment of this Act, by striking "the Federal Savings and Loan Insurance Corporation,";

(2) in section 246A(c)(3)—

(A) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(B) by amending clause (ii) to read as follows:

"(ii) FINANCIAL SERVICES HOLDING COMPANY.—The term "Financial Services Holding Company" means a financial services holding company (within the meaning of section 2 of the Financial Services Company Act of 1991 (12 U.S.C. 1841)).";

(3) in section 304(b)(3)—

(A) by striking "bank holding companies" and inserting instead "financial services holding companies";

(B) by striking "BHC" wherever it appears and inserting instead "FSHC";

(C) by striking "BHC's" wherever it appears and inserting instead FSHC's"; and

(D) by amending clause (D)(ii) to read as follows:

"(ii) FSHC.—The term "FSHC" means a financial services holding company (within the meaning of section 2 of the Financial Services Holding Company Act of 1991).";

(4) in section 581, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(6) in section 597(c)(1), effective on the date of enactment of this Act, by inserting "(or any successor thereof)" after "the Federal Savings and Loan Insurance Corporation";

(7) in section 864(e)(5)(D)—

(A) by striking "bank holding companies" and inserting instead "financial services holding companies";

(B) by striking "bank holding company" wherever it appears and inserting instead "financial services holding company"; and

(C) by striking "Bank Holding Company Act of 1956" and inserting instead "Financial Services Holding Company Act of 1991";

(8) in section 3305(c), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(9) in section 7507(a), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

SEC. 622. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

Title 28, United States Code, is amended—

(1) in section 1348, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(2) in section 1394, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(3) in section 2001(c), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(4) in section 2002, by striking "Comptroller of the Currency," and inserting instead "Director of the Office of Depository Institutions Supervision";

(5) in section 2004, by striking "Comptroller of the Currency," and inserting instead "Director of the Office of Depository Institutions Supervision";

SEC. 623. AMENDMENTS TO TITLE 31, UNITED STATES CODE.

Title 31, United States Code, is amended—

(1) in the table of sections of subchapter I of chapter 3 of subtitle I—

(A) by amending the item relating to section 307 to read as follows:*ERR08*

"307. Office of Depository Institutions Supervision.";

(B) by amending the item relating to section 309 to read as follows:*ERR08*

"309. Continuing in Office.";

and

(C) by striking the item relating to section 310;

(2) by amending section 307 to read as follows:*ERR08*

"307. Office of Depository Institutions Supervision

"The Office of Depository Institutions Supervision, established by section 301 of the Financial Institutions Safety and Consumer Choice Act of 1991, is a bureau of the Department of the Treasury.";

(3) by striking section 309 and redesignating section 310 as section 309;

(4) in section 321—

(A) by inserting "and" at the end of subsection (c)(1);

(B) by amending subsection (c)(2) to read as follows:

"(2) vested by the Financial Institutions Safety and Consumer Choice Act of 1991 in the Director of the Office of Depository Institutions Supervision";

(C) by striking subsection (c)(3); and

(D) by striking subsection (e);

(5) in section 714(a), by striking "the Office of the Comptroller of the Currency, and the Office of Thrift Supervision" and inserting instead "and the Office of Depository Institutions Supervision";

(6) in section 718(a), by striking "Office of the Comptroller of the Currency" and inserting instead "Office of Depository Institutions Supervision";

(7) in section 1321(b), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision";

(8) by amending section 5115(b) to read as follows:

"(b) The amount of United States currency notes outstanding and in circulation may not be more than $300,000,000."; and

(9) in section 5119(b)(2), by adding the following sentence at the end thereof:

"The Secretary shall not be required to reissue United States currency notes upon redemption.".

SEC. 624. AMENDMENTS TO ACTS CODIFIED IN TITLE 42, UNITED STATES CODE.

(a) THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 3(a)(5) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4003(a)(5)), is amended by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Insitutions Supervision".

(b) THE ENERGY CONSERVATION AND PRODUCTION ACT.—Section 303(7) of the Energy Conservation and Production Act (42 U.S.C. 6832(7)) is amended—

(1) effective on the date of enactment of this Act, by striking "the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation" and inserting instead "the Director of the Office of Thrift Supervision"; and

(2) effective January 1, 1993, by striking "Federal Deposit Insurance Corporation, Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

(c) THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.—The Neighborhood Reinvestment Corporation Act, as amended (42 U.S.C. 8101 et seq.), is amended—

(1) in section 604 (42 U.S.C. 8103)—

(A) in subsection (a)—

(i) by striking paragraph (1);

(ii) in paragraph (5), by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(iii) by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively; and

(B) in subsection (f), by striking "Comptroller of the Currency, through a duly designated Deputy Comptroller" and inserting instead "Director of the Office of Depository Institutions Supervision, through a duly designated representative"; and

(2) in section 606(c)(3) (42 U.S.C. 8105(c)(3))—

(A) effective on the date of enactment of this Act, by striking "Federal Home Loan Bank Board" and in- serting instead "Directory of the Office of Thrift Supervision";

(B) effective January 1, 1993, by striking "the Director of the Office of Thrift Supervision and"; and

(C) effective January 1, 1993, by striking the term "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision".

SEC. 625. AMENDMENTS TO TITLE 44, UNITED STATES CODE.

Title 44, United States Code, is amended—

(1) in section 1111, by striking "Comptroller of the Currency" and inserting instead "Director of the Office of Depository Institutions Supervision"; and

(2) in section 1344, by striking "Office of the Comptroller of the Currency" and inserting instead "Office of Depository Institutions Supervision".

SEC. 626. AMENDMENT TO TITLE 46, UNITED STATES CODE.

Section 10315(a)(3) of title 46, United States Code, is amended, effective on the date of enactment of this Act, by striking "or the Federal Savings and Loan Insurance Corporation".

SEC. 627. AMENDMENTS TO PUBLIC LAW 101-647.

Public Law 101-647 is amended—

(1) in section 2539(c)(2)—

(A) in subparagraph (C), by striking "Office of Thrift Supervision" and inserting instead "Office of Depository Institutions Supervision"; and

(B) by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively; and

(2) in section 2554(b)(2), by striking "Office of Thrift Supervision" wherever it appears and inserting instead "Office of Depository Institutions Supervision".

Subtitle C—Repeal of Obsolete Provisions of Law

SEC. 631. REPEAL OF OBSOLETE PROVISIONS OF LAW.

The following provisions of law (as they may have been amended) are repealed:

(1) The following sections of the Revised Statutes: 324 (12 U.S.C. 1); 325 (12 U.S.C. 2); 326 (12 U.S.C. 3); 327 (12 U.S.C. 4); 327A (12 U.S.C. 4A); 328 (12 U.S.C. 8); 329 (12 U.S.C. 11); 330 (12 U.S.C. 12); 331 (12 U.S.C. 13); and 333 (12 U.S.C. 14);

(2) title II of the Act of October 28, 1974, Public Law 93-495 (12 U.S.C. 2401 et seq.); and

(3) section 14 of the Act of December 22, 1974, Public Law 93-533 (12 U.S.C. 2612).

Subtitle D—Effective Date

SEC. 641. EFFECTIVE DATE.

Unless otherwise expressly provided, the amendments made by this title shall take effect January 1, 1993.

FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1991 SECTION-BY-SECTION ANALYSIS

SECTION 2. PURPOSES

Section 2 provides that the purposes of the Financial Institutions Safety and Consumer Choice Act of 1991 (FISCCA) are to return deposit insurance coverage to its original purposes of protecting small depositors and promoting financial stability; to strengthen the role of capital, enhance the supervision, and restrict risky activities of insured depository institutions; to permit nationwide banking and branching; to authorize the establishment of financial services holding companies to permit companies owning depository institutions to engage in other financial services with appropriate safeguards; to promote consumer convenience by permitting banking organizations a broader range of financial products; to simplify the regulatory structure for depository institutions by establishing a consolidated regulatory agency, the Office of Depository Institutions Supervision; and to recapitalize the Bank Insurance Fund.

Title I—Federal Deposit Insurance Reform

Subtitle A—Federal Deposit Insurance System Reform

SECTION 101. DEPOSIT AND PASSTHROUGH INSURANCE

Section 101 amends provisions in the Federal Deposit Insurance Act relating to the Federal Deposit Insurance Corporation's insurance coverage of deposits at insured depository institutions. Subsection (a) amends and adds new definitions relating to the insurance of deposits and subsection (b) adds new provisions for the determination of the amount of insurance payable to depositors.

Subsection (a)(1)(A) of section 101 amends the definition of "insured deposit" in section 3(m)(1) of the Federal Deposit Insurance Act to provide that "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution less any part thereof which is in excess of $100,000. That net amount is to be determined in accordance with the provisions of section 11(a) of the Federal Deposit Insurance Act. The amended definition eliminates the language in the existing definition which provides for the determination of insurance of deposits based upon the capacities and rights in which deposits are held by depositors. Instead, the amended definition requires that the insurance of deposits be determined in accordance with section 11(a) of the Federal Deposit Insurance Act. The amendment made by subsection (a)(1)(A) will be effective two years after the date of enactment of this Act.

The definition of "insured deposit" is also amended by subsection (a)(1)(B) by adding to that definition a new paragraph (3) that excludes from the meaning of that term, and thus from insurance coverage, certain types of deposits. First, new paragraph (3)(A) provides that "insured deposit" shall not include funds obtained, directly or indirectly, for deposit from a deposit broker. The definition of the term "deposit broker" is discussed below. As provided in new paragraph (3)(A), this exclusion of funds accepted by a deposit broker does not apply to an insured depository institution for which the Federal Deposit Insurance Corporation or the Resolution Trust Corporation has been appointed as conservator or the appropriate Federal banking agency has appointed a conservator and such conservator has determined that the acceptance of such funds (1) is not an unsafe or unsound practice; and (2) either is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business, or is consistent with the conservator's fiduciary duty to minimize the losses of the institution.

Also excluded from the definition of "insured deposit" are depository institution investment contracts (otherwise known as "BICs") entered into between an insured depository institution and an employee benefit plan as defined in section 3(3) of the Employment Retirement Income Security Act, including a plan described in section 401(d) of the Internal Revenue Code of 1986. For purposes of this exclusion, a depository institution investment contract is defined as a contract that is nontransferable and provides for the deposit of funds over an extended period of time at a specified rate of interest whether or not the funds can be withdrawn without penalty prior to maturity.

Subsection (a)(2) of section 101 amends the definitional section of the Federal Deposit Insurance Act by adding a definition of the term "deposit broker" as subsection (y) to section 3 of the Federal Deposit Insurance Act. This definition is essentially the same definition that is currently contained in section 29 of the Federal Deposit Insurance Act. A "deposit broker" is defined by new subsection (y) as any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties. A "deposit broker" also includes an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

The term "deposit broker" does not, however, include the following:

(1) an insured depository institution with respect to funds placed with that depository institution or with other insured depository institutions;

(2) an employee, as defined in section 29(b) of the Federal Deposit Insurance Act, of an insured depository institution with respect to funds placed with the employing depository institution;

(3) a trust department of an insured depository institution if the trust has not been established for the primary purpose of placing funds with insured depository institutions;

(4) the trustee of a pension or other employee benefit plan with respect to funds of the plan;

(5) a person acting as a plan administrator or investment advisor in connection with a pension plan or other employee benefit plan provided that such person is performing managerial functions with respect to the plan;

(6) the trustee of a testamentary account;

(7) the trustee of an irrevocable trust, other than one described above, as long as the trust in question has not been established for the primary purpose of placing funds with the insured depository institution;

(8) a trustee or custodian of a pension or profit sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

(9) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

Subsection (b) of section 101 provides a new method for the Federal Deposit Insurance Corporation to determine deposit insurance coverage. Subsection (b) amends section 11(a)(1) of the Federal Deposit Insurance Act by specifically providing that the maximum $100,000 insured deposit limitation is applicable on a per insured depository institution basis. This is essentially the same as under current law. The amendments, however, include a new requirement for all deposits to be registered under the taxpayer identification number or employer identification number of each depositor. For individuals the taxpayer identification number will be the individual's social security number. For other depositors the taxpayer identification number or employer identification number are obtained from the Internal Revenue Service. Even though such numbers are required from depositors for the purpose of aggregating and attributing deposits, the Federal Deposit Insurance Corporation is authorized to consider additional information in the depository institution's records or other information made available by the depositor.

For the purpose of determining the amount due to any depositor, the amendments to section 11(a) require the Federal Deposit Insurance Corporation to aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor or are maintained by others for the benefit of the depositor. The amount due to a depositor is the lesser of the amount calculated under this provision or $100,000.

For the purpose of aggregating amounts to a depositor the following rules apply:

(1) Deposits that are registered under the same taxpayer identification number or employer identification number of one depositor are to be attributed to that depositor.

(2) Depositors that are registered under the taxpayer identification number or employer identification number of more than one depositor are to be attributed equally among those depositors. If, however, the deposit account records clearly provide that amounts are to be attributed other than equally, the Federal Deposit Insurance Corporation is to consider such records in providing insurance coverage.

(3) Deposits consisting of a revocable trust or similar account are to be attributed to the settlor or grantor of the deposit account.

(4) Deposits maintained by an individual or entity (including an insured depository institution) acting as agent, custodian, nominee, conservator, or in a similar capacity on behalf of a principal (other than an insured depository institution) are to be attributed to such principal.

(5) Finally, the Board of Directors of the Federal Deposit Insurance Corporation is authorized to provide for such other attribution as the Board determines by regulation not to be unduly burdensome and costly to calculate, provided that the attribution would be consistent with the insurance purpose of the Federal Deposit Insurance Act.

Section 11(a)(1) of the Federal Deposit Insurance Act is also amended by adding a new subparagraph (D) which provides for the elimination of pass-through insurance coverage for deposits made by certain defined benefit and defined contribution pension plans. Pass-through insurance occurs when a fiduciary deposits fund for a large number of beneficiaries, and $100,000 of deposit insurance "pass through" to each of the beneficiaries.

According to the amendment to section 11(a)(1), the Federal Deposit Insurance Corporation may not provide deposit insurance coverage on a pro-rata or pass-through basis to participants in or beneficiaries of employee defined benefit plans and defined contribution plans. This prohibition, however, is not applicable to self-directed defined contribution plans. This amendment does not apply to pension plans of state and local governments. The elimination of pass-through insurance coverage does not prevent the plan itself from receiving the maximum insurance coverage of $100,000.

Section 11(a)(1) of the Federal Deposit Insurance Act is also amended by adding a new subparagraph (E) which provides for separate deposit insurance coverage on a pro-rata or pass-through basis for accounts meeting certain specified requirements. This is an exception to the subparagraph (C)(iv) requirement of attribution to the principal of certain accounts maintained by an agent, custodian, nominee or conservator. To be entitled to separate pass-through insurance coverage the account must meet the following requirements: the deposit account must be maintained for a business purpose; the principal or beneficiary of the account may not have control over where the funds are deposited; the account may not be maintained for investment purposes; and the deposit account may not be maintained principally for the purpose of increasing deposit insurance coverage. This provision is meant to cover escrow and similar types of accounts.

Finally, a new subparagraph (F) is added to section 11(a)(1) which gives the Board of Directors authority to adopt regulations to implement and to clarify the insurance coverage under sections 11(a)(1) and 11(i)(3). The regulatory authority with respect to section 11(i)(3), related to the rights of creditors other than insured depositors of troubled institutions, is merely a transfer of existing authority with respect to that section from the section 3(m) definition of "insured deposit" to amended section 11(a)(1).

Subsection (b)(2) of section 101 amends section 11(a)(3) of the Federal Deposit Insurance Act which provides for the insurance coverage of deposits (so-called Keogh accounts) made pursuant to plans described in section 401(d) of the Internal Revenue Code of 1986 or made in the form of an individual retirement account described in section 408(a) of the Code. Under current law, time and savings deposits of 401(d) plans and individual retirement accounts are separately insured up to $100,000 per depository institution. Section 11(a)(3) as amended by the Act requires the aggregation of all deposits made in connection with an individual retirement account, as well as self-directed Keogh plans and other self-directed defined contribution plans held in individual accounts maintained on their behalf by the plan.

Thus, for any one depositor, the deposits made by such plans will no longer be separately insured but will be added together and will be entitled to receive up to a total of $100,000 in deposit insurance coverage per institution. As is the case under current law, the amount insured under this provision may only consist of the present vested and ascertainable interest of each participant under a plan, excluding any remainder interest created by, or as a result of, the plan.

Subsection (b)(3) of section 101 amends section 7(i) of the Federal Deposit Insurance Act with respect to the insurance coverage of certain deposits of trust funds. The amendment limits the insurance coverage to $100,000 per trust estate for trust funds held on deposit by an insured depository institution as trustee pursuant to irrevocable trusts. When such trust funds are deposited by the fiduciary depository institution in another insured depository institution, such trust funds will be insured up to $100,000 to the depository institution according to each trust estate. The Board of Directors of the Federal Deposit Insurance Corporation is authorized to adopt regulations as necessary to clarify the insurance coverage under section 7(i) and to prescribe the manner of reporting and depositing the trust funds.

Subsection (b)(4) of section 101 directs the Board of Directors of the Federal Deposit Insurance Corporation, during the one year period beginning on the date of enactment of the Act, to review the present capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Federal Deposit Insurance Corporation. At the end of the one year period, the Board of Directors may promulgate regulations that provide for separate insurance coverage for different capacities and rights in which deposit accounts are maintained, if a determination is made by the Board of Directors that such separate insurance coverage is consistent with the purposes of protecting small depositors and limiting the undue expansion of deposit insurance coverage. In addition, any such regulations must be consistent with the insurance provisions of the Federal Deposit Insurance Act. Any regulations promulgated by the Board of Directors under this paragraph may not be effective earlier than two years from the date of enactment of the Act.

The amendments made under subsections (a) and (b) are to be effective two years from the date of enactment of the Act, except that such amendments will not apply to any time deposit that is entered into before the date of enactment of the Act and that matures more than two years after the date of enactment of the Act. Such deposits will continue to be insured under current insurance provisions until maturity. The renewal or rollover of a time deposit after the new provisions become effective will trigger the new provisions as to the deposit renewed or rolled over.

Subsection (d) of section 101 requires the Federal Deposit Insurance Corporation to conduct a study on the feasibility of implementing a system of deposit insurance based on systemwide limitations in coverage for each depositor. Insurance under this system would be based on $100,000 per depositor with a separate $100,000 for retirement savings.

The study is to be conducted in conjunction with such consultants and technical experts as the Federal Deposit Insurance Corporation determines to be appropriate. The study is to include a detailed, technical analysis of the costs and benefits associated with the least expensive way to implement such a system. As part of the study, the Corporation is required to investigate, review and evaluate the following:

(a) the data systems that would be required to implement the system;

(b) the reporting burdens of such a system on individual depository institutions;

(c) the interface with existing data processing systems maintained by depository institutions; and

(d) the use of a selective audit of depositors for compliance after the resolution of a failed depository institution.

As part of the feasibility study, the Board of Governors of the Federal Reserve System is required to conduct, in conjunction with such other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals, including the dollar amount of deposits held, the type of deposit accounts held and the type of financial institution in which the deposit accounts are held. The results of the survey are to be provided to the Federal Deposit Insurance Corporation not later than one year from the date of enactment of the Act for analysis and inclusion in the feasibility study.

Not later than 18 months after the date of enactment of the Act, the Federal Deposit Insurance Corporation is required to submit to the Congress a report on the findings made and conclusions drawn from the feasibility study. This report is to contain recommendations for any administrative and legislative action as the Federal Deposit Insurance Corporation determines to be appropriate.

Subsection (e) of section 101 provides for conforming amendments to the Federal Deposit Insurance Act. Paragraph (1) transfers language now found in section 3(m) of the Federal Deposit Insurance Act to section 11(a)(2) of the Federal Deposit Insurance Act. Paragraph (2) subjects section 12(c) of the Federal Deposit Insurance Act to new section 11(a)(1)(B) of the same Act.

SECTION 102. DEPOSIT SOLICITATION RESTRICTED

Section 102 of the Act amends section 29 of the Federal Deposit Insurance Act to provide that no insured depository institution, which does not meet the applicable minimum capital requirements, or employee of any such institution, may engage, directly or indirectly, in the solicitation of deposits by offering rates of interest, with respect to such deposits, which are significantly higher than the prevailing rates of interest offered by other insured depository institutions in the institution's normal market area. The institution is required to look to other institutions in the market area whether or not they have the same charter.

The amendment essentially retains the definition of "employee" found in current section 29 with one change. The term "employee" will include employees who are employed either full-time or part-time by a depository institution. The amendment made by this section will be effective on the date of enactment of the Act.

SECTION 103. LEAST-COST RESOLUTION

Subsection (a) of section 103 of the Act amends section 13(c)(4) of the Federal Deposit Insurance Act to require the Federal Deposit Insurance Corporation to use the least costly method to resolve insured depository institutions. Subsection (a)(1) of the Act amends section 13(c)(4)(A) of the Federal Deposit Insurance Act to require the Federal Deposit Insurance Corporation to provide assistance and make payments only in such amounts as are necessary to satisfy its obligations to a depository institution's insured depositors at the least-cost to the affected deposit insurance fund whether by insured deposit payout, insured deposit transfer, or such other least-cost method as determined by the Federal Deposit Insurance Corporation. Nevertheless, the Federal Deposit Insurance Corporation is required to provide assistance or make payments to satisfy, in whole or in part, a depository institution's liability to its uninsured depositors if the assistance or payments would be least-cost method of resolving the institution.

Subsection (a)(2) of the Act adds a new subparagraph (B) to section 13(c)(4) which sets forth various factors the Federal Deposit Insurance Corporation is required to consider in making a least-cost determination. New subparagraph (B) requires the Federal Deposit Insurance Corporation to: evaluate resolution alternatives on a present value basis using a realistic discount rate; document that evaluation; retain the documentation for not less than five years; and treat the 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. In addition, the Federal Deposit Insurance Corporation is required to determine and compare the costs of assistance or liquidation as of the date on which it makes the determination to provide assistance under the Federal Deposit Insurance Act. In making a least-cost determination, however, the Federal Deposit Insurance Corporation is not permitted to consider the impact of a transaction on any part of the financial system other than the institution being resolved.

A systemic risk determination may only be made by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury with respect to any assistance that may be provided by the Federal Deposit Insurance Corporation to an insured depository institution. Under new subparagraph (C) to section 13(c)(4), upon a joint determination by the Board of Governors and the Secretary of the Treasury that the Federal Deposit Insurance Corporation would be unable to resolve an insured depository institution in accordance with a least cost determination under subparagraph (A) without causing a severe adverse impact upon the financial system, the Board of Governors and the Secretary of the Treasury, in consultation with the Federal Deposit Insurance Corporation and the Director of the Office of Management and Budget, will direct the Federal Deposit Insurance Corporation to provide assistance or make payments to an insured depository institution to satisfy the institution's liability to its depositors or take such other action as determined to be necessary to lessen the risk posed by the depository institution.

Subsections (b), (c), (d), and (e) of section 103 amend various provisions of sections 11 and 13 of the Federal Deposit Insurance Act to subject asnd conform those provisions to the least-cost resolution amendments made to section 13(c)(4) of the Federal Deposit Insurance Act.

The amendments made by section 103 are to become effective three years after the date of enactment of the Act.

SECTION 104. RISK-BASED ASSESSMENTS

Subsection (a) of section 104 amends section 7(b) of the Federal Deposit Insurance Act by removing the minimum 0.15 percent assessment rate for both Bank Insurance Fund and Savings Association Insurance Fund members.

Subsection (b) redesignates paragraph 9 of section 7(b) as paragraph 10 and adds a new paragraph 9 requiring the Board of Directors of the Federal Deposit Insurance Corporation to establish by regulation a risk-based assessment system for setting insurance premiums for insured depository institutions. The structure of the risk-based assessment system must provide that the insurance premium paid by an insured depository institution vary according to the degree of risk the institution poses to the relevant insurance fund.

For purposes of developing the assessment system, the Board of Directors is required to establish rates based on categories of risk. These risk categories must use the ratio of capital to risk-weighted assets for the insured depository institutions as the fundamental measure. In defining categories, the Board may also consider the activities, assets, and liabilities of insured depository institutions and any other risk factors the Board of Directors determines to be appropriate. The ability of the Board of Directors to assess members of the Bank Insurance Fund is limited by the provisions of section 7(b)(1)(C)(iii) as amended by this Act.

Subsection (c) of section 104 requires the Board of Directors to promulgate regulations within 18 months of enactment of the Act. The regulations must go into effect no later than two years after enactment.

SECTION 105. RESTRICTIONS ON FEDERALLY INSURED STATE BANK ACTIVITIES

Section 105(a) amends the Federal Deposit Insurance Act by adding a new section 24 regarding permissible activities for federally insured State banks and their subsidiaries. Section 24 retains the authority given to the States under the dual banking system for State bank agency activities but, as in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 for thrifts, State bank activities as principal may be limited based on risk.

Section 24(a) provides that, beginning one year after enactment of this Act, State banks, with certain exceptions, generally may not engage as principal in any activity impermissible for national banks. The Federal Deposit Insurance Corporation may make exceptions to the rule if the Corporation determines that the activity would not pose a significant risk to the insurance fund and the bank is in compliance with minimum capital standards established by the appropriate Federal banking agency.

Section 24(b) prohibits State banks and their subsidiaries from acquiring or retaining any equity investment of a type not permissible for national banks. An exception is made to this rule to allow State banks to own subsidiaries if the bank's ownership interest in the subsidiary is greater than 50 percent.

Section 24(b) also requires a State bank that holds an equity investment (other than a majority-owned subsidiary) impermissible under this Act to divest as soon as prudently possible, but in no event later than five years after enactment of this Act. However, a bank with a nonconforming equity investment, as a result of this Act, will not be found to be in violation within the five-year divestment period if it complies with the di-

vestment procedures established by the Federal Deposit Insurance Corporation.

Section 24(c) requires, beginning one year after enactment of this Act, subsidiaries of State banks generally to maintain parity of activity engaged in as principal with subsidiaries of national banks. The Federal Deposit Insurance Corporation is authorized to make exceptions for State bank subsidiaries if the Corporation determines that engaging in an activity impermissible for national bank subsidiaries would not pose a significant risk to the insurance fund and that the bank is in compliance with minimum capital standards. No subsidiary of a State bank, however, is permitted to engage in insurance or securities underwriting that is not permissible for a national bank.

Section 24(d) provides that the Federal Deposit Insurance Corporation must make determinations under section 24 through regulations and orders.

Section 24(e) defines the term "activity" to include acquiring or retaining any investment. For purposes of section 24, the term "State bank" is defined as in section 3 of the Federal Deposit Insurance Act to include any bank, banking association, trust company, savings bank, industrial bank, cooperative bank and any other banking association that receives deposits, other than trust funds, and is incorporated under the laws of any State or operating under District of Columbia law (except a national bank).

Section 24(f) clarifies that the Board of Governors of the Federal Reserve System, the Office of Depository Institutions Supervision, and any State authority may impose more stringent activity restrictions than are provided in section 24. Section 105(b) also amends section 9 of the Federal Reserve Act to authorize specifically the Board of Governors of the Federal Reserve System, which will be responsible for regulating all State banks, to impose more stringent activity restrictions on State banks consistent with section 24 of the Federal Deposit Insurance Act.

SECTION 106. EXAMINATIONS

Subsection (a) expands the current examination authority of the Board of Governors of the Federal Reserve System for Federal Reserve banks and member banks by amending section 11(a) of the Federal Reserve Act to include any bank or branch of a foreign bank for which the Board is the appropriate Federal banking agency.

Subsection (a)(1)(A) amends section 11(a) of the Federal Reserve Act by adding a new paragraph (2) and redesignating former paragraph (2) as paragraph (3). New paragraph (2) requires the Board of Governors of the Federal Reserve System to conduct annual onsite examinations of such banks and branches of foreign banks. For banks and foreign bank branches that have assets of less than $1,000,000,000 and are in compliance with required capital standards, the Board must conduct examinations at least once every eighteen months, but may examine them more frequently.

Subsection (a)(1)(B) amends section 11(a) of the Federal Reserve Act at paragraph (3), as redesignated, to require that reports made to the Board of Governors of the Federal Reserve System, other than those for monetary control purposes, be made through the appropriate Federal banking agency, the National Credit Union Administration Board for insured credit unions, and a State officer or agency designated by the Board for State banks and savings associations and credit unions that are not federally insured.

Subsection (a)(2)(A) amends section 9 of the Federal Reserve Act to permit the Board of Governors of the Federal Reserve System to examine affiliates of those banks and foreign bank branches for which the Board is the appropriate Federal banking agency and which are not part of a holding company. The scope of the Board's examination authority for such affiliates parallels the authority of the Director of the Office of Depository Institutions Supervision in section 323(d) and 323(g)(2) of this Act. The Board's authority to examine banks and branches and their affiliates within a holding company structure is set forth in the Financial Services Holding Company Act of 1991.

Subsection (a)(2)(B) amends section 9 of the Federal Reserve Act to allow the Board of Governors of the Federal Reserve System to assess the expense of examinations of affiliates against the affiliated bank or branch. The amendment also permits the Board to require an affiliated bank to surrender its Federal Reserve stock and forfeit its membership in the Federal Reserve System if the affiliate refuses to be examined or to provide requested information in connection with an examination or if the bank refuses to pay its examination assessment.

Subsection (b) provides that the provisions of this section shall become effective on January 1, 1993.

SECTION 107. MARKET VALUE AND OTHER DISCLOSURE

This section provides for supplemental fair market value disclosures and disclosure of audit reports by depository institutions.

Subsection (a) would require the appropriate Federal banking agencies and the Securities and Exchange Commission to develop jointly a method by which banks would include supplemental disclosures of the fair market value of their assets and liabilities (with respect to those assets and liabilities for which a fair market value could reasonably be determined) in financial statements and in reports filed with those agencies. This section only requires supplemental disclosure and does not require a change in accounting standards. This method must be developed within one year of enactment of this Act.

Subsection (b) amends section 7(a) of the Federal Deposit Insurance Act by adding a new paragraph (9) requiring insured depository institutions to supply their appropriate Federal banking agency with copies of their audit reports (including any qualifications to those reports), management letters, and other reports within 15 days after they are received by the banks. Banks are also required to provide written notification to the appropriate Federal banking agency of a change in their independent auditors and the reasons for any change. Notification is required within 15 calendar days of the change.

SECTION 108. CAPITAL STANDARDS AND INTEREST RATE RISK

This section requires the appropriate Federal banking agencies to develop a system to monitor interest rate risk and incorporate interest rate risk into the risk-based capital standards. No later than one year after enactment of this Act, the agencies must issue regulations implementing the system, and the regulations must take effect no later than two years after enactment.

SECTION 109. REQUIREMENT TO EXPENSE DEPOSIT WITH NATIONAL CREDIT UNION SHARE INSURANCE FUND

This section eliminates the double counting of insurance fund assets and credit union assets by requiring the double-counted assets to be expensed over a twelve-year period.

Subsection (a) amends section 201(b)(8) of the Federal Credit Union Act, pertaining to application for insurance of member accounts, to require newly chartered Federal credit unions and credit unions converting to National Credit Union Share Insurance Fund coverage to make an initial capitalization payment (formerly called a "deposit") to the National Credit Union Share Insurance Fund and to pay a capitalization adjustment and the required deposit insurance premium. To avoid diluting the equity ratio for credit unions already in the National Credit Union Share Insurance Fund, the initial capitalization payment will equal the current equity ratio of the Fund times the total insurable shares of the applicant. The initial capitalization must be expensed annually by the credit union over a 12-year period with minimum payments each year in an amount equal to one-twelfth of the total initial capitalization payment. Amounts expensed in a single year in excess of the required amount will reduce the amount due in future years. The National Credit Union Administration Board is authorized to prescribe procedures for expensing the initial capitalization.

Subsection (b)(1) amends section 202(b)(1) of the Federal Credit Union Act to require an insured credit union to include in its annual certified statement the capitalization adjustment amount due to the National Credit Union Share Insurance Fund for the preceding year, the amount of insurance premium due for that year and any other information the National Credit Union Administration Board requests.

Subsection (b)(2) amends subsection (c) of section 202 of the Federal Credit Union Act to provide for annual payments to and rebates from the National Credit Union Share Insurance Fund. Subsection (c)(1) requires insured credit unions to pay to the National Credit Union Share Insurance Fund, under procedures established by the National Credit Union Administration Board, an annual capitalization adjustment (formerly called a "deposit") equal to one percent of any increase in the credit union's insured shares over the prior year. Any insured credit union with a decline in insured shares over those of the prior year will receive a refund equal to one percent of the decline. Amended subsection (c)(1) does not represent a substantive change from former law.

Subsection (b)(2) also amends section 202 of the Federal Credit Union Act at subsection (c)(2) to require that insured credit unions pay to the National Credit Union Share Insurance Fund, in addition to a capitalization adjustment and pursuant to procedures prescribed by the National Credit Union Administration Board, an annual premium in an amount sufficient to maintain the Fund's equity at a minimum level of 1.25 percent. Under former law, the required premium equalled one-twelfth of one percent of total insured shares in the credit union. The premium must be in proportion to the insured shares of each credit union. If the equity level of the National Credit Union Share Insurance Fund substantially declines below 1.25 percent in a given year, the National Credit Union Administration Board may allow replenishment to the minimum level over a period longer than one year.

Subsection (b)(2) further amends section 202 of the Federal Credit Union Act at subsection (c)(3) to provide for rebates to the insured credit unions if the equity of the National Credit Union Share Insurance Fund exceeds its normal operating level (i.e., ex-

ceeds 1.5 percent) at the close of a given insurance year and any loans to the Fund from the Federal Government and the interest on those loans have been repaid. The rebate shall bring the Fund down to its normal operating level and be in proportion to each insured credit union's insured shares.

Subsections (b)(3) and (4) make conforming amendments to section 202(d) through (g) of the Federal Credit Union Act.

Subsection (b)(5) redefines, at subsection (h)(2) of the Federal Credit Union Act, the Fund's "normal operating level" to mean a level of Fund equity, based on market value accounting, equal to 1.3 percent of the total amount of insured shares in all insured credit unions, or such other level as determined by the Federal Credit Union Administration Board, but such level may not be below 1.25 percent or exceed 1.5 percent. Current law imposes a ceiling of 1.3 and gives the National Credit Union Administration Board discretion in setting a floor.

Subsection (b)(6) adds a new subsection (i) to section 202 of the Federal Credit Union Act requiring that insured credit unions expense annually their deposits on one percent, maintained with the Federal Credit Union Administration Board pursuant to the Deficit Reduction Act of 1984 (P.L. 98-369), over a period of 12 years after the date of enactment of this Act. At least one-twelfth of the total deposit of each insured credit union, as calculated on the date of enactment of this Act, must be expensed each year, as prescribed by the Board. If more than one-twelfth is expensed in a given year, treatment of further payments will reduce the amount due in future years and will be made in accordance with Board direction.

Subsection (c) makes conforming amendments to section 203(b) of the Federal Credit Union Act.

Subtitle C—Reinsurance Demonstration Project

SECTION 116. REINSURANCE DEMONSTRATION PROJECT.

This section requires the Federal Deposit Insurance Corporation, in consultation with the Department of Treasury, to establish a reinsurance demonstration project to determine whether it would be feasible to develop a private reinsurance system to help price risk-based premiums.

Subsection (a) defines the project as consisting of a sample of private reinsurers and insured depository institutions that would simulate or could even engage in, if deemed appropriate by the Federal Deposit Insurance Corporation, actual reinsurance transactions. To reflect how the system would actually work, the project must include, at a minimum, the following steps that would be taken in an actual reinsurance transaction: establish the pricing structure for risk-based premiums, prepare insurance contracts, and identify and obtain the information needed to evaluate and monitor risk in a given insured depository institution.

Subsection (a) also establishes a Reinsurance Demonstration Project Committee, comprised of the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and a representative of each of the private reinsurers and depository institutions participating in the project, to analyze and review the results of the project and report those results to Congress.

Subsection (b) requires that the Reinsurance Demonstration Project Committee report to Congress, within one year of enactment of this Act, on the feasibility of a private reinsurance system. The report must include whether the private insurers have sufficient interest and the capacity to participate in such a system, whether public policy goals can be satisified by such a system, and any recommendations for administrative and legislative action necessary to establish such a system.

Title II—Financial Services Modernization

Title II contains the amendments to the Bank Holding Company Act of 1956 and other laws that are necessary to implement the Treasury recommendation to strengthen the financial system and improve the competitiveness of the nation's banks by permitting banks to affiliate with a broad range of financial firms through the formation of financial services holding companies (FSHCs), which in turn will be permitted to be owned or controlled by commercial businesses so long as the subsidiary banks remain well capitalized. Subtitle A, which contains the Financial Services Holding Company Act of 1991 (the FSHCA), amends the Bank Holding Company Act to permit banks to affiliate through FSHCs with securities, insurance, and other companies that engage in activities determined to be of a financial nature. The FSHCA contains a number of safeguards, described in greater detail below, which will assure that the broader range of permitted affiliations does not expose the taxpayer to greater risk through the Federal safety net.

Subtitle B includes amendments to the Banking Act of 1933 and the Federal Reserve Act to conform provisions in these laws relating to permitted activities for banks. Subtitle C covers non-banking activities of foreign banks in the United States.

Subtitle D amends the various securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934, to revise applicability of the securities laws to banks. Subtitle E provides for a new system for supervising banks based primarily on their capital levels. In particular, based on the capital level and the financial condition of a given bank, the appropriate Federal banking agencies are authorized to take various mandatory and discretionary supervisory actions with respect to banks and companies that control banks.

Finally, Subtitle F expands the authority of banks to branch interstate.

Subtitle A—Financial Services Holding Companies

Subtitle A provides a new framework for ownership of banks. It creates a new Financial Service Holding Company Act through amendments to the Bank Holding Company Act of 1956 and new provisions. The FSHCA will be effective on January 1, 1993.

The FSHCA is crafted to (1) encourage ownership of well capitalized banks by providing expanded activities and expedited regulatory procedures for holding companies that have such banks and (2) streamline regulatory procedures and reduce regulatory burdens for all holding companies by placing the emphasis of regulation on the insured bank. This is achieved by the integration of the provisions of the FSHCA and the Prompt Corrective Action provisions of the Federal Deposit Insurance Act so that the expansion of activities and the availability of the expedited regulatory procedures under the FSHCA is dependent on the capitalization of the banks in the holding company while any deterioration of bank capital is subject to corrective action which may include imposing requirements on the holding company.

The FSHCA provides for two different types of holding companies. The first, financial services holding companies, will be able to directly own banks and engage in certain activities as defined in the FSHCA. These holding companies replace bank holding companies. Financial services holding companies will be permitted to engage directly in the activities currently permissible for bank holding companies except that a bank will not be able to be a holding company.

In addition, if a holding company is a Zone 1 financial services holding company which means that 80% of the banks it controls are in Zone 1 (the highest Zone of capital) and the remaining 20% of the banks are in Zone 2, the holding company also can engage through subsidiaries (but not bank subsidiaries with certain exceptions) in securities, insurance, and activities deemed by the appropriate Federal banking agencies to be of a financial nature. Holding companies in Zone 2 that have demonstrated that they are making substantial progress in becoming a Zone 1 company also can engage in the expanded securities, insurance, and financial activities. Zone 1 financial services holding companies, but not the Zone 2 companies, also will be able to take advantage of expedited regulatory procedures for approval of bank and savings association acquisitions and of nonbanking activities.

The second type of holding company is a diversified holding company, which can engage in any activity but cannot own or control a bank directly. Diversified holding companies can only own or control a bank indirectly through ownership or control of a financial services holding company.

SECTION 201. FINANCIAL SERVICES HOLDING COMPANIES

This section amends the definitions in section 2 of the Bank Holding Company Act of 1956 to incorporate descriptions of the organizations to which the FSHCA will apply.

Subsection (a)(1) amends section 2(a)(1) of the Bank Holding Company Act to delete the definition of "bank holding company" and replace it with definitions of "financial services holding company" and "diversified holding company". The effect of this amendment is that, after the FSHCA becomes effective, *all* companies that control banks will be known as financial services holding companies rather than bank holding companies. In addition, companies that control financial services holding companies and engage in activities not permitted for financial services holding companies will be known as diversified holding companies.

The definition of "financial services holding company" includes any company which has control over a bank but that is not a diversified holding company. The intent is that financial services holding companies will only be allowed to engage in activities pursuant to the Financial Services Holding Company Act while diversified holding companies can engage in any activity. Companies that control a bank through a financial services holding company and are engaged only in activities permissible for financial services holding companies will themselves be financial services holding companies.

The definition of "diversified holding company" refers to any company, other than a bank or a foreign bank, that has control over a bank through a financial services holding company and is engaged in or controls a company engaged in activities not permissible for financial services holding companies. Consequently, companies engaged in commercial activities can control a bank but only through ownership of a financial services holding company.

Subsection (a)(2) amends section 2(a)(5)(a) of the Bank Holding Company Act of 1956 to delete a provision that by its own terms has expired.

Subsection (a)(3) amends section 2(f) of the Bank Holding Company Act of 1956 to include a definition of appropriate Federal banking agency as that term is defined in section 3(q) of the Federal Deposit Insurance Act. The appropriate Federal banking agencies are the Board of Governors of the Federal Reserve System and the Director of the Office of Depository Institutions Supervision. The determination of which agency will be the appropriate Federal banking agency for a particular holding company is based on the charter of the largest bank subsidiary in the holding company as determined pursuant to Title III of the Financial Institutions Safety and Consumer Choice Act of 1991. The definition of "Board" has not been amended because there are references to the actions taken by the "Board" under the Bank Holding Company Act which will remain in the FSHCA.

Subsection (a)(4) adds eight new definitions to section 2 of the Bank Holding Company Act of 1956. These definitions are as follows:

(1) Securities Affiliate. A securities affiliate is defined as any company controlled by a financial services holding company and engaged in the activities permissible under 4(c)(15). The term does not include companies engaged in activities authorized pursuant to section 4(c)(8).

(2) Insurance Affiliate. An insurance affiliate is defined as any company controlled by a financial services holding company and engaged in activities permitted under 4(c)(16), which includes insurance underwriting and brokerage. The term does not include companies engaged in activities authorized pursuant to section 4(c)(8).

(3) Foreign bank. The term "foreign bank" has the same meaning as the term has under section 1(b)(7) of the International Banking Act. It means any organization organized under the laws of another country or a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands that is engaged in the business of banking.

(4) Insured depository institution. The term "insured depository institution" includes any insured bank as that term is defined in section 3(h) of the Federal Deposit Insurance Act and any insured institution. The latter term is defined in section 2(j) of the Bank Holding Company Act to mean a Federal savings and loan association, a Federal savings bank, a building and loan association, a Federal savings bank, a building and loan association, savings and loan or homestead association or a cooperative bank, the accounts of which are insured by the Federal Deposit Insurance Corporation. A definition of insured depository institution has been added because in general the provisions of the FSHCA that apply to banks also will apply to savings and loan associations owned by a financial service holding company.

(5) Zone 1 and Zone 2. The terms Zone 1 and Zone 2 refer to the highest capital zones defined in section 35 of the Federal Deposit Insurance Act. These zone classifications generally determine the permissible activities for financial services holding companies.

(6) Zone 1 Financial Services Holding Company. The term Zone 1 financial services holding company means any financial services holding company that qualifies as a Zone 1 financial services holding company pursuant to section 35(d)(2) of the Federal Deposit Insurance Act, that is, holding companies that have well-capitalized banks.

(7) Functional Regulator. The term functional regulator is defined as the Federal or State regulator that has supervisory authority concerning the activities of a non-banking company that is part of a financial services holding company. The functional regulator for a securities affiliate is the Securities and Exchange Commission and for an insurance affiliate is the state insurance commissioner.

(8) New Financial Activity. The term new financial activity means any activity authorized pursuant to section 4(c)(8) after the effective date of the Financial Services Holding Company Act and securities and insurance activities pursuant to section 4(c) (15) or (16) respectively. It does not include any activities authorized by the Board of Governors of the Federal Reserve Board pursuant to the closely related standard under section 4(c)(8) of the Bank Holding Company Act prior to the effective date of the Financial Services Holding Company Act of 1991.

(9) Qualified Financial Activity. The term qualified financial activity means those activities authorized pursuant to section 4(c)(8), (c)(15), and (c)(16). The term qualified financial activities includes those activities authorized by the Board of Governors of the Federal Reserve System pursuant to the closely related standard under 4(c)(8) of the Bank Holding Company Act as in effect prior to the effective date of the Financial Services Holding Company Act of 1991.

(10) Financial Affiliate. The term financial affiliate means any company that is controlled by a financial services holding company that is engaged in the United States in qualified financial activities and any company controlled by a diversified holding company that is engaged in similar activities.

SECTION 202. ACQUISITION OF BANKS

Section 202 amends the application procedures in section 3 of the Bank Holding Company Act of 1956 for bank acquisitions. It also applies to acquisitions of savings and loan associations by financial services holding companies. This represents a different approach than under the Bank Holding Company Act in which the acquisitions of savings and loan associations were included in the provisions of section 4 dealing with non-banking activities. The amendments add new expedited procedures for acquisitions of insured depository institutions by Zone 1 financial service holding companies and new procedures for acquisitions of financial services holding companies by diversified holding companies.

The grandfather provisions in section 2 of the Bank Holding Company Act that except certain institutions from the definition of bank will remain in the FSHCA. Any loss of the grandfather exception pursuant to the current provisions will result in the parent company becoming a financial services holding company to the same extent as a loss of the grandfather provision would have caused such parent company to become a bank holding company.

Subsection (a)(1)(A) amends section 3(a) to make it unlawful for any bank or savings and loan association to become a financial services holding company or a diversified holding company. This changes current law which permits banks to be holding companies. This does not apply to foreign banks with insured branches in the United States, which would otherwise be subject to the bar because they are defined to be insured banks.

Subsection (a)(1)(B) amends section 3(a)(3) of the Bank Holding Company Act, which prohibits the acquisition of more than 5% of a bank without the prior approval of the appropriate Federal banking agency, to encompass acquisitions of insured depository institutions, financial services holding companies, or diversified holding companies. This is necessary because branches are legally part of the foreign bank and foreign banks that do not take advantage of the new financial activities of the FSHCA are permitted to own banks directly, as under present law.

Subsection (a)(1)(C) amends section 3(a)(3) of the Bank Holding Company Act to provide that companies that were bank holding companies on December 31, 1992 will be financial services holding companies as of January 1, 1993 without obtaining the approval of the appropriate Federal banking agency. This exemption is a one-time exemption for bank holding companies becoming financial services holding companies as a result of the enactment of this legislation. It applies to both companies regulated as bank holding companies and non-bank bank holding companies which will be financial services holding companies after the effective date of the Financial Services Holding Company Act, but which will maintain their exempt status.

Subsection (a)(1)(D) permits reorganizations of banks into holding companies without obtaining the prior approval of the appropriate Federal bank agency if, after the reorganization, the bank's shareholders will have substantially the same proportional share interest in the holding company as they had in the bank, the bank meets the requirements for Zone 1 or Zone 2 capital, the holding company only engages in managing and controlling banks or insured institutions after the reorganization and the holding company provides 30 days prior written notice.

Subsection (a)(2)(A) makes technical amendments to the notice and hearing requirements in section 3(b) of the Bank Holding Company Act to provide that the appropriate Federal banking agency will notify the other appropriate Federal banking agency and the State banking supervisor, if appropriate, when it receives an application for a bank acquisition. Section 3(b) of the Bank Holding Company Act provides that the Federal Reserve Board is to notify the Comptroller of the Currency and the State banking supervisor upon receipt of an application to acquire a national bank or State bank as appropriate. Under the Financial Services Holding Company Act there may be instances in which the appropriate Federal banking agency for a particular holding company must notify the other appropriate Federal banking agency because an application has been received to acquire a bank subject to the latter's authority. The amendment will insure that such notification is provided.

Subsection (a)(2)(B) makes a technical amendment replacing the reference to Comptroller of the Currency with a reference to the other appropriate Federal banking agency.

Subsection (a)(3) amends the factors that an appropriate Federal banking agency can consider in evaluating a bank acquisition, merger, or consolidation under the FSHCA to include the safety and soundness of the insured depository institution to be acquired or of the insured depository institutions that are currently controlled by the holding company.

Subsection (a)(4)(A) redesignates certain subsections of section 3 of the Bank Holding Company Act to provide for the inclusion of the following new section establishing expedited procedures for acquisitions of additional banks by Zone 1 financial services holding companies and acquisitions involving diversified holding companies.

Subsection (a)(4)(B) establishes expedited procedures for acquisitions of additional insured depository institutions by Zone 1 financial services holding companies. The expedited procedures provide for a shorter time period for consideration of the application. The other appropriate Federal banking agency and the State banking supervisors have 21 days after receipt of notice of the application from the appropriate Federal banking agency to recommend disapproval. The appropriate Federal banking agency has 45 days to act on the application from the date a complete application is received. If the appropriate Federal banking agency fails to act, the application will be considered approved. The 45-day period can be extended if the other appropriate Federal banking agency or the State banking supervisor recommends disapproval for one of the reasons established in the FSHCA. If one of the other agencies recommends disapproval, the appropriate Federal banking agency must follow the regular procedures for a hearing. The time period can also be waived in the event of an emergency acquisition.

The grounds for disapproval are the current anticompetitive provisions and the safety and soundness of the institutions to be acquired and the institutions controlled by the holding company. The application can also be disapproved if the financial services holding company does not or would not continue to qualify as a Zone 1 financial services holding company or if the appropriate Federal banking agency finds that such an acquisition is not consistent with the convenience or needs of the community.

Subsection (a)(4)(B) also provides that the appropriate Federal banking agency may not permit any acquisition, merger, or consolidation of a financial services holding company that involves a diversified holding company, including an application by a company to become a diversified holding company, unless the diversified holding company will become or is in Zone 1 and any financial services holding company that is the subject of the transaction must be a Zone 1 company as a result of the transaction. Consequently, a diversified holding company could acquire a financial services holding company that is not in Zone 1; however, as part of the acquisition, the diversified holding company must take the steps necessary to raise the capital of the financial services holding company to Zone 1. The same factors used to evaluate bank acquisitions are applicable to acquisitions of financial services holding companies.

The limits on the exemption for companies that own non-bank banks in the Bank Holding Company Act will remain in place including the restrictions and limitations on activities. As in the Bank Holding Company Act, if a non-bank bank holding company wants to change or in fact changes its activities in a manner that is not contemplated by its grandfather provisions, it will either have to comply with the provisions of the FSHCA or divest the bank.

Subsection (b) contains conforming amendments.

SECTION 203. INTERESTS IN NONBANKING ORGANIZATIONS

Section 203 replaces the current closely related standard in the Bank Holding Company Act for determining whether an activity is permissible for bank holding companies with a standard that requires a determination of whether the activity is of a financial nature. In addition the section replaces the application procedures concerning nonbanking activities and adds expedited procedures for Zone 1, financial services holding companies that want to take advantage of the securities, insurance, or other activities. The section also authorizes the appropriate Federal banking agencies to adopt funding firewalls.

Paragraph (a)(2)(B) amends subparagraph 4(a)(2)(A) of the Bank Holding Company Act to provide that financial services holding companies cannot be banks. This is accomplished by deleting the phrase "of banking or" from the description of activities that are permissible for holding companies. Foreign banks that are bank holding companies are permitted to carry on banking activity in the United States if they own a bank, if such activity is otherwise permitted through a branch or agency as those terms are defined in the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*). This is necessary because branches are legally a part of the foreign bank and would be barred from controlling banks without the exception.

Subsection (a)(2)(C) provides that financial services holding companies themselves may only engage directly in activities that were approved by the Board of Governors of the Federal Reserve System pursuant to the closely related standard in section 4(c)(8) of the Bank Holding Company Act. Financial services holding companies themselves will not be permitted to engage directly in any new activities that may be approved under the "financial nature" standard or in the securities or insurance activities authorized pursuant to 4(c)(15) and 4(c)(16) respectively.

However, insurance companies organized in mutual form or as reciprocal inter-insurance exchanges will be able to be financial services holding companies. The reason for the exception for these types of insurance companies is that they are organized in mutual form and therefore cannot be owned by a financial services holding company as a subsidiary pursuant to section 4(c)(16). All of the limitations and restrictions that would apply to the insurance affiliate would apply to a holding company engaged in insurance through these exceptions. Also, holding companies will be permitted to engage in the insurance activities authorized pursuant to section 4(c)(8).

Subsection (a)(3) deletes the provision of section 4(c)(8) of the Bank Holding Company Act that contains the "closely related" standard for determining whether activities are permissible for bank holding companies and replaces it with a "financial nature" standard. Activities that were determined to be "closely related" by regulation under the Bank Holding Company Act will be considered to be activities permissible under the "financial nature" standard. It is anticipated that the appropriate Federal banking agencies will republish or adopt the list of preapproved activities under section 4(c)(8) of the Bank Holding Company Act. Any bank holding company that was engaged in activities pursuant to an order or regulation under section 4(c)(8) may continue to engage in such activity after January 1, 1993 provided that the order or regulation is still in effect on December 31, 1992.

The section specifically addresses the continued ownership and control of companies by financial services holding companies that are engaged in underwriting and dealing in securities that national banks cannot underwrite and deal in (Section 20 subsidiaries). Bank holding companies that control such Section 20 subsidiaries and become financial services holding companies as a result of enactment of the FISCCA can continue to operate such subsidiaries for three years after enactment of the FISCCA. During the three year period, the section 20 subsidiaries will be subject to the conditions and limitations imposed by the Board of Governors in authorizing the activity including the activities that the subsidiaries can engage in, the revenue limitations, and the funding limitations. During the three year period, the holding companies will be exempt from the requirement that they must be in Zone 1 to conduct such underwriting and dealing activities. At the end of the three year period, the holding companies must be in compliance with the requirements of Zone 1 and file a notice to convert the section 20 subsidiary into a section (4)(c)(15) subsidiary if they intend to continue to engage in such activities.

The subsection also amends section 4(c) to provide that holding companies can only engage in insurance activities in a subsidiary authorized pursuant to 4(c)(16), except for those activities authorized for subsidiaries in section 4(c)(8) and directly if the financial services holding company is an insurance company organized in mutual form.

The section amends the Bank Holding Company Act to permit the establishment of securities and insurance affiliates upon the effective date of the Financial Services Holding Company Act. Securities affiliates can engage in a full range of securities activities. These activities include underwriting, distributing, and dealing in any type of securities without limitation. Securities affiliates also can organize, sponsor, control, and distribute shares of any registered investment company. Other permissible activities include full service securities brokerage, private placement, and investment advisory activities as well as other securities activities permitted for brokers or dealers registered under the Securities Exchange Act or for investment advisers registered under the Investment Advisers Act.

A financial services holding company that acquires control of a securities affiliate must not permit a depository institution it controls to engage in any securities activity except to the extent specifically permitted by statute, regulation, or order promulgated by the Comptroller of the Currency as of the date of enactment of the Financial Institutions Safety and Soundness Act. This language, in combination with the restrictions on bank activities as a result of amendments to the Glass-Steagall Act and the Securities Exchange Act of 1934, means that if a financial services holding company establishes a securities affiliate it cannot permit its bank subsidiary to engage in distributing general obligation bonds and mortgage backed securities. Brokerage activities will have to be transferred from the bank to a subsidiary of the bank or a holding company affiliate pursuant to section 4(c)(8) and 4(c)(15) with certain exceptions.

New paragraph (c)(15)(C) makes this requirement equally applicable to branches and agencies of foreign banks, and commercial lending companies owned by foreign banks. This provision will be effective with respect to branches and agencies beginning three years after enactment of this Act. After that time, no foreign bank will be able to maintain in the U.S. both affiliates undertaking new financial activities and branches and agencies of the bank itself.

Financial services holding companies will be able to establish insurance affiliates that provide insurance as principal, agent or broker without any geographic or product limitations pursuant to section 4(c)(16). However, a financial services holding company that establishes an insurance affiliate may not permit an insured depository institution

it controls to provide insurance as agent or broker including insurance for which the affiliate acts as principal, agent, or broker unless the laws of the State in which the State bank is located permit State-chartered banks to provide insurance as agent or broker or to the extent permitted by law for national bank subsidiaries. Foreign bank branches, agencies, and commercial lending company subsidiaries are subjected to a similar limitation.

Subsection (a)(4) adds a new notice provision in new subsection (j) to section 4 of the Bank Holding Act. This requires companies that become financial services holding companies to give at least 45 days notice to the appropriate Federal banking agency before engaging in, or acquiring or retaining ownership or control of the shares of a company engaged in, the nonbanking activities described in subsection (c)(8) (activities of a financial nature), (c)(15) (securities activities), or (c)(16) (insurance activities).

The appropriate Federal banking agency must define, by regulation or on a case-by-case basis, the contents of the notice. Only information relevant to the nature and scope of the proposed transaction or activity and to the agency's evaluation of the general standards of review (under paragraph 2) and any additional capital requirements (pursuant to subsection (k)), as appropriate, may be requested by the agency.

The agency may disapprove an activity or transaction by issuing an order to the holding company setting forth the reasons for dissapproval before the end of 45 days following receipt of the notice. The 45-day period may be extended an additional 30 days.

Expedited notice procedures are provided for Zone 1 financial services holding companies. Under the expedited procedures, a Zone 1 financial services holding company that intends to commence de novo through a subsidiary (but not through the acquisition of a company) any activity authorized under section 4(c)(15), 4(c)(16), or an activity that has been determined by regulation to be of a financial nature, must file a notice with the appropriate Federal banking agency 30 days after commencement of the activity. In order to engage in activities pursuant to section 4(c)(15), 4(c)(16) and 4(c)(8) through the acquisition of a company, a Zone 1 financial services holding company must file a notice 30 days before such acquisition. The notice will be deemed to be approved unless, within the 30 day period after receipt of the notice, the agency issues an order stating the reasons for disapproval.

A holding company may proceed with a proposal immediately if it receives written notification of approval from the agency. With respect to particular activities, the agency may eliminate the notice requirement or shorten the notice period. With respect to a proposal to engage in, directly or indirectly, a (c)(8) activity not previously approved, the agency may extend the notice period for an additional 90 days.

In considering a notice under this subsection, the agency must generally evaluate the proposal using the following criteria: managerial resources; financial resources, including capital; any material adverse effect on the safety and soundness or financial condition of an affiliated depository institution; and, as to (c)(8) activities, whether there is any reasonable expectation of a public benefit that would outweight any possible adverse effects.

Notwithstanding the above, an agency must disapprove a proposal under this subsection if any insured bank controlled by the holding company is engaging in an unsafe or unsound practice or is in an unsafe or unsound condition.

An agency may only disapprove a proposal by a Zone 1 holding company under this subsection if the holding company is engaging in an unsafe or unsound practice or is in an unsafe and unsound condition or the agency finds that the holding company does not qualify as a Zone 1 holding company.

Subsection (j) of section 4 of the Bank Holding Company Act provides that bank holding companies that become financial services holding companies may only engage in, or acquire or retain the shares of a company engaged in, new financial activities, as defined in section 2(a)(4) of the Bank Holding Company Act, if the holding company is in Zone 1 or it meets the following capital requirements: (1) the capital of each insured bank controlled by the company is above the mean capital level of the range for insured banks in Zone 2; and, (2) the holding company is making substantial progress toward qualifying as a Zone 1 holding company.

Subsection (k) of section 4 of the Bank Holding Company Act provides that any holding company that engages in, or controls a company engaged in, any new financial activity and does not qualify as a Zone 1 holding company within the time specified by the appropriate Federal banking agency shall be subject to the prompt corrective action provisions of section 35(d)(6) of the Federal Deposit Insurance Act.

Subsection (l) of section 4 of the Bank Holding Company Act places limitations on the activities of securities and insurance affiliates of holding companies. Securities affiliates, affiliates engaged in securities activities under section (c)(8), or insurance affiliates must prominently disclose in writing to their customers that they are not insured institutions and are separate from any insured institution, and that their securities or insurance products are not insured deposits, are not guaranteed by any affiliated insured institution, and are not otherwise obligations of the affiliated institutions (unless such is the case). The affiliates engaged in such insurance or securities activities must obtain from their customers an acknowledgment that such notice has been received and the date of receipt, and name, address, and account number of the customer.

Pursuant to subsection (1), the Securities and Exchange Commission may adopt regulations in consultation with the appropriate Federal banking agencies regarding the disclosures required of securities affiliates and affiliates engaged in securities activities under section 4(c)(8). The banking agencies may adopt regulations under this subsection for disclosures required by insurance affiliates or affiliates engaged in 4(c)(8) activities, other than securities activities.

The appropriate Federal banking agency may adopt regulations to limit disclosure of nonpublic customer information between an insured depository institution and its affiliates (including a creditworthiness evaluation of an issuer or other customer of the insured depository institution or its subsidiaries, or a financial, securities, or insurance affiliate).

The appropriate Federal banking agency also may issue regulations or orders limiting or restricting insured depository institutions owned by holding companies from providing financial support, purchasing or selling assets, or issuing guarantees, letters of credit, or other credit facilities to or for the benefit of an affiliate engaged in new financial activities or a customer of such affiliate. The agency must adopt such limitations or restrictions as it deems appropriate to limit potential adverse effects, such as unfair competition, conflicts of interest, and unfair banking practices. No insured depository institution and customer of an affiliate engaged in such activities may enter into transactions to evade those restrictions.

Subsection (m)(1) of section 4 of the Bank Holding Act permits a holding company to own or control voting shares of a company engaged in activities that are not permitted for financial services holding companies in two circumstances. First, the shares must have been acquired before January 1, 1993, and the total investment in the shares must not exceed five percent of the holding company's capital and surplus on a consolidated basis. Second, the shares must have been acquired and held by a securities affiliate as part of a bona fide underwriting or investment banking activity and will be held only for such period of time as will permit their sale on a reasonable basis consistent with the nature of such investment banking activity.

The effect of the first provision is that companies that become financial services holding companies may keep subsidiaries or investments in companies engaged in activities not permitted for the holding company if the shares were acquired before January 1, 1993, and the percentage limitation is met. The effect of the second provision is that a securities affiliate can engage in investment banking or underwriting activities without limitation. The intent is not to inhibit the usual investment activities of securities firms. This means that a financial services holding company securities affiliate could retain or acquire control of a company engaged in activities not permissible for the holding company. In order to protect the insured depository institution, the firewalls applicable to the diversified holding company will apply to companies in which the financial services holding company or a securities affiliate hold shares pursuant to this provision.

Subsection (m)(2) of section 4 of the Bank Holding Act requires a holding company that loses the exemption in paragraph (1)(A) to divest ownership and control of all companies engaged in activities not authorized by subsection (b) or (c) within 180 days of losing the exemption. If the paragraph (1)(B) exemption is lost, the holding company must divest ownership and control within 15 days of that loss. If the paragraph (1)(C) exemption is lost, the holding company must, within 180 days of that loss, divest ownership and control of a sufficient number of shares so that the aggregate investment of the holding company and its subsidiaries permits the company to requalify for the exemption.

SECTION 204. DIVERSIFIED HOLDING COMPANIES

This section sets out the framework pursuant to which commercial firms can affiliate with banks. Diversified holding companies may only own well-capitalized banks. Strict firewalls prohibit all forms of lending between a financial services holding company, including all its banking and nonbanking subsidiaries, and the diversified holding company. While a diversified holding company may choose to have financial companies either inside or outside the financial services holding company, those that stay outside the financial services holding company will be subject to the most restrictive firewalls plus any discretionary firewalls the appropriate Federal banking agencies may impose on the financial companies inside the financial services holding company.

Thus, the first part of section 204 provides that diversified holding companies can acquire a financial services holding company, but only if, after the transaction, the financial services holding company meets the requirements for Zone 1. The purpose of this provision is to ensure that affiliations between commercial firms and banks will only take place if the banks are well-capitalized.

In addition to the requirement that financial services holding companies be in Zone 1, this section establishes a number of "firewalls" to protect the insured bank or thrift. These firewalls provide that financial services holding companies and their subsidiaries (1) may not extend credit to an affiliated diversified holding company or its affiliates that are not controlled by a financial services holding company; (2) may not purchase for its own accounts the financial assets or securities of an affiliated diversified holding company or its affiliates, that are not controlled by a financial services holding company; (3) may not issue a guarantee, acceptance, or letter of credit to an affiliated diversified holding company or its affiliates, that are not controlled by a financial services holding company; and (4) may not extend credit to any customer of the diversified holding company or its affiliates other than on an arm's length basis, subject to the provisions of Section 23B of the Federal Reserve Act.

Third, unless the transactions are specifically prohibited, the firewalls provided for in section 4(1) of the FSHCA shall apply to diversified holding companies and their affiliates not otherwise controlled by a financial services holding company.

Fourth, a diversified holding company and any of its affiliates that purchase and sell real property as principal, agent, or broker or provide insurance as principal, agent, or broker may market such service jointly with any affiliated insured depository institution, provided the depository institution is permitted to engage in the activity by the State where the service is to be offered.

These restrictions are to be applied to foreign banks and their U.S. affiliates in the same manner and to the same extent as to U.S. organizations. The territorial limitation is necessary so that affiliate operations located outside the U.S. are not adversely affected by these firewalls.

SECTION 205. ADMINISTRATION

Section 205 creates a new section 6 which provides in subsection (a) that financial services holding companies register with the appropriate Federal banking agency within 180 days of becoming a financial services holding company. Registration shall be documented on forms prescribed by the appropriate federal banking regulators, which shall include information concerning the financial condition and operations, management, and inter-company relationships of the registrant and its affiliates, as well as any additional information deemed appropriate by the regulators. The regulators retain the discretion to extend the registration period beyond 180 days.

Subsection (6)(b) requires the Federal banking agencies to adopt and publish final joint regulations implementing this Act by January 1, 1993. After the implementing regulations are adopted, the appropriate Federal banking agencies do not have to issue joint regulations but they do have to provide each other with notice and opportunity to object to proposed rules or other policy changes. The appropriate Federal banking agencies shall provide the other Federal banking agencies with at least 60 days notice with respect to any proposed formal policy changes affecting diversified or financial services holding companies or any of their subsidiaries or affiliates. If one agency objects to the proposed policy change of another agency, the change may not be implemented without the written consent of the objecting agency.

Section 6(c) sets forth the recordkeeping and reporting requirements that may be imposed by the appropriate Federal banking agency on a financial services holding company and a diversified holding company. It also sets forth the examination authority with respect to a financial services holding company and affiliates it controls, a diversified holding company, and affiliates of the diversified holding company that are not controlled by a financial services holding company. Nothing in section 6(c) is intended to limit the sharing of records by banking agencies with appropriate law enforcement authorities.

Subsection (c)(1)(A) contains the authority for the appropriate Federal banking agency to impose recordkeeping requirements on a financial services holding company to enable monitoring of the financial and operational risk to insured depository institutions in a holding company structure from an affiliated diversified holding company and its financial affiliates that are outside the control of the financial services holding company.

Specifically the financial services holding company is required to obtain such information and make and keep such records as the appropriate Federal banking agency may prescribe concerning the policies and procedures for monitoring and controlling financial and operational risks to insured depository institution subsidiaries of the financial services holding company from the activities of a diversified holding company controlling the financial services holding company and from the activities of financial affiliates of the diversified holding company that are not controlled by the financial services holding company. The required records shall describe the activities conducted by the diversified holding company, and its financial affiliates that are not controlled by the financial services holding company, that are likely to have a material impact on the financial or operational condition of the insured depository institution subsidiaries of the financial services holding company. The records shall also describe the sources of capital and funding of any such activities.

Subsection (c)(1)(B) provides that the appropriate Federal banking agency may require a financial services holding company and its insured depository institution subsidiaries to file reports under oath to keep the appropriate Federal banking agency informed as to compliance with the provisions of the Act and regulations and orders issued thereunder. For insured depository institution subsidiaries for which the primary regulator is the other appropriate Federal banking agency, the appropriate Federal banking agency is required to consult with and, to the extent possible, use reports obtained by the other agency.

Subsection (c)(1)(C) provides that the appropriate Federal banking agency may require the financial services holding company, and any affiliate it controls, to file reports if the agency reasonably believes that the activities or financial condition of any such companies are likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary, or a subsidiary of the insured depository institution. This permits the appropriate Federal banking agency to obtain additional information if, based on information obtained from the records and reports described above, the agency has concerns about the impact on any insured depository institution of the activities of the financial services holding company or affiliates it controls.

Where the affiliate or financial services holding company has a functional regulator, as defined in section 2 of the Act, the appropriate Federal banking agency is required to consult with and, to the extent possible, use reports obtained by, that functional regulator. A functional regulator is defined as a Federal or State agency that has supervisory authority over the activities of a company that are of concern to the appropriate Federal banking agency under this subsection. As a result, consultation is only required if the functional regulator examines the specific activities that the appropriate Federal banking agency believes are to have a material impact on the depository institutions.

Subsection (c)(1)(D) provides similar authority to require reports from an affiliated diversified holding company and financial affiliates of the diversified holding company that are not controlled by a financial services holding company.

Subsection (c)(1)(E) provides for reciprocal access to reports, other than examination reports, among the appropriate Federal banking agencies and the functional regulators, if any, for financial affiliates and diversified holding companies, if the agency or regulator reasonably believes that the activities or financial condition of an affiliate could have a material impact on the company for which the agency or regulator has responsibility.

Subsection (c)(1)(F) provides that any reports obtained from another agency or regulator may not be disclosed to the public by the recipient agency and shall not be disclosed to any other agency or the Congress except as permitted by law. Furthermore, reports obtained from another agency or regulator may be used only for purposes of determining if a material impact on a given entity exists, or as otherwise permitted by law. The reports may not be used to carry out other supervisory responsibilities of the recipient agency or regulator. As noted above, however, nothing in subsection (c) is intended to limit the sharing of records by banking agencies with appropriate law enforcement authorities.

Subsection (c)(2) provides for general authority to examine a financial services holding company and its insured depository institution subsidiaries, as well as more limited authority to examine other affiliates controlled by the financial services holding company, a diversified holding company and its financial affiliates. Under subsection (c)(2)(A), the appropriate Federal banking agency is given general authority to examine a financial services holding company, its insured depository institution subsidiaries, and other affiliates under its control. Wherever appropriate, the appropriate Federal banking agency is required to consult with and, to the extent possible, use the report of examination made by the other appropriate Federal banking agency. This is intended to encourage the regulator of a financial serivces holding company to use examination reports made by the other appropriate Federal banking agency with respect to an insured depository institution within the holding company structure for which the other appropriate Federal banking agency is the primary regulator.

Subsection (c)(2)(B) authorizes the appropriate Federal banking agency to examine the financial services holding company and any affiliate under its control to determine whether such company or affiliate is engaged in any transaction that would violate the restriction set forth in sections (4)(1) and 5(c), or to determine compliance with sections 35 (f) and (g) of the Federal Deposit Insurance Act if either is applicable because an insured bank controlled by the financial services holding company is within Zone 3 or Zone 4, as defined in section 35. The appropriate Federal banking agency is also authorized to conduct such examinations if the agency reasonably believes that the company or affiliate is engaged in a particular transaction or a course of conduct that may constitute a material risk to any insured depository institution subsidiary.

The appropriate Federal banking agency is directed to use examination reports prepared by the functional regulator, if any, of the holding company or financial affiliate. If the examination report does not contain the information necessary to identify any violations of sections 4(1) and 5(c), or assure compliance with sections 35 (f) and (g), if applicable, or if it does not contain the information necessary to determine if there is a material risk to an insured depository institution, then the appropriate Federal banking agency may request the functional regulator to conduct an examination to obtain such information. If the regulator does not do so within a reasonable period of time, then the appropriate Federal banking agency may conduct the examination after notifying the functional regulator.

Subsection (c)(2)(C) contains similar examination authority with respect to a diversified holding company and its financial affiliates that are not controlled by a financial services holding company.

Subsection (c)(2)(D) authorizes the functional regulator of a financial affiliate to examine an affiliated insured depository institution if the regulator reasonably believes that such institution is engaged in a particular transaction or course of conduct that may constitute a material risk to the financial affiliate. Similar to the procedure described above, the functional regulator is first required to attempt to obtain the necessary information through the appropriate Federal banking agency for such insured depository institution.

Subsection (c)(2)(E) authorizes the appropriate Federal banking agency to examine any nonfinancial affiliate of a diversified holding company in order to determine whether the affiliate is engaged in a particular transaction that would violate section 5(c).

Subsection (c)(2)(F) provides that the cost of examinations of a diversified holding company and any affiliate not controlled by a financial services holding company shall be assessed against the company that is the subject of the examination. The cost of examinations of a financial services holding company and its subsidiaries shall be assessed against the financial services holding company.

Subsection (d) makes clear that the mere transfer of records pursuant to section 205 of the Act does not in itself constitute a waiver of any privilege that may apply to that record (*e.g.*, attorney-client privilege, attorney work product doctrine).

Section 6(f) provides the appropriate Federal banking agencies with additional enforcement authority. First, an appropriate Federal banking agency may institute cease and desist proceedings or issue a temporary order requiring the holding company to cease and desist engaging in the activity in question to prevent any significant dissipation of assets or earnings of the insured depository institution. This authority applies to a diversified holding company or financial services holding company controlled by the diversified holding company or any of its affiliates. The appropriate Federal banking agency may take such action when it has reasonable cause to believe that (1) any financial affiliate of an insured depository institution is engaged in activities in such a manner as to constitute a serious risk to the financial health of the insured depository institution, or (2) the diversified or financial services holding company controlled by the diversified holding company or any affiliate is in danger of defaulting and thereby causing the insolvency or a significant dissipation of assets of the insured depository institution.

If the diversified or financial services holding company fails to comply with the order discussed above, the appropriate Federal banking agency may order the holding company to divest itself of the offending nonbank affiliate within 120 days. Due notice and an opportunity for hearing must be provided prior to any order to divest. A holding company may divest by selling the affiliate to a third party or by a pro rata distribution of the shares of the affiliate to all of the shareholders of the distributing holding company. The appropriate federal banking agency may enforce any order issued under this subsection in the United States District Court within the jurisdiction of which the principal office of the offending holding company is located.

Section 6(g) provides that the appropriate Federal banking agency may enforce any order issued under this subsection in the United States District Court for the District of Columbia, in the judicial district in which the proceeding is being conducted, or in the district where the witness resides or carries on business. This section also authorizes the appropriate Federal banking agency to issue witness subpoenas and subpoenas duces tecum in the course of any application, examination, investigation, or other proceedings under this chaper. Subpoenas may be issued under regulations adopted by the appropriate banking agency. Service of subpoenas is in accord with the Federal Rules of Civil Procedure, including service outside the jurisdiction of the United States. Witnesses subpoenaed under this subsection are accorded the standard fees and expenses of witnesses.

Subpoenas may be enforced in the United States District Courts. Courts before which enforcement actions are brought are authorized to award attorneys fees as they deem just and proper. Finally, willful failure or refusal to testify or produce documents pursuant to a subpoena can be punishable by up to one year in prison or by a fine of up to $1,000, or both.

SECTION 206. RESERVATION OF RIGHTS TO STATES: PRE-EMPTION OF ANTI-AFFILIATION PROVISIONS

Section 206 amends section 7 to continue the current law's existing requirement that the Bank Holding Company Act not be construed so as to diminish the existing or future powers and jurisdiction of any State regarding companies, banks, diversified holding companies, financial services holding companies, and any of their subsidiaries. The only change in the existing reservation of rights to states substitutes the terms "diversified holding company" for the term "bank holding company."

Subsection 7(b) creates three exemptions from the reservation of rights to the States, whereas existing law includes none. First, no State law shall prevent or impede any insured depository institution (or any related entity) from being or becoming a subsidiary or affiliate of a financial services holding company (or any related entity) because of the activities engaged in by either the depository institution (or the related entity) or the financial services holding company (or the related entity).

Second, no State law shall prevent or impede any financial services holding company (or any related entity) from acquiring, owning, controlling, or affiliating with any insured depository institution (or any related entity) because of the activities engaged in by either the depository institution (or the related entity) or the financial services holding company (or the related entity).

Third, no State law may prevent or impede any insured insured depository institution (or any related entry) from (1) offering or marketing the products or services of any affiliated financial services holding company (or related entity) or (2) having its own products or services offered or marketed by any affiliated financial services holding company (or related entity). However, cross marketing of insurance and real estate products and services in insured depository institution affiliates is permitted only to the extent such activities are permitted for State banks in the particular State in which the products or services are to be offered. The third exemption does not preempt any State law governing the examination, supervision, or regulation of financial service providers or the protection of consumers, unless such a law is inconsistent with the purposes of the Bank Holding Company Act (in which case the State law will be preempted only to the extent of the inconsistency).

The provisions of subsection (b) apply to foreign bank branches, agencies, and commercial lending companies as these terms are defined in the International Banking Act of 1978.

SECTION 207. PENALTIES

Section 207 amends section 8 of the Bank Holding Company Act of 1956, as amended by section 907(j) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (codified as 12 U.S.C. 1847 (1989)), by striking the vague term "profit significantly" and replacing it with the term "obtain anything of value," which is broadly construed to include intangibles as well as tangible items (*e.g.*, *United States v. Girard*, 601 F.2d 69, 71 (2d Cir.), *cert. denied*, 444 U.S. 871 (1979)) (bribery prosecution); and to focus on the worth attached to the item by the defendant rather than its commercial value (*e.g.*, *United States v. Williams*, 705 F.2d 603, 622–23 (2d Cir.), *cert. denied*, 464 U.S. 1007 (1983) (bribery prosecution). This section also would strike the last paragraph from subsection 8(a) of the Bank Holding Company Act, since the subsection addresses conduct best addressed by amending 18 U.S.C. 1005. A conforming amendment to 18 U.S.C. 1005 is made at section 618 of the FISCCA.

The civil penalty provisions in subsection (g) are intended to be in addition to, and not a substitute for, any criminal punishment or administrative sanction that may apply to the same conduct. A civil penalty awarded under this subsection is intended to be compensatory, not punitive, and therefore it avoids any double jeopardy issue under *United States v. Halper*, 490 U.S. 435 (1989). The

phrase "forfeit and" has been deleted from the draft provision in order to avoid confusing this civil penalty provision with civil forfeiture for purposes of *Halper* analysis.

SECTION 209. ANTITRUST TRUST REVIEW

Section 209 amends section 11(b)(1) of the Bank Holding Company Act, 12 U.S.C. 1849 (b)(1) and section 18(c)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1828 (c)(6), to permit, with the concurrence of the Attorney General, elimination or reduction of the special five-day period for consummation of certain mergers and acquisitions.

SECTION 212. APPLICATION OF THE LIMITATIONS ON TYING ARRANGEMENTS AND INSIDER LENDING TO FINANCIAL SERVICES AND DIVERSIFIED HOLDING COMPANIES

Section 212 replaces the term "bank holding company" with "financial services holding company" and "diversified holding company" in that portion of the Bank Holding Company Act Amendments of 1970 governing tying arrangements and in that portion of the Federal Reserve Act governing insider loans. In addition, section 212 adds specific transactions to the prohibited tying arrangements listed in the Bank Holding Company Act of 1970. Generally, a financial services holding company and any of its nonbank subsidiaries and a diversified holding company and any of its subsidiaries may not in any manner provide products or services, or set or vary the cost of such products or services, on the condition or requirement that the customer also obtain products or services from an affiliated bank.

Two exceptions to the general prohibition are provided. First, products and services of a bank and an affiliate of a bank may be offered together and the price of the nonbank product may be varied on the condition that the customer purchases a bank product or service. This can only be offered if both the bank product and the affiliate's product are separately available to the customer at an essentially fair market price. This is to ensure that the price of the products offered on a separate basis are not so exorbitant as to force the customer to purchase both products. Second, if the bank and the nonbank products are both "core banking" products, the price can be varied on the product offered by the affiliate provided both products are separately available. Core banking products include loans, deposit, discount, and trust services. This reflects the position of the Federal Reserve Board in a recent order. Competition in the area of banking products is so strong that it is likely the products will be offered separately at fair market prices. The Federal Reserve Board may adopt any regulations necessary to carry out the purposes of the section, including restrictions on the two exceptions to the section's general prohibition.

SECTION 213. PROVISIONS EXEMPTING FINANCIAL SERVICES HOLDING COMPANIES FROM THE SAVINGS AND LOAN HOLDING COMPANY ACT

This section generally exempts financial services holding companies that own savings associations from the provisions of the Savings and Loan Holding Company Act found at section 10(a) of Home Owners Loan Act, other than financial services holding companies that are defined in section 4(f) of the Financial Services Holding Company Act (companies owning non-bank banks). Consequently, as long as a company is a financial services holding company, it is not subject to the limitations of the Savings and Loan Holding Company Act when it acquires ownership or control of a savings and loan association. It also does not need to form a separate savings and loan holding company structure to make such an acquisition.

Section 212(a) amends section 10(a) of the Home Owners Loan Act (12 U.S.C. 1467a(a)) by adding a new paragraph (5) to generally implement this exemption from the savings and loan holding company regulatory regime. Section 212(b) amends the definition of savings and loan holding company found at section 10(a)(1)(D) of the Home Owners Loan Act (12 U.S.C. 1467a(a)(1)(D)) to incorporate this exemption in the definition.

Subtitle B—Financial Activities of National Banks

SECTION 221. AMENDMENTS TO THE BANKING ACT OF 1933

This section delineates the permissible activities of national banks once the expanded securities and insurance powers of the Financial Services Holding Company Act are effective and repeals certain provisions of the Glass-Steagall Act.

Section 221 amends paragraph Seven of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seven)) by adding new limitations and rights to the powers of national banks.

Subsection (a) allows national banks that do not have a securities affiliate (as that term is defined in section 2 of the Financial Services Holding Company Act) to distribute securities issued by investment companies as that term is defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3).

Subsection (a) prohibits national banks from underwriting and distributing or selling interests in a pool of assets that are originated or purchased by the national bank itself, or by the bank's affiliates in the United States. This subsection also prohibits a national bank from sponsoring, organizing or controlling an investment company registered under the Investment Company Act that is established or maintained for employee benefit accounts under section 408 of the Internal Revenue Code.

Finally, subsection (a) permits national banks to engage only in those securities activities that were specifically authorized by statute, regulation, order, or interpretation on the date of enactment of this Act. This authority does not include, however, permission to engage in the asset-backed securities activities that were prohibited, as described above.

These amendments, when combined with other provisions of the FSHCA and amendments to the securities laws, require banks to transfer some existing securities activities to an operating subsidiary of the bank or an affiliate as provided. For example, brokerage must be conducted outside the bank in a subsidiary or an affiliate pursuant to section 4(c)(8) or (15). Underwriting and distributing mortgage backed securities must be conducted in a securities affiliate pursuant to section 4(c)(15). Brokerage of affiliate securities can only be conducted in a bank lobby to the bank's retail customer base through a registered broker dealer.

Subsection (a) repeals section 20 (12 U.S.C. 377) and section 32 (12 U.S.C. 78) of the Banking Act of 1933, commonly known as the Glass-Steagall Act. Section 20 prevented any affiliate of a member bank from engaging principally in certain securities activities, and section 32 generally limited common directors, officers, and employees between investment banks and commercial banks.

SECTION 222. INSURANCE ACTIVITIES OF BANKS

This section addresses insurance activities of national banks. First, it strikes the provision in the Act of September 7, 1916, that had been classified in 12 U.S.C. 92 and repeals it as purportedly amended by the Garn-St Germain Act (section 403(b) of P.L. 97-320). This provision authorized national banks to engage in insurance activities if they have an office in towns with populations under 5,000. The provision is re-enacted as subsection (a) to remove any doubt regarding its status and to amend it to provide that a national bank located in such a place may sell insurance in that place so long as: (1) such insurance activities are confined to that place, and (2) the insurance is sold only to residents of the State in which the association is located and natural persons employed in that State.

This section also adds a subsection (b) which allows a national bank to engage in insurance brokerage in any state in which the bank has its headquarters or a branch to the extent insurance brokerage activities are permitted in that State for banks chartered in that State. This provision supersedes any limitations that would prevent exercise of such authority.

SECTION 223. AMENDMENTS TO SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT

Section 223 prohibits a financial services holding company from permitting an insured depository institution subsidiary from engaging in any "covered transaction," as defined in 12 U.S.C. 371c(b)(7), that exceeds five percent of the insured depository institution's capital stock and surplus, unless five days' notice has been provided to the appropriate federal banking regulator of the financial services holding company and the insured depository institution.

Section 223 amends the definition of the term "affiliate" in three respects. First, it includes in the definition any mutual fund, commodity pool, or other company engaged in such activities if a member bank or any member bank affiliate is an investment advisor, commodity trading advisor, or performs substantially equivalent activities for the company. Second, under current law, a subsidiary of a member bank, other than a bank, is presumed not to be an affiliate. Section 216 narrows this presumption to encompass only subsidiaries of which the member bank owns at least 80 percent of the voting stock.

Under existing section 23A, the term "bank" includes a trust company. Section 223 restricts this definition to trust companies principally engaged in deposit taking or lending activities.

Three transactions are added to the list of covered transactions under section 23A. First, a member bank's assumption of the liability of any affiliate. Second, any transaction to enhance the marketability of securities, obligations, or assets underwritten or distributed by an affiliate, unless there is substantial participation by other lenders in the transaction. Any transaction concerning securities that a member bank may underwrite under current law is exempt. Third, any financial transaction determined by the Federal Reserve Board by regulation to be the same as any transaction described in the paragraph.

Section 23A also includes as a transaction with an affiliate any transaction by a member bank or its subsidiary with any person if any of the proceeds of the transaction are used for the benefit of, or transferred to, such affiliate. This provision is amended to provide that such a transaction will not be deemed to be with an affiliate if the member bank approves the loan or extension of credit in accordance with substantially the same standards it has used for similar loans or extensions of credit in which the proceeds are

not transferred to or for the benefit of an affiliate and the loan or extension of credit is not made for the purpose of evading section 23A.

Current law requires collateral to secure letters of credit issued on behalf of an affiliate. Section 223 ensures that collateral is also required for letters of credit issued to affiliates. Under the existing statute, securities issued by an affiliate are not considered acceptable collateral. Section 223 extends this treatment to securities issued by the member bank. Similarly, letters of credit issued on behalf of an affiliate are not considered acceptable collateral under current law. Section 223 extends this treatment to letters of credit issued to affiliates.

Although current law exempts the purchase of securities issued by bank service corporations from the provisions of section 23A, section 223 qualifies the exemption to apply only to those service corporations that provide services solely to affiliated member banks.

Under existing section 23B, covered transactions include those with a third party in the following two cases: (1) if an affiliate has a financial interest in the third party; or (2) if an affiliate is a participant in such a transaction. Section 216 adds a third case to the list, namely, any third party who is a customer of an affiliate as defined by the Financial Services Holding Company Act of 1991, unless the member bank approves the transaction in accordance with substantially the same standards, procedures, and terms that it has applied to similar transactions with individuals who are not customers of an affiliate and the transaction is not made for the purpose of evading any of the requirements of section 23B.

Existing section 23B prohibits a member bank or its subsidiary from acquiring, during the existence of any underwriting or selling syndicate, any security if a principal underwriter is an affiliate of the bank. The only exception is if the acquisition was approved before the securities were initially offered for sale to the public by a majority of the bank's board of directors, provided those directors are not officers or employees of the bank or any affiliate. Section 223 strengthens the exception by requiring that the majority of directors not be officers, directors, or employees of the affiliate for the exception to be operable.

SECTION 224. CUSTOMER DISCLOSURES

Section 224 requires an insured depository institution to prominently disclose in writing to each of its customers that any securities or insurance products offered, recommended, or sold by the institution are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the institution or any affiliate, and are not an obligation of the institution, unless such is the case.

An insured depository institution may permit securities or insurance products to be offered, recommended, or sold on the institution's premises or to an institution's customer as part of joint marketing activities with another entity, provided the other entity prominently discloses in writing that it is not an insured institution and is separate from the insured depository institution. The entity must also make the disclosures discussed above regarding the fact that the products are not automatically insured in any way. An insured depository institution must ensure that prior to the consummation of a sale, the customer acknowledges in writing the receipt of the disclosure required by this section.

The appropriate Federal banking agencies shall adopt regulations governing disclosures required by this section.

Subtitle C—Non-Banking Activities of Foreign Banks in the United States

Subtitle C permits foreign banks to enjoy the benefits of the repeal of the Glass-Steagall Act and its related laws on the same basis as domestic banks.

Subsection (a) amends section 8(a) of the International Banking Act of 1978 (IBA). Amended paragraph 8(a)(1)(A) provides that any foreign bank that has a branch, agency, or commercial lending company in the United States is subject to non-banking activity restrictions of the Financial Services Holding Company Act of 1991 (FSHCA) in subtitle A of this Act to the same extent and in the same manner as a financial services holding company. Paragraph 8(a)(1)(B) subjects companies owning the foreign banks described in 8(a)(1)(A) to the FSHCA regulation as well.

A foreign bank that does not own an insured depository institution is not, however, by reason of this subsection alone, subject to the provisions of section 3 of the FSHCA. When and if a foreign bank seeks to acquire an insured depository institution, it will be subject to the FSHCA. In addition, if a foreign bank with a branch, agency, or commercial lending company wishes to acquire a savings association, it shall be treated as a financial services holding company, and not a savings and loan holding company.

The sections also amends paragraph 8(a)(2) of the IBA to prohibit any foreign bank or company that is engaged in banking in the United States from engaging in non-banking securities and insurance activities in any manner other than as set out in amended paragraph 8(a)(3) of the IBA. Paragraph 8(a)(3) requires all foreign banks wishing to engage in the new securities, insurance or other financial activities pursuant to section 4(c) of the FSHCA to conduct their business in the U.S. only through, directly or indirectly, a single financial services holding company established in the United States. This is national treatment.

Subsection (b) of section 231 amends section 8(c) of the IBA to cause the authority under the IBA for the continued operation of certain foreign bank securities subsidiaries operating before 1978 to expire three years after the date of enactment of the FSHCA. These entities can simply apply for approval pursuant to section 4(c)(15) of the FSHCA at the appropriate time.

The net effect of this section, when combined with the phasing out of "section 20" securities affiliates of banks under section 4(c)(8) of the FSHCA, is to require foreign banks to adopt a comparable holding company structure in the U.S. as exists for domestic institutions. A foreign bank will not be entitled to maintain direct branches and agencies in the U.S. if it chooses to undertake securities activities under section 4(c)(15) of the FSCHA, or insurance activities under 4(c)(16) of that Act. Foreign banks that choose not to undertake these new activities may continue to operate their U.S. branches and agencies, and will be fully entitled to engage in interstate banking. The choice will be left to each foreign bank. It is expected that costs of converting existing branches and agencies into subsidiary operations in the U.S. will be alleviated somewhat by the fact that all existing U.S. branches and agencies can be converted into one subsidiary given the interstate branching reforms.

Subtitle D—Amendments to the Securities Acts

SECTION 241. AMENDMENTS TO THE SECURITIES ACT OF 1933

Subsection 3(a)(2) of the Securities Act of 1933 currently exempts any security issued or guaranteed by any bank from the registration provision of that Act. Subsection 3(a)(5) exempts from the registration provisions of that Act securities issued by savings and loan associations. Section 241(a) amends section 3(a)(2) to delete the exemption for bank-issued and bank-guaranteed securities and (b) amends section 3(a)(5) to eliminate the exemption from registration for securities issued by savings and loan associations and similar institutions that are supervised by a State or Federal authority. Section 241(c), which is discussed in greater detail below, also adds a new subsection (d), however, which provides that any deposit instrument which has been deemed to be a security within the definition set forth in section 2(1) of the Securities Act would be exempt from its provisions, as is the case for those classes or securities listed in section 3(a). The new subsection (d) is intended to avoid any suggestion that the language of the exemption reflects an intention that the instruments listed be treated as "securities," under the Act.

The overall purpose and effect of this amendment is to centralize regulation of all public offerings of bank-issued or bank-guaranteed securities in the SEC. Under the current exemption, the bank regulatory agencies generally have jurisdiction over offering disclosure requirements with respect to securities issued by banks under their supervision. The proposed amendment is intended to preclude uneven regulatory treatment of public offerings of bank securities as opposed to the securities of other classes of issuers. The proposed amendment, however, does not modify or alter the existing scope of the Federal securities laws regarding bank instruments, nor does it confer authority on any agency to expand, by interpretation or regulation, the coverage of the Federal securities laws over bank products and instruments.

The elimination of the special exemption for thrift securities offerings will achieve the same purposes of economy of government resources, protection of investors and uniformity of regulation described above for bank securities offerings. In this regard future thrift offerings will be treated in the same manner as already occurs under current law for offerings of thrift holding companies.

The list of banking instruments in new section 3(d) generally is based on the relevant provisions of the Federal Deposit Insurance Act, 12 U.S.C. 1813. For purposes of defining a "deposit," the list includes deposit accounts and certificates of deposit, certified checks, letters of credit, traveler's checks, non-pooled assets of individual trust funds received or held by a bank or savings association and funds held for special or specific non-investment purposes, such as escrow funds, funds held as security, and other special purposes. Further, the list includes a general provision for any bank account or instrument which is insured by the Federal Deposit Insurance Corporation, is subject to the Federal Reserve Board's deposit reserve requirements, or is regulated as a deposit by the Bureau of Financial Institutions Supervision or the Federal Reserve Board.

Subsection (d) adds an exemption under section 4 of the Securities Act of 1933 for the reorganization of a bank into a financial services holding company or the reorganization of a financial services holding company into a diversified holding company. The ex-

emption provides that the interests of the securities holders in the new holding company must be in substantially the same proportion as their interest in the bank or financial services holding company and the newly formed holding company has substantially the same assets as its predecessor.

SECTION 242. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934

The Securities Exchange Act of 1934 (the "Exchange Act") currently excludes banks from the definition of "broker." As a result, a bank may currently engage in permissible securities activities directly, subject to regulation by the appropriate bank regulator, but is not subject to regulation by the Securities and Exchange Commission under the Exchange Act. The following amendments were adapted in large part from provisions of S. 1886 passed by the Senate in 1988.

Subsection (a) amends the Exchange Act's definition of "broker" to include banks under certain specific circumstances and subject to certain specific exemptions. This is consistent with other sections of the bill that promote functional regulation: the SEC will regulate securities activities as a general rule, but the appropriate Federal banking agencies will continue to regulate certain securities activities that are closely connected to traditional banking activities.

Subsection (a) achieves this result by amending the definition of "broker" to exclude a bank except when the bank "publicly solicits" brokerage business or receives "incentive compensation" for brokerage. A bank covered by either of these exceptions will be subject to broker-dealer registration and regulation under the Exchange Act unless the brokerage activities fall within the exemptions described below.

If the bank is covered, it will be required under subsection (d) to spin off its public brokerage business into a separate corporate entity, which for purposes of this section includes an operating subsidiary of the bank or a subsidiary of the parent financial services holding company established under section 4(c)(8) or 4(c)(15) of the Financial Services Holding Company Act of 1991.

The term "publicly solicits" is to be broadly interpreted, and includes not only general advertisements or public telephone solicitation, but also systematic solicitation of existing customers through such items as materials included with bank statements.

"Incentive compensation" is the payment of commissions or similar remuneration based on effecting transactions in securities in excess of the bank's incremental costs directly attributable to effecting such transactions. "Incentive compensation" does not include fees calculated on a basis unrelated to or unconnected with effecting transactions in securities, such as, for example, an annual administration charge or an hourly charge for fiduciary consulting services, or fees calculated as a percentage of assets under management.

As mentioned above, section 242(a) also includes certain specific exemptions. These recognize that certain bank brokerage activities are closely allied to traditional bank functions that already are subject to extensive regulation and supervision by Federal banking agencies. Specifically, section 242(a) includes nine exemptions that allow a bank to continue engaging in such brokerage activities directly in the bank without being deemed a "broker" under the Exchange Act, and without being subject to SEC regulation.

A. Networking Exemption—A bank will not be deemed a "broker" because of transactions in connection with a "networking arrangement". This occurs where a bank contracts with a registered broker dealer, whether or not affiliated with the bank, to provide brokerage services on bank premises on a fully disclosed basis. However, bank employees engaged in this activity whose functions are other than clerical or ministerial, or who are compensated on a commission basis, must be suitably qualified and regulated as securities registered representatives. Whether or not such employees are so qualified, however, the bank itself could receive commissions without losing the exemption.

B. Trust Activities Exemption—A bank will not be deemed a "broker" because of trust activities, including brokerage, unless the bank receives incentive compensation and publicly solicits brokerage business other than by advertising, in conjunction with advertising its other trust activities, that it affects transactions in securities.

C. Exemption for Transactions in Certain Securities—A bank will not be deemed a "broker" because of transactions in certain specific types of securities. These are: (a) securities that are defined as "exempted securities" under the Exchange Act, but excluding municipal securities, which are subject to the separate exemption described below; (b) commercial paper; (c) bankers' acceptances; and (d) commercial bills.

D. Municipal Securities Exemption—A bank that does not have a securities affiliate under new section 4(c)(15) of the Financial Services Holding Company Act will not be deemed a "broker" because of transactions in municipal securities. The exemption applies to transactions in both general obligation bonds and certain municipal revenue bonds that banks are permitted to underwrite and deal in pursuant to section 16 of the Glass-Steagall Act (12 U.S.C. 24 (seventh)).

A bank that does have a securities affiliate, however, would not receive this exemption. As a result, if it otherwise fell within the definition of "broker" it would be required to spin off its municipal securities brokerage activities into an affiliate established pursuant to section 4(c)(15) of the Financial Services Holding Company Act.

E. Employee Benefit Account Exemption—A bank will not be deemed a "broker" because of transactions for employee benefit accounts. Such accounts include bonus, profit sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plans.

F. Money Market Sweep Account Exemption—A bank will not be deemed a "broker" because of transactions that sweep depositors' funds into money market accounts.

G. Affiliate Transaction Exemption—A bank will not be deemed a "broker" because of transactions for the account of any affiliate, as that term is defined in the Banking Act of 1933.

H. Private Placement Exemption—A bank will not be deemed a "broker" because of its role in placing primary offerings of securities by an issuer, not involving a public offering, to three classes of purchasers:

(1) specified institutional investors, such as banks, insurance companies, investment companies, thrifts, State and local governments, charitable organizations, and certain foreign entities;

(2) individuals with a net worth exceeding $5 million—an amount which is adjusted annually for inflation; and

(3) employees benefit plans if the investment decision is made by a plan fiduciary as if the plan has assets in excess of $5,000,000; an employee benefit plan established by a State or political subdivision if the plan has an excess of $25,000,000 in assets and the decision is made by a plan fiduciary; a corporation with assets in excess of $50,000,000 and net worth in excess of $5,000,000; and other entities or individuals that have net worth of $5,000,000.

With respect to the second class, a bank would not lose the exemption if a particular purchaser did not meet the net worth requirement so long as the bank reasonably believed that the purchaser met that requirement.

This exemption is intended to preserve certain existing bank private placement functions.

I. Under 1,000 Transactions Exemption—A bank will not be deemed a "broker" if it limits its brokerage activities to fewer than 1,000 transactions per year (other than those transactions described in the other eight exemptions from the "broker" definition) and if it does not have a separate registered broker-dealer, regardless of whether it is a bank operating subsidiary or holding company affiliate established pursuant to either section 4(c)(8) or 4(c)(15) of the Financial Services Holding Company Act of 1991.

J. Effect of Exemptions—The exemptions from the definition of "broker" are concerned with registration and regulation as a broker under the Exchange Act. They are not grants of authority, and do not affect any restrictions applicable under the Federal banking laws. The exemptions should not be used to draw inferences about the Federal banking laws, including the provisions added by the other subtitles of the bill.

Section 242(b) is a complementary amendment to the Exchange Act concerning the definition of "dealer." Lke the current definition of "broker," the current definition of "dealer" in the Exchange Act specifically excludes banks. This section includes banks under the general definition of "dealer"—"any person engaged in the business of buying and selling securities for his own account through a broker or otherwise"—but creates three specific exemptions for banks that are similar to the "broker" exemptions.

A. Exemption for Transactions in Certain Securities—A bank will not be deemed a "dealer" because of transactions in certain specific types of securities. These are: (1) commercial paper; (2) bankers' acceptances; (3) commercial bills; and (4) securities that are defined as "exempted securities" under the Exchange Act, but excluding municipal securities, which are subject to the separate exemption described below.

B. Municipal Securities Exemption—A bank that does not have a securities affiliate under new section 4(c)(15) of the Financial Services Holding Company Act will not be deemed a "dealer" because of transactions in municipal securities. As with the similar "broker" exemption, this applies to transactions in general obligation bonds and certain municipal revenue bonds. However, a bank that does have a securities affiliate will not receive this exemption, and will therefore be required to spin off its municipal securities dealing activities into a registered broker-dealer holding company affiliate authorized pursuant to section 4(c)(15).

C. Trust Activities Exemption—A bank will not be deemed a "dealer" because it engages in trust or fiduciary activities, including buying and selling securities for investment purposes in the course of those activities.

Section 242(b) preserves the existing distinctions between dealer activities on the

one hand, and non-dealer principal transactions on the other hand (including bank investment and trading portfolio transactions for its own account or as a trustee or fiduciary), as reflected in current SEC interpretive positions.

D. Effect of Exemptions—The exemptions from the definition of "dealer" are concerned with registration and regulation as a dealer under the Exchange Act. They are not grants of authority, and do not affect any restrictions applicable under the Federal banking laws. The exemptions should not be used to draw inferences about the Federal banking laws. Including the provision added by other subtitles of the bill.

Subsection 242(d) amends section 3 to authorize the SEC to exempt by rule, regulation, or order any person or class of persons from the definition of "broker" or "dealer" if the SEC finds that the exemption is consistent with the public interest, the protection of investors, or the purposes of the Exchange Act.

Subsection (d) amended the general registration requirement for brokers and dealers under the Exchange Act to prohibit a bank from becoming a broker or dealer, except on an exclusively intrastate basis. This change is intended to require banks that come under the revised definitions of "broker" and "dealer" in the Exchange Act to create a separate affiliate or subsidiary to perform these activities. Consistent with the general purposes of this legislation, this section would not restrict the substantive authority of any bank or financial services holding company, under the national banking laws or any State banking law provision, to offer through an affiliate or subsidiary any permitted securities brokerage and dealing services.

Under this section, a bank would engage in activities as a "broker" or "dealer" either through an affiliate or a subsidiary. For those activities not required to be conducted in a securities affiliate pursuant to section 4(c)(15) of the Financial Services Holding Company Act, banking organizations will—insofar as this section is concerned—be allowed the organizational flexibility to select the corporate form through which they would offer brokerage and dealing services. This would include a bank operating subsidiary, a nonbank affiliate established under section 4(c)(8) of the Financial Services Holding Company Act, or a section 4(c)(15) securities affiliate.

It is intended that a bank be permitted, subject to applicable SEC registration and other requirements, to establish an operating subsidiary to engage in broker-dealer activities that are permissible for banks under section 16 of the Glass-Steagall Act but that may not be conducted directly in the bank because of section 242(d) of the bill. Accordingly, the second sentence of section 15(a)(2) of the Exchange Act is amended to provide that the prohibition on a bank's conducting broker-dealer activities directly does not preclude the bank from establishing a subsidiary to conduct those activities. Those activities must, however, be activities that the bank could conduct directly but for section 242(e).

Section 242(e) amends section 15 of the Exchange Act to impose restrictions on the offering or sale of certain securities on bank premises. Generally, shares or debt issued by a bank or any affiliate of a bank may not be offered or sold to the general public in any office of the bank that is commonly accessible to the general public for the purpose of accepting deposits. This restriction does not apply to shares of certain mutual funds affiliated with the bank if such securities are offered for sale by a registered broker and dealer. The restrictions of subsection (e) also do not apply to ownership interests which are deposits or which constitute a means of payment to a third party such as a traveler's check or cashier's check.

Section 242(f) repeals section 12(i) of the Exchange Act of 1934 that requires the bank regulatory agencies to administer and enforce the disclosure requirements under the Exchange Act with respect to banks and thrifts. Deletion of section 12(i) will centralize all administration and enforcement responsibilities for the disclosure requirements under the Exchange Act in the SEC.

SECTION 243. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

Subsection (a) amends the Investment Company Act of 1940 to provide the SEC with rulemaking authority over certain situations involving banks affiliated with management investment companies (i.e., mutual funds and closed-end investment companies) and unit investment trusts.

Subsection (a)(1) amends section 17(f) of the Investment Company Act to clarify and strengthen the SEC's authority to adopt regulations governing how banks may serve as custodians of affiliated management investment companies. Specifically, an investment company is permitted to place its assets with a bank that is an affiliated person, promoter, sponsor, organizer, or principal underwriter for such a company only in accordance with rules that the SEC may adopt after written consultation with the appropriate Federal banking agencies.

Subsection (a)(2) amends section 26(a) of the Investment Company Act. That provision, among other things, prohibits a principal underwriter or depositor of a unit investment trust from selling securities issued by the trust unless the trust, by appropriate agreement, designates a bank meeting certain qualifications as trustee. The amendment would allow a unit investment trust to designate an affiliated bank as trustee only in accordance with rules that the SEC may adopt after written consultation with the Federal banking agencies.

Subsection (b) amends two provisions of the Investment Company Act to strengthen its requirements for independent directors sitting on the boards of investment companies. Paragraph (1) amends the definition of "interested person" in section 2(a)(19)(A) of the Investment Company Act to include a person (or any affiliate of a person) that acts as custodian or transfer agent or effects portfolio transactions for, engages in principal transactions with, or loans money to, an investment company or any other investment company in the same investment company "complex" within the preceding six-month period.

For example, officers, directors, or employees of a bank or other financial services provider that effects transactions in Government or municipal securities for an investment company without broker-dealer registration would become "interested persons" of that investment company. Such persons would not be prevented from serving as directors of that investment company; rather, they merely would be considered "interested persons" for purposes of the required percentage of disinterested or independent directors of that investment company.

The change also clarifies the status of foreign broker-dealers under section 2(a)(19) that execute portfolio transactions for U.S.-registered investment companies investing in foreign markets, but that are not registered as broker-dealers under the Exchange Act. The current definition of "interested person" refers only to SEC-registered broker-dealers. As a result, officers, employees, and directors of a foreign broker-dealer are not automatically disqualified from serving as independent directors of a registered investment company, even if the broker-dealer effects portfolio transactions for the investment company. This amendment clarifies this situation by including such broker-dealers (and their affiliated person) within the definition of "interested person."

Paragraph (2) amends section 10(c) of the Investment Company Act, which currently provides that no registered investment company may have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank. The amendment extends the prohibition to the officers, directors, or employees of any one bank and its subsidiaries, or of any one financial services holding company and its affiliates and subsidiaries. This eliminates the potential to circumvent the legislative intent of section 10(c) by a bank operating under a multiple financial services holding structure. Section 243(c) amends section 38 of the Investment Company Act of 1940 to authorize the SEC to adopt rules regarding transactions between a bank, or an associated person or an affiliated mutual fund. The purpose of this provision is to give the SEC authority to address conflicts that may arise as a result of bank affiliation with investment companies to the same extent as the Investment Company Act of 1940 currently addresses conflicts involving investment companies.

Section 243(d) prohibits an investment company from representing that it or its securities are federally insured or guaranteed by federally insured banks or thrifts. Specifically, section 35(a) of the Investment Company Act is amended to prohibit a registered investment company or persons who sell securities issued by a registered investment company from representing or implying that the company or the securities are insured by the FDIC or is guaranteed by or is otherwise an obligation of any bank or insured institution.

The SEC is also authorized to require persons who issue or sell securities of an investment company, and have specified relationships with a bank or financial services holding company, including a similar name to the bank, to disclose prominently that the company and any security issued by it are not: (1) insured by the FDIC; (2) otherwise guaranteed by an affiliated bank or insured institution; or (3) otherwise an obligation of that bank or institution. In addition, persons who issue or sell securities of an investment company that have such relationships are required to obtain a customer acknowledgment of the receipt of such disclosures. The SEC is required to consult in writing with the Federal banking agencies before adopting such regulations.

Section 243(d) is not intended to affect the Commission's authority under other provisions of the Federal securities laws to require disclosure, such as section 5 of the Securities Act of 1933.

Subsection (e) amends the definition of "broker" in section 2(a)(6) of the Investment Company Act to reflect the bill's amended definition of that term in the Securities Exchange Act. The new definition would, however, continue to exclude any person (including a bank) solely by reason of the fact that such person is an underwriter for one or more investment companies.

Similarly, this subsection (f) amends the definition of "dealer" in section 2(a)(11) of the Investment Company Act to reflect the amended definition of that term in the Securities Exchange Act. The new definition would continue to exclude insurance companies and investment companies.

SECTION 244. REMOVAL OF EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

This section amends section 202(a)(11) of the Investment Advisers Act of 1940 ("Advisers Act") to remove the current exclusion from the definition of "investment adviser" for a bank or bank holding company that serves as an investment adviser to a registered investment company. This does not mean, however, that a bank is required to establish a separate subsidiary or affiliate in order to register as an investment adviser (although it would be permitted to do so). Instead, a bank would be permitted to establish a separately identifiable department or division to perform this function, in which case only the department or division, and not the bank or bank holding company, would be required to register. The SEC would have the same regulatory authority over such a bank department or division as it has over other investments advisers. The amendment includes reference to financial services holding companies because the amendments to the securities laws will be effective January 1, 1993, which is the same effective date as that of the FSHCA.

This removal of the bank exclusion is intended to strengthen the SEC's ability to oversee the activities of registered investment companies. It is also intended to subject banks and financial services holding companies that advise investment companies to the Advisers Act restrictions on performance fees, as well as agency cross and principal transactions. As a result, the SEC's regulatory authority over a bank or its departments or divisions would extend only to investment advisory services provided to registered investment companies and not to other advisory services.

Subsection (b) amends the definition of "broker" in section 202(a)(3) of the Advisers Act to make it identical to the definition of "broker" in the Securities Exchange Act, as amended by this Act.

Subsection (c) amends the definitions of "dealer" in section 202(a)(7) of the Advisers Act to make it identical to the definition of "dealer" in the Securities Exchange Act, as amended by this Act, except that the amended definition does not include an insurance company or an investment company.

Subsection (d) requires the SEC to notify the appropriate Federal banking agency before initiating any examination, investigation or enforcement action against any financial services holding company, bank, or department or division of a bank registered or required to be registered under the Advisers Act. The only exception to this requirement would be in a situation in which the protection of investors require immediate SEC action. In addition, regulators are required to share those portions of examination reports covering bank and financial services holding companies' investment advisory functions that are subject to the Advisers Act. The notification and sharing requirements will diminish the possibility of redundant or duplicative regulation.

SECTION 245. TREATMENT OF BANK COMMON TRUST FUNDS.

This section amends the exclusion from the definition of investment company in section 3(c)(3) of the Investment Company Act of 1940 for common trust funds to provide that the exclusion is applicable only under certain conditions. These conditions are designed to ensure that the common trust fund is established only as a vehicle to assist in administering fiduciary accounts and not as an investment vehicle for the general public.

To achieve the purpose of ensuring that common trust funds are not used as investment vehicles for the public, section 3(c)(3) is amended to provide that common trust funds (1) must be established solely for the purpose of administration of fiduciary accounts; (2) that the funds cannot be advertised; and (3) that the bank does not charge the fund fees and expenses that when added to the fees and charges to the participating trusts would exceed the costs to the trust if its assets had not been invested in the fund. However, the bank can charge the fund reasonable and necessary expenses such as the cost of an outside auditor, that are related to the prudent operation of the fund. These conditions reflect current regulations and interpretations. The purpose of incorporating these conditions into the statute is to ensure that common trust funds are only used to assist in the administration of fiduciary accounts.

In the event a common trust fund did not meet the conditions set forth above it would not be exempt from registration as an investment company under the Investment Company Act of 1940. The bank would be required to transfer the fund if it did not comply with the conditions to a mutual fund because banks themselves are not permitted to sponsor investment companies.

In the event a bank decides to transfer a common trust fund to a mutual fund, the section includes a provision that such a transfer would not be a taxable event for the participating trust.

SECTION 246. SECURITIES AND EXCHANGE COMMISSION STUDY OF BANK INSURANCE POOLED INVESTMENT VEHICLES.

Section 246 directs the SEC in consultation with the Department of Labor to study the appropriate treatment of collective investment funds and separate accounts that are organized for the investment of certain pension and employee benefit plans under the securities laws and the Employee Retirement Income Security Act. Collective investment funds and separate accounts are currently exempt from the Investment Company Act of 1940. As part of the study, the SEC should also consider the appropriate treatment of bank common trust funds under the securities laws. The goal is to adopt a regulatory scheme that protects investors in pooled investment funds on an equal basis, regardless of whether the funds are pooled by investment companies, banks, or insurance companies.

Subtitle E—Prompt Corrective Action

SECTION 251. PROMPT CORRECTIVE ACTION

In General. This section would add a new section 35 to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) that establishes a new system for supervision of insured banks based primarily on their capital levels. Generally using a risk-based capital standard and a leverage limit, the new section 35 establishes five different capital zones. The section authorizes certain mandatory and discretionary supervisory actions that may be taken by the appropriate Federal banking agency with respect to an insured bank in any of the lower capital zones. Certain actions are also authorized with respect to a financial services holding company and to a diversified holding company. The new prompt corrective actions do not depend exclusively on capital levels, however. The appropriate Federal banking agency has the explicit authority to reclassify institutions into lower zones based on the safety and soundness of a bank wholly apart from its capital levels. In addition, the authority for supervisory actions under section 35 are in addition to the other supervisory powers of the appropriate Federal banking agencies.

Definitions. Subsection (a) contains definitions for terms used in section 35.

The term "banking laws" is defined to include any law codified in Title 12 of the United States Code that is applicable to or affects insured banks and persons that own or control insured banks, and any regulations promulgated pursuant to such law.

The term "capital distribution" generally includes dividends or other distributions in cash or in kind paid with respect to any shares or other ownership interest in any insured bank. The phrase "other ownership interest" includes preferred stock as well as any ownership interest in a mutual savings bank, but does not include debt, whether or not subordinated. The term "capital distribution" does not include dividends consisting only of shares of the insured bank making the dividend, nor does it include any amount paid on the deposits of a mutual savings bank that is determined by the appropriate Federal banking agency not to constitute a dividend. The latter exception permits the appropriate Federal banking agency to determine which amounts paid on the deposits of a mutual savings bank constitute interest and which amounts constitute dividends or other distributions of capital. A capital distribution also includes a payment made by an insured bank to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an affiliated company's acquisition of such shares, or a transaction that the appropriate Federal banking agency determines by order or regulation to be in substance the distribution of capital.

The term "company" has the same meaning as provided in section 2(b) of the Financial Services Holding Company Act of 1991.

The term "compensation" means any payment of money or provision of any other thing of current or potential value in connection with employment.

The terms "diversified holding company," "financial services holding company," and "financial affiliate" have the same meanings as provided in section 2(a) of the Financial Services Holding Company Act of 1991.

The term "new financial activity" includes any activity authorized pursuant to sections 4(c)(8), 4(c)(15) or 4(c)(16) of the Financial Services Holding Company Act of 1991, other than activities determined by other or regulation by the Board of Governors of the Federal Reserve System prior to enactment of this Act to be closely related to banking pursuant to section 4(c)(8). For the exception to apply, the order or regulation must still be in effect on December 31, 1992, the day prior to the effective date of the provisions permitting well-capitalized banks and financial services holding companies to engage in the new financial activities. This definition parallels the definition of "new financial activity" in the Financial Services Holding Company Act of 1991.

The term "qualified financial activity" includes all activities authorized pursuant to sections 4(c)(8), 4(c)(15), and 4(c)(16) including those authorized pursuant to section 4(c)(8) prior to the effective date of this Act. This definition parallels the definition for "quali-

fied financial activity" in the Financial Services Holding Company Act of 1991.

Definitions of Zones. Unless otherwise specified by the appropriate Federal banking agencies, risk-based capital ratios and the leverage limits established by the appropriate Federal banking agencies are the relevant capital measures for purposes of Zones 1 through 4. The appropriate Federal banking agencies are authorized to adopt other relevant capital measures for these zones in addition to the risk-based capital ratio and the leverage limit, and to eliminate the use of the risk-based capital ratio or the leverage limit upon a finding, after notice and opportunity for comment, that the measure is no longer appropriate. The capital ratio, leverage limit, and additional relevant capital measures may include different ratios or minimums for different classes of banks, but section 35 is not intended to incorporate individual minimum capital ratios set by an appropriate Federal banking agency for a specific bank.

Subsection 35(b) also provides for a critical capital level which is the level of capital that will permit resolution of an insured bank's problems without significant financial loss to the relevant insurance fund. The critical capital level, which is to be established by the appropriate Federal banking agencies, must equal or exceed a ratio of Tier 1 capital to total assets of one and one-half percent. "Tier 1 capital" and "total assets" shall be calculated as set forth in the risk-based capital rule or guideline adopted by the appropriate Federal banking agency.

Zone 1 is generally defined to include any insured bank that (1)(A) maintains a risk-based capital ratio that is significantly in excess of the minimum ratio required by the appropriate Federal banking agency under its risk-based capital standard and Tier 1 capital that is significantly in excess of the required minimum for Tier 1 capital, or (B) meets the required minimum risk-based capital ratio and maintains Tier 1 capital that is substantially in excess of the required minimum for Tier 1 capital, and (2) meets or exceeds each other relevant capital measure established by the appropriate Federal banking agency. For purposes of the alternatives described above, Tier 1 capital that is substantially in excess of the required minimum is intended to be a higher standard than Tier 1 capital that is significantly in excess of the required minimum. Alternative (1)(A), which in part requires risk-based capital significantly in excess of the required minimum, is designed to permit banks to issue subordinated debt as a means of raising their capital level to qualify for Zone 1.

Zone 2 includes any insured depository bank that meets or exceeds both the applicable risk-based capital standard and the other relevent capital measure, but is not within Zone 1. Zone 3 includes any insured bank that maintains capital below any of the relevant capital measures but that is not within Zone 4 or Zone 5. Zone 4 includes any insured bank that maintains capital that is significantly below any of the relevant capital measures but is still in excess of the applicable critical capital level. The use of the term "significantly" is not intended to suggest symmetry with Zone 1, which is based in part on a capital level that significantly exceeds the specified minimum. Zone 5 is defined to include any insured bank with capital at or below the applicable critical capital level.

Notwithstanding these general definitions, pursuant to subsection (b)(7), if the appropriate Federal banking agency determines that an insured bank is in an unsafe and unsound condition, the bank may be reclassified to another zone. Any such bank within Zone 1 or Zone 2 is automatically reclassified as Zone 3 and may be further reclassified to Zone 4 by the appropriate Federal banking agency. Any bank in Zone 3 that is determined to be in an unsafe and unsound condition may also be reclassified to Zone 4.

Regulations. Under subsection 35(c), each appropriate Federal banking agency is directed, in consultation with the other appropriate Federal banking agency, to promulgate such regulations and take such other actions as are necessary to implement the provisions of this section. Each appropriate Federal banking agency is also authorized to issue orders and take such other actions as are necessary or appropriate to carry out its purposes. The appropriate Federal banking agencies also are directed to adopt regulations specifying the applicable capital ratios for each relevant capital measure in each of the zones, including the critical capital level described above which defines Zone 5. The appropriate Federal banking agencies are authorized to establish different critical capital levels for different classes of insured banks. Classes may be determined according to size, activities, condition of assets, local economic conditions, or any other relevant factor consistent with the purposes of this section. Establishment of all the capital ratios shall be done in consultation with the Federal Deposit Insurance Corporation.

Zone 1. Subsection 35(d)(1) permits qualifying Zone 1 banks to engage in certain expansions of their activities without prior notice to the appropriate Federal banking agency and to engage in mergers and certain other transactions under expedited procedures. A financial services holding company that qualifies as a Zone 1 company receives similar benefits under the Financial Services Holding Company Act.

To qualify, a bank must fall within Zone 1 both before and after the expansion. In addition, if the depository institution is owned by a financial services holding company, the company must qualify as a Zone 1 financial services holding company both before and after the expansion. A financial services holding company qualifies as within Zone 1 if insured banks representing at least 80 percent of the assets of all insured banks controlled by the company are within Zone 1, and the balance of its insured banks are within Zone 2. This standard will permit a financial services holding company to acquire, for example, a Zone 3 bank, so long as the financial services holding company brings up the capital level of the bank to a level sufficient for the holding company to meet the 80 percent test after the acquisition.

Although the provisions of section 35 generally do not apply to savings associations, both insured banks and savings associations are to be taken into account to determine if a company qualifies as a Zone 1 financial services holding company. A savings association is in Zone 1 if, based on the risk-based capital rule and leverage limit applicable to the savings association, it meets the capital ratio that defines Zone 1 as adopted by regulation by the appropriate Federal banking agency for the lead bank of the financial services holding company.

A Zone 1 bank is permitted without prior notice or approval to open any new branch office at any otherwise permitted location, so long as the branch office is not the first branch office of the bank in a given state and the bank has been rated as outstanding or satisfactory pursuant to the Community Reinvestment Act of 1977. A Zone 1 bank also may, without prior notice or approval, commence, directly or through a subsidiary, any activity determined by Federal statute or by regulation by the appropriate Federal banking agency to be permissible for an insured depository or its subsidiary. Under subsection (d)(3)(A), the bank is required only to give the appropriate Federal banking agency notice of any such expansion within 30 days following the opening of the new branch or other permitted commencement of new activities. Any branch office that is the first branch office of the bank in a given state must be approved in advance pursuant to the procedures applicable under other relevant provisions of Title 12 of the United States Code.

In addition, an insured bank in Zone 1 may merge or consolidate with any other insured bank, acquire the assets or assume the liability to pay any deposits of any other insured bank, or acquire the assets, or all the voting shares or control, of any company other than an insured bank that is engaged solely in activities determined by regulation by the appropriate Federal banking agency to be permissible for an insured bank.

The appropriate Federal banking agency shall by regulation establish the form and content of any subsequent notice required by subsection (d)(3)(A). The notice requirement of subsection (d)(3)(A) supersedes any other notice or application requirement applicable under Title 12 to the bank with respect to the expansion. Proposed transactions not eligible for the subsequent notice provision must still be approved under the applicable provisions of Title 12. However, the appropriate Federal banking agency is required to act within 45 days of receipt of the completed notice or application.

Subsection (d)(3)(C) specifically provides that the appropriate Federal banking agency may not approve any transaction involving a bank within Zone 1 if the agency determines that the bank is engaging in an unsafe and unsound practice or will be in an unsafe and unsound condition following the transaction, notwithstanding its qualification as a Zone 1 bank. An application by a Zone 1 bank may otherwise be disapproved only because it would violate the antitrust laws, as set forth in section 18(c)(5)(A) of the Federal Deposit Insurance Act, or if the appropriate Federal banking agency determines that the bank is not in compliance with the Community Reinvestment Act or that the transaction is otherwise inconsistent with the convenience and needs of the community to be served. Nothing in subsection (d) relieves the bank from any other applicable provisions of law or regulation, including requirements under other provisions of Title 12 of the United States Code. It is expected that the appropriate Federal banking agencies will adopt regulations consistent with the purposes of this Act to allow the best-capitalized foreign banks with branches and agencies in the United States to take advantage of the expedited procedure on a basis similar to domestic institutions.

Paragraph (5) of subsection (d) provides that an appropriate Federal banking agency shall not approve any investment, expansion, acquisiton, or other proposal subject to review under the banking laws that would result in reclassification of an insured bank from Zone 1 to Zone 3 or 4, unless the agency finds that the transaction substantially improves the financial condition of the bank or is consistent with a capital restoration plan approved by the agency. No expansion may be permitted that would result in reclassification to Zone 5.

Finally, paragraph (6) of subsection (d) imposes either capital restoration or divestiture requirements on certain financial services holding companies that cease to qualify as Zone 1 financial services holding companies or that do not to attain Zone 1 status within the period of time specified by the appropriate Federal banking agency pursuant to section 4(j) of the Financial Services Holding Company Act of 1991. In addition to the failure to maintain or attain Zone 1 status, for the requirements of paragraph 6 to apply, the financial services holding company must either be engaged in any of the new financial activities, directly or through a subsidiary, or it must be controlled by a diversified holding company.

Any such financial services holding company is required to promptly restore the capital of insured depository institutions controlled by the company to at least the levels required for the company to requalify under Zone 1 or to take the actions required in subparagraph (B). Under subparagraph (B), the financial services holding company must execute a bond in an amount equal to the amount necessary to restore the capital of the depository institutions to at least the level required for the company to requalify as a Zone 1 financial services holding company. The bond shall be subject to forfeiture in the event resolution of the insured depository institution's problems require an expenditure of funds by the Federal Deposit Insurance Corporation. In addition, the company must either (1) file an acceptable capital plan in accordance with subsection (i), or (2) within one year from the date the company first failed to qualify under Zone 1, divest any interest in any insured depository institution, or terminate all new financial activities, as defined above, or divest any interest in any company engaged in such activities.

If the financial services holding company does not take the required actions, the appropriate Federal banking agency may appoint a conservator for any insured depository institution with capital at a level that causes the company to fail to qualify as a Zone 1 financial services holding company. Because savings associations are taken into account in determining qualification for Zone 1 status, all of the requirements of this subparagraph apply with respect to both banks and savings associations controlled by the financial services holding company.

The appropriate Federal banking agency is authorized to extend the compliance period for up to one year if it finds that the financial services holding company has taken significant steps toward restoring the capital of the controlled depository institutions to at least the levels required for the company to requalify under Zone 1. The period may also be shortened by regulation by the appropriate Federal banking agency. In any case involving a financial services holding company controlled by a diversified holding company, if the financial services holding company does not requalify as a Zone 1 financial services holding company or divest any insured depository institutions, as provided in subparagraph (b), then the diversified holding company must either divest the financial services holding company or terminate all activities not permitted for a financial services holding company. Under the Financial Services Holding Company Act, a diversified holding company may only acquire Zone 1 financial services holding companies. Under the provision just described, the diversified holding company will be required either to cease to be a diversified holding company or to divest a financial services holding company that loses its Zone 1 status and does not requalify.

Zone 2. Subsection (e) specifies certain mandatory supervisory actions that are authorized with respect to banks that fall within Zone 2.

Similar to the restriction on expansion described above for Zone 1 banks, subsection (e)(1)(A) provides that the appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition, or other proposal subject to review under the banking laws that would result in reclassification of an insured bank from Zone 2 to Zone 3 or 4, unless the agency finds that the transaction substantially improves the financial condition of an insured bank involved in the transaction or is consistent with a capital restoration plan approved by the agency. Expansions that would result in reclassification to Zone 5 are not permitted.

Subsection (e)(1)(B) provides that the appropriate Federal banking agency shall not approve any investment, expansion, acquisition, or other proposal involving any insured bank within Zone 2 or a financial services holding company which controls an insured bank within Zone 2 if the appropriate Federal banking agency determines that such bank, or any other commonly-controlled bank is engaging in an unsafe or unsound practice or is in an unsafe or unsound condition. This provision would not preclude an acquisition involving such a bank provided that the unsafe or unsound practice or condition is corrected as part of the acquisition.

Subsection (e)(2)(B) provides that no insured bank within Zone 2 shall make any capital distribution that would cause the bank to be reclassified within Zone 4 or 5. An insured bank may make a capital distribution that would cause the institution to be reclassified within Zone 3, if the institution provides the appropriate Federal banking agency with 30 days' prior written notice of such distribution and the agency has not issued a notice of disapproval. The agency may permit the distribution only if the agency determines that the capital distribution will enhance the bank's ability to restore its capital to Zone 2 or otherwise determines that the distribution is in the public interest.

Subsection (e)(3) provides that the appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action applicable under section 35 to an insured depository bank within Zone 2 or to a company that controls an insured bank within Zone 2 if the agency determines in writing that such action is in the public interest.

Zone 3. Subsection (f) authorizes mandatory and discretionary supervisory actions for banks that fall within Zone 3.

Subsection (f)(1)(A) requires every insured bank within Zone 3, within the specified time period, to submit to the appropriate Federal banking agency and implement a capital plan that will restore the relevant capital measures to at least the levels required for classification within Zone 2. The plan must contain all of the information specified in, and meet the other requirements of, subsection (i).

Subsection (f)(1)(B) provides that no insured bank within Zone 3 shall make any capital distribution, or pay any management fee to any person or affiliate controlling the bank, that would cause the bank to be reclassified below Zone 3. No insured depository institution within Zone 3 shall make any other capital distribution or pay any other management fee without receiving the prior approval of the appropriate Federal banking agency. The agency may approve such a payment only if the agency determines that it will enhance the ability of the bank promptly to restore its capital to Zone 3 or is otherwise in the public interest.

Subsection (f)(1)(C) provides that the appropriate Federal banking agency shall not approve or permit any investment, expansion, acquisition or other similar action subject to review under the banking laws by an insured bank within Zone 3, by a company that controls an insured depository bank within Zone 3, or by an affiliate that is engaged in any qualified financial activity, unless the agency finds that the transaction furthers achievement of the capital restoration plan approved by the agency and meets the other standards required to be reviewed by the agency in considering such proposals under the banking laws.

Subsection (f)(1)(D) imposes certain requirements on financial services holding companies and diversified holding companies that control an insured bank within Zone 3. The requirements cease to apply if the company divests any interest in the bank or the bank is restored to at least Zone 2. The first requirement is that the financial services holding company and the diversified holding company must maintain capital, on a consolidated basis, at least equal to the required minimum capital ratio applicable to the lead bank of the financial services holding company for each relevant capital measure. In addition, the diversified holding company may not make any capital distribution without the prior approval of the appropriate Federal banking agency.

Finally, the financial services holding company and each company controlled by the diversified holding company that engages in activities authorized to be engaged in by a subsidiary of a financial services holding company shall be subject to the mandatory supervisory actions of paragraph (1) as if the company were an insured bank within Zone 3. Under section 6(c)(2) of the Financial Services Holding Company Act, the financial services holding company, the diversified holding company and affiliates engaged in qualified financial activities will be subject to examination for compliance with these provisions.

The requirements of subsection (f)(1)(D) begin to apply after 45 days after the latest of the date on which the bank becomes a Zone 3 bank, the date on which the financial services holding company acquires the bank, or the effective date of the subsection.

Subsection (f)(1)(E) provides that an insured bank within Zone 3 shall immediately be reclassified as within Zone 4 if the insured bank does not submit the capital restoration plan required under subparagraph (A) within the time required by the appropriate Federal banking agency, or the appropriate Federal banking agency is not satisfied that the insured depository bank is making every effort in good faith to fulfill completely the capital plan within the schedule approved by the agency.

Subsection (f)(2) provides that the appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action applicable under section 35 to an insured depository bank within Zone 3 or to a company that controls an insured bank within Zone 3 if the agency determines in writing that such action is in the public interest.

Discretionary Supervisory Actions. Subsection (f)(3) lists the discretionary supervisory actions that are authorized with respect to an insured bank within Zone 3. Subsection (f)(3)(A) authorizes the appropriate

Federal banking agency to restrict or eliminate growth of the bank's assets, or to require contraction of the bank's assets. Subsection (f)(3)(B) authorizes the appropriate Federal banking agency to restrict the insured bank and any company that controls the insured bank from making any capital distribution.

Subsection (f)(3)(C) authorizes the appropriate Federal banking agency to limit any increase in, or order the reduction of, any type of liabilities of the bank. Subsection (f)(3)(D) authorizes the appropriate Federal banking agency to order the insured bank to issue new capital in any form and in any amount sufficient to restore the institution to at least the capital levels required for Zone 2. Subsection (f)(3)(E) authorizes the appropriate Federal banking agency to require the insured bank to terminate, reduce or alter any activity, if the agency determines that the activity creates excessive risk to the institution.

Subsection (f)(3)(F) authorizes the appropriate Federal banking agency, for cause, to require the insured bank to dismiss from office at the bank any or all of the listed persons, if the person accepted employment, accepted a new position, or renewed any contract for employment in the same position at the insured bank following the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and the person has been employed in that position at the insured depository bank for at least 180 days. The listed persons are any member of the bank's board of directors, the chief executive officer, the chief financial officer, and any other executive officer. Dismissal under this authority shall not be construed to be removal under section 8 of the Federal Deposit Insurance Act.

Subsection (f)(3)(G) authorizes the appropriate Federal banking agency to order the insured bank to reduce or eliminate any or all of the listed types of compensation for any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. The listed types of compensation include any bonus, any compensation at a rate exceeding the officer's average rate of compensation during the previous 12 calendar months, and any payment that is or would be due under any employment severance contract.

Subsection (f)(3)(H) authorizes the appropriate Federal banking agency to order a new election of the board of directors of the insured bank and to designate such individuals as the agency deems appropriate to serve on the board.

Subsection (f)(3)(I) permits the appropriate Federal banking agency to require divestiture of any affiliate of a Zone 3 bank, if the appropriate Federal banking agency determines that the affiliate is in danger of default and it poses a significant risk to the liquidity or solvency of the bank or is likely to cause a significant dissipation of its assets or earnings.

Subsection (f)(4) requires the appropriate Federal banking agency to provide the Federal Deposit Insurance Corporation with prompt notice of any supervisory action taken pursuant to subsection (f).

Zone 4. Subsection (g) lists the mandatory and discretionary supervisory actions authorized with respect to an insured bank within Zone 4.

Mandatory Supervisory Actions. Subsection (g)(1)(A) requires every insured bank within Zone 4 that has not submitted a capital restoration plan under subsection (f), as described above, to submit and implement a plan that meets the requirement of subsection (i) and will restore the relevant capital measures of the bank to at least the levels required for classification within Zone 2.

Subsection (g)(1)(B) provides that no insured bank within Zone 4 shall make any capital distribution or pay any management fee to a person or affilate controlling such bank. Subsection (g)(1)(C) provides that no insured bank within Zone 4, or financial services holding company controlling any insured bank within Zone 4, is permitted, directly or indirectly, to acquire any interest in an insured bank or any company that is not an insured bank, or establish or acquire additional branch offices. The insured bank or financial services holding company is also precluded from engaging in any new activity. This restriction is intended to preclude engaging in any new line of business, but not to preclude expansion of activities already engaged in.

Subsection (g)(1)(D) provides that any financial services holding company and any diversified holding company that controls an insured bank within Zone 4 shall be subject to the requirements of subsections (f)(1)(D)(i) and (f)(1)(D)(ii) (relating to consolidated capital and capital distributions, as described above) and to the mandatory supervisory actions of subsection (f) as if the company were an insured bank within the relevant zone. The financial services holding company or diversified holding company is subject to these requirements until such time as the relevant capital measures of the insured bank are restored to at least the levels required for classification within Zone 2 or the company divests any interest in the insured bank. The companies and their financial affiliates will also be subject to examination pursuant to section 6(c)(2) of the Financial Services Holding Company Act.

Subsection (g)(1)(E) provides that an insured bank within Zone 4 shall not increase its total assets except under specified circumstances. The appropriate Federal banking agency may permit a bank within Zone 4 to increase its total assets by an amount not exceeding the amount of net interest that depositors reinvest in their deposit accounts at the insured bank, if the agency has accepted the bank's capital restoration plan, any increase in assets is accompanied by a specified increase in capital, and the bank's capital levels increase at a rate sufficient to enable the bank to satisfy the bank's capital restoration plan within a reasonable time.

Subsection (g)(1)(F) provides that an insured bank within Zone 4 may not pay excessive compensation to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991. The listed compensation includes any bonus, or any compensation at a rate exceeding the officer's average rate of compensation during the previous 12 calendar months.

Subsection (g)(2) provides that the appropriate Federal banking agency may modify, defer, or remove any mandatory supervisory action authorized by this section to an insured depository bank within Zone 4 or a company that controls an insured bank within Zone 4 if the agency determines in writing that such action is in the public interest.

Discretionary Supervisory Actions. Subsection (g)(3)(A) authorizes the appropriate Federal banking agency to take any discretionary action authorized under Zone 3 with respect to an insured bank within Zone 4 or a company that controls an insured bank within Zone 4. Subsection (g)(3)(B) authorizes the appropriate Federal banking agency to restrict or eliminate any transaction between the insured bank and any other affiliate.

Subsection (g)(3)(C) authorizes the appropriate Federal banking agency to require an insured bank within Zone 4 or a company that controls such an insured bank to divest, liquidate or close any affiliate that is not an insured bank, if the appropriate Federal banking agency determines that the affiliate is in danger of default. Subsection (g)(3)(D) authorizes the appropriate Federal banking agency to order the insured bank to reduce or eliminate any compensation to any executive officer who accepted employment, accepted a new position, or renewed any contract for employment as an executive officer at the insured bank following enactment of the Financial Institutions Safety and Consumer Choice Act of 1991, if the appropriate Federal banking agency determines the compensation to be excessive.

Subsection (g)(1)(E) authorizes the appropriate Federal banking agency to order any company that controls an insured depository bank within Zone 4 to divest the bank, if the appropriate Federal banking agency determines that such divestiture would improve the financial condition and future prospects of the bank. Subsection (g)(1)(F) authorizes the appropriate Federal banking agency to require the insured bank to dismiss from office at the bank any or all of the listed persons, if the person accepted employment, accepted a new position, or renewed any contract for employment in the same position at the insured bank following the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1991 and the person has been employed in that position at the insured depository bank for at least 180 days. Subsection (g)(1)(G) authorizes the appropriate Federal banking agency to appoint a conservator for the insured bank.

Zone 5. Under subsection (h)(1), the appropriate Federal banking agency shall, no later than 30 days after determining that an insured bank is within Zone 5, require the sale or merger of the insured bank, or appoint a conservator or receiver for the bank. Any conservator or receiver shall have full authority, in its sole discretion, to liquidate or sell the insured bank, to take any actions authorized under subsections (f) and (g) that are not inconsistent with the powers of the conservator or receiver, and to take any other combination of actions authorized pursuant to the provisions applicable to conservators and receivers under the banking laws. As with mandatory supervisory actions under Zone 3 and Zone 4, the appropriate Federal banking agency is authorized to modify, defer, or remove any applicable mandatory supervisory action, if the agency determines in writing that such action is in the public interest. However, with respect to Zone 5 banks, the Federal Deposit Insurance Corporation must concur in such determination.

Capital Restoration Plans. Subsection (i)(1) specifies that a capital plan submitted for purposes of section 35 must be a feasible plan for promptly restoring the levels of capital for all relevant capital measures of the insured bank to at least the levels required by the subsection pursuant to which the capital plan is ordered. Subsection (i)(1) also lists the required contents of the plan and

specifies that the plan must be acceptable to the appropriate Federal banking agency.

Subsection (i)(2) provides that each appropriate Federal banking agency shall by regulation establish the deadlines for submission of acceptable capital restoration plans. Unless the agency specifically determines that a greater amount of time is needed, the maximum time allowed shall be no greater than 30 days.

Subsection (i)(3) provides that the appropriate Federal banking agency shall review and act on a capital restoration plan within 30 days after its submission. This period may be extended by the appropriate Federal banking agency.

Judicial Review. Subsection (j)(1) provides that a person aggrieved by action of an appropriate Federal banking agency under section 35 may obtain review of that action by filing a written petition in the United States Court of Appeals for the circuit in which the concerned bank maintains its home office. The "concerned depository institution" means the bank whose classification within a particular zone is the basis for the agency action being complained of.

An aggrieved person is defined to include a company ordered to make a divestiture or terminate activities under section 35; an insured bank or company that is the subject of a mandatory or discretionary supervisory action and any company that controls such a company, with respect to an action taken for an insured bank within Zone 3, 4, and 5; a person dismissed under any provision of section 35; and a person whose compensation, bonus or severance payment has been reduced or eliminated under section 35.

Generally, action taken by an appropriate Federal banking agency under section 35 shall be modified, terminated, or set aside if the court finds that the agency's action under review was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Subsection (j)(2)(B) contains a savings clause providing that an aggrieved person may pursue any judicial review of the order of the appropriate Federal banking agency appointing a conservator or receiver that is otherwise available under the banking laws. This clause is not intended to expand or diminish any otherwise existing rights to judicial review under the banking laws.

Subsection (j)(3) provides that preliminary or temporary injunctive relief is not available.

Subsection (j)(4) provides that petitions under subsection (j) shall be given expedited review. Subsection (5) provides that, except as provided in subsection (j), no court shall have jurisdiction to effect by injunction or otherwise the issuance or effectiveness of any action of an appropriate Federal banking agency under section 35 or to review, modify, suspend, terminate, or set aside such agency action.

Section 251(b) amends section 8(i) of the Federal Deposit Insurance Act to include references to orders issued under section 35. This permits enforcement of section 35 orders by injunctions issued by a United States district court. It also permits imposition of civil penalties for failure to comply with section 35 orders.

Section 251(c) amends Title 28 of the United States Code to add a new jurisdictional section granting the United States Claims Court exclusive jurisdiction to consider claims for damages based on an agency action that has been modified, terminated, or set aside pursuant to judicial review under subsection 35(j) as described above.

Section 251 (d) and (e) make conforming amendments to certain sections of Title 12 to incorporate appointment of a conservator or receiver pursuant to section 35 as a basis for exercising appointment authority.

Section 251(f) grants the Board of Governors of the Federal Reserve System with general authority to appoint conservators and receivers for insured State banks other than District banks chartered by the Director of the Office of Depository Institutions Supervision. The authority given to the Board parallels the authority of the Director with respect to national banks.

Section 251(g) adds section 35 classification to the grounds for appointment of a conservator or receiver for District banks.

Section 251(h) also amends section 11 of the Federal Deposit Insurance Act to require appointment of the Corporation whenever a receiver is appointed pursuant to section 35.

Section 251(i) provides for the effective date of section 35.

Subtitle F—Nationwide Banking and Branching

SECTION 261. NATIONWIDE BANKING

This section provides that, three years after the effective date of FISCCA, section 3(d) of the Bank Holding Company Act, as redesignated section 3(f) of the Financial Services Holding Company Act of 1991, shall be repealed. At present, section 3(d) prohibits a bank holding company from acquiring a bank in a State other than the company's principal State of business unless the acquisition in question is specifically authorized by the laws of the State in which such bank is located.

Pursuant to the revised section 3(f), which is effective three years from date of enactment, the appropriate Federal banking agency may approve an application of a financial services holding company or foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of, any additional insured depository institution.

The new provisions preempt certain State laws by allowing an interstate acquisition that has been approved under section 3 of the Financial Services Holding Company Act of 1991 of an insured depository institution or financial services holding company Holding Company Act of 1991 to be consummated notwithstanding any State law that would have the effect of prohibiting or limiting an acquisition by an out-of-state financial services holding company or foreign bank if the legal standard for denial would not be applied, with similar effect, to the same acquisition by an in-State financial services holding company.

A State will continue to review acquisitions for anticompetitive effects, financial and managerial resources, and other safety and soundness considerations in the same manner as it would review expansion proposals of in-State entities. However, acquisitions cannot be limited on the basis of the location or size of the acquiring company or foreign bank, the number of insured depository institution subsidiaries of such company or foreign bank, or any other factor which has the effect of limiting or preventing the acquisition. State laws will continue to apply to branches just as they do to banks. Such laws include local community investment, consumer protection, and fair lending laws.

SECTION 262. INTERSTATE BRANCHING BY NATIONAL BANKS

Section 252 amends section 5155 of the Revised Statutes (12 U.S.C. 36(c)) by inserting a new provision allowing national banks to establish and operate new branches at an initial location within any State in which: (A) a financial services holding company having the same home State as the national bank could acquire a bank pursuant to section 3 of the Financial Services Holding Company Act of 1991; or (B) a State bank chartered in the home State of the national bank could establish a branch.

It is intended that banks opening branches outside their home State will be treated similarly to other business corporations that engage in business outside the State in which they are chartered or have their principal place of business. As a result, section 36(c) is also amended to provide expressly that a State, other than the home State, in which a bank wishes to establish a branch may impose on the bank such filing requirements as are ordinarily imposed on other corporations that are not chartered in such State but wish to engage in business in such State.

After an initial branch is established, additional branches may be approved at any point within the State to the same extent permitted under paragraphs (1) and (2) of section 36(c). State laws, such as community investment, consumer protection, and fair lending laws, will apply to interstate branches as they do to banks.

The definition of "branch" contained in Revised Statutes section 5155 (12 U.S.C. 36(c)) is amended by substituting "any office, agency, or other place of business" for "branch bank, branch office, branch agency, additional office, or any branch place of business".

The term "home state" is defined for purposes of this section to mean:

(i) in the case of a national bank, the State in which the principal place of business of the bank is located; and

(ii) in the case of a financial services holding company, the State in which the operations of the company's principal bank subsidiary are conducted for purposes of section 3(d) of the Financial Services Holding Company Act of 1991.

The term "State" is defined to include the District of Columbia.

For purposes of section 36 of the National Bank Act, "host State" shall mean the State in which a bank establishes or maintains a branch other than a State which is the bank's home State.

SECTION 263. INTERSTATE CONSOLIDATION OR MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS

Section 263 amends provisions of the National Bank Act pertaining to the interstate consolidation or merger of national banks or State banks with national banks. Current law authorizes the Comptroller of the Currency to approve certain consolidations and mergers of national banks or State banks with national banks located in the same State.

This section inserts into sections 215(a) and 215a(a) of the National Bank Act (12 U.S.C. 215(a) and 215a(a)) the phrase "or in any other State", thereby expanding the authority of the appropriate Federal banking agency to approve such interstate consolidations or mergers.

A parallel change is made to the definition of "receiving association" in section 215b(4) by deleting the phrase "located within the same State".

Section 36(b)(2) of the National Bank Act (12 U.S.C. 36(b)(2)) is amended to expand the authority of national banks to retain branches following a merger or consolidation with a national bank.

In section 36(b)(2)(A), the parenthetical "(other than the national bank)" is stricken, and other provisions in paragraph (2) pertaining to certain branches which were in operation on February 25, 1927 are removed.

Section 263(d) of the legislation provides that the appropriate Federal banking agency may not approve the retention of a branch of any bank participating in the consolidation if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation with another bank or banks would be prohibited by the law of such State from retaining and operating as a branch of the State bank immediately prior to the consolidation.

SECTION 264. INTERSTATE BRANCHING BY STATE BANKS

This section amends section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) to provide that no State may prohibit any insured bank chartered by, and engaged in, a banking business in another State from establishing and maintaining one or more branches within the State. Similar to the provision described above for national banks, section 18(d) is amended to provide that a host State may require an out-of-state bank to comply with the same filing requirements that are otherwise imposed on a corporation incorporated in another State and seeking to engage in business in the host State. For purposes of this subsection, "host State" is the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business.

If authorized by the law of the State in which the bank is chartered, any insured State bank may establish a branch at an initial location within any other State or States in which a financial services holding company whose principal place of operations is the same State in which the insured bank is chartered could acquire a bank pursuant to section 3 of the Financial Services Holding Company Act of 1991. For purposes of this provision, the principal place of operations means the State in which the total deposits of all bank subsidiaries of such company are largest.

Once an initial branch has been established in a State, additional branches within that same State may be established and maintained to the extent permitted for insured State banks located in such State as if the initial branch of the out-of-state insured bank were a State bank chartered in such State with its head office at the location of the initial branch. Certain rights are reserved to the States under this section. In particular, States retain the right to determine the authority of State banks chartered in that State to establish and maintain branches, or to supervise, regulate, and examine State banks chartered by that State. State laws relating to community investment, fair lending, and consumer protection will apply to interstate branches just as they do to in-State banks.

Activities conducted at a branch are limited to those activities permissible for a bank chartered by the "host State". Branches established and maintained in a State by a bank chartered by another State may be examined by the State bank supervisory or regulatory authority for the purpose of determining compliance with the State law regarding permissible activities, sound banking principles, and safety and soundness considerations.

Enforcement actions or proceedings may be commenced by the State bank authority if such authority determines that the activities being conducted by the branch violate State law or the manner of operations is not consistent with sound banking principles. Such enforcement actions or proceedings are authorized only to the extent that would be permitted under State law if the branch were deemed to be a bank chartered by that State.

Cooperative agreements among State bank authorities from more than one State are authorized to facilitate State regulatory supervision and joint participation and coordination of examinations of State-chartered banks. Nonetheless, the participation by the host State supervisory authority in the examination of a branch of an out-of-state bank is limited to the same examination procedures and principles as would be applied if the branch were deemed to be a bank chartered by that State.

Subtitle F—Foreign Banking Organizations in the United States

SECTION 265. FOREIGN BANKS IN THE UNITED STATES

Section 265 amends the International Banking Act of 1978 (IBA) to extend national treatment to foreign banks conducting banking business in the United States with respect to interstate branching.

Subsection (a) amends section 4(a) of the IBA to allow a Federal branch or agency to be established in any State after licensing by the Director. Until three years after enactment of the Act, however, the States retain the right to prohibit such establishment of a Federal branch or agency if that branch or agency is the initial branch or agency of a foreign bank in the United States. Additional branches can be established according to the provisions of section 4(h) of the IBA.

Subsection (b) amends section 4(h) of the IBA to allow a foreign bank that already has a Federal branch or agency in the United States to branch both within its home state, as defined in the IBA, and outside its home state, to the same extent as national banks (*i.e.*, initially, into any State where a bank holding company with its principal place of business in the foreign bank's home state could acquire a bank, and thereafter subject to the branching laws of the host State).

Subsection (c) provides for interstate banking by foreign banks in addition to that under subsection (a) and (b). In particular, this section amends section 5 of the IBA to (1) limit a foreign bank's branching outside its IBA home state with a State licensed branch to those States where a financial services holding company with the same home State could acquire a bank; (2) require the approval of the Board and the state regulator in order to branch into another State; and (3) require approval of the appropriate Federal banking agency for acquisition by a foreign bank of 5 percent or more of the voting shares of, or all or substantially all the assets of, a bank or a financial services holding company.

Subsection (c) goes on to provide an exception from the requirement that no foreign bank can branch outside its IBA home state without the approval of the regulator of the host State by adding a new paragraph 5(a)(4) to the IBA. This provision allows any State to license foreign banks with State-licensed branches or agencies to branch into an initial location in another State without receiving approval of the host State. This provision is meant to parallel a similar provision for State banks in section 253 of this Act (interstate branching by insured State banks) and applies the same requirements on exercising of powers in that other State, subsequent branches in the host State, and regulatory cooperation.

Finally, subsection (c) continues to permit Federal and State agencies and "limited branches" (entities that can only take deposits that are incident to international and foreign business of the entity) to be established by a foreign bank in any State that permits such interstate establishments after the approval of the appropriate Federal banking agency.

Subsection (d) provides the Board with authority to approve any acquisition by a foreign bank of a commercial lending company where the foreign bank is not subject to the provisions of the Financial Services Holding Company Act. In acting upon any such application, the Board may consider the effects of the proposal on domestic and foreign competition, the financial prospects of the branch, agency and the applicant, and the convenience and needs of the community.

SECTION 266. INTERSTATE ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.

This section amends section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467(e)(3)) by striking the current text and inserting a substitute paragraph authorizing the Director to approve applications for savings and loan holding companies to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of, any additional savings association located in any State. Foreign banks are also entitled to this right.

Section 10(e)(3) is further amended to preempt State laws by allowing, subject to approval by the Director, certain interstate acquisitions by savings and loan holding companies, bank holding companies, and foreign banks to be consummated notwithstanding any State law that would have the effect, directly or indirectly, of prohibiting or limiting an acquisition by an out-of-state company or foreign bank if the standards for denial would include any factor which has the effect of limiting or preventing an acquisition by an out-of-state acquirer when compared to an in-state savings and loan holding company in an identical transaction.

In particular, a State may not limit or prohibit an acquisition on the basis of the location or size of the acquiring company or foreign bank, the number of insured depository institution subsidiaries of such company or foreign bank, or any other factor which has a disparate effect.

A State can continue to review acquisitions for anticompetitive effects, financial and managerial resources, and other safety and soundness considerations in the same manner as it would review expansion proposals of in-state entities.

This provision is parallel to the amendment to section 3(d) as redesignated 3(f) of the Financial Services Holding Company Act of 1991 which is set forth in section 251, *supra*.

Definitional amendments are inserted into section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) which provide that, for purposes of this paragraph, "State" shall include the District of Columbia, and "foreign bank" shall mean any foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978.

SECTION 267. EFFECTIVE DATE.

The amendments contained in this subtitle F shall be effective upon the date of enactment.

Title III—Regulatory Restructuring

Subtitle A—Office of Depository Institutions Supervision

SECTION 301. ESTABLISHMENT OF AN OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION

Effective January 1, 1992, section 301 establishes the Office of Depository Institutions Supervision which shall be a bureau within the Department of the Treasury.

SECTION 302. DEFINITIONS

Section 302 sets forth definitions for use in this title. "Director" means the Director of the Office of Depository Institutions Supervision. "Office" means the Office of Depository Institutions Supervision. "Secretary" means the Secretary of the Treasury.

SECTION 303. DIRECTOR OF THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION

Section 303 provides for a Director who shall be the head of the Office of Depository Institutions Supervision, and who is appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States. The Director shall be appointed for a five-year term, subject to removal by the President; thus, the Director is an Officer of the United States within the meaning of the Appointments Clause. A vacancy in the position of Director which occurs before expiration of the Director's term shall be filled only for the remainder of that term, and the successor Director shall be appointed by the President, by and with the advice and consent of the Senate. This section provides that the Director may designate who shall act as Director if the Director dies, resigns, or is sick or absent. If the Director fails or is unable to designate who shall act as Director, the Secretary shall designate an acting Director who shall possess the power to perform the duties vested in the Director. An individual may serve as Director after the term for which appointed until a successor Director has been appointed. Effective January 1, 1993, the Secretary may appoint two Deputy Directors.

SECTION 304. AUTHORITY OF THE DIRECTOR

Section 304 provides for exclusive authority of the Director to make certain decisions with respect to particular institutions or entities for which the Director is the appropriate Federal banking agency. These decisions concern a grant or denial of a charter or other application, an examination, a decision to appoint a conservator or receiver for a depository institution and a final decision in a contested administrative enforcement proceeding. These authorities, which are vested in the Director effective January 1, 1993, do not prevent the Director from consulting with the Secretary on any matter. Effective January 1, 1992, all other authority vested in the Director by this title is exercised by the Director subject to the review and approval of the Secretary. The Director may delegate to any employee, representative, or agent of the Office any authority or power of the Director, effective January 1, 1992.

SECTION 305. PERSONNEL

Section 305 provides that the Director appoints, directs and fixes the compensation of all employees of the Office. Such compensation is set without regard to the provisions of laws (other than this title) applicable to officers and employees of the United States. Additional benefits may be provided to the employees of the Office if the Director determines that the same type of benefits are then being provided by the Board of Governors of the Federal Reserve Board or the Federal Deposit Insurance Corporation or if such benefits could be provided by those other agencies under applicable provisions of law, rule, or regulation. In setting and adjusting the compensation and benefits for employees, the Director must consult with and may seek to maintain comparability with the Board of Governors of the Federal Reserve Board and the Federal Deposit Insurance Corporation. This section becomes effective January 1, 1993.

SECTION 306. REGULATIONS AND ORDERS

Section 306 authorizes the Director to prescribe such regulations and orders as the Director determines to be necessary or appropriate for carrying out any law within the Director's jurisidiction.

SECTION 307. FUNDING

Section 307 authorizes the Director to impose and collect assessments, fees and other charges from any institution or entity for which the Director is the appropriate Federal banking agency. The amounts collected are to be set to cover all the Office's expenses. Funds obtained may be used to pay all direct and indirect expenses of the Office, including salary and administrative expenses.

Subtitle B—Interim Provisions; Transfer of Functions, Personnel, and Property

SECTION 311. INTERIM PROVISIONS FOR THE OFFICE OF DEPOSITORY INSTITUTIONS SUPERVISION

Section 311 sets forth provisions, covering the one-year period from January 1, 1992 to January 1, 1993, for the orderly transfer of the functions of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) to the Office. During this interim period, the Director must consult and cooperate with the Director of the Office of Thrift Supervision and the Comptroller of the Currency (Comptroller) to facilitate the orderly transfer of functions to the Office. During the interim period, the Director, jointly with the Board of Governors of the Federal Reserve System, may issue regulations governing financial services holding companies which shall become effective on January 1, 1993. Further, during the interim period, the Director is authorized to take such actions as are necessary to provide for the establishment of the Office. The Secretary may detail to the Director of the Office such personnel of the OCC and the OTS as the Secretary deems appropriate to assist in carrying out the Director's interim duties. The Secretary may provide all administrative services necessary to support the Office during the interim period and may obtain, in equal shares from OCC and OTS, and spend, reimbursement for the cost of such services.

SECTION 312. OFFICE OF THRIFT SUPERVISION ABOLISHED.

Section 312(a) abolishes the Office of Thrift Supervision (OTS) and the position of the Director of the Office of Thrift Supervision, effective on January 1, 1993.

Before the OTS is abolished, its Director must consult and cooperate with the Director of the Office of Depository Institutions Supervision and the Comptroller of the Currency to facilitate the orderly transfer of functions to the Bureau. Any matter not resolved through such consultation shall be resolved by the Secretary. Except for the requirements that the Director of the OTS consult and cooperate with the Director of the new Office and the Comptroller regarding transition, any authority which was vested in the Director of the OTS on the day before the date of enactment of this title which is necessary for him to carry out his duties shall continue until his position is abolished. Any agency, department or other instrumentality of the United States that was providing support services to the OTS on the day before the date the OTS is abolished shall continue to provide such services in accordance with the terms of the arrangement, except that, effective January 1, 1993 the new Office shall substitute for OTS as a party to the arrangement. Any such agency, department or other instrumentality of the United States shall consult with the new Office's Director to coordinate a prompt and reasonable transition.

All rights, duties and obligations of the United States, the OTS or any person which exist on the day before the date the OTS is abolished are preserved from being affected by the Act. Any suit or other proceeding commenced by or against the OTS or its Director is unaffected by this act, except that, effective January 1, 1993, the Director of the new Office shall be substituted as a party. All orders, resolutions and regulations of the OTS which are in effect on January 1, 1993 shall continue in effect according to their terms. The Director of the new Office must administer such orders, resolutions and regulations and they are enforceable by or against him until such time as they are modified, terminated, set aside or superseded by him, a court, or operation of law. Any proposed regulations or rules of the OTS are deemed proposed regulations or rules of the new Office. Each of the foregoing provisions applies unless expressly provided otherwise.

All individuals employed by OTS on the day before OTS is abolished are transferred to the new Office.

Each transferred employee has the rights accorded by 5 U.S.C. 3503 and is guaranteed a position in the new Office with the same status and tenure as that held by the employee preceding the transfer. Transferred employees who held permanent positions at OTS may not be involuntarily separated or reduced in grade for one year after the transfer, except for cause and except for those who held positions at OTS that were exempted from the competitive service by reason of the positions' confidential policy-making, policy-determining or policy-advocating character. Each transferred employee who remains with the new Office is to receive for one year after the transfer the same total compensation that the employee received immediately preceding the transfer. Transferred employees also may elect to retain for one year after the transfer membership in any OTS employee benefit program (other than retirement but including insurance) if the Director of the new Office continues the program. The new Office will pay all costs of the continued benefit programs. If an employee elects not to continue membership in such a program, the employee may participate in the new Office's program notwithstanding pre-existing health conditions. However, such an election must be made within 120 days after the transfer or the OTS program's discontinuation.

If the new Office's Director determines between one and three years after the transfer that a reorganization of the combined work force is required, the reorganization is to be treated as a major reorganization for purposes of entitling employees to certain early retirement options under other law. Chapter 35 of title 5, United States Code, shall apply to any reduction in force resulting from such reorganization.

The Director of the new Office is to take necessary action on a case-by-case basis to

continue to provide transferring employees with equitable treatment for retirement, and leave and vacation time purposes regarding credit previously received for prior service with a Federal entity or instrumentality or with a Federal Home Loan Bank or a joint office of such Banks. This provision tracks the language of section 722(f) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Under section 722(f) of FIRREA, approximately 2,000 employees who were transferred to the OTS from the Federal Home Loan Banks and joint offices of those Banks were grandfathered in a private retirement plan, the Financial Institutions Retirement Fund (FIRF), rather than being compelled to leave the FIRF and enter a Federal retirement program. Accordingly, one purpose of paragraph (d)(4) is to authorize the Director of the new Office to permit OTS employees who participate in FIRF to continue that participation after they transfer to the Office.

All OTS property is to be transferred to the new Office on January 1, 1993.

SECTION 313. OFFICE OF THE COMPTROLLER OF THE CURRENCY ABOLISHED

Section 313(a) abolishes the Office of the Comptroller of the Currency (OCC) and the position of the Comptroller of the Currency, effective on January 1, 1993.

Before the OCC is abolished, the Comptroller must consult and cooperate with the Director of the Office of Depository Institutions Supervision and the Director of the Office of Thrift Supervision to facilitate the orderly transfer of functions to the new Office. Any matter not resolved through such consultation and cooperation shall be resolved by the Secretary. Except for the requirement that the Comptroller consult and cooperate with the Secretary and the Director of the Office of Thrift Supervision regarding transition, any authority which was vested in the Comptroller on the day before the date of enactment of this Act which is necessary for him to carry out his duties shall continue until January 1, 1993. Any agency, department, or other instrumentality of the United States that was providing support services to the OCC on the day before the date the OCC is abolished shall continue to provide such services in accordance with the terms of the arrangement, except that, effective January 1, 1993, the new Office shall substitute for the OCC as a party to the arrangement. Any such agency, department, or other instumentality of the United States shall consult with the Director of the new Office to coordinate a prompt and reasonable transition.

All rights, duties and obligations of the United States, the OCC or any person which exist on the day before the date the OCC is abolished are preserved from being affected by the Act. Any suit or other proceeding commenced by or against the OCC or the Comptroller is unaffected by this Act, except that, effective January 1, 1993, the Director of the new Office shall be substituted as a party. All orders, resolutions and regulations of the Comptroller which are in effect on January 1, 1993 shall continue in effect according to their terms. The Director of the new Office must administer such orders, resolutions and regulations and they are enforceable by or against him until such time as they are modified, terminated, set aside or superseded by him, a court, or operation of law. Any proposed regulations or rules of the Comptroller are deemed proposed regulations or rules of the new Office. Each of the foregoing provisions applies unless expressly provided otherwise.

All individuals employed by OCC on the day before the OCC is abolished are transferred to the new Office.

Each transferred employee has the rights accorded by 5 U.S.C. 3503 and is guaranteed a position in the new Office with the same status and tenure as that held immediately preceding the transfer. Transferred employees who held permanent positions at the OCC may not be involuntarily separated or reduced in grade for one year after the transfer, except for cause and except for those who held positions at the OCC that were exempted from the competitive service by reason of the positions' confidential policy-making, policy-determining or policy-advocating character. Each transferred employee who remains with the new Office is to receive for one year after the transfer the same total compensation that the employee received immediately preceding the transfer. Transferred employees also may elect to retain for one year after the transfer membership in any OCC employee benefit program (other than retirement but including insurance) if the Director of the new Office continues the program. The new Office will pay all costs of the continued benefit programs. If an employee elects not to continue membership in such a program or if the Director of the new Office terminates the program, the employee may participate in the new Office's program notwithstanding pre-existing health conditions. However, such an election must be made within 120 days after the transfer or the discontinuation of the OCC's program.

If the new Office's Director determines between one and three years after the transfer that a reorganization of the combined work force is required, the reorganization is to be treated as a major reorganization for purposes of entitling employees to certain early retirement options under other law. Chapter 35 of title 5, United States Code shall apply to any reduction in force resulting from such a reorganization.

All property of the OCC is to be transferred to the new Office on January 1, 1993.

Subtitle C—Regulatory and Supervisory Responsibility

SECTION 321. REGULATORY AUTHORITY

Section 321 transfers all powers and duties that were vested in the Director of the Office of Thrift Supervision and the Comptroller of the Currency on December 31, 1992 to the Director of the Office of Depository Institutions Supervision, effective January 1, 1993.

SECTION 322. APPROPRIATE FEDERAL BANKING AGENCY

Section 322 provides that the Director of the Office of Depository Institutions Supervision is the appropriate Federal banking agency for all institutions and entities with a national or Federal charter or license and for District banks chartered by the Director, Federal branches and Federal agencies of foreign banks, State savings associations, and savings and loan holding companies. The Board of Governors of the Federal Reserve System is the appropriate Federal banking agency for all other institutions and entities with a State charter or license (including State branches and State agencies of foreign banks) and for commercial lending companies, Edge Act corporations, and agreement corporations.

The appropriate Federal banking agency for a diversified holding company or a financial services holding company is determined by the charter of the principal bank subsidiary. The term "principal bank subsidiary" is defined as the single subsidiary depository institution of a financial services holding company that has the greatest dollar amount of assets on average for the last day of each quarter of the preceding calendar year. The appropriate Federal banking agency for a foreign bank that is not a financial services holding company is the same as the appropriate Federal banking agency for the largest branch, agency, or commercial lending company controlled or operated by the foreign bank.

The appropriate Federal banking agency must evaluate the principal bank subsidiary every five years for the purpose of determining whether a transfer of supervisory authority over the financial services holding company to the other appropriate Federal banking agency is necessary. In order to ensure regulatory and supervisory consistency, the appropriate Federal banking agency for a holding company cannot change more frequently than every five years. This section amends the definition in current law of appropriate Federal banking agency in accordance with the overall scheme for regulatory restructuring set forth in the Act. This section is effective on January 1, 1993.

SECTION 323. EXAMINATIONS

Section 323 authorizes the Director of the Office of Depository Institutions Supervision to examine institutions or entities for which the Director is the appropriate Federal banking agency, and any other institution or entity over which the Director has examination authority pursuant to the Financial Services Holding Company Act of 1991.

At least once during every twelve month period, the Director must conduct an on-site examination of each depository institution and branch of a foreign bank for which the Director is the appropriate Federal banking agency. Depository institutions for which a conservator or receiver has been appointed may be examined less frequently. Any depository institution or foreign bank branch that has total assets of less than $1 billion for the year preceding a scheduled examination and that is in compliance with the capital standards prescribed by the Director must be examined on-site at least once during the following 18-month period.

This section authorizes the Director to examine any institution or entity for which the Director is the appropriate Federal banking agency as frequently as the Director determines to be necessary. This examination authority extends to any affiliate of a depository institution (other than those examined pursuant to the Financial Services Holding Company Act of 1991) to permit the Director to determine the relationship between the depository institution and its affiliate and the effect of such relationship on the depository institution. The Director's authority to examine other affiliates within a holding company structure is set forth in Financial Services Holding Company Act of 1991.

Examiners appointed by the Director have the power to conduct an examination and prepare a full report of condition of any depository institution for which the Director is the appropriate Federal banking agency. Such examiners also have the power to administer oaths and to examine any raise, directors, employees, or agents under oath. Examiners must be given prompt and complete access to all relevant books, records, and documents of any type.

This section retains current law with respect to publication of examination reports of national banks and their subsidiaries that fail to comply with the recommendations or suggestions made in an examination within 120 days after notification. The national

bank or subsidiary must be given 90 days notice prior to publication. This section contains a limitation on visitorial powers for depository institutions chartered under Federal law. State auditors and examiners may review such institutions' records solely to ensure compliance with applicable unclaimed property or escheat laws when there is reasonable cause to believe that the institutions have failed to comply with such laws. This section parallels the current limitation on visitorial powers for national banks. This section is not intended to expand or limit the valid exercise of law enforcement.

If any affiliate of any depository institution (other than those examined pursuant to the FSHCA which is subject to examination by the Director refuses to pay any assessment or fails to pay any assessment within 60 days after the assessment, the Director may collect the amount not paid from the depository institution. If such an affiliate is an affiliate of more than one depository institution, the amount not paid may be collected from any affiliated depository institution in such proportions as the Director determines. If any such affiliate of any depository institution refuses to permit the Director to make an examination or refuses to provide information required to be disclosed in the course of examination, the Director is authorized to assess a civil penalty of $5,000 against the depository institution for each day that such refusal continues.

SECTION 324. CONFORMING AMENDMENTS

Section 324 revises section 5240 of the Revised Statutes by deleting those provisions relating to the examination and assessment of national banks and their affiliates since the authority provided in such provisions is duplicative of the Director's authority, and by retaining those provisions relating to the authority of the Federal Reserve banks to examine member banks, with the approval of the Board of Governors of the Federal Reserve System or the appropriate Federal Reserve agent. Section 324 amends the Home Owners' Loan Act by deleting those provisions which provide authority that is duplicative of the Director's examination and assessment authority. This section becomes effective on January 1, 1993.

SECTION 325. APPOINTMENT OF A RECEIVER

Section 325 provides the Director of the Office of Depository Institutions Supervision with authority to appoint a receiver for a national bank based on any of the grounds currently set forth in the Bank Conservation Act (12 U.S.C. 203) and in section 5239 of the Revised Statutes (12 U.S.C. 191). In addition, this section requires the Director of the Office of Depository Institutions Supervision to appoint a receiver for any national bank that is classified by the Director as a Zone 5 institution pursuant to section 35 of the Federal Deposit Insurance Act. The amendments made by this section are effective on January 1, 1993. For savings associations, the grounds for appointment of a receiver as set forth in the Home Owners' Loan Act and transferred by this title to the Director of the Office of Depository Institutions Supervision are unchanged.

Subtitle D—Transfer of Federal Deposit Insurance Corporation Authority

SECTION 331. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT

Section 331 transfers the Federal Deposit Insurance Corporation's supervisory and regulatory authority over State nonmember insured banks, to the Board of Governors of the Federal Reserve System which is the new appropriate Federal banking agency for such institutions. The amendments made by this section become effective on January 1, 1993.

SECTION 332. CONFORMING AMENDMENTS TO THE FEDERAL RESERVE ACT

Section 332 amends the Federal Reserve Act to include State nonmember insured banks in those provisions of law in the Federal Reserve Act for which there was a parallel provision in the Federal Deposit Insurance Act which was amended or repealed by section 331 of this Act. The amended sections include those dealing with transactions with affiliates, loans to executive officiers, and lotteries.

SECTION 333. SAVINGS PROVISIONS

Section 333 preserves the validity of any right, duty or obligation of the United States, the Federal Deposit Insurance Corporation, or any person which exists on December 31, 1992, the day before the date the Federal Deposit Insurance Corporation's supervisory and regulatory authority over State nonmember banks is transferred to the Board of Governors of the Federal Reserve System. Any suit or other proceeding commenced by or against the Federal Deposit Insurance Corporation with respect to the supervisory and regulatory responsibilities transferred under this Act is unaffected by this Act, except that the Board of Governors of the Federal Reserve System shall be substituted as a party.

All orders, resolutions, and regulations of the Federal Deposit Insurance Corporation which are in effect on December 31, 1992, and which relate to the supervision and regulation of insured State nonmember banks continue in effect according to their terms. The Board of Governors of the Federal Reserve System must administer such orders, resolutions, and regulations and they are enforceable by or against the Board until such time as they are modified, terminated, set aside, or superseded by the Board by a court, or by operation of law. Any proposed regulations or rules of the Federal Deposit Insurance Corporation relating to the supervision and regulation of State nonmember insured banks are deemed proposed regulations or rules of the Board of Governors of the Federal Reserve System. Each of the foregoing provisions applies unless expressly provided otherwise in this Act.

SECTION 334. TRANSFER OF PERSONNEL AND PROPERTY

The Chairman of the Board of the Federal Deposit Insurance Corporation (FDIC) and the Chairman of the Board of Governors of the Federal Reserve System (FRB) shall jointly determine which FDIC employees should accompany the functions transferred by the Act from the FDIC to the FRB, and this section requires that those employees be so transferred.

Employees so identified are to be transferred not later than January 1, 1993 with the protection accorded by 5 U.S.C. 3503 to employees accompanying a transferred function. The transferred employees are guaranteed a FRB position with tenure comparable to what they had at the FDIC and with pay no lower than their most recent FDIC pay level. In addition the transferred employees may not be removed or reduced in pay except for cause for one year after the transfer. If the FRB determines between December 31, 1993, and December 31, 1995, that the combined work force is to be reorganized, the reorganization is treated as a major reorganization for purposes of authorizing certain retirement options under other law.

Employees transferred from the FDIC can elect to retain membership in FDIC benefit programs (other than retirement) for one year after the transfer if the FDIC continues the programs. If the cost of a FDIC program exceeds the cost of the comparable FRB program, the excess cost is to be paid by the FDIC. If a transferred employee does not elect to retain a FDIC health benefit or if FDIC discontinues a health benefit program, the employee may elect to participate in the FRB health benefit program within one year after the transfer.

Transferred employees who are within the definition of employee at 5 U.S.C. 8401(11) may elect to remain in a Federal retirement plan in which they participated while employed at the FDIC, and the FRB will make all contributions to the plan that the FDIC would have made if the employees had not been transferred. The employees also may elect within one year after the transfer to participate in the retirement program offered by the FRB to those commencing service with the FRB after December 31, 1983. Employees electing the FRB retirement program forego all benefits (except for the thrift plan) under the Federal Employee Retirement System (FERS) but receive benefits under the FRB program as if they had enrolled in that system on the same date they enrolled in FERS.

Transferred employees are to be placed in FRB positions comparable to the positions they occupied at the FDIC. The FRB is to take necessary action on a case-by-case basis to provide transferring employees with equitable treatment for retirement, and leave and vacation time purposes regarding credit for prior service with a Federal entity or instrumentality. Transferring employees are to receive notice of their position assignments within 120 days after the effective date of their transfer. Transferring employees have the same rights and entitlements as other, similarly situated FRB employees have under sections 10 and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)), except as the Act otherwise specifically provides.

The Chairman of the Board of Governors of the Federal Reserve System and the Chairman of the FDIC shall jointly determine no later than January 1, 1993, the FDIC property that had been used to perform functions transferred to the FRB by this Act, and such property shall be transferred to the FRB promptly. The FRB is authorized to hold such transferred property and acquired any other property necessary to perform the transferred functions or related functions or activities with respect to State member banks or holding companies.

Any agency, department or other instrumentality of the United States that was providing support services to the FDIC on the day before the date functions are transferred from the FDIC to the FRB under this Act shall continue to provide such services in accordance with the terms of the arrangement, except that, effective January 1, 1993, the FRB shall substitute for the FDIC, or, if appropriate, be added, as a party to the arrangement. Any such agency, department or other instrumentality of the United States shall consult with the FRB to coordinate a prompt and reasonable transition.

Conforming amendments are made to the FRB's property authorities.

Subtitle E—Litigation Authority

SECTION 341. LITIGATION AUTHORITY

Section 341 authorizes the Director of the Office of Depository Institutions Supervision, the Board of Governors of the Federal

Reserve System, the National Credit Union Administration, and the Federal Deposit Insurance Corporation to employ attorneys to conduct litigation, but such litigation may be conducted only with the prior consent of the Attorney General and is subject to the direction and control of the Attorney General. Section 341 is intended to permit the Attorney General to allocate federal litigation resources in the manner he deems most efficient.

Under current law, except as otherwise provided, the Attorney General is responsible for conducting litigation involving Federal agencies. See e.g., 28 U.S.C. 516, 519. However, much litigation involving Federal banking agencies and concerning questions of banking law can be conducted most effectively by attorneys employed by the appropriate Federal banking agencies, the National Credit Union Administration and the Federal Deposit Insurance Corporation rather than the Department of Justice. Section 341 therefore permits the Attorney General to delegate authority to conduct litigation to the appropriate Federal banking agency, the National Credit Union Administration, or the Federal Deposit Insurance Corporation when he believes that attorneys from those agencies are able to provide the most efficient and effective representation. Such delegation may be made in individual cases or may be made more generally.

The Home Owners' Loan Act is amended by deleting the Director of the Office of Thrift Supervision's independent litigating authority as of January 1, 1993, the date on which all powers of the Director of the Office of Thrift Supervision transfer to the Director of the Office of Depository Institutions Supervision.

Subtitle F—Reorganization of Boards of Directors

SECTION 351. REORGANIZATION OF BOARDS OF DIRECTORS

Section 351 revises the composition of the Board of Directors of the Federal Deposit Insurance Corporation to conform with the new regulatory structure. The Federal Deposit Insurance Corporation's Board of Directors consists of the Director of the Office of Depository Institutions Supervision, the Chairman of the Board of Governors of the Federal Reserve System, and three independent members. The Director of the Office of Depository Institutions Supervision and the Chairman of the Board of Governors of the Federal Reserve System may delegate their authority to serve as Board members.

SECTION 352. NATIONAL CREDIT UNION ADMINISTRATION BOARD OF DIRECTORS

Section 352 revises the composition of the Board of Directors of the National Credit Union Administration to include the Director of the Office of Depository Institutions Supervision as a Board member. Effective January 1, 1993, the Board of Directors of the National Credit Union Administration will consist of the Director of the Office of Depository Institutions Supervision and two independent members appointed by the President.

Subtitle G—Savings Provisions for Authority Transferred from the Board of Governors of the Federal Reserve System to the Director of the Office of Depository Institutions Supervision.

SECTION 361. SAVINGS PROVISIONS

Section 361 preserves the validity of any right, duty, or obligation of the United States, the Board of Governors of the Federal Reserve System, or any person which exists on December 31, 1992, the day before the Board's supervisory and regulatory authority is transferred to the Director of the Office of Depository Institutions Supervision. Any suit or other proceeding commenced by or against the Board of Governors of the Federal Reserve System with respect to the supervisory and regulatory responsibilities transferred under this Act is unaffected by this Act, except that the Director of the Office of Depository Institutions Supervision, as the appropriate Federal banking agency, may be substituted as a party.

All orders, resolutions and regulations of the Board of Governors of the Federal Reserve System which are in effect on January 1, 1993, and which relate to any function transferred under this Act shall continue in effect according to their terms. The Board of Governors of the Federal Reserve System or the Director of the Office of Depository Institutions Supervision, as appropriate, must administer such orders, resolutions and regulations and they will be enforceable by or against the Board or the Director until such time as they are modified, terminated, set aside or superseded by the Board or by the Director, by a court, or by operation of law.

Any proposed regulations or rules of the Board of Governors of the Federal Reserve System relating to any function transferred under this Act shall be deemed a proposed regulation or rule of the Director of the Office of Depository Institutions Supervision.

Title IV—Bank Insurance Fund Recapitalization

Subtitle A—FDIC Borrowing

SECTION 401. FDIC BORROWING

This amendment provides the FDIC with new borrowing authority under section 15 of the Federal Deposit Insurance Act. Paragraph (1) of the amendment explicitly permits the FDIC to borrow up to $25 billion from the Federal Reserve banks for use as loss funds of the Bank Insurance Fund and to protect the liquidity of the Fund or to deal with a troubled or failed institution. The FDIC is to have no more than $25 billion in borrowing from the Federal Reserve banks outstanding at any one time.

Paragraph (2) of the amendment adds a new subsection (c)(6) concerning exemptions on FDIC obligations. Subsection (c)(6)(A) preserves the existing exception from the obligation limitation for $5 billion in FDIC borrowing. Subsection (c)(6)(B) permits the FDIC to use its authority to borrow from the Federal Reserve banks as intended by explicitly exempting such borrowing from the limitation on FDIC obligations. In addition, funds flowing between the FDIC and the Federal Reserve banks in connection with such borrowing will not be counted in calculating compliance with the limitation on FDIC obligations.

Finally, new subsection (c)(6)(E) provides that the unused portion of the FDIC's existing $5 billion in emergency borrowing authority—which is exempt from the limitation on FDIC obligations under current law—shall be counted as net worth solely in calculating compliance with the limitation on obligations. The purpose of this provision is to permit the FDIC to continue to incur obligations to hold working capital in resolving institutions insured by the Bank Insurance Fund, even if the Fund's accounting net worth is exhausted.

SECTION 402. FEDERAL RESERVE LENDING

This amendment is intended to provide to the Board of Governors of the Federal Reserve System and the Federal Reserve Banks, as directed by the Board, the authority to lend to the FDIC. In addition, the amendment is intended to provide to the Board of Governors wide authority to prescribe the terms under which the funds will be lent.

Subtitle B—FDIC Assessments

SECTION 411. MAXIMUM AGGREGATE ASSESSMENT

This section strikes out a redundant provision in the current Federal Deposit Insurance Act, and replaces it with a provision that the maximum aggregate assessment rate to be charged to the members of the Bank Insurance Fund is 0.30 percent of deposits of the members of the Fund. This aggregate limitation would apply not to individual institutions, but to all institutions insured by the Bank Insurance Fund in the aggregate. The FDIC would retain discretion to assess individual institutions more than 0.30 percent of deposits. This amendment also makes it clear that the Corporation has full discretionary authority to compute the assessment using industry-wide data it has gathered, and may then collect whatever assessment it has computed. Any challenges assessment is due, and may only seek repayment of the amount in question.

SECTION 412. BANK INSURANCE FUND BORROWING ASSESSMENT

This section directs the Board of Directors, so long as funds borrowed from the Federal Reserve banks remain unpaid, to determine the amount of assessments necessary to repay the borrowed funds in accord with the terms of loan. The language further directs the Board of Directors to take whatever actions are necessary to dedicate the amounts of assessments necessary to repay the loans so as to preclude the use of dedicated assessments for any purpose other than repaying the loans.

Title V—Payment System Risk Reduction

Subtitle A—Payment System Risk Reduction

SECTION 501. FINDINGS

This section sets forth the Congress' findings regarding the need for efficient processing of financial transactions and for legal recognition of the validity of netting procedures.

SECTION 502. DEFINITIONS

(1) "Broker/dealer." Broker/dealers are included in the definition of financial institution, which establishes the coverage of the Act. The provisions of the Act apply to all registered or licensed securities brokers, underwriters, and dealers.

(2) "Clearing organization" is defined broadly to include any entity that clears or settles transactions for financial institutions. Section 5 of the Act provides that such transactions shall be netted on an aggregate basis if so provided in the rules of the clearing organization.

(3) "Covered clearing obligation." This definition describes those obligations settled through a clearing organization that are covered by the Act.

(4), (5) "Covered contractual payment entitlement" and "Covered contractual payment obligation." The Act applies to obligations to make payments and entitlements to receive payments if (i) they are covered by a netting contract, and (ii) they are either (a) obligations or entitlements between two financial institutions or (b) obligations or entitlements settled or cleared through a clearing organization.

(6) "Depository institution" is defined to include all domestic depository institutions, U.S. branches and agencies of foreign banks, and Edge and agreement corporations. De-

pository institutions are included in the definition of financial institution.

(7), (8) "Failed financial institution" and "failed member." A failure occurs when a financial institution or member: (i) fails to satisfy its obligations with respect to another financial institution or member; (ii) is subject to, whether voluntary or involuntary, insolvency, liquidation, receivership, or similar proceedings; or (iii) generally fails to meet obligations.

(9) "Futures commission merchant." Futures commission merchants are included in the definition of financial institution. The provisions of the Act apply to all registered or licensed sellers of commodity futures and options.

(10) "Futures commission merchant." Futures commission merchants are included in the definition of financial institution. The provisions of the Act apply to all registered or licensed sellers or commodity futures and options.

(11) "Member" is defined broadly to cover all participants in a clearing organization.

(12) "Net entitlement" and "net obligation" are defined to mean the post-netting amounts a financial institution or member is entitled to receive or obligated to pay under a netting contract.

(13) "Netting contract." The Act applies only when there are contractual netting arrangements between private parties. The Act does not impose a netting requirement in the absence of a contractual arrangement, nor does the Act impose a United States rule of law when the contractual parties elect to apply the law of a foreign jurisdiction. The contractual obligations among members of a clearing organization are normally established by the rules of the clearing organization, thus "netting contract" is defined to include such rules.

SECTION 503. BILATERAL NETTING

This section provides that, in accordance with the terms of the contractual arrangements between two financial institutions, the mutual obligations of such institutions shall be netted and set off. The obligations and entitlements between the parties shall relate only to the remainder after giving effect to netting procedures. Netting may occur without regard to whether the obligations are matured or unmatured.

To illustrate, assume that Bank A has an obligation to make a payment of $10 million to Bank B and that Bank B then incurs an obligation to make a $12 million payment to Bank A. If a netting contract between the two banks so provides, at the time Bank B's obligation is incurred, the two obligations will be netted so that Bank B has a $2 million obligation to Bank A and Bank A has no obligation to Bank B. The $2 million net obligation represents the excess of Bank B's $12 million obligation to Bank A over Bank A's $10 million obligation to Bank B.

Although it is believed that a similar result would be obtained under existing law, some uncertainty exists. The daily volume of trillions of dollars of payments through clearing organizations requires that this uncertainty be eliminated.

SECTION 504. CLEARING ORGANIZATION NETTING

Members of a clearing organization will normally transmit and receive numerous payment orders during the course of a business day. The vast majority of these payments orders will be made for customers of the member rather than for the member's own account.

Under the rules of most clearing organizations, final settlement is made on a "net-net" (sometimes referred to as "multilateral") basis. Each member aggregates all the payment orders received during the day and compares that amount to the aggregate amount of all payment orders sent during the day. The member's obligation to make a settlement payment, or its entitlement to receive a settlement payment, is equal to the differential between the two aggregate amounts. If the aggregate amount of payment orders received by a member exceeds the aggregate amount of payment orders transmitted, the member receives a net settlement amount equal to the differential.

This section addresses the concern that, in the event of a member's bankruptcy, its receiver or liquidator would attempt to negate the net-net settlement rules of the clearing organization. If the receiver or liquidator were successful in that effort, the failed member could be immediately entitled to the gross amount of all payment orders received by it during the day, but all payment orders transmitted by it would represent merely unsecured creditor claims. The recipients of those transmitted payments orders would almost certainly receive less than face amount and would probably be required to wait a substantial period of time before receiving any actual payment. The potential loss to the recipients would be exacerbated if the failed member were subject to a depositor preference or similar statute.

Section 504 is intended to eliminate the risk that the receiver or liquidator of a failed member of a clearing organization could negate the netting rules of the clearing organization. This section provides statutory validation of netting to the extent provided by the clearing organization rules. If a member fails, its claim with respect to payment orders received through the clearing organization would be limited to the excess, if any, of the amount of payment orders received over the amount of payment orders transmitted.

SECTION 505. PREEMPTION

Financial institutions and members of clearing organizations are organized under the laws of numerous jurisdictions, which may differ. These laws may establish a variety of preferences and priorities among creditors in the event of bankruptcy, many of which are not codified and the implications of which are not fully developed.

Consequently, it cannot be determined with certainty whether the netting procedures provided in private contracts would be honored under these various laws. Because certainty of settlement on a net basis is essential to the safety and soundness of the banking system and financial markets, this section provides that the Act preempts any injunction or similar order issued by a court or agency that would interfere with the netting procedures governed by the Act. This preemption is, however, explicitly limited to orders that are inconsistent with the netting procedures and are not intended to affect any other priorities or preferences established by other laws.

Subtitle B—Right to Financial Privacy Act Amendments

SECTION 511. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Section 1(a) is intended to clarify the language of subsection 1112(f), as amended, of the Right to Financial Privacy Act (RFPA), (12 U.S.C. 3412(f)), which relates generally to transfers of financial records that may be relevant to a violation of federal criminal law. Such transfers are permitted by a Federal agency or department to the Attorney General. As a result of changes in federal statutes since the passage of the RFPA in 1978, the Department of Justice has authority not only to prosecute criminal violations of bank fraud statutes, but also to initiate civil actions under those statutes pursuant to section 951 of FIRREA, (12 U.S.C. 1833a) and to seek civil and criminal forfeitures under 18 U.S.C. 981 and 982.

The current language of subsection 1112(f)(2), however, limits the use of records transferred under subsection 1112(f)(1) to "criminal investigative or prosecutive purposes by the Department of Justice." While this language arguably extends to criminal forfeitures under 18 U.S.C. 982, Federal agencies require an unambiguous source of authority to transfer records to the Department of Justice for use in either civil actions under section 951 of FIRREA or in civil forfeitures under 18 U.S.C. 981. In contrast to subsection 1112(f), subsection 1113(1) of the RFPA, (12 U.S.C. 3413(1)), which exempts from the RFPA's provisions disclosures of certain financial records relating to possible crimes against financial institutions by insiders, contains no language that limits the use of records so disclosed. Accordingly, no amendment of that language appears necessary.

Subsection 1(b) would further amend subsection 1112(f)(2) of the RFPA by adding a new sentence to make clear that when a Federal agency or department transfers records under subsection 1112(f), that transfer does not constitute waiver of any privilege that may apply to those records (e.g., the attorney-client privilege and the attorney work product doctrine). Similarly, subsection (2) would amend subsection 1113(l) of the RFPA by adding a new sentence to make clear that when a Federal supervisory agency transfers a record under that subsection, that transfer does not constitute a waiver of any privilege that may apply to that record (e.g., the attorney-client privilege and the attorney work product doctrine). Federal supervisory agencies have expressed concern that when they transfer financial records to the Department of Justice for use in possible criminal cases, for civil actions under section 951 of FIRREA or for forfeiture cases under 18 U.S.C. 981 and 982, third parties in litigation with those agencies may seek to discover those records and claim that by transferring those records to the Department, the agencies have waived otherwise applicable privileges. If the Department of Justice is to have timely and complete disclosure of all financial records that agencies may view to suggest criminal conduct, the Act should make clear that the mere transfer of records under subsection 1112(f) or subsection 1113(l) does not constitute a waiver of those privileges. This amendment, however, would not bar courts from finding that in a particular case, an agency may have otherwise waived its privilege, as through an explicit written waiver provided at the time of transfer of the records in question.

Subtitle C—Reduction in Regulatory Burden

SECTION 521. HOME MORTGAGE DISCLOSURE ACT

Section 521 increases the exemption in the Home Mortgage Disclosure Act for small depository institutions from $10 million to $50 million in total assets. This section also adds a provision requiring yearly adjustments in the exemption amount of total assets based on the annual percentage change in the Consumer Price Index. Current law exempts depository institutions with total assets of less than $10 million from the provisions of the Home Mortgage Disclosure Act and does not provide for an adjustment to the exemp-

tion level due to changes in the Consumer Price Index.

SECTION 522. REGULATORY BURDEN STUDY

Section 522 requires the Secretary of the Treasury and each appropriate Federal banking agency to conduct a review of all laws and regulations primarily enforced by each agency, except tax laws and regulations, giving particular attention to duplicate paperwork and compliance requirements, to determine the effect on insured depository institutions' capital positions and profitability.

The agencies' reports must be submitted to Congress no later than one year after enactment of the Act. The reports must contain a description of all laws and regulations that each agency determines may be modified in order to enhance and protect depository institutions' capitalization and profitability. The report must include a cost benefit analysis of the laws and regulations under study, including applications and other reporting and recordkeeping requirements. In particular the report must analyze the feasibility of reducing the number of items reported on reports of condition for institutions with total assets of under $50 million. The agencies must also report on the effectiveness of the Paperwork Reduction Act and the Regulatory Flexibility Act, including an after-the-fact analysis of the accuracy of agency estimates of the paperwork burden and the overall impact of the rules adopted.

SECTION 523. FAIR HOUSING REPORTING

The data the Federal banking agencies currently require to be disclosed for purposes of the Home Mortgage Disclosure Act and the Fair Housing Act are nearly identical. Section 523 eliminates the necessity to prepare separate forms by prohibiting the Federal banking agencies from requiring any institution that they regulate to prepare, file, or maintain a form to satisfy the Fair Housing Act, other than the form required under the Home Mortgage Disclosure Act. Under current law, the Secretary of Housing and Urban Development is responsible for promulgating rules to carry out the Fair Housing Act, including rules for the collection, analysis, and maintenance of data. The Secretary of Housing and Urban Development's authority under current law is unaffected by this section.

Subtitle D—Expedited Funds Availability

SECTION 531. AMENDMENT OF THE EXPEDITED FUNDS AVAILABILITY ACT

Section 531 amends the Expedited Funds Availability Act regarding the frequency of notices when funds will be held beyond statutory schedules based on the exceptions in the statute. For the exceptions to the statutory schedules for funds availability, no further notice is required after the required notice has been provided to a depositor until the earlier of 1 year after notice has been provided or such other time as the exception for which the notice was provided ceases to apply.

Subtitle E—Final Settlement Payment Procedures

SECTION 541. FINAL SETTLEMENT PAYMENT PROCEDURES

Section 541 amends section 11 of the Federal Deposit Insurance Act to give the Corporation, as receiver, the discretionary authority to use the "final settlement payment" method of resolving failed institutions. Under this method, in resolutions where uninsured depositors are not fully protected, the Corporation would make an immediate payment equal to the weighted average recovery of the Corporation standing in the shoes of depositors. In recent years, the weighted average recovery rate has been over 80 percent.

Title VI—Technical and Conforming Amendments

Subtitle A—Severability; Transition References

SECTION 601. SEVERABILITY

This section provides that if any provision of the Act is held to be invalid, the remainder of the Act will continue in force.

SECTION 602. TRANSITION REFERENCE

This section provides that until January 1, 1993, any references in this Act to financial services holding companies and to the FSHCA encompass bank holding companies and the BHCA, respectively.

Subtitle B—Technical and Conforming Amendments

SECTIONS 611–627. AMENDMENTS TO VARIOUS PROVISIONS OF LAW

This subtitle contains technical and conforming amendments to various provisions of law. Almost all of these amendments result from the abolishment of the Office of the Comptroller of Currency and of the Thrift Supervision and the redistribution of responsibility among the Board of Governors of the Federal Reserve System, the Director of the Office of Depository Institutions Supervision, and the Federal Deposit Insurance Corporation. A number of other provisions amend obsolete references to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation in order to conform to current law and the substantive provisions of this Act. Amendments are also made to reflect changes in nomenclature and regulatory responsibility made by title II of the Act relating to financial services holding companies. The following additional amendments are also made:

Section 611. Subsection (b) amends the Balanced Budget and Emergency Deficit Control Act of 1985 to provide the Office of Depository Institutions Supervision with the same exemption from the apportionment and sequestration provisions of that Act provided by current law for the Office of Thrift Supervision and the Office of the Comptroller of the Currency.

Section 612. Paragraph (1) amends 5 U.S.C. 3132 to exclude the Office of Depository Institutions Supervision from the provisions of law concerning the Senior Executive Service in the same manner as the Office of Thrift Supervision and the Office of the Comptroller of the Currency are excluded under current law.

Paragraph (2) provides that the Director of the Office of Depository Institutions Supervision will be paid at the rate established for Executive Level III, the same rate at which the Director of the Office of Thrift Supervision and the Comptroller of the Currency are paid under current law.

Section 615. Subsections (a) and (b) repeal portions of the Act of January 3, 1923 (12 U.S.C. 7) and the Act of March 4, 1923 (12 U.S.C. 9–10) that relate to the organization of the Office of the Comptroller of the Currency.

Subsection (d) deletes the Office of Thrift Supervision from section 111 of Public Law 93–495 (12 U.S.C. 250) which exempted from Presidential oversight its legislative program. The same exemption did not apply to the Office of the Comptroller of the Currency and is not extended to the Office of Depository Institutions Supervision.

Subsections (e)(2) and (10) substitute the Secretary of the Treasury for the Comptroller of the Currency in sections 11(d) and 16 of the Federal Reserve Act (12 U.S.C. 248(d), 418 and 419) with regard to certain administrative matters relating to the circulation and cancellation of Federal Reserve notes.

Subsection (g)(2) repeals section 3 of the Home Owners' Loan Act (12 U.S.C. 1462a) which established the Office of Thrift Supervision. Subsection (g)(5) repeals section 9 of the Home Owners' Loan Act (12 U.S.C. 1467) governing the assessment of the cost of examinations against savings associations because this Act authorizes the Director of the Office of Depository Institutions Supervision to recover the costs of examinations from regulated institutions.

Subsection (k)(9) repeals section 26 of the Federal Deposit Insurance Act (12 U.S.C. 1831c), an obsolete provision governing the conversion of mutual savings banks to Federal savings banks prior to October 15, 1982.

Section 618. Paragraph (6) amends 18 U.S.C. 1005 to include financial services holding companies and diversified holding companies within the coverage of the section. This is accomplished by reference to the term "depository institution holding company," which is amended elsewhere in the Financial Services Holding Company Act of 1991, to include the terms "financial services holding company" and "diversified holding company."

Section 623. Paragraphs (1) through (3) amend chapter 3, subchapter I, of title 31, United States Code, to reflect the organizational changes made in the Department of the Treasury by this Act. Paragraph 4 amends 31 U.S.C. 321 to provide that powers and duties vested in the Director of the Depository Institutions Supervision by this Act are not vested in the Secretary of the Treasury. Paragraphs (8) and (9) amend provisions governing United States currency notes.

Subtitle C—Repeal of Obsolete Provisions of Law

SECTION 630. REPEAL OF OBSOLETE PROVISIONS OF LAW

Paragraph (1) repeals various provisions relating to the Comptroller of the Currency that are obsolete or are made obsolete by the Act. Paragraph (2) repeals title II of the Act of October 28, 1974 (12 U.S.C. 2401 et seq.), relating to the National Commission on Electronic Fund Transfer which completed its work more than ten years ago. Paragraph (3) similarly repeals section 14 of the Act of December 22, 1974 (12 U.S.C. 2612), relating to a report submitted to Congress by the Secretary of the Treasury prior to 1980.

Subtitle D—Effective Date

SECTION 641. EFFECTIVE DATE

This section provides that the amendments made by title V are effective on January 1, 1993, unless otherwise provided.●

● Mr. GARN. Mr. President, today I am joining with Senator RIEGLE in introducing, by request, the administration's proposal to reform our deposit insurance system and modernize our banking laws. This proposal is the result of an 18-month study of our financial system mandated by the Financial Institutions Reform, Recovery and Enforcement Act, passed in August 1989. I am very encouraged by the fact that the administration has taken the initiative in developing a comprehensive approach to the problems in our financial services industry, rather than recommending narrow "band-aid" type fixes for these problems. The issues addressed in this proposal are of vital im-

portance to our country, and have already been the focus of an on-going series of hearings in the Banking Committee, under the leadership of Chairman RIEGLE. Following these hearings, I hope that the Banking Committee and the Senate will be able to turn its full attention to completing the necessary legislative action to address these issues in this session of Congress.●

By Mr. COCHRAN:

S. 714. A bill to provide for the establishment of the Margaret Walker Alexander National African-American Research Center; to the Committee on Labor and Human Resources.

MARGARET WALKER ALEXANDER NATIONAL AFRICAN-AMERICAN RESEARCH CENTER

● Mr. COCHRAN. Mr. President, I am introducing legislation to provide for the establishment of the Margaret Walker Alexander National African-American Research Center.

The research center is to be located at Jackson State University in Jackson, MS. Historically, the university has been known for providing education, support, and encouragement for many black students from economically disadvantaged backgrounds by providing the means for young black people to move into America's social and economic mainstream. In 1979, Jackson State University was assigned the role of an urban university, by Mississippi's governing board of public universities. Mississippi has long been a State with a predominately rural population and agriculturally based economy, but the State is now confronting many issues associated with urbanization and modernization. Jackson State University's challenges and opportunities include providing effective programs and services to meet the needs of both black and white populations in the urban area of Jackson, MS. This research center will provide an opportunity for the University to share the African American experience with all Mississippians and with others from across our Nation.

This national research center will be named after Margaret Walker Alexander, professor emeritus in the department of English at Jackson State University and a noted author and poet perhaps best known for her Civil War novel "Jubilee," her volume of verse "For My People," and most recently for her biography about her novelist friend, "The Daemonic Genius of Richard Wright."

The primary purpose of the center will be the preservation of 20th century African-American materials and archival resources. The facility will serve as a national center for the study, research, and teaching of African-American literature and history and as a repository for papers and memorabilia relating to the life of Margaret Walker Alexander and other individuals noted for their work in African-American literature, history, and the civil rights movement.

Since there is currently no national archival oral history research facility focusing exclusively on 20th century African Americans, this center will provide much needed resource materials to inform present and future generations of African-American contributions to our Nation.

Mr. President, I urge other Senators to join me in this effort and to cosponsor my bill establishing the Margaret Walker Alexander National African-American Research Center.●

By Mr. BURNS (for himself, Mr. DOLE, Mr. DIXON, Mr. BOREN, Mr. SYMMS, Mr. BAUCUS, Mr. GRASSLEY, Mr. LOTT, Mr. WIRTH, Mr. BROWN, Mr. CONRAD, Mr. NICKLES, Mr. PRESSLER, Mr. COCHRAN, Mr. SHELBY, Mr. MACK, Mr. WALLOP, Mr. COATS, Mr. FORD, Mr. SMITH, Mr. BURDICK, Mr. BOND, Mr. HELMS, Mr. KASTEN, Mr. GRAMM, Mr. SIMPSON, Mr. LUGAR, Mr. FOWLER, Mr. PRYOR, Mr. STEVENS, Mr. MCCONNELL, Mr. DASCHLE, Mr. KERREY, Mr. EXON, Mr. HEINZ, Mr. DOMENICI, and Mr. HEFLIN):

S. 715. A bill to permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer; to the Committee on Commerce, Science, and Transportation.

COMMERCIAL DRIVERS LICENSES

Mr. BURNS. Mr. President, I rise today to introduce legislation. Time has run out as harvest season starts to near. It seems like we are in an early spring, but in some sections of our country, the harvest has started.

I introduce this bill for its consideration, along with 36 cosponsors.

Mr. President, this is a bill to give the States the right to waive the commercial driver's license requirement for the part-time young men and women who work in the harvest every year. Where I come from, family members and young workers have always worked on the family farm and in the family businesses, and this addresses part of that problem.

All I am asking is that the States most affected by these requirements, our Nation's farm States, are given the opportunity to exempt not only farmers but farm retailers and custom harvesters.

I think this is a reasonable piece of legislation, and I urge my colleagues to support it.

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

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

S. 715

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in addition to the authority which the Department of Transportation granted to States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to farm vehicles contained in volume 53, pages 37313–37316, of the Federal Register (September 26, 1988), such States may extend such waivers to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, whether or not such vehicles are controlled and operated by a farmer.

Mr. DOLE. Mr. President, last year I was proud to cosponsor this measure, and I am proud to do so again this year. This bill would permit States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to vehicles used to transport farm supplies from retail dealers to or from a farm, to vehicles used for custom harvesting, and to vehicles used to transport livestock feed, whether or not such vehicles are controlled or operated by the farmer.

Nearly 2 years ago, the U.S. Department of Transportation gave States the authority to waive commercial drivers license requirements for farm vehicles under the Commercial Motor Vehicle Safety Act. Unfortunately, DOT did not recognize when granting this waiver that the majority of these particular seasonal agricultural shipments were carried out by agricultural retail outlets, not necessarily by farmers.

DOT failed to recognize the importance of the custom harvesting industry, which many farmers rely upon to harvest a seasonal, perishable crop. The same is true for livestock feed operations which provide a valuable, cost effective service for farmers. These industries are markedly different than the commercial trucking industry. Most of the driving is done offpavement. They differ from other for-hire carriers because they only provide the initial transportation of grain from the field to storage, or to market, or to feedlots. These trucks average 15,000 per year and simply cannot be considered in the same category as commercial, long-haul trucking operations.

Farmers are currently facing serious economic hardship with increasing operation and transportation costs. This bill is not an exemption from commercial drivers license requirements, rather it is a commonsense approach to give States with an excellent safety record in the area the ability to set reasonable requirements for farm vehicles.

Mr. President, last year when I joined in the introduction of this legislation, this bill was cosponsored by

Senators BURNS, GRASSLEY, SYMMS, BURDICK, BOREN, PRESSLER, and NICKLES. Subsequently, upon passage of this bill October 9, 1990, Senators BAUCUS, WALLOP, COATS, FORD, BOND, HELMS, WIRTH, KASTEN, GRAMM, SIMPSON, FOWLER, and LUGAR joined as cosponsors.

The waiver was also unanimously approved by the Senate Commerce Committee on July 31, 1990, gaining Senator EXON'S support, and was included as a provision in the Negotiated Rates Equity Act. The waiver was approved again by the Senate when it was included in the Safe Food Transportation Act of 1990 which was passed by the Senate in September.

Mr. President, it is my firm belief that this measure is desperately needed in farm country. It is quite probable, if this measure is not adopted in Congress, that crops will go unharvested, farmers will find themselves short of needed supplies, and livestock producers will find themselves in trouble when it comes to securing adequate feed supplies as well.

I encourage my colleagues, particularly in the House where this measure has met repeated resistance, to once again pass this needed legislation.

By Mr. JEFFORDS (for himself, Mr. DOMENICI, Mr. WIRTH, Mr. BURDICK, Mr. BURNS, Mr. DASCHLE, Mr. CONRAD, Mr. SHELBY, Mr. CRAIG, Mr. SEYMOUR, Mr. REID, Mr. KERREY, Mr. AKAKA, and Mr. BINGAMAN):

S. 716. A bill to establish a replacement fuels and alternative fuels program, and for other purposes; to the Committee on Energy and Natural Resources.

REPLACEMENT AND ALTERNATIVE FUELS ACT

Mr. JEFFORDS. Mr. President, before our sense of pride and relief over the Mideast conflict fades from our memory, we should reflect on some of the underlying causes of that war. Primary among these is oil and our desire to preserve political stability in a region with huge reserves of this resource.

Today we are introducing a proposal to phase in the replacement of gasoline with domestic, nonpetroleum resources. I am joined by Senators DOMENICI, WIRTH, BURDICK, BURNS, DASCHLE, CONRAD, SHELBY, CRAIG, SEYMOUR, REID, KERREY, AKAKA, and BINGAMAN.

I've long held an interest in energy issues, partly from my upbringing in oil-dependent New England, and partly from my experiences as a young naval officer aboard one of the first U.S. vessels through the reopened Suez Canal in 1957. Each experience taught me the inherent advantages to domestic energy resources, an intuition that has recently been reinforced.

Our recent victory will not end our problems of oil dependence—it only emphasizes how perilous our situation remains. Cultural differences and huge disparities of income cannot help but lead to more oil interdictions.

Recently, I had the opportunity to ask Admiral Crowe, the immediate past Chairman of the Joint Chiefs of Staff, how important it is to become energy independent. He replied, "It is extremely important. We must become energy independent even if it results in a serious reduction in our standard of living." The program I am proposing today will allow us to reach that goal. And, it will do so with no significant change in our standard of living. In fact, it could improve it.

The proposal I will describe today is not new or Johnny-come-lately. I first introduced it in the 96th Congress, it garnered over 100 cosponsers, and was incorporated as title 5 of the House Energy Committee's omnibus energy bill before the bottom fell out of the price of oil.

I've reintroduced it each session of Congress since then, during which time we've reaped the benefits and detriments of cheap foreign oil without taking any significant action in the way of national energy strategy.

In brief, the bill guarantees a market for alternative and replacement fuels independent of the price of oil. It calls on refiners to substitute a fixed percentage of their total motor fuel product with nonpetroleum, domestic fuels. A market credit program, a reversal of sorts to the program under which we eliminated lead from gasoline, is established to ease the transition and encourage the least-cost options. All fuels compete on a level playing field with no new subsidies. Candidate fuels include, but are not limited to, ethanol, methanol, natural gas, electricity, and liquids from coal or oil shale.

Mr. President, scores of studies reveal the extent of our domestic energy resources. Clearly oil production alone, given that our total proven reserves are only equal to about 5-years consumption at current rates, will never bring us to oil independence. For the record, let me review my understanding of those which are potential alternative and replacement transportation fuels.

Biomass alcohols include both ethanol and methanol. A July 1990 GAO report showed that a tripling of today's ethanol capacity can be accomplished with relative ease by the year 2000. Such action would help establish the land base, refinery capacity, and distribution system for a cellulous-based biomass industry, which recent reports estimate will become cost-effective around the turn of the century.

Based on DOE research and projections, and from that which I have personally observed at its research center, all of the requirements of my bill can be met with biomass alcohols, although nothing in my bill dictates such an outcome.

Our most abundant domestic fossil fuel resource is coal, followed by oil shale. My proposal includes liquids from these resources as candidate transportation fuels, either as a refinery-blended crude-equivalent, or as converted methanol or gasoline.

Much progress has been made in improving the conversion efficiency of coal to liquids. A pilot project in Ohio, which I recently visited, achieves a thermal conversion efficiency above 80 percent in a closed system, yielding clean gases for methanol and electricity generation. A clean coal technology demonstration plant in Wyoming will convert coal to two products, one solid and one liquid.

These processes, in addition to improving the efficiency of coal utilization, render clean energy products that help with the sorts of problems we grappled with during Clean Air Act reauthorization last year. The technologies we develop will not only help in meeting clean air targets, but will help other countries, such as China and the Soviet Union, more efficiently use their vast coal reserves.

Natural gas is a promising transportation fuel, as demonstrated by the number of initiatives to encourage its use in private fleets, urban buses, and large trucks. While projections of our domestic resource base of natural gas is somewhat debatable right now, especially considering increasing estimates of coal-bed methane, my bill will encourage efforts to utilize natural gas as a transportation fuel, but will not mandate it.

Progress on battery technologies for electric vehicles has been promising, and with a new public-private research effort having recently been announced, further progress is likely. My program includes the use of electric vehicles.

Other potential candidate fuels include propane, hydrogen, fuel cells, and solar energy.

Allow me to briefly describe our proposal. First, potential nonpetroleum fuels are defined under two broad definitions. "Alternative fuels" are those fuels not suitable for being incorporated into gasoline and for which distinct engines are required. These include natural gas, propane, and the "neat" alcohols.

"Replacement fuels" are those that are capable of being mixed with gasoline and used in today's gasoline engines. These include gasohol, the ether blends, including the methanol or ethanol constituents, and liquids derived from coal, shale, or tar sands.

Under this bill, all of these fuels are treated equally, based on their relative energy content.

Under the program, beginning in 1996, refiners of motor fuels would be required to substitute an increasing per-

centage of their product with alternative or replacement fuels.

This substitution could take place at the refinery, as is currently being done pursuant to Clean Air Act requirements for oxygenated fuels, or through a credit-trading program with other fuel providers. The credit system also allows a company to average its requirement among its separate refineries.

For refiners who also distribute motor fuel, the substitution could take place at service stations, via blended gasohol or dedicated methanol pumps. Again, this is nothing new as it is currently being done in this area, in the Midwest and in California.

Other options for these alternative and replacement fuels to penetrate the market are created through the establishment of a market credit system, similar to that established under the acid rain title of the Clean Air Act.

Refiners that exeed their quota generate market credits to sell to another refiner who is deficient in volume. Distributors of natural gas as a transportation fuel generate credits which are then available to refiners. The same is true of distributors selling ethanol and methanol into the transportation market.

Under the market credit system, each transportation fuel is given equal opportunity to penetrate the market, because each fuel generates market credits that can be used by refiners in meeting their percentage requirement.

Mr. President, the administration proposes to expand the alternative fuels provisions of the Clean Air Act to include private fleets nationwide. The Johnston-Wallop bill proposes Federal assistance to State and local governments for purchases of alternative fueled vehicles. My State of Vermont has considered converting to natural gas vehicles. Under the Clean Air Act, municipalities will be required to purchase alternatively fueled buses.

The fuels utilized under any of these scenarios would generate market credits, which would be of value to refiners seeking to meet their percentage requirement. The program envisions maximum flexibility in meeting the requirements, it establishes a cost-sharing program, of sorts, which ultimately will be passed on to purchasers of motor fuel. Because the costs will be distributed over the total volume of motor fuel sold, and because the least-costly options are implicitly encouraged, the cost increase per gallon of gasoline should be in the range of 2 to 3 cents.

Now, producing the alternative and replacement fuels is only part of the equation. Vehicles capable of utilizing these fuels must also be phased in.

Our bill builds upon incentives of current law, the vehicle manufacturers CAFE credit for producing dual fuel and dedicated-fuel vehicles—the so-called Rockefeller-Sharp CAFE credit. The current cap of 1.2 mpg would be lifted, but only to the extent to which alternative and replacement fuels are being used as transportation fuels to displace imported oil. The idea is to give both the vehicle makers and the fuel providers timely incentives to encourage a successful and ambitious phase-in of alternative fuels.

And, under this bill, fuel for the existing vehicle fleet will become cleaner and less oil-dependent through the encouragement of alcohols, ethers, and synthetics which are suitable for refinery processing.

A final link, to the distribution network, is established by granting DOE the authority to require fuel availability at large stations in critical areas. The same authority that the State of California already has.

Mr. President, as I pointed out at the beginning of this testimony, our proposal works in harmony with everything else proposed for alternative transportation fuels.

The President's NES estimates that 700,000 barrels per day of gasoline will be displaced by the year 2000 under provisions of the Clear Air Act for reformulated gasoline and oxygenated fuels. Add to this the volume displaced under California's program, under the Fleet Conversion Program and as ethanol capacity is expanded under the GAO scenario, and the target of 10 percent by 2000 is well within reach. Ramping up to 30 percent after two decades of progress should likewise be within our national potential.

Mr. President, our bill is an insurance policy that will enhance the programs others have proposed and indeed bring them further along. Incorporated in the percentage requirements are assumptions for reformulated gasoline, oxygenated fuels, vehicle fleets, municipal buses, dual-fueled and dedicated fuel vehicles. My bill assures the effectiveness of each of these programs.

But the proposal goes further still. Some see it as "technology forcing," but I prefer to describe it as "technology proving." There are plenty of fuel technologies out there in America waiting to jump into the fuel market. Each may be confident of being more cost-effective than the other, but none is prepared to challenge the inherent cost advantages, and the volatile price, of gasoline.

This bill requires each to compete under market conditions, but leaves conventional gasoline out of the game. I see this as the only way, given the fact that OPEC can dictate the price of oil as its wellhead price is only limited by the imagination of the OPEC ministers. The uncontrolled oil gushers in Kuwait clearly proclaim the ease to which oil comes to the surface in the Mideast. As for bringing this oil from the wellhead to our refineries, our commitment here is also now well documented.

Gasoline has other advantages, as well—as well-defined infrastructure for processing and distribution; a huge vehicle fleet designed to consume it; a public accustomed to its convenience.

Unfortunately, our country's oil resources are dwindling. Even the most ambitious of strategies merely attempt to slow the rate at which we are becoming more dependent on imported oil.

Our bill guarantees the introduction of a fixed volume of alternative and replacement fuels. It puts this country in a position to prove the technologies that will allow us to go entirely oil independent later in the century. It does so in a least-cost fashion, with a coordinated introduction of alternatively fueled vehicles, and allows the market to determine the sorts of energy initiatives that the American people desire.

Mr. Chairman, until we break the grip of oil in the transportation sector, we cannot claim to have taken meaningful strides in achieving energy independence. It is not an easy task, but I see this bill as the only comprehensive and cost-effective proposal for the replacement of gasoline.

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

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

S. 716

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 "Replacement and Alternative Fuels Act of 1991".

SEC. 2. FINDINGS.

The Congress finds and declares that—

(1) United States national security demands that we reduce our dependency on imported oil;

(2) domestic resources are available to eliminate or substantially reduce our dependency on imported oil;

(3) the transportation sector, currently 95% dependent on oil, accounts for more than 60 percent of our national oil consumption;

(4) a comprehensive energy program, including the stimulation of the production and use of automobiles capable of using alternative fuels, is needed to reduce pollution as well as reduce our dependency on imported oil;

(5) such program should be designed to create a positive impact on the economy, our national trade balance, and our national budget;

(6) such program should allow market forces, within appropriate environmental parameters, to affect the selection of replacement or alternative fuels; and

(7) such program should provide long-term stability to industries producing replacement and alternative fuels.

SEC. 3. PURPOSE.

The purposes of this Act are to—

(1) enhance energy security;

(2) reduce air pollution;

(3) improve our balance of trade;

(4) reduce the budget deficit;

(5) improve the marketability of alternative and flexible fuel vehicles; and

(6) improve the condition of the national economy through the enhancement of the replacement fuel industry and the creation of an alternative fuel industry.

SEC. 4. DEFINITIONS.

For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "alcohol" means methanol or ethanol, which is suitable for use by itself or in combination with other fuels as a motor fuel;

(3) the term "conventional petroleum" means petroleum derived from oil wells, including stripper wells, domestic or imported;

(4) the term "domestic" means derived from resources within the 50 States and the territories of the United States;

(5) the term "motor fuel" means any substance suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways;

(6) the term "alternative fuel" means a motor fuel not designed to be mixed with gasoline, including propane, natural gas, "neat" alcohol, hydrogen, and electricity;

(7) the term "replacement fuel" means a motor fuel capable of mixing with gasoline, including alcohol and liquids not derived from conventional petroleum;

(8) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A);

(9) the term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, including any affiliate of such person, or any importer of motor fuel; and

(10) the term "Secretary" means the Secretary of Energy.

SEC. 5. REPLACEMENT AND ALTERNATIVE FUEL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish, pursuant to this Act, a program to promote the development and use of domestic-produced replacement and alternative fuels. Such program shall promote the replacement of conventional petroleum motor fuels with replacement and alternative fuels to the maximum extent practicable. Such program shall, to the extent practicable, ensure the availability of those replacement fuels and alternative motor fuels which will have the greatest impact in improving air quality in urban areas, along transportation corridors, and nationwide.

(b) DEVELOPMENT PLAN AND PRODUCTION GOALS.—Under the program established under subsection (a), the Secretary, in consultation with the Administrator, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of Commerce, and the heads of other appropriate agencies, shall review appropriate information and—

(1) estimate the production capacity in the United States for replacement fuel and alternative fuel needed to implement the provisions of this section;

(2) determine the technical and economic feasibility of producing in the United States sufficient replacement fuels and alternative fuels, by the calendar year 2010 to replace 30 percent or more, on an energy equivalent basis, of the projected consumption of motor fuel in the United States for that year;

(3) determine the most suitable raw materials, other than conventional petroleum, for the production in the United States of replacement and alternative fuels;

(4) determine the most suitable means and methods of developing and encouraging the production, distribution, and use of replacement and alternative fuels; and

(5) identify ways to encourage the development of reliable replacement fuel and alternative fuel industries in the United States, and the technical, economic, and institutional barriers to such development.

The Secretary shall prescribe, by rule, a substitute percentage goal for purposes of paragraph (2) upon a determination that 30 percent is unachievable due to technological or cost constraints.

(c) TIMETABLE.—(1) Not later than January 1, 1993, the Secretary shall, by rule, prescribe the minimum percentage of domestic-produced replacement and alternative fuels, on an energy equivalent basis, to be sold in calendar years 1996 and 1997 by any refiner for use as a motor fuel. In establishing such percentages, the Secretary shall—

(A) take into account the availability of reliable sources of replacement fuel and alternative fuel; and

(B) provide that the goal for domestic production of replacement fuel and alternative motor fuels for calendar year 1998 and thereafter shall be not less than 10 percent on an energy equivalent basis of the projected consumption of motor fuel in the United States for each year. The Secretary shall increase the minimum percentage for the years 2005 through 2009 if feasible based on the findings rendered under subsection (b).

(2) Of the total quantity of gasoline, alternative fuel, and replacement motor fuel sold in commerce during any of the following years by any refiner (including sales to the Federal Government), replacement fuel and alternative fuel produced domestically shall constitute the minimum percentage determined in accordance with the following table:*ERR08*

In the calendar year:	The minimum percentage which replacement fuel constitutes, shall be—
1996, 1997	Determined by the Secretary under subsection (c) of this section.
1998 through 2009	10 percent, adjustable by rule after 2005.
2010 and each year thereafter.	The percentage determined feasible under subsection (b).

(3) The Secretary shall, not later than January 1, 1993, promulgate regulations allowing the sale and other exchange of marketable credits among—

(A) refiners;

(B) distributors of alternative motor fuels sold into commerce for transportation purposes; and

(C) manufacturers of electricity powered automobiles;

in order to satisfy the requirements of this section, and to further the purposes of this Act. In determining the value of such credits for the various fuel sources, the Secretary shall consider the relative energy content of the fuel source.

(4)(A) Any domestic refinery of crude oil, whose capacity per calendar day as of the date of enactment is less than 20,000 barrels, shall be granted a 36-month extension by the Secretary from the requirements of this subsection.

(B) The Secretary may, on the application of any person, make adjustments to reduce the minimum percentage requirement as it applies to that person, due to prohibitive costs or an inability to access raw materials.

(d) REPORTING REQUIREMENTS.—(1) Not later than 9 months after the date of the enactment into law of this Act, the Secretary shall complete his review and determinations under this section and prepare and transmit a report thereon to each House of the Congress.

(2)(A) Each refiner shall report annually to the Secretary the percentage of domestic-produced replacement fuel, on an energy equivalent basis, contained in the total quantity of motor fuel that such refiner sold during the preceding calendar year, and the amount of alternative motor fuels, sold or credited to such refiner during such year.

(B) Each distributor of alternative fuel shall report annually to the Secretary the amount of alternative fuel sold into commerce for transportation purposes, and the amount of credits sold to refiners, by such distributor during such year.

(C) The Secretary of Transportation shall report annually to the Secretary of Energy the number of dual fuel and dedicated alternative fuel vehicles manufactured and sold into commerce by each manufacturer each year.

(D) For electricity powered vehicles, the Secretary shall determine the value of credits which shall be available to manufacturers of electricity powered vehicles.

(3) The Administrator shall report to Congress not later than 24 months after the date of the enactment into law of this Act on the environmental impact potential of developing replacement fuels and alternative motor fuels. Such report shall analyze potential benefits and detriments to air and water quality, the ramifications on solid and hazardous waste management, and implications for public land management.

SEC. 6. COORDINATION OF AUTOMOBILES WITH ALTERNATIVE FUELS.

Subsection (g) of section 513 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013) is amended by adding at the end the following:

"(3) Notwithstanding any other provision of this section, if the average fuel economy standard applicable to passenger automobiles is increased above 27.5 miles per gallon for any model year, the Secretary may increase the maximum increase in average fuel economy for a manufacturer attributable to dual energy automobiles and natural gas dual energy automobiles to the extent that alternative and replacement motor fuel sales indicate that such fuels are being used to displace the use of conventional petroleum as a motor fuel, provided that the fuel economy standard for gasoline fueled vehicles does not decrease from the level as of the date of enactment of this Act.".

SEC. 7. ENFORCEMENT BY THE SECRETARY.

(a) VIOLATIONS.—Any person who violates any requirement of section (5) is subject to a civil penalty of not more than $1 per gallon for each gallon of fuel sold that is not in compliance with subsection (c). Such penalties shall be assessed by the Secretary.

(b) REVIEW.—Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have ju-

risdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to carry out this Act not to exceed $10,000,000 for each of the fiscal years 1992 through 1996.

SEC. 9. COORDINATION WITH OTHER ACTS.

This Act shall be administered and enforced in coordination with the administration and enforcement of the Energy Security Act, and the Clean Air Act.

SEC. 10. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to require retailers of motor fuel, at service stations which dispense more than 20,000 gallons of motor fuel per month, to have available for sale, in addition to replacement motor fuels, other alternative motor fuels, for the transportation needs of consumers.

SUMMARY OF THE REPLACEMENT AND ALTERNATIVE FUELS ACT OF 1991

Section 1: Title: "Replacement Fuels & Alternative Fuels Act of 1991"

Section 2: Findings: Need for national energy strategy that utilizes domestic resources competing under market conditions.

Section 3: Purpose: To enhance energy security and reduce air pollution, and for other purposes.

Section 4: Definitions:

Alternative Fuel: motor fuel not designed to be mixed with gasoline, including propane, natural gas, "neat" alcohol, hydrogen and electricity.

Replacement Fuel: motor fuel capable of being mixed with gasoline, including alcohol and liquids not derived from conventional petroleum.

Section 5: Program:

Secretary of Energy shall establish program to replace gasoline with the maximum amount of replacement and alternative fuels.

Targets: 10% replacement by 1998 and 30% replacement by 2010.

Credit trading: Allowed between refiners of gasoline and distributors of alternative fuels.

Reporting: Required by refiners, distributors, and manufacturers of vehicles.

Exemptions: Deadline extension allowed for small refiners of domestic oil, and on a case-by-case basis. Year 2010 target may be adjusted by the Administrator.

Section 6: Automobiles: manufacturers may earn credits against Corporate Average Fuel Economy standard for production of alternative fuel vehicle, provided fuel sales indicate that such vehicles utilize alternative fuels.

Section 7: Enforcement: $1 per gallon penalty for non-compliance.

Section 8: Authorizes $10 million annually to administer program.

Section 9: Program to be coordinated with Clean Air Act.

Section 10: Regulations: Secretary may require retailers to make available sales of alternative fuels.

By Mr. DOMENICI (for himself and Mr. INOUYE):

S.J. Res. 97. Joint resolution to recognize and honor members of the reserve components of the Armed Forces of the United States for their contribution to victory in the Persian Gulf; to the Committee on Armed Services.

PERSIAN GULF WAR RESERVIST COMMEMORATIVE LEGISLATION

Mr. DOMENICI. Mr. President, for myself and Senator INOUYE, I send to the desk for proper referral a joint resolution, which would appropriately honor the men and women of the Reserve forces of the United States who were called up for this engagement in the Middle East. I do not believe we have properly set about to thank and honor them, while many of them sacrificed well beyond anything we ever expected. This resolution would properly recognize them in a joint congressional way.

I send to the desk the resolution, and ask that the resolution be properly referred.

Over 200,000 reservists were called to active duty since the beginning of Operation Desert Shield/Storm on August 2, 1991. Mr. President, about half of these Americans were sent to Saudi Arabia to serve in that theatre, but over 120,000 who were called to active duty remained here in the United States to make up the backbone of the line of support that lead to the troops stationed in Saudi Arabia.

We are justifiably proud of our service men and women who took us to victory in the Persian Gulf. However, we must not forget that this victory could not have been possible without the efforts of those members of the Reserve forces called to active duty but who remained here in the United States.

Many of these reservists come from all walks of life. Some of them are engineers, some are doctors, some are small store owners—but they are all dedicated and hard-working Americans. One of these reservists called to active duty is a member of my staff in New Mexico, so I know about what they are going through. It is a credit to them and to our country that such a massive number of people could be called to active duty and serve with such professionalism, skill and pride. One of the lessons we have learned from this war is the value of the professional soldier, who is trained, educated, and well-equipped. That is what these reservists who were called to active duty demonstrated very plainly to the American people and to the world.

It is important to point out that the lives of these reservists and their families were as equally disrupted as the active duty component of our Armed Forces that left for the Saudi Arabian theatre. It doesn't really matter to a 4- or 5-year old whose parent is called to active duty where their mother or father serves. Georgia, Florida, or New Mexico can be as far away in their eyes as Saudi Arabia. All they really know is that mommy or daddy is gone and they don't know for certain when he or she might be coming home again.

Therefore, Mr. President, I rise to call to the attention of this body, the American people, and the rest of the world, the valiant efforts of the Reserve forces called to active duty and remaining in the United States to support the efforts of those deployed elsewhere. Their actions were truly an indispensable contribution in carrying the Nation to victory. They deserve to be honored in this way, and it is my hope that my fellow colleagues will support this resolution. It is but one small way to pay them the thanks they really deserve.

• Mr. INOUYE. Mr. President, I am honored to join with my distinguished colleague from New Mexico, Senator DOMENICI, in sponsoring the Persian Gulf War Reservist Commemorative Act of 1991.

Surely, there is not a person in the Chamber today who has not stood in awe of the magnificent actions taken by the men and women in our armed services during Operation Desert Shield/Desert Storm. An armed force composed of all elements of the total force policy faced an enemy and won.

As we recognize the bravery and gallantry shown by the members of the active-duty Army, Navy, Marine Corps, Air Force, and Coast Guard—of whom we are so rightfully proud—we must not forget the citizen soldiers who served during the Persian Gulf conflict.

The Reserve components who reaped the most renown for their service were those on the front line of battle, and we honor them. But we must not forget—and we must also honor—those units of the Reserves and National Guard who served in supporting roles in the United States.

Without these good Americans, willing to endure disruption of their private lives and to sacrifice self for country, I doubt that the outcome of the battle in the Persian Gulf could have been the same. To all of them, we are grateful.

It is wonderful—and I use that word in its classic sense, I am "full of wonder"—how successfully the members of the activated Reserves and National Guard performed a myriad of complex and often dangerous tasks. Because of their service, ships went to sea quickly, and it was they who expeditiously loaded and unloaded our ships and planes to provide needed supplies to our military on the ground in the Persian Gulf. Without them fewer combat missions would have flown, and the air support our troops on the ground desperately needed would have been lacking.

Medical facilities—both in the Persian Gulf and in the United States—would have been undermanned. Indeed, it is no exaggeration to say that, without medical care professionals brought in from the reserve component, military hospitals in the United States could not have functioned once active duty physicians and nurses had been deployed.

Some reservists made the ultimate sacrifice—their lives—and others will bear the scars of battle forever. They have our respect and gratitude.

I shall not attempt to enumerate all the functions provided by reservists, from the provision of pure water to carrying the mail, from equipment maintenance to medical care. All were necessary, all were performed with professionalism and skill.

When we offer tribute to the Reserves who served so well on the Arabian Peninsula and in the United States, we must not forget to offer a similar tribute to their families who also served their country by enduring the pains of separation, the fear of loss, and who bore their burdens with grace.

I referred earlier to the "citizen soldier." One of the things that has made our Nation great is the partnership between those who choose a life of active military service and those who are prepared to respond when their country calls.

I am glad to join with my friend from New Mexico in offering this tribute to the Reserve components of the United States, and I am sure our colleagues will also join us in honoring them.●

By Mr. EXON (for himself, Mr. ADAMS, Mr. AKAKA, Mr. BENTSEN, Mr. BIDEN, Mr. BRADLEY, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. BYRD, Mr. COATS, Mr. CONRAD, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. FORD, Mr. FOWLER, Mr. GLENN, Mr. GORE, Mr. GRASSLEY, Mr. HEINZ, Mr. HOLLINGS, Mr. INOUYE, Mr. JEFFORDS, Mr. KASTEN, Mr. KENNEDY, Mr. KERREY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. PRYOR, Mr. REID, Mr. ROBB, Mr. ROCKEFELLER, Mr. SANFORD, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. WARNER, and Mr. WELLSTONE):

S.J. Res. 98. A joint resolution to express appreciation for the benefit brought to the Nation by Amtrak during its twenty years of existence; to the Committee on Commerce, Science, and Transportation.

COMMEMORATION OF AMTRAK'S FIRST TRAIN

● Mr. EXON. Mr. President, on October 30, 1970, Congress enacted the Rail Passenger Service Act in an attempt to salvage the Nation's rail passenger system. Now, some 20 years later, the wisdom and vision reflected in passage of the act is demonstrated daily as thousands of travelers board Amtrak trains across the country. I rise today to introduce a joint resolution commemorating the 20th anniversary of the operation of Amtrak's first train, which will occur on May 1, 1991.

Over the years, as chairman of the Senate Subcommittee on Surface Transportation charged with the oversight of Amtrak, I have been involved in several capacities with this federally created corporation charged with saving and revitalizing the Nation's intercity rail passenger system.

While many were skeptical 20 years ago that Amtrak could or would succeed, there were those in this body who believed that it had to succeed for the good of the Nation. While every other major industrialized nation was rapidly developing their rail passenger programs, trains in the United States were on the transportation endangered species list.

Congress recognized that rail passenger service had an important role to play in the Nation's transportation system—both in urban areas and as a link to rural America. As an energy-efficient and environmentally preferable alternative to highway and airport congestion, its role was a unique one.

The convictions of this Congress proved well founded. While the new Rail Passenger Corporation struggled with antiquated equipment, a decentralized and fragmented rail network and a skeptical industry, the public responded with their wallets at the ticket windows. The downtrend in rail passenger ridership reversed itself overnight and Amtrak set its sights on expansion and improvement.

It was anything but smooth sailing for Amtrak in the first decade. The railroad maintained its equipment in outdoor facilities in the dead of winter. It fought breakdowns for lack of parts, and struggled to instill a sense of professionalism and optimism in a work force that had been demoralized by years of neglect of the passenger train business.

Amtrak's success in the face of those early challenges has exceeded the expectations of even its most ardent supporters. Its on-time-performance today rivals that of the airline industry. Rolling stock, though in short supply, is well maintained and in many cases state-of-the-art. Amtrak's track and track maintenance capabilities are unparalleled, and its modern computer reservations and ticketing system is serving as the model for the development of new systems around the world.

No rail passenger system in the world covers a higher percentage of it costs from non-Federal sources than Amtrak, and it has announced that it intends to become the first passenger railroad in the modern age to operate without federal operating support by the year 2000.

Frankly, Mr. President, if Amtrak had announced such a goal 10 years ago, I would have been concerned for its collective sanity. But I have witnessed firsthand the strides the company has made under the capable and steady hand of its president and chairman, W. Graham Claytor, Jr. He has brought a toughmindedness about cost control and a dedication to quality transportation service to Amtrak, with remarkable results.

Indeed, an announcement that would have seemed absurdly unrealistic under another CEO suddenly strikes anyone who knows Graham Claytor as deadly serious. His organization has made it clear that he is not content merely keeping the status quo in today's transportation environment. Amtrak wants to be able to meet the call for new and expanded service, where it makes good business sense.

Amtrak is an important part of our nationwide transportation system. Amtrak serves my home State of Nebraska with stops in Omaha, Lincoln, Hastings, Holdredge, and McCook. Amtrak has also become the Nation's largest rail commuter operator and is expanding its leadership role in that field. With that learning curve behind them, Amtrak is now looking ahead to the development of high-speed rail passenger systems and magnetic levitation systems in the United States. It intends to be an active participant in this repainting of the American transportation landscape.

Mr. President, the support shown for Amtrak in Congress during recent votes on the Amtrak Reauthorization and Improvement Act was impressive. For the first time in a decade, a freestanding Amtrak authorization bill has been signed by the President. I believe Amtrak has a very bright future, and I further believe that the Nation will be better for it.

In light of the dramatic progress Amtrak has made since its inception, and the enthusiasm with which it looks to its future, it gives me great pleasure to introduce this joint resolution to Congress, to commemorate 20 years of good railroading and to applaud those with the vision and conviction to preserve rail passenger service.●

By Mr. GLENN (for himself, Mr. BRADLEY, Mr. REID, Mr. MOYNIHAN, Mr. CONRAD, Mr. SANFORD, Mr. WARNER, Mr. DIXON, Mr. JEFFORDS, Mr. CRANSTON, and Mr. MURKOWSKI):

S.J. Res. 99. Joint resolution designating November 24–30, 1991, and November 22–28, 1992, as "National Family Caregivers Week"; to the Committee on the Judiciary.

NATIONAL FAMILY CAREGIVERS WEEK

● Mr. GLENN. Mr. President, today, along with Senators BRADLEY, REID, MOYNIHAN, MURKOWSKI, CONRAD, SANFORD, WARNER, DIXON, JEFFORDS, and CRANSTON, I am introducing Senate Joint Resolution 99 designating the weeks of November 24, 1991, and November 22, 1992, as "National Family Caregivers Week." Congresswoman OLYMPIA SNOWE has introduced an identical resolution, House Joint Resolution 125, in the House of Representatives.

The fastest growing segment of our population is the age 85 and older group. Although the majority of older Americans enjoy a fulfilling and independent retirement, those fortunate to reach age 85 and beyond face an increased chance of suffering from multiple chronic ailments, and thus requiring help from caregivers. Over 80 percent of this care is provided by family members. The resolution that I am introducing today would both recognize the important work done by America's 7 million family caregivers and highlight the need to provide assistance to these hard-working individuals.

Most of the care received by older Americans comes from wives, daughters, and daughters-in-law. Caregivers are usually between the ages of 30 and 70 and often have many other demands on their time. Caregivers who face the challenge of caring for their children and parents simultaneously—an estimated 1.8 million women—are called the sandwich generation. Many sacrifice employment opportunities because they are unable to meet the demands of their jobs, their families, and their caregiving responsibilities. They are forced to risk not only their careers but also their current and future financial well-being. Also, an increasing number of caregivers are elderly themselves and have taken on the responsibility of caring for their spouses.

The care provided by these people often delays or prevents the receiver's need for institutional care. It can save money and help keep families intact. However, caregiving is very stressful. It is often an around-the-clock responsibility that leaves the caregiver emotionally and physically exhausted.

As our population continues to age, more Americans will provide care to the elderly. We must improve services to assist our Nation's caregivers. Programs such as adult day care, respite care, and counseling and support groups for caregivers are essential and should be expanded. The U.S. Bipartisan Commission on Comprehensive Health Care, also known as the Pepper Commission, has recommended creating a long-term care insurance program for the elderly and disabled which would cover respite, home health, personal, and home- and community-based care. I agree that we need to assure access to these services which would help caregivers take care of themselves and their families.

"National Family Caregivers Week" recognizes the vital role of caregivers in our society and focuses on ways of meeting their needs. I urge my colleagues in the Senate to join me in supporting this important measure.

Mr. President, I request that the text of the joint resolution be printed in the RECORD at this point.

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

S.J. RES. 99

Whereas the number of Americans who are age 65 or older is growing;

Whereas there has been an unprecedented increase in the number of persons who are age 85 or older;

Whereas the incidence of frailty and disability increases among persons of advanced age;

Whereas approximately 5.2 million older persons have disabilities that leave them in need of help with their daily tasks, including food preparation, dressing, and bathing;

Whereas families provide older persons help with such tasks, in addition to providing between 80 and 90 percent of the medical care, household maintenance, transportation, and shopping needed by older persons;

Whereas families who give care to older persons face many additional expenses, including the costs of home modifications, equipment rental, and additional heating;

Whereas 80 percent of disabled elderly persons receive care from their family members, most of whom are their wives, daughters, and daughters-in-law, who often must sacrifice employment opportunities to provide such care;

Whereas the role of the aged spouse as a principal caregiver has generally been understated;

Whereas family caregivers are often physically and emotionally exhausted from the amount of time and stress involved in caregiving activities;

Whereas family caregivers need information about available community resources;

Whereas family caregivers need respite from the strains of their caregiving roles;

Whereas the contributions of family caregivers help maintain strong family ties and assure support among generations; and

Whereas there is a need for greater public awareness of and support for the care that family caregivers are providing:

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 24–30, 1991, and November 22–28, 1992, are each designated "National Family Caregivers Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such weeks with appropriate programs, ceremonies, and activities.•

ADDITIONAL COSPONSORS

At the request of Mr. BOREN, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 3, a bill to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes.

S. 28

At the request of Mr. MOYNIHAN, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 28, a bill to amend title 13, United States Code, to remedy the historic undercount of the poor and minorities in the decennial census of population and to otherwise improve the overall accuracy of the population data collected in the decennial census by directing the use of appropriate statistical adjustment procedures, and for other purposes.

S. 50

At the request of Mr. SYMMS, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 50, a bill to ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

S. 68

At the request of Mr. THURMOND, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 68, a bill to amend title 10, United States Code, to authorize the appointment of chiropractors as commissioned officers in the Armed Forces to provide chiropractic care, and to amend title 37, United States Code, to provide special pay for chiropractic officers in the Armed Forces.

S. 83

At the request of Mr. SYMMS, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 83, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income payments made by public utilities to customers to subsidize the cost of energy and water conservation services and measures.

S. 106

At the request of Mr. CRAIG, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 106, a bill to amend the Federal Power Act.

S. 144

At the request of Mr. MCCAIN, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. BUMPERS], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 144, a bill to protect the natural and cultural resources of the Grand Canyon and Glen Canyon.

S. 178

At the request of Mr. INOUYE, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of S. 178, a bill to amend title 10, United States Code, to authorize the appointment of health care professionals to the positions of the Surgeon General of the Army, the Surgeon General of the Navy, and the Surgeon General of the Air Force.

S. 284

At the request of Mr. LIEBERMAN, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of payments under life insurance contracts for terminally ill individuals.

S. 311

At the request of Mr. ROTH, the names of the Senator from Montana

[Mr. BURNS], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 311, a bill to make long-term care insurance available to civilian Federal employees, and for other purposes.

S. 369

At the request of Mr. WARNER, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 369, a bill to amend title 23, United States Code, to establish a program for expanding the capacity of heavily traveled portions of the National System of Interstate and Defense Highways located in urbanized areas with a population of 50,000 or more for the purposes of reducing traffic congestion, improving safety, and increasing the efficiency of the System.

S. 377

At the request of Mrs. KASSEBAUM, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 377, a bill to amend the International Air Transportation Competition Act of 1979.

S. 391

At the request of Mr. REID, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 391, a bill to amend the Toxic Substances Control Act to reduce the levels of lead in the environment, and for other purposes.

S. 401

At the request of Mr. DOMENICI, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 401, a bill to amend the Internal Revenue Code of 1986 to exempt from the luxury excise tax parts or accessories installed for the use of passenger vehicles by disabled individuals.

S. 448

At the request of Mr. SYMMS, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Pennsylvania [Mr. HEINZ], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 448, a bill to amend the Internal Revenue Code of 1986 to allow tax-exempt organizations to establish cash and deferred pension arrangements for their employees.

S. 463

At the request of Mr. HATFIELD, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Washington [Mr. GORTON], the Senator from Hawaii [Mr. AKAKA], the Senator from Mississippi [Mr. LOTT], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 463, a bill to establish within the Department of Education an Office of Community Colleges.

S. 474

At the request of Mr. DECONCINI, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 474, a bill to prohibit sports gambling under State law.

S. 487

At the request of Mr. GLENN, the names of the Senator from Maine [Mr. MITCHELL], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 487, a bill to amend title XVIII of the Social Security Act to provide for coverage of bone mass measurements for certain individuals under part B of the Medicare Program.

S. 534

At the request of Mr. LOTT, the names of the Senator from Minnesota [Mr. DURENBERGER], the Senator from Maryland [Mr. SARBANES], the Senator from Texas [Mr. GRAMM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Delaware [Mr. ROTH], the Senator from South Dakota [Mr. PRESSLER], the Senator from Rhode Island [Mr. PELL], the Senator from Wisconsin [Mr. KASTEN], the Senator from Montana [Mr. BAUCUS], the Senator from Minnesota [Mr. WELLSTONE], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of S. 534, a bill to authorize the President to award a gold medal on behalf of the Congress to General H. Norman Schwarzkopf, and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 559

At the request of Mr. SYMMS, the names of the Senator from New York [Mr. D'AMATO], the Senator from Michigan [Mr. LEVIN], the Senator from Indiana [Mr. COATS], the Senator from Massachusetts [Mr. KERRY], the Senator from Idaho [Mr. CRAIG], the Senator from Arizona [Mr. DECONCINI], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Nevada [Mr. BRYAN], the Senator from North Carolina [Mr. HELMS], the Senator from Colorado [Mr. WIRTH], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Tennessee [Mr. SASSER], the Senator from Colorado [Mr. BROWN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. DIXON], the Senator from Delaware [Mr. ROTH], the Senator from New Mexico [Mr. DOMENICI], the Senator from Virginia [Mr. WARNER], the Senator from Florida [Mr. MACK], the Senator from Mississippi [Mr. LOTT], the Senator from Oklahoma [Mr. NICKLES], the Senator from Alaska [Mr. STEVENS], the Senator from Wyoming [Mr. SIMPSON], the Senator from Washington [Mr. ADAMS], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Montana [Mr. BURNS], the Senator from Arkansas [Mr. BUMPERS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Kentucky [Mr. FORD], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 559, a bill to require the Secretary of the Treasury to mint coins in commemoration of Operation Desert Shield/Desert Storm.

S. 565

At the request of Mr. WARNER, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 565, a bill to authorize the President to award a gold medal on behalf of the Congress to General Colin L. Powell, and to provide for the production of bronze duplicates of such medal for sale to the public.

S. 583

At the request of Mr. ROTH, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 583, a bill to amend the Internal Revenue Code of 1986 to require the recapture of certain losses of savings and loan associations, to clarify the treatment of certain Federal financial assistance to savings and loan associations, and for other purposes.

S. 593

At the request of Mr. CHAFEE, the name of the Senator from Hawaii [Mr. INOUYE] was withdrawn as a cosponsor of S. 593, a bill to amend title 23, United States Code, to control billboard advertising adjacent to Interstate Federal-aid primary highways, and for other purposes.

S. 615

At the request of Mr. LAUTENBERG, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 615, a bill entitled the "Environmental Marketing Claims Act of 1991."

S. 627

At the request of Mr. JOHNSTON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 627, a bill to designate the lock and dam 1 on the Red River Waterway in Louisiana as the "Lindy Claiborne Boggs Lock."

S. 651

At the request of Mr. GARN, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 651, a bill to improve the administration of the Federal Deposit Insurance Corporation, and to make technical amendments to the Federal Deposit Insurance Act, the Federal Home Loan Bank Act, and the National Bank Act.

S. 654

At the request of Mr. DECONCINI, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 654, a bill to amend title 35, United States Code, with respect to patents on certain processes.

S. 689

At the request of Mr. HATFIELD, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 689, a bill to amend the Internal Revenue Code of 1986 to provide that a taxpayer conscientiously opposed to participation in war may elect to have such taxpayer's income, estate, or gift

tax payments spent for nonmilitary purposes; to create the United States Peace Tax Fund to receive such tax payments; to establish a United States Peace Tax Fund Board of Trustees; and for other purposes.

SENATE JOINT RESOLUTION 21

At the request of Mr. SASSER, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Joint Resolution 21, a joint resolution expressing the sense of the Congress that the Department of Commerce should utilize the statistical correction methodology to achieve a fair and accurate 1990 Census.

SENATE JOINT RESOLUTION 65

At the request of Mr. D'AMATO, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 65, a joint resolution designating the week beginning May 12, 1991, as "Emergency Medical Services Week."

SENATE JOINT RESOLUTION 94

At the request of Mr. PACKWOOD, his name was added as a cosponsor of Senate Joint Resolution 94, a joint resolution relative to Iraq.

At the request of Mr. BROWN, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 94, supra.

SENATE CONCURRENT RESOLUTION 12

At the request of Mr. LAUTENBERG, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Concurrent Resolution 12, a concurrent resolution to express the sense of the Congress that the civil rights and civil liberties of all Americans, including Arab Americans, should be protected at all times, and particularly during times of international conflict of war, and for other purposes.

SENATE CONCURRENT RESOLUTION 16

At the request of Mr. BOREN, his name was added as a cosponsor of Senate Concurrent Resolution 16, a concurrent resolution urging Arab states to recognize, and end the state of belligerency with, Israel.

SENATE CONCURRENT RESOLUTION 19

At the request of Mr. CRANSTON, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of Senate Concurrent Resolution 19, a concurrent resolution condemning the People's Republic of China's continuing violation of universal human rights principles.

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. PACKWOOD, his name was added as a cosponsor of Senate Concurrent Resolution 22, a concurrent resolution extending the appreciation of Congress to all American Indian veterans for their service in the Armed Forces of the United States.

SENATE RESOLUTION 72

At the request of Mr. KASTEN, the names of the Senator from Washington [Mr. GORTON], the Senator from South Carolina [Mr. THURMOND], and the Senator from Iowa [Mr. GRASSLEY], were added as cosponsors of Senate Resolution 72, a resolution to express the sense of the Senate that American small businesses should be involved in rebuilding Kuwait.

SENATE RESOLUTION 81

At the request of Mr. DECONCINI, his name was added as a cosponsor of Senate Resolution 81, a resolution commending the Baltic States for their efforts to regain independence and urging measures to support such efforts.

SENATE CONCURRENT RESOLUTION 23—DEPLORING THE BLATANT DESTRUCTION OF THE ENVIRONMENT IN THE PERSIAN GULF REGION BY SADDAM HUSSEIN

Mr. MACK (for himself and Mr. GRAHAM) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 23

Whereas the release of millions of gallons of oil into the Persian Gulf will have a devastating impact on the wildlife and marine life of the Gulf region and endangers the water supplies of several Gulf states;

Whereas the deliberate torching of more than 500 oil wells in Kuwait has created severe atmospheric pollution; and

Whereas Saddam Hussein is responsible for the degradation of the environment: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) deplores Saddam Hussein's vicious attacks against the environment in releasing millions of gallons of oil into the Persian Gulf and torching hundreds of oil wells in Kuwait; and

(2) declares that Saddam Hussein and the current Iraqi regime should be held liable under United Nations Security Council Resolution 686 (1991) for the costs resulting from these deliberate destructive acts, including—

(A) the costs of containment incurred by any nation,

(B) the clean-up costs incurred by any nation,

(C) the costs of restoration of the natural resources, and

(D) any other costs associated with these environmental catastrophes.

• Mr. MACK. Mr. President, the human tragedies for which Saddam Hussein is undeniably responsible are borne by many families throughout the world. These sacrifices are foremost in our minds as the civilized world determines the appropriate recourse against Saddam Hussein.

Even as we mourn these human tragedies which are clearly the greatest tragedies attributable to the "Butcher of Baghdad," we ought to also direct attention to the other destructive events that Saddam Hussein has caused. The Kuwaitis along with their neighbors will be able to resurface roads and rebuild buildings, but they will not be able to replace or refurbish much of the ecological damage that has been done. Saddam Hussein chose not only to wage a military and political war, but an environmental war as well.

We have been steadfast in our resolve that Saddam Hussein must pay reparations for the damage which he has caused. It is only appropriate that these reparations include the devastating environmental damage that has been done to the entire gulf region. This damage has manifested itself in many ways. The oil fires that have made much of Kuwait a "hell on Earth" and the resulting air pollution has led to what the Kuwaiti people call black rain. The intentional release of oil into the gulf has caused severe damage to much of the wildlife that resides within the area.

This resolution which Senator BOB GRAHAM and I are introducing today was first introduced by Congressman PORTER GOSS and passed by the House of Representatives yesterday. It is my hope this resolution will serve as a reminder that Saddam Hussein must be held accountable for all of his actions, and that we along with the rest of the world community will not stand for any form of ecoterrorism. I urge my colleagues to cosponsor this resolution.•

• Mr. GRAHAM. Mr. President, much of the news coming to us today about the Persian Gulf is bright.

The people of Kuwait are struggling to rebuild their war-ravaged country, literally from the ground back up again. Although the challenges are great and the obstacles many, the Kuwaitis are energized by their newly restored freedom and the return of their Emir, and a world coalition of partners is aiding the reconstruction effort.

The despotic rule of Saddam Hussein over Iraq appears to be threatened by those who were once his ardent followers.

More of our brave troops arrive home to the awaiting arms of their families and friends. Again, we express our gratitude and indebtedness for their service to America and the cause of world peace.

My colleagues and I on the Banking Committee voted last week to award congressional gold medals to Generals H. Norman Schwarzkopf and Colin Powell for their leadership in orchestrating this great military victory over the dictator Saddam Hussein.

But, Mr. President, I rise today to remind my colleagues that, amid all this bright news, the Sun is not shining today in the Middle East. An ominous cloud hangs over the Persian Gulf, a cloud thick with black smoke and noxious gases, certain to cause widespread and irreparable damage to the region's ecosystem and to create untold health risks for its citizenry.

The source of that cloud is a seemingly endless series of oil field fires raging out of control, set by Saddam's troops in the immediate wake of Iraq's

defeat by the allied coalition. On their way out, the forces blew up or otherwise sabotaged 80 percent of Kuwait's more than 1,000 oil wells; over 500 of these wellheads remain ablaze at this moment. By comparison, the largest oil field fire in history consisted of just five wellheads.

Mr. President, not having personally witnessed this massive fire, I am certain that I cannot accurately portray its impact to my colleagues. In last Thursday's Washington Post, however, a front-page article describes the scene in newly freed Kuwait:

. . . a wellhead in the al Burgan oil field, one of the world's largest, shoots orange flames at least 50 feet into the air. It is a "dirty burn," in industry parlance, for the well is also filling the sky with monstrous rolling thunderheads of thick black smoke.

When the wind shifts unfavorably, some of the hundreds of oil well fires that are burning around the clock in Kuwait produce a black overcast above Kuwait City and environs that turns day into night, creating a literal darkness at noon. This week, motorists have had to drive with their headlights on at midday. . . .

Kuwait today is an environmental nightmare whose future no one yet knows. Venture outdoors, and the insides of your nostrils soon become coated with thin black soot. Look around after a rain, and there are black puddles of water on the ground that have come to be known as "black rain." The howling winds that blow across the desert this time of year spray a sticky grit over everything.

Clearly, Mr. President, the fire is making what already was a harsh life in Kuwait a greater challenge. Those who have been outside in the oil smog have suffered from stinging eyes and sore throats. Medical professionals expect the incidence of respiratory ailments to increase.

But the true health implications of this blaze are yet unknown. For one thing, no one has been able to measure the toxicity of the gases and smoke billowing into the atmosphere from these fires; in addition, the world has simply never experienced an oil field fire of this magnitude. Experts believe that massive amounts of hydrogen sulfide, a poisonous gas, have been released into the air. In addition, early estimates suggest massive destruction of the upper ozone layer, an effect which will have longlasting health impacts.

As if this unprecedented collection of fires were not enough, the waters of the gulf are polluted by a deliberate oilspill of proportions the world has never seen. The wildlife which has perished and will continue to suffer as a result of the spill is perhaps the most visible effect of this action.

Americans viewing images of the spill's destruction undoubtedly revisited their memories of the devastation following the Valdez, AK, oilspill. The *Exxon Valdez* tanker dumped 11 million gallons of crude into the bay, the most in American history. Saddam Hussein's sabotage has created a spill in the Persian Gulf waters six to eight times the magnitude of the Valdez disaster.

The economic costs of this tragedy are almost incalculable, as a region plagued by more immediate crises struggles to contain this monumental spill. Science is being pushed to its limits in the cleanup and containment efforts.

Most importantly, we must remember that the implications for human health of this willful destruction are tremendous. Water is quickly eclipsing oil as the most precious natural resource in the Persian Gulf. War has greatly heightened demand for fresh water supplies there. The desalination plants near the spill—a vital source of safe drinking water—are operating today, but the long-term consequences of the spill cannot be estimated.

Today, Mr. President, I am introducing with Senator MACK a concurrent resolution expressing the outrage of Congress at these acts of ecological terrorism. We must hold Saddam Hussein morally, legally, and financially responsible for his actions.

Our colleague from Florida, Representative PORTER GOSS, has introduced similar legislation in the House. I am pleased to report that House Concurrent Resolution 57 passed the House of Representatives just yesterday. This resolution, as amended in committee and introduced here today, has been endorsed by the State Department.

Mr. President, I invite my colleagues to join me as cosponsors and supporters of this important expression regarding the environmental tragedy which has occurred at the hand of Saddam Hussein.●

AMENDMENTS SUBMITTED

DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1991

NICKLES (AND DeCONCINI) AMENDMENT NO. 53

Mr. NICKLES (for himself and Mr. DECONCINI) proposed an amendment to the bill (H.R. 1281) making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes, as follows:

On page 56, between lines 13 and 14, insert the following new section:

SEC. 502. PROHIBITION ON CERTAIN ASSISTANCE FOR JORDAN.

(a) PROHIBITION.—Except as otherwise provided in this section, none of the funds appropriated or otherwise made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, may be obligated or expended for assistance for Jordan except pursuant to appropriate congressional notification procedures.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) assistance for refugees; or

(2) assistance to finance the training or studies outside Jordan of students whose course of study or training program began before the date of enactment of this Act.

(c) WAIVER.—Notwithstanding subsection (a), funds appropriated or otherwise made available for fiscal year 1991 to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) may only be obligated or expended for Jordan if the President determines and certifies to the appropriate congressional committees that the Government of Jordan has taken steps to advance the peace process in the Middle East.

(d) DEFINITION.—FOR PURPOSES OF THIS SUBSECTION—

(1) the term "appropriate congressional committees" means the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives; and

(2) the term "appropriate congressional notification procedures" means—

(A) with respect to the Committees on Appropriations of the House of Representatives and of the Senate, the procedures of section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, and

(B) with respect to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961.

(e) REPEAL.—(1) The ninth proviso of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, is hereby repealed.

(2) Any other provision of law that earmarks economic or military assistance for Jordan shall have no force or effect upon the date of enactment of this Act.

BYRD AMENDMENT NO. 54

Mr. BYRD proposed an amendment to the bill H.R. 1281, supra, as follows:

On page 39, strike lines 9 thru 13, and insert the following:

Funds appropriated under this head in Public Law 101-507, 104 Stat. 1362, and all unobligated balances of prior year appropriations under such head, shall be made available for the revised Congregate Housing Services Program under section 802 of the Cranston-Gonzalez National Affordable Housing Act shall remain available until expended.

On page 41, line 8, strike "said" and insert "such".

On page 41, strike lines 13 thru 22 and insert:

"Section 17(f) of the United States Housing Act of 1937 (42 U.S.C. 1437o(f)), as amended by Public Law 101-507 (104 Stat. 1369) is further amended by striking "or City of West Hollywood, California" and by inserting at the end thereof, the following new sentence: 'This subsection shall also not apply to requirements relating to rents imposed on a structure by the City of West Hollywood, California.'. Section 17(f) as amended by the immediate foregoing amendment shall apply retroactively to any structure assisted with

section 17 rental rehabilitation funds in the City of West Hollywood, California."

BYRD (FOR LEAHY) AMENDMENT NO. 55

Mr. BYRD (for Mr. LEAHY) proposed an amendment to the bill H.R. 1281, supra, as follows:

At the appropriate place, insert the following:

SEC. . ADMINISTRATIVE PROVISION.

Section 837 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11403 note) is amended by striking subsection (c).

BYRD AMENDMENT NO. 56

Mr. BYRD proposed an amendment to the bill H.R. 1281, supra, as follows:

At the end of title III add the following new section:

SEC. . (a) Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended by adding at the end the following new subsection:

"(j) Transition.—

"(1) ORIGINATOR LIABILITY.—A person who makes a federally related mortage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

"(2) SERVICER LIABILITY.—A servicer of a federally related mortage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

"(3) REGULATIONS AND EFFECTIVE DATE.—The Secretary shall, by regulations that shall take effect not later than August 21, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).".

(b) Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by striking "section 8 or 9" and inserting "section 6, 8, or 9".

GRAHAM (AND OTHERS) AMENDMENT NO. 57

Mr. GRAHAM (for himself, Mr. LAUTENBERG, Mr. MCCAIN, Mr. LEVIN, Mr. KASTEN, Mr. DECONCINI, Mr. SIMON, and Mr. FOWLER) proposed an amendment to the bill H.R. 1281, supra; as follows:

the successful conclusion of the war in the Persian Gulf provides an opportunity to begin building a lasting peace in the Mideast;

a crucial element of peace in this unstable region is the willingness of Arab states to negotiate with Israel, recognizing her right to live in peace;

the United States should continue to urge Arab states to negotiate peace with the State of Israel;

one of those Arab states, Syria, continues to undermine goodwill and peace in the region by depriving the 4,000 Jews living in Syria the right to emigrate;

Syrian Jews continue to live in a climate of fear and insecurity, still denied fundamental civil and human rights;

a Jew living in Syria, in order to travel, must leave a large sum of money and members of his immediate family as insurance for his return;

Jews suspected of having traveled "illegally" or even of planning to do so have been arrested, interrogated, and subjected to lengthy imprisonment;

Syrian President Hafez Assad continues to deny the basic right of free emigration, a violation of the Universal Declaration of Human Rights to which Syria is a signatory: Now, therefore, be it

the sense of Senate, That the Senate—

(1) Condemns the Government of Syria for continuing to deny the basic human right of free emigration;

(2) calls upon the Government of Syria—

(A) to allow all Syrian Jews to emigrate freely,

(B) to release from prison Jews suspected of having traveled illegally or of planning to do so;

(3) urges the administration to continue to make known to Syrian authorities the important role that human rights in the Jewish community, especially the right to emigrate, will play in determining future policy toward Syria.

BOND AMENDMENT NO. 58

Mr. BOND proposed an amendment to the bill H.R. 1281, supra; as follows:

On page 28, line 12

Strike "$25,000,000: *Provided*" and insert in lieu thereof the following: "$57,400,000, *Provided*, That no less than 95 percent of such funds shall be used for expanding patient services, *And Provided further*,".

COATS (AND OTHERS) AMENDMENT NO. 59

Mr. COATS (for himself, Mr. HELMS, Mr. SMITH, and Mr. MCCAIN) proposed an amendment to the bill H.R. 1281, supra, as follows:

On page 22, strike lines 8 through 13.

HELMS AMENDMENT NO. 60

Mr. HELMS proposed an amendment to the bill H.R. 1281, supra, as follows:

In lieu of the language proposed to be stricken, insert the following:

"The language on page 30, lines 1-5 are null, void, and of no effect."

BYRD AMENDMENT NO. 61

Mr. BYRD proposed an amendment to the bill H.R. 1281, supra, as follows:

On page 30, between lines 7 and 8, insert the following:

SENATE ADMINISTRATIVE PROVISION

SEC. 502. (a) Upon the written request of the Majority or Minority Leader of the Senate, the Secretary of the Senate shall transfer during any fiscal year, from the appropriations account appropriated under the headings "Salaries, Officers and Employees" and "Offices of the Majority and Minority Leaders", such amount as either Leader shall specify to the appropriations account, within the contingent fund of the Senate, "Miscellaneous Items".

(b) The Majority and Minority Leaders of the Senate are each authorized to incur such expenses as may be necessary or appropriate. Expenses incurred by either such leader shall be paid from the amount transferred pursuant to subsection (a) of this section by such leader and upon vouchers approved by such leader.

(c) The Secretary of the Senate is authorized to advance such sums as may be necessary to defray expenses incurred in carrying out this section.

DOMENICI AMENDMENT NO. 62

Mr. DOMENICI proposed an amendment to amendment No. 60 proposed by Mr. HELMS to the bill H.R. 1281, supra, as follows:

In lieu of the language proposed to be inserted, insert the following:

"The language on page 30, line 1-5 are null, void, and of no effect.

"Sec. 103. FOOD AND MILK PRICES.

"The Secretary shall not implement subsections 101 (a) and (b) of amendment No. 43, as modified and agreed to by the Senate on March 19, 1991, if the Secretary determines that implementation of those provisions will reduce by at least 50,000 the estimated average monthly participation in, or reduce significantly the benefits received per participant under, the Special Supplemental Food Program for Women Infants and Children established pursuant to section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"Sec. 104. CEREAL PRICES.

"The Secretary shall not expend, in fiscal year 1991, in excess of $425,000,000 in the aggregate amount of funds and/or commodities to carry out an export enhancement program if the Secretary determines that the expenditure of those funds and/or commodities will reduce by at least 50,000 the estimated average monthly participation in, or reduce significantly the benefits received per participant under, the Special Supplemental Food Program for Women Infants and Children established pursuant to Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).".

LEAHY (AND OTHERS) AMENDMENT NO. 63

Mr. LEAHY (for himself, Mr. JEFFORDS, Mr. KASTEN, and Mr. KOHL) proposed an amendment to the bill H.R. 1281, supra, as follows:

SEC. 103. MAINTENANCE OF NUTRITION PROGRAMS.

(a) MAINTENANCE OF BENEFITS.—In order to ensure that benefits under the Special Supplemental Food Program for Women, Infants, and Children established pursuant to section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) (hereafter referred to in this section as the "WIC" program) are not significantly reduced as a result of the implementation of section 101(a) of this Act, the Secretary of Agriculture shall distribute as soon as possible at the beginning of the second, third, and fourth quarters of 1991 a portion of the funds described in section 101(a)(2)(A) of this Act to each State agency overseeing the WIC program, as needed to prevent any decline in the average monthly participation in the WIC program as determined in subsection (b) caused as a result of the implementation of section 101(a).

(b) DETERMINATION.—Any determination under subsection (a) by the Secretary of Agriculture of a decline in the average monthly participation in the WIC program as a result of the implementation of section 101(a) of this Act shall—

(1) be based upon any difference between the estimated average monthly participation in the WIC program (as set forth in the Budget of the United States Government for fiscal year 1992 submitted by the President of

the United States to the Congress of the United States) and monthly participation levels in such program for each of the last three quarters of 1991 (as estimated by the Secretary of Agriculture on a quarterly basis) that is caused by an increase in the seasonally adjusted cost of fluid milk during the last three quarters of 1991 (as measured by the Retail Price Index for Urban Consumers of Whole Milk issued by the Bureau of Labor Statistics) that is greater than—

(A) for the second quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.00925;

(B) for the third quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.0185;

(C) for the fourth quarter of 1991, the seasonally adjusted cost of fluid milk during the first quarter of 1991 multiplied by 1.02775; and

(2) be made on the record.

(c) DELAY IN DISTRIBUTION OF FUNDS.—The secretary shall not delay the distribution of funds to producers of milk under section 101(a) of this Act due to provisions of this section.

(d) FINAL ADJUSTMENTS.—If actual monthly participation levels in the WIC program (determined in accordance with subsection (b)(1)) are different from the Secretary's estimate in subsection (b)(1), the Secretary shall make adjustments, based on actual monthly participation levels, in the distribution of funds under this section or under section 101(a) of this Act to carry out the purposes of subsection (a) of this section and to maintain dairy income under section 101(a) of this Act.

NOTICES OF HEARINGS

SUBCOMMITTEE ON ENERGY REGULATION AND CONSERVATION

Mr. WIRTH. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Energy Regulation and Conservation of the Committee on Energy and Natural Resources.

The hearing will take place on Wednesday, April 3, 1991, at 9:30 a.m. in the council chambers, room 450, City and County Building, 1437 Bannock Street, Denver, CO 80202.

The purpose of the hearing is to address the implications of proposed national energy policy legislation on natural gas production and consumption in the United States. In particular, the hearing will focus on S. 662, the Natural Gas Policy Reform Act, and pertinent provisions of S. 341, the National Energy Security Act of 1991—(including Senator BINGAMAN'S amendments to title X)—and S. 570, the National Energy Strategy Act.

Testimony will be by invitation only. For further information, please contact Don Santa of the subcommittee staff at (202) 224-4820.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. The Committee on Rules and Administration will meet on Wednesday, April 17, 1991, at 9:30 a.m., in SR-301, Russell Senate Office Building, to markup S. 250, the National Voter Registration Act of 1991. I would also like to remind Members and the public that prior to this markup, the Rules Committee will hold two hearings on this bill. On Thursday, March 21, and Wednesday, April 10, 1991, at 9:30 a.m. on each date, the committee will meet in SR-301 to receive testimony on S. 250.

For further information regarding the markup on April 17, please contact Tom Zoeller of the Rules Committee staff on 224-0279.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON SMALL BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate of Wednesday, March 20, 1991, at 9:30 a.m. The committee will hold a confirmation hearing on the nomination of Patricia F. Saiki to be Administrator of the Small Business Administration. There will also be an ogranizational meeting to approve committee rules and subcommittee assignments for new Members.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, March 20, 1991, at 9 a.m., for an executive session on pending nominations.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the full Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 2 p.m., March 20, 1991, to receive testimony on S. 341, the National Energy Security Act of 1991, title XI concerning transportation issues, and on the administration's proposal contained in the national energy strategy concerning alternative-fuel fleets.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the full Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., March 20, 1991, to receive testimony on S. 341, the National Energy Security Act of 1991, title XI concerning corporate average fuel economy [CAFE].

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Wednesday, March 20, 1991, at 9:30 a.m., on the subject: status of the FTS 2000 contract.

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

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, March 20, beginning at 10 a.m., to conduct a hearing to examine and evaluate global warming and other environmental consequences of energy strategies.

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

COMMITTEE ON FINANCE

Mr. FORD. Mr. President, I ask unanimous consent that the committee on Finance be authorized to meet during the session of the Senate on March 20, 1991, at 10 a.m., to hold a hearing on President Bush's budget for fiscal year 1992.

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

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, March 20, 1991, at 10 a.m., to hold a hearing on the nomination of Kenneth L. Ryskamp, to be U.S. circuit judge for the 11th circuit.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, March 20, 1991, beginning at 9:30 a.m., to markup pending legislative business. The committee will consider the following: S. 3, to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits for Senate election campaigns, and for other purposes; Senate Resolution 79, authorizing the printing of additional copies of the Senate report titled "Developments in Aging: 1980: and House Concurrent Resolution 45, permitting the use of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the Holocaust.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, March 20, 1991, at 9:30 a.m. in open session to receive testimony on the Defense authorization request for fiscal years 1992 and 1993 and the fiscal year 1992-97 future year defense plan.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in open session on Wednesday, March 20, 1991, at 2 p.m. to consider the nomination of Gen. Duane H. Cassidy, USAF (retired), to be a member of the Defense Base Closure and Realignment Commission.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science and Transportation, be authorized to meet during the session of the Senate on March 20, 1991, at 2 p.m. on new priorities for U.S. technology.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be allowed to meet during the session of the Senate, Wednesday, March 20, 1991, at 10 a.m. to conduct a hearing on the Treasury proposal on interstate banking and branching, and S. 300, dealing with nationwide banking.

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

ADDITIONAL STATEMENTS

TRIBUTE TO THE FRANCIS MARION HIGH SCHOOL BASKETBALL TEAM

• Mr. SHELBY. Mr. President, it is an honor to rise today in tribute to one of the great athletic dynasties in the Nation—the Francis Marion High School basketball team of Marion, AL.

The Francis Marion Rams have recently won their fourth consecutive Alabama 2A State Basketball Championship. Their fourth straight State title marks an unprecedented event in Alabama high school athletics.

This outstanding group of student-athletes is ably led by Coach Woodie Jackson. Coach Jackson is one of the most highly respected coaches in America. In addition to his four State championships at Francis Marion, Coach Jackson has also taken two teams to participate in the AAU summer games in Birmingham and compiled a remarkable 115–18 record during his tenure with the Rams. Coach Jackson's dedication to the game and commitment to young people have made him an outstanding mentor to his players.

The Francis Marion High School basketball team is a model of dedication and commitment for individuals and teams everywhere. The example these young men have set, on and off the court, is a tribute to their coaches, their families, their school, and their community. It is my hope that the members of this championship team take the discipline and commitment they have learned under Coach Jackson with them in all of their pursuits.

Mr. President, it has been a privilege to share some of Francis Marion High School basketball team's immense accomplishments with my colleagues in the U.S. Senate.•

AN OFFERING FROM THE INSIDER

• Mr. SIMON. Mr. President, recently, I read a front-page statement by the editor-in-chief of a publication called The Insider that is printed in English and comes from Warsaw, Poland. It is a publication I recommend to give something of an insight in to what is happening in Eastern Europe.

It formerly was called Solidarity and was an arm of that movement in Poland.

I sense that it is now largely independent, and I hope it can survive economically.

On the front page, in an editorial written immediately after the United States and the coalition partners launched our offensive against Iraq, the editor comments about the West's failure to show greater support for the Baltic Republics.

My own feeling is that we can do much more short of formal recognition for Lithuania, Estonia, and Latvia.

We do not formally recognize Taiwan and, yet, there are significant ties between our Government and their Government.

I do not suggest that there are complete parallels between the Taiwan situation and the situation in Lithuania, Latvia, and Estonia, but there are some parallels.

There certainly would be nothing wrong with the U.S. Government having a permanent trade mission, in each of these countries, or a cultural mission to encourage exchanges between the Baltic States and the United States.

I insert into the RECORD the statement by Jane Dobija, editor-in-chief of The Insider.

The statement follows:

AN OFFERING FROM THE INSIDER

As we go to press for the first time, the attention of world leaders, and the military forces they control, are concentrated upon a tiny, oil-rich country, that has been robbed of its independence. Meanwhile, in the Baltic region, small states, which are unlucky enough to have no oil, have been left to struggle alone for their autonomy.

Here in Warsaw, we are acutely aware of the agony our eastern neighbors are suffering. Poland faced a similar tragedy with the declaration of martial law in 1981. Our solidarity with the supporters of democracy in Lithuania, Latvia, and Estonia is motivated, in part, by self-interest. We see strong, democratic neighbors as the best partners for this country's own, very young democratic system.

We recognize the danger which Soviet troops, that President Mikhail Gorbachev claims he no longer controls, might pose to Poland's hard-won freedom.

Western absorption with the Gulf crisis is, in part, a result of the seemingly very different self-interests, which motivate leaders' decisions in another part of the world. But it is also, in our estimation, a result of a lack of information and understanding. In the West, glasnost has been mistakenly interpreted as an irreversible process. The civilian casualties in recent skirmishes with Soviet soldiers on the streets of Riga proved the error of that thinking. The hesitation on the part of Western leaders to declare unequivocal support for the Baltic republics' aspirations to democracy, indicates that those leaders do not appreciate the fragility of perestroika, and the frightening consequences a reversal of that process of change might entail—not only for a small corner of the Soviet Union, not only for the East.•

NANCY RADER'S TESTIMONY BEFORE THE HOUSE AGRICULTURE COMMITTEE VALUABLE TO THE SENATE

• Mr. CONRAD. Mr. President, I would like to enter into the CONGRESSIONAL RECORD an excellent piece of testimony offered by a North Dakotan at the House Committee on Agriculture. Nancy Rader traveled to Washington from Cando, ND, to offer a firsthand account of what farm families are going through with the planting season arriving and many farmers still stationed in the gulf.

Nancy's husband, Gary, was deployed to the Persian Gulf on September 12. Since then, she has worked in a local hospital, given birth to her fourth child, and worked to keep the family farm afloat. All this she has done without her husband.

It has been difficult. And now, Nancy needs to know that our Government will do its best to get our troops home as soon as possible.

Mr. President, as the Pentagon begins the process of bringing our troops home, I hope careful thought and consideration will be given to the civilian responsibilities of our Nation's Guard and Reserve personnel. While we hope that all our soldiers will be home soon, some thought should be given to returning single parents, farmers, small business owners, and others with great responsibilities home as soon as possible.

Nancy Rader is just one of the countless Americans who has done a courageous job since our troops were sent to the Persian Gulf. I commend her for her courage through this ordeal. Let us do our best to bring Gary Rader and others like him home as soon as we possibly can.

The testimony follows:

TESTIMONY OF NANCY RADER

Life in rural America is troubled. As members of a congressional committee whose efforts have a profound effect on the rural population, I would hope that this statement comes as no surprise to any of you. Droughts, high input costs, depressed returns, scarce economic opportunities have all contributed to hard times in our rural States. Now in the past 6 months we have been asked to deal with yet one more hardship. Many men and women, both young and not so young, have been called out of military reserve components to active duty status in support of allied operations in the Persian Gulf. My husband, Gary, is one of these reservists.

Gary has been a so called "part time soldier" with the North Dakota National Guard for the past 14 years. He was put on active duty September 12, 1990. In addition to his involvement in the Guards, Gary and I also farm. During the past 10 years of our marriage there have been many times in our lives that would have been made much easier had he not been in the Guards. In the past years very few excused absences from drill weekends were granted. Come August we would always hope for rain on the scheduled guard drills so that we would not have to shutdown part of our harvesting operation while he practiced being a soldier. The 2 week annual training in June also caused difficulties as Gary had to leave the farming operation during the time when spraying for weeds and the first summer fallow operations were to be done. But despite these difficulties we decided that Gary should stay in the Guards. You see, I believe farm living is among the best lifestyles this country has to offer. In order to stay on the farm though, we had to have more income than our farm generated. It is hard to maintain, let alone increase, a standard of living when the total operation expense increases year after year while the total income per operation steadily declines as it has in the case of our small grains operation. This past fall I sold good quality hard amber durum at $2.35 a bushel. With durum prices at their lowest in 6 years of farming, we continue to rent our portion—440 tillable acres—of the farm from Gary's father instead of buying into it, because we are afraid of the future in farming. We live in a mobile home, too small for our growing family, also because we are unsure if we want to set down a permanent home in an area where the economic future looks so bleak. Still we hold on to the idea that urban America cannot survive without rural America. Therefore Gary stayed in the Guards, building a small retirement pension and enrolling in a reasonably priced life insurance plan for both himself and me through the Guards, in addition to receiving his part-time soldier pay. I also work part-time and full-time as a medical technologist in a local hospital and clinic.

As trying as it has been for us in the past maintaining our life on the farm, we, as a couple, have only recently faced our greatest trials, beginning at the time of Gary's activation in September. We had just completed harvest but had done no fall field work. I was pregnant with our fourth child, and we were in the midst of fall lambing, another venture we have undertaken, with the urging and support of area university extension representatives who say that diversification is yet another way to enhance family farm incomes. I was at least thankful that his activation came at a time when the majority of the field work for the crop year had been completed. Gary left with orders stating he was called to active duty "for a period of 90 days which can be extended for an additional 90 days unless sooner released or later extended." In September, when he left, we prepared ourselves for 90 days plus 90 days—6 months. I was certain he would be back in March 1991 to take care of the spring farming responsibilities (silly me!) I, with the help of Gary's father, brother-in-law, and uncle finished the lambing, sold enough of the grain to pay the year-end expenses, and did what fall work was absolutely necessary. I cut back on one part-time job while trying to juggle the responsibilities of caring for the farm and our three children. For, while Gary is making more in the Army than he made on the farm and we could have done without my income for the time being, I could not give up my job and risk the chance of not having one to come back to as my job normally contributes to at least 30 percent of our total income. I had our baby. I and the children dealt with loneliness. The kids became increasingly watchful and protective of me, in their fears that I too would be taken from them. And as the tensions in the gulf area increased I hoped and prayed I would see Gary in the spring, but I was no longer certain.

Now March is almost here. Gary will not be back for the start of spring's field work. He will likely not be back for the harvesting. We have received orders stating that our soldier's active duty time has been extended for a period of 360 days starting on the day of activation. This could be a very hard year for me, as the wife of a part-time soldier turned fulltime. I am now planning for the new crop year. We will soon be lambing again. All the fields need to be soil tested, fertilized, and tilled before the seedbed is ready for planting. I know I can depend greatly on Gary's father and other family members to help me out, but I may also have to hire custom work to be done so that we can all finish our seeding preparations in an optimal time. This would mean an extra expense added to an already marginally profitable business. If I have to apply for a farm operating loan, I am not eligible for a reduced interest rate, as are other loans that activated soldiers may have had prior to their activation. Yet I may not be able to maintain our family business during my husband's activation without that new loan.

Gary, as are most of the other activated guardsmen from the Cando Area, is a member of a support unit—a quartermaster water supply company to be more specific. I, our children, and Gary's family are now looking forward to being together again with him by mid-September, the end of this 360 days. But I have a real fear that this may not happen. Gary's enlistment contract states that upon enlistment in a Reserve component he "may be ordered to active duty * * * for the duration of a war and for 6 months thereafter * * *" His active duty time has already been extended twice. According to some sources "the troops won't rush out of the gulf." "It will probably take more time to dismantle Operation Desert Storm than it took to set it up * * * the military command will want the reservists to be the last to leave." So, even now as the end of the war may seem to be in sight, I can not allow myself to get excited about seeing the return of my husband anytime soon.

I am here before you today, not to ask for sympathy for my situation—my husband signed a contract, he then reenlisted under the terms of that contract after careful consideration of our personal family situation; we know he has an obligation to fulfill—but to being to you a firsthand scenario of what sacrifices making a commitment to a Reserve component of the military can mean to one rural family, especially upon activation of the military person from that family. I would also like to further describe some scenarios relating the concerns of and sacrifices made by other soldiers, family members and exployers connected with my husband's Guard unit, arising upon activation of the unit. These are likely concerns and sacrifices very similar to those felt by reservists and their family members and employers across the country.

Like my husband, many of these soldiers also enlisted to earn extra money. In one family situation where this was the case the wife has chosen to cutback on the number of hours she works outside her home because she is just otherwise unable to meet the needs of her family while her spouse is away. And, while his military pay is comparable to his civilian pay, she has realized a decrease in income and their family has therefore made a financial sacrifice.

In more than one other case there are single farmers serving. The managers of their affairs are going to have to make decisions with regard to their farm land, and likely, as in my case, these farmers will realize increased farm related operating expenses by having to custom hire to get the farm operations completed for the year.

There are younger soldiers who joined as a means of paying for ongoing college enrollment. If these soldiers are not released from active duty before the start of the fall sessions they will lose additional college time and will likely encounter difficulties in finding a short term job while waiting for the start of the next college session. These soldiers will then be making a financial sacrifice for being a member of a military Reserve component.

Employers and people who accept employment as replacements for reservists also make sacrifices. One of the reservists with the Cando Guard unit is a farm laborer. His employer does not know how to make employment plans. He cannot very easily hire someone to fill in for his soldier/employee without hiring then for some specific length of time, normally the entire farming season. Yet he cannot afford to have two hired laborers, should the soldiers be released from active duty sometime this spring or summer. There is a school system that has had much difficulty keeping the position of their soldier/music teacher filled. In 6 months of school there has been three substitute teachers. The students have made little musical progress in this year of school as there has been little continuity in their class. The teachers who are substituting during this school year may be very hesitant to agree to fill in at the start of the next school year if they fear they may teach only a couple of weeks, then have the regular teachers return to the classroom, as would be the case with those teachers from my husband's unit, if they are indeed discharged at the end of the 360 days of active duty.

I have just enumerated some real concerns of soldiers, family members, employers, and fill-in employees. Had there not been a Reserve component of our military many of these concerns would not exist. But we, as a country, do have an all-voluntary military with Reserves and so we must recognize these concerns and address them. There may be nothing that can be done about some of these problems at this point in the activation, but possibly by looking at them now something could be done if a call-up of re-

servists to this magnitude ever happens again.

Having only a vaguely defined period of active duty and having to consider the possibility of extension has been a real difficulty for all parties involved to deal with it. The solution for that problem may be hard to develop. But certainly at this time, consideration for early discharge from active duty on a case by case basis of teachers, farmers and agriculture industry employees, self-employed reservists, college students, and others may be necessary following the resolution of our current conflicts in the gulf as a means of reducing the effects of the economic and personal sacrifices made by reservists, their families, and employers.

Another consideration may include establishing new guidelines under the Soldiers and Sailors Civil Relief Act to allow for reduced interest rates for business operating loans on established businesses, and loans to cover other extenuating circumstances within the family unit, even though application for these loans may have been made after activation of a reservist. Increased compensation, financial or otherwise, for the reservist upon activation may also be a consideration, as their lives and the lives of their family members are more profoundly disrupted than the lives of the already active full time military personnel and their families. The majority of reservists' families have difficulties accessing military base facilities and the benefits and services offered through such facilities, therefore compensation in other forms for these families may be appropriate.

There may also be justification of some type of increased compensation to the activated reservists, during their time of activation, when one considers the overall cost savings the Government has realized by having a highly trained and ready Reserve component over having to maintain the same number of full time active military strength.

Because of the activation of the numbers of reservists from the United States in support of allied forces in the gulf our Nation is now having to deal with many new problems and situations never before encountered to such a degree due to war. Addressing these problems early on and openly will hopefully diminish their negative effects. I thank you for your consideration of my concerns. As I said earlier on in my remarks, I consider farm living and the rural way of life that best this country has to offer. I know this now more so than ever because of the love and support given by all the folks in Cando and surrounding communities to me and my family during the difficult days of separation from my husband. It is also because of their monetary support, along with other contributions received, and their support in caring for my children now that I am able to be here. We cannot allow our rural way of life to be lost. We depend on all of you to help see that our standard of living in the rural area is preserved. Please concern yourself with our needs. Thank you.•

PROBATION PROMOTING PUBLIC SAFETY IN THE NINETIES

• Mr. SIMON. Mr. President, recently, I had the opportunity to read a presentation of Commissioner Catherine M. Abate, who heads the New York City Department of Probation, before the City Club of New York.

Her call for prevention and constructive efforts seems to me to be so obviously sound it hardly needs to be repeated. And yet, we know we are not paying attention to this.

I thought one of the interesting items in her speech was:

Over 50 percent of our probationeers come from the City's poorest neighborhoods. The average probationer is a minority male, between the ages of 16 and 25, placed on probation for drug-related felony offense. He is abusing either drugs and/or alcohol. A high school dropout and unemployed, he is functionally illiterate with few, if any, job skills.

Commissioner Abate is the kind of humanitarian leader I would expect from Mayor David Dinkins, a leader for whom I have great respect.

But the practical suggestions of community involvement, sensitivity to the victims, and better monitoring of offenders is a sound recommendation.

I insert her remarks into the RECORD at this point.

The remarks follow:

PROBATION PROMOTING PUBLIC SAFETY IN THE NINETIES

(Remarks by Catherine M. Abate)

Never before has this nation and this City been challenged on so many fronts. We are waging one war across our waters, the results of which will have a profound effect on the City for years to come. With the same determination, resolve and resources, we must fight our war against crime, drug abuse and violence at home. It is time for us to press our cause in Washington and throughout the State. It is time for us to say "Mr. President, you speak of freedom and human rights abroad, then let us speak of the same freedom of each and every citizen to live in their homes and walk through their neighborhoods free from fear and violence." 1991 must mark the time when we in government, joined with communities throughout this City, act with clarity, vigor and conviction. Together we must meet the challenge to restore and maintain public safety.

According to the National Institute of Justice, last year there were more than 1,000,000 Americans aged 18 years and over in prison and jail in the United States, and more than 2,500,000 on parole and probation. The grand total under the control of the criminal justice system exceeded 4 million. That number is nearly 2 percent of the nation's adult population.

We have seen the prison population more than double in the last decade. Among the nations of the world, the United States has surpassed South Africa and the Soviet Union in having the highest per capita ratio of its population in prison.

In New York State alone the number of prison beds has doubled in the 1980's. The City system has grown from 7,000 beds in 1980 to 21,000 today. Unfortunately those incarcerated soon were replaced by too many others on the street who were willing to follow in their footsteps. Too many released from prison returned to their communities no better prepared to live a law-abiding life.

Today more persons are incarcerated in New York State than ever before. Yet crime has not diminished. Arrests for violent crime are ever increasing. The percentage of juveniles arrested for felonies has dramatically increased by 75 percent in the last three years.

We must ask ourselves, how can we meet the challenge of crime's insidious and relentless assault upon the quality of life in our City. We know that not all the solutions are before us. But we have an opportunity to learn from our experiences in the 80's to define an action plan for the 90's. One lesson we have learned is that the focus of our criminal justice system—whether that be corrections, the courts or probation—must involve more than punishment and control. We must be in the business of preventing crime and shaping behavior. Prevention, treatment, and law enforcement must become the co-equal cornerstones of a justice system that can begin to effectively stem the tide of victimization.

Fiscal constraints will define future policy. It costs the City 58,000 dollars per year to maintain a defendant at Rikers Island. To construct an additional 5,500 beds will cost 1 billion dollars. Overtime costs in City Correction are currently at 61 million dollars—or almost equalling the entire budget of the New York City Department of Probation.

With escalating prison costs, jail overcrowding and increasing violence, the role that probation plays in the criminal justice system becomes even more critical. On any given day in New York City, over 60,000 people are under our supervision. That is almost three times the number incarcerated at Rikers Island. In fact, more people are on probation in New York City than are incarcerated in New York State correctional institutions statewide.

Over 50 percent of our probationers come from the City's poorest neighborhoods. The average probationer is a minority male, between the ages of 16 and 25, placed on probation for a drug-related felony offense. He is abusing either drugs and/or alcohol. A high school dropout and unemployed, he is functionally illiterate with few, if any, job skills.

The mission of the Department is to promote public safety by providing community-oriented criminal justice sanctions and by assisting the offender to remain in his community as a law abiding and productive citizen. We must honor our contract with the Courts and the community to violate those individuals who fail to live up to the conditions of their probation. But to effect change, probation must do more than process people. We must offer meaningful services and interventions.

To that end, we have developed a resource delivery concept to enable the probation officer to provide the appropriate services to more fully meet the needs of our probationers. This model will include medical and mental health care, drug treatment, vocational training, job preparation, direct employment referrals, literacy and life skills development. The Department has created a network of community-based services to enhance the quality of supervision to offenders. Other City agencies, as well as not-for-profits, are cooperating in this effort.

We know that we must not only design programs to meet the specific needs of offenders, but that these limited resources must be directed to those who present the highest risk to society. We have strengthened our intensive supervision programs to better monitor high risk juveniles and adults.

We are establishing a Day Treatment Center for those probationers, who despite our best efforts, are on the road to violating the terms of their probation sentence. The Center will provide probationers with an intensive program of rehabilitative and remedial services for up to 12 hours a day, five days a week, for a period of 90 to 120 days. On site, operating within the Center, will be a Board of Education alternative school, a Department of Employment Tap Center, and a Department of Mental Health psychiatric social work clinic. If such a model proves effec-

tive—we hope to open similar centers throughout the City.

To address the severe drug crisis facing the City, we have developed a specialized unit of probation officers to supervise "high risk" cocaine abusers. This case management strategy includes reduced caseloads, more frequent reporting requirements and home visits as well as routine drug testing. As a result of a City/State initiative, the Department will be able, for the first time, to contract for 1,100 drug treatment slots dedicated to probationers. And with a grant from the State, special assessment, diagnosis and support referral will be available to those who are developmentally disabled among this substance abuse population.

Mayor Dinkins has stated on numerous occasions that responsible government must be responsive to the communities we serve. This shift in philosophy is reflected in the new direction of the Probation Department. We recognize that the community and victims throughout this City are our primary clients. If we effectively monitor and supervise offenders, our streets and our neighborhoods will become safer. To accomplish this, however, Probation must become a part of the community it serves. We must bring Probation back to the community.

Because probationers pose the largest threat to their own communities, our efforts to establish neighborhood offices have been given high priority. Community probation will improve our ability to monitor offenders and link them to appropriate services in their own neighborhoods. We are returning probation officers to the field to intervene with the probationer and his family before a violation occurs. In FY 92, at least 20 percent of the Probation Officer's time will be spent in the field. Our Field Service Unit, a specially trained unit of armed Probation Officers, will continue to work with the Police Department to execute warrants against probationers wanted for new crimes or for violating the terms and conditions of their probation sentences and just as importantly, to intervene in potentially volatile crisis situations.

We want to send a strong message to the community that we do not condone violence and abuse, and that the rights of the victims of crime are at the forefront of our agenda. We believe that probationers must be accountable to the individual and to the community they victimized.

One way of repaying their debt to society is through community service. Community service acts as a constructive punishment reminding offenders that their actions have consequences and tying them in a positive way into the very neighborhoods that they victimized. The Mayor's "Safe Streets/Safe City" program will allow the Department to expand its community service program well beyond the current 100,000 hours of service. It will mean cleaner parks, food and other services provided to the homeless, cleared vacant lots, graffiti free subways and rehabilitated apartments for the elderly. Community service teaches the probationer respect for his/her community and enables civic leaders to see offenders as potential assets. It will improve the quality of life in the neighborhoods and provide the offender with a positive work experience.

Communities throughout this City face the consequences of crime on a daily basis. Crime affects each and every household. The impact on its victims is severe and lasting. To address the needs of victims, we have created a Victims Advisory Panel made up of the leading advocates and service providers in this City. The Panel is assisting the Department in developing improved victim impact statements within the 53,000 pre-sentence investigation reports we prepare for the Family and Criminal Courts each year. Better impact statements will lead to wider use of restitution to victims. We are automating our restitution program to provide more effective collection and disbursement of these funds. Victim advocates are training our staff to identify child, elder and spouse abuse when making family visits. We are establishing specialized caseloads to better supervise and treat batterers and sex offenders. We are making efforts to ensure that orders of protection are real and not illusory sanctions.

I hope I have dispelled the notion that Probation coddles criminals and is soft on crime. Probation is punitive. It is punishment and it is tough. To many offenders, "doing time" is far less intrusive than being supervised on probation for up to five years. They know if they fail—do not undergo drug treatment—remain unemployed—do not go back to school or pay back their community and the victim—they will be faced with longer terms of imprisonment.

Probation makes sense. Both Govenor Cuomo and Mayor Dinkins speak about investing in our future—in our children. I do not believe children are born to hate. They learn too well—growing up—the ways of violence, denial, and apathy. We must do all we can to stop the vicious cycle once a child enters the criminal justice system. We must see that they graduate from school and on to higher levels of learning and growth and not into Attica, Elmira, and Danemora and higher levels of incarceration and detention.

Probation cannot succeed without your support. Together we must assist probationers to become productive citizens by addressing their needs for an education, a decent job and a stabilized family life. By teaching them to resolve conflicts without violence, to reduce their dependency on alcohol and drugs, to manage family responsibilities and to find resources they need to improve their lives, we hope to restore the probationer to the community. By promoting greater community involvement in Probation practice, by being more sensitive to the almost 30,000 victims of crime we encounter yearly and by better monitoring offenders living in the City's neighborhoods, I believe Probation can have a significant impact on reducing crime.

Adequately staffed, properly equipped and intelligently managed, Probation is the most safety-conscious and cost-effective criminal justice sanction we have. Its unique blend of punishment, prevention and treatment will significantly contribute to a safer New York. That is the mission of the New York City Department of Probation and its commitment to this City.•

TRIBUTE TO THURMAN PARSONS BY KERAK SHRINE TEMPLE

• Mr. BRYAN. Mr. President, I rise today to recognize a Nevadan who has made a difference for the youth of Nevada. Thurman Parsons, who is being honored by Kerak Shrine Temple, has given freely of his time to many worthy causes. Foremost among these is the Shrine Circus and Hospital.

The Shrine Circus is an institution in Nevada that annually entertains thousands of people. The main event in Reno spawns several satellite circuses. These circuses cover northern Nevada, from Ely in the east to Fallon in the south. These people provide valuable entertainment for small towns throughout Nevada. Without the office work and individual fundraising capability of Thurman Parsons and his fellow shriners, this would be a special event lost to many of the people in these smaller communities. Through Thurman Parson and his fellow shriners' efforts, the lives of more than 30,000 people are enriched each year.

Mr. President, many organizations have been the recipient of Thurman's largess. These include Masonic youth groups, International Order of Rainbow for girls, DeMolay for boys, Bethel No. 2, Little League, the ATO fraternity, as well as the YWCA. Whether repairing cabins for the YWCA, or coaching in Little League, he was there for the children of Nevada.

Mr. President, people devoting time to children are not enough in evidence today. The example of people like Thurman Parsons enables us to remember that it is the selfless giving of one generation to another that has helped make this country great. Thurman Parsons is a shining example of the spirit of Nevada and our love of children.•

CHILDREN'S AID INTERNATIONAL IN POLAND

• Mr. SIMON. Mr. President, I have the privilege of serving on the Advisory Committee for a group called American Committee for Aid to Poland.

Our colleague, Senator BOB DOLE, serves as cochairman, and former Security Adviser to President Carter, Zbigniew Brzezinski, is the other cochairman. Serving as president and chief executive officer of the organization is former Ambassador John W. Shirley.

I recently received the minutes of the meeting that took place on February 28 with representatives of private voluntary organizations. All of it is fascinating, but particularly depressing is a report in the minutes of the comments of Dr. T.J. Grosser, president of Children's Aid International. The statement is so eloquent in expressing need that I am simply inserting the two paragraphs from the minutes in the CONGRESSIONAL RECORD at this point. Mr. President, I ask to insert them into the RECORD at this point.

I do not know precisely how we can respond more effectively to this need, but somehow we have to be able to do it.

I am confident that is what the American public would want us to do.

The excerpts follow:

CHILDREN'S AID

Dr. T. J. Grosser, President of Children's Aid International, said that his organization, with a budget of $7 million, is focussed en-

tirely on the private sector and does not seek U.S. government assistance. Dr. Grosser was in Poland last July to set up a program for retarded children in Warsaw and a center for urban poor children in Elk.

He spoke at length about health problems in Poland caused by the Chernobyl disaster. One stop during his visit was a sanatorium in a village near Bialystok, where 125 child victims of Chernobyl are being cared for. The nuns who operate the sanatorium are obliged to turn away 20 children for every one they are able to take. Children's Aid International is currently working to determine the scope of this health problem, the needs of the victims and to identify who can help. Even such basics as the need for pure water and pure food must be addressed. He added that he found Polish technical competence to be high, but there is a shortage of medications and instruments for testing. He said that in Poland today there is only a 50% possibility for cure of leukemia. Simply removing children from contaminated areas for a period of time can help to raise the levels of their immune systems. He is working closely with the Polish Ministry of Health and with people here on this problem, but at the present time even the extent of the problem is not known.•

COSPONSOR PEACE TAX FUND

• Mr. HATFIELD. Mr. President, yesterday I introduced S. 689 the Peace Tax Fund Act. My friend and colleague, Senator HARKIN was inadvertently not listed as an original cosponsor of this important bill. This is unfortunate, because I greatly appreciate the Senator's partnership in this effort this year, as well as in years past. I understand that he will now be listed as the primary cosponsor, and I wish to extend my deep thanks to him for his consistent support.•

THE SENATE FUMBLES ON PUERTO RICO

• Mr. SIMON. Mr. President, if there is one thing the United States has stood for throughout the decades it is self-determination.

And yet, I regret to say, we have failed to apply self-determination to the status of Puerto Rico.

I frequently resent editorials attacking the Senate for decisions we make, the editorial writers frequently not understanding the dimensions of an issue. But when the Chicago Tribune recently headed an editorial, "The Senate Fumbles on Puerto Rico," they hit it right on the head. By a 10–10 vote we have denied the people of Puerto Rico the right to have a plebiscite to determine their future.

The final paragraph of the editorial sums it up well:

In the past, dissatisfaction with Puerto Rico's status has given rise to occasional violence and terrorism. But that isn't what should motivate Congress or the Puerto Rican legislature. The real motivation ought to be to assure to Puerto Ricans what all Americans treasure: the right of popular self-determination.

The current status is commonwealth status, which is a fancy name for old-fashioned colonialism. Puerto Rico eventually will either become an independent country or it will become a State. That decision should be up to the people of Puerto Rico, and we should not deny them that decision.

Mr. President, I ask to insert into the RECORD the full editorial from the Chicago Tribune.

The editorial follows:

THE SENATE FUMBLES ON PUERTO RICO

A United States Senate committee has deadlocked on legislation to authorize a referendum on Puerto Rico's political future. While the 10-10 tie probably reflects perfectly the ambivalence most Americans feel about the island, it does nothing to advance the nation toward resolution of the so-called "status issue."

Neither, for that matter, does the Puerto Rican Senate's approval last week of a bill to make Spanish the island's sole official language. It's time lawmakers in Washington and San Juan began dealing realistically with the status question. Continued delay is unwise, and it could become dangerous.

Puerto Rico and the mainland U.S. have been locked in an ambiguous embrace since 1898, when Spain ceded the island after the Spanish-American War. Puerto Ricans were granted U.S. citizenship in 1917. In 1952, the island acquired its current status as a commonwealth; residents got all benefits of citizenship except the right to vote in federal elections and the duty to pay income taxes.

In 1967, in a referendum initiated by their own government, Puerto Ricans reaffirmed their backing for commonwealth status.

But things have changed since then. Recent polls have indicated growing support among Puerto Ricans for statehood, and mainland Americans have become increasingly uncomfortable with any relationship that smacks of colonialism.

At the request of Puerto Rican political leaders of all stripes, Congress in 1989 began considering legislation to authorize a new referendum and, potentially, a new status. A bill passed the House last year to authorize a non-binding referendum, with Puerto Ricans to choose among statehood, independence and "enhanced commonwealth" status. But the Senate lagged and now has failed to move a similar bill.

The recent committee action virtually assures that there can be no referendum before 1993 at the earliest. Whether there will be one even then depends on whether, after more than two years of dithering, Congress can summon the will to face this difficult issue head-on and pass the necessary legislation.

That cause won't be helped by things like the Spanish-only bill, which is expected to win quick approval in the Puerto Rican House and the signature of Gov. Rafael Hernandez Colon, a commonwealth proponent. While it is unlikely to have much practical effect, it may have a large political effect on members of Congress who would be concerned about offering the possibility of statehood to a determinedly foreign territory.

In the past, dissatisfaction with Puerto Rico's status has given rise to occasional violence and terrorism. But that isn't what should motivate Congress or the Puerto Rican legislature. The real motivation ought to be to assure to Puerto Ricans what all Americans treasure: the right of popular self-determination.•

TRIBUTE TO HARRY E. (BUD) SMITH BY KERAK SHRINE TEMPLE

• Mr. BRYAN. Mr. President, I rise today to recognize a native Nevadan, Harry E. (Bud) Smith who is being honored by the Kerak Shrine Temple for his contributions to the Nevada community. He is an outstanding member of the Order of the Eastern Star, as well as the Kerak Shrine Temple. The most visible evidence of his involvement is 12 years of devoted service to the Shrine Circus for children, and raising funds for crippled and burned children. Bud is a living example of the spirit to give that is alive and well in Nevada.

The Shrine Circus is an institution in Nevada that annually entertains thousands of people. The 3-day event in Reno is not the end; from this main event there are satellite circuses, which span more than 500 miles from Elko in the East, to Bishop, CA, in the West. These people provide valuable entertainment resources for small towns throughout northern Nevada and into California. Through their efforts the lives of more than 30,000 people are enriched in the region. Without the fundraising capabilities of people such as Harry Smith, the circus would be an experience lost to many of the people of these communities.

Mr. President, laughter is a precious gift, and Harry has proven to be generous with his talent. He was a charter member of the Kerak Shrine Klown Unit, founded on January 11, 1971. He proved so successful in this unit, that eventually he clowned his way to its pinnacle, Chief Klown. He is also a member of the Royal Order of Jesters, Court #33.

Mr. President, Harry may have been a lifetime worker on the Southern Pacific Railroad, but he will always be "Mr. Circus" to Kerak Shrine.•

RECOGNIZING VIETNAM

• Mr. SIMON. Mr. President, on Sunday, the New York Times has an editorial suggesting once again that it is long past time to renew official diplomatic ties with the Government of Vietnam.

The time has long since past.

It should have been done long ago, but we should do it now.

We want to make clear to the Government of Vietnam that we want to work with them to bring peace to Cambodia, but we also have to make clear to Vietnam that any substantial improvement in relationship depends on whether they pay attention to human rights in Vietnam.

Official recognition does not mean approval of their policies any more than it does of the policies of China and Syria and other countries that are mentioned in the New York Times editorial.

Mr. President, I ask to insert the New York Times editorial into the CONGRESSIONAL RECORD at this point.

The editorial follows:

[From the New York Times, Mar. 10, 1991]

GOOD MORNING, VIETNAM

It was as if two wars, not just one, ended with the American-led coalition's quick and decisive victory over Iraq. When the guns fell silent, President Bush proudly proclaimed that "The specter of Vietnam has been buried forever in the desert sands of the Arabian Peninsula."

Postwar diplomacy concerning the Middle East has already begun. But postwar diplomacy concerning Veitnam has been mired in bitterness and recriminations for 16 years. Washington can make constructive use of America's revived international pride by now moving to normalize relations with Vietnam.

Vietnam contributed to its long diplomatic isolation by sending troops into Cambodia late in 1978 and keeping them there for almost 11 years. But Washington is also to blame. The past four Administrations have refused to acknowledge the 1975 Communist triumph in Indochina as a fact of international life.

Hanoi prevailed against American power on the battlefield. Washington has punished this affront by diplomatic ostracism, even to the point of winking at a Chinese invasion of Vietnam and, until last year, aiding a Cambodian resistance coalition incorporating the genocidal Khmer Rouge.

Victory in this new war offers an opportunity to bury the bitter legacy of an old one. True, Vietnam is neither a model democracy nor a model international citizen. Its human rights performance has recently been criticized by Asia Watch and by brave voices from within. And while Hanoi has withdrawn its troops from Cambodia, it still backs hard-liners in Phnom Penh who resist implementing the United Nations peace plan.

Yet Vietnam's policies are no more offensive to Americans than those of many other states. The U.S. rightly maintains ties with Syria, even though it sponsors terrorism and occupies much of Lebanon. The U.S. deals with China despite the massacres in Tiananmen Square and Tibet, and with the Soviet Union despite the brutal crackdown in the Baltics.

Diplomatic relations give Washington the chance to raise vexing issues and exert a moderating influence. The Vietnam War ended 16 years ago. Now it has been officially buried. It's time to banish the ghost.●

McDONALD'S CAPITAL CLASSIC ALL-STARS

● Mr. LUGAR. Mr. President, I would like to take this opportunity to recognize the extraordinary talent that will gather Monday, March 25, 1991, in our Nation's capital during the McDonald's Capital Classic. Indiana is very proud of its tradition of excellence in basketball and I would like to acknowledge two outstanding individuals who will be participating in the Monday night game. They have set an example for others to follow in high school athletics and academics. Their achievements and accomplishments are worthy of our attention.

Six-foot, 8-inch Alan Henderson will participate in this year's all-star game as an all-American basketball player. Alan is a native of Indianapolis, IN, and attends Brebeuf Preparatory High School. He has maintained a 3.7-grade point average despite the enormous time commitment of the basketball season. Alan's intelligence is evident, scoring 1,300 on the SAT test, with high ambitions to study either medicine or law at Indiana University in Bloomington next fall.

Another great Indiana player, Daimon Beathea, attends Memorial High School in Elkhart, IN. He is a solid 6-foot, 7-inch forward with an impressive outside jump shot. Daimon plans to attend Michigan State University in East Lansing, MI next year.

I would also like to take this opportunity to acknowledge the coach of the all-stars, another Hoosier, Mr. Ed Schilling, Jr. Coach Schilling will be assisted by his father, Ed Schilling, Sr. During the regular season, Coach Schilling coaches at Western Boone High School in Thorntown, IN.

I ask my colleagues to join me in saluting all the individuals who will participate in the 1991 Capital Classic.

The Capital All-Stars are Romeo Roach and Johnny Rhodes, from Dunbar High School, District of Columbia; David Vanderpool, from Blair High School, Maryland; Rob Garner, from Potomac High School, Maryland; Nii Nelson-Richards, from Good Counsel High School, Maryland; Avis Willis, from West Potomac High School, Virginia; Wayne Bristol, from High Point High School, Maryland; John Stuckey, from Coolidge High School, District of Columbia; Devin Gray, from St. Francis High School, Maryland; Bart Lammersen, from James Madison High School, Virginia; Don Reid, from Largo High School, Maryland; Luteke Kalombo, from Herndon High School, Virginia. The coach of the Capital All-Stars is Joe Gallagher, from St. John's High School in Washington, DC.

The United States All-Stars include Travis Best, from Springfield Central High School, Maine; Danny Hurley, from St. Anthony's High School, New Jersey; Louis Roe, from Atlantic City High School, New Jersey; Reggie Manuel, from Southwest Macon High School, Georgia; James Scott, from Eastside High School, New Jersey; James Forrest, from Southside High School, Georgia; Tom Kleinschmidt, from Gordon Tech High School, Illinois; Donyell Marshall, from Reading High School, Pennsylvania; Cherokee Parks, from Marina High School, California; and Erik Meek, from San Pasqual High School, California.●

A DEMOCRATIC IRAQ

● Mr. SIMON. Mr. President, it has been my privilege to have the opportunity to come into contact with Dr. Jawad Hashim, who heads a committee for a democratic Iraq that is composed of exiles from Iraq.

Recently, they issued a statement that merits the attention of my colleagues in the Senate and the House and the administration.

I ask to insert this into the RECORD at this point.

The statement follows:

THE COMMITTEE FOR DEMOCRATIC IRAQ

On behalf of the People of Iraq, brutalized by Saddam Hussein for two decades; subjugated by terror to fight two pointless wars; helpless as genocide was committed in their name; facing now their gravest threat, I make this appeal.

The appointment of Saddam's cousin as the new Interior Minister is the latest and most hideous attempt to sustain the regime. It was he who gassed a Kurdish village, and he who committed the atrocities to be witnessed in Kuwait. It will be him who will act now for a regime, which—criminal beyond measure; amoral beyond human recognition—has no flat, no mandate to rule and is by any standard unfit so to do. A regime whose sole purpose, manifest by the appointment, is self-perpetuation and self-preservation. This signals the intent to continue their heinous dominion by force of arms. By terror.

The people cannot fight; have no power, no communications; no vestige of protection by law or civilized code. No Geneva convention; no Hague treaty. Not hopeless but without hope.

They are faced by Saddam's "Special Force" of some 10,000 thugs who are the instrument of suppression.

I implore you to bring this affront to humanity, this villainous regime, to an immediate end.

It is the duty of every civilized nation to succour the people of Iraq by every means possible. A people united by suffering. A duty to end suffering.

For and on behalf of the Committee.

JAWAD HASHIM, Ph.D.

MARCH 7, 1991.●

UP FROM THE GHETTO?

● Mr. SIMON. Mr. President, Anthony Lewis visited Chicago in my State. I wish I could tell my colleagues in the Senate he came away with a glowing report about the fine city of Chicago.

What he did was to visit an area that is too often ignored, like all areas of poverty in this Nation are too often ignored.

We continue to be a nation that is deeply segregated on the basis of economics. We are more economically segregated than at any point in our Nation's history.

That means that those who are less fortunate do not live next to most of us who are not in that category, and we continue to ignore their problems.

That is both inhumane and it is contrary to the long run best interest of the Nation.

I urge my colleagues to read Tony Lewis's column, "Up From the Ghetto?" I ask to insert it into the RECORD at this point.

The column follows:

UP FROM THE GHETTO?

(By Anthony Lewis)

"They are now among the worst places in the world to live." That stark epitaph for the black urban ghetto in America comes at the end of Nicholas Lemann's stunning new book, "The Promised Land." I thought of it as I visited North Lawndale, on Chicago's West Side.

North Lawndale was one of the first parts of Chicago to become home for blacks moving up from the South in the great migration that is the subject of Mr. Lemann's book.

The idea of a city slum brings to mind densely packed buildings, a teeming population. But that is not North Lawndale. What strikes the eye here is empitness: burned-out buildings, vacant lots, stores boarded over. And everywhere the ground littered with shards of glass.

On Roosevelt Road and other main streets, stores were destroyed in the 1968 riots and never rebuilt. On the side streets there are gaps where houses and small apartment buildings decayed or were abandoned: sometimes more gaps than buildings. It is as if the great flat prairie of Illinois were trying to re-emerge.

Drug users filter into a crumbling hotel. A dozen young men hang out in an empty lot, getting through the empty day. A prostitute struts on a street corner.

It is a desolate scene. But something unexpected, and powerful, strikes the visitor. Some people in North Lawndale do not accept the desolation as inescapable. They have not given up on the place. They have not given up on themselves.

Some of the small three-story houses are nicely maintained. One has white pillars in front, freshly painted, with a yellow ribbon for the soldiers in the Persian Gulf.

A boy and girl carrying school books scurry across a vacant lot, neatly dressed. A young man with a college degree in biology, working in the local alderman's office, plans to go to law school so he will be better able to help the community.

Even in this place of lost hope, then, there are those who believe in the promise of American society. And that connects with Nicholas Lemann's message in the final chapter of "The Promised Land," which appears in somewhat briefer form in the March issue of The Atlantic.

"American society in the wider sense is not a presence in the ghettos," he writes, "except on television. Policemen don't walk the beat, most schools don't teach, fathers don't live at home, crime goes unpunished. . . ."

But that can change, Mr. Lemann argues. The ghettos can be brought back into the society. It would be a large undertaking, so comprehensive that it would substantially affect all aspects of life in a ghetto:

"The rather casual official attitude toward street crime, for example, which has existed for as long as there have been ghettos, could finally change; policemen could be put back on the streets, and criminals quickly punished. Welfare could become a temporary program leading to a job . . .

"We could try to insure that every ghetto child is born healthy, learns to read and write in grade school, graduates from high school, has a private or government-created job waiting at the end of the process . . ."

The concept is simple, Mr. Lemann concludes: "The Government should be trying to break the hold of those aspects of the ghetto culture that work against upward mobility, by constantly and powerfully encouraging ghetto residents to consider themselves part of the social structure of the country."

To speak of a comprehensive government effort to rescue the black ghettos is to go against the grain of politics today. For our political system has essentially given up on the problem. We have come to think that government programs don't work, that we have no answers.

But the facts are otherwise, Mr. Lemann persuasively argues. We know that some ideas do work. Head Start works. Job training works. Care for expectant mothers works. We have just not had the will to make the needed effort.

It is easy to understand why those of us who are comfortable tend to write off the afflicted, indeed forget them. Comfortable Chicagoans do not often, or ever, visit North Lawndale. But the existence of this and other ghettos nevertheless affects everyone's quality of life. American society is less safe and less decent while this corruption endures.

And there is the question that nags at us: Why should the richest country in the world have in it some of the worst places in the world to live?●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44; all Nominations Placed on the Secretary's Desk in the Air Force, Army, Coast Guard, and Navy.

I further ask unanimous consent that the nominees be confirmed en bloc, that any statements appear in the Record as if read, that the motions to reconsider to be laid upon the table en bloc, 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:

EXPORT-IMPORT BANK OF THE UNITED STATES

Cecil B. Thompson, of Virginia, to be a member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1991.

Cecil B. Thompson, of Virginia, to be a member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 1995. (Reappointment.)

SECURITIES INVESTOR PROTECTION CORPORATION

George H. Pfau, Jr., of California, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1993.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Capt. Christian Andreasen for appointment to the grade of rear admiral (lower half), while serving in a position of importance and responsibility as Deputy Director, Office of NOAA Corps Operations, National Oceanic and Atmospheric Administration, and

Capt. Freddie L. Jeffries for appointment to the grade of rear admiral (lower half), while serving in a position of importance and responsibility as Director, Atlantic Marine Center, National Oceanic and Atmospheric Administration, under the provisions of title 33, United States Code, section 853u.

Rear Adm. James A. Yeager for appointment to the grade of rear admiral (O–8), while serving in a position of importance and responsibility designated by the Secretary of Commerce as warranting that grade in the National Oceanic and Atmospheric Administration, and

Rear Adm. Raymond L. Speer for appointment to the grade of rear admiral (lower half) (O–7), while serving in a position of importance and responsibility designated by the Secretary of Commerce as warranting that grade in the National Oceanic and Atmospheric Administration, under the provisions of title 33, United States Code, section 853u.

IN THE COAST GUARD

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral:

Arthur E. Henn.
Peter A. Bunch.
David E. Ciancaglini.
William J. Ecker.

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral (lower half):

John L. Linnon, Jr.
Rudy K. Peschel.
Gerald F. Woolever.
Richard D. Herr.

NATIONAL RAILROAD PASSENGER CORPORATION

Carl W. Vogt, of Maryland, to be a member of the Board of Directors of the National Railroad Passenger Corporation for a term of 4 years.

INTERSTATE COMMERCE COMMISSION

J.J. Simmons III, of Oklahoma, to be a member of the Interstate Commerce Commission for a term expiring December 31, 1995. (Reappointment.)

DEPARTMENT OF TRANSPORTATION

Stanford E. Parris, of Virginia, to be Administrator of the Saint Lawrence Seaway Development Corporation for a term of 7 years.

IN THE AIR FORCE

The following-named officer for reappointment to the grade of general while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

To be general

Gen. John M. Loh, [redacted] Air Force.

The following-named officer for reappointment to the grade of lieutenant general while assigned to a position of importance and responsibility under title 120, United States Code, section 601:

To be lieutenant general

Lt. Gen. Leo W. Smith, II, [redacted] U.S. Air Force.

IN THE ARMY

The following-named officers for appointment in the Regular Army of the United States to the grade indicated, under the provisions of title 10, United States Code, section 611(a) and 624:

To be permanent major general

Brig. Gen. Roland Lajoie, [redacted] U.S. Army.

Brig. Gen. William A. Stofft [redacted] U.S. Army.

Brig. Gen. William W. Crouch [redacted] U.S. Army.
Brig. Gen. Edison E. Scholes [redacted] U.S. Army.
Brig. Gen. Arthur E. Williams [redacted] U.S. Army.
Brig. Gen. Theodore G. Stroup, Jr [redacted] U.S. Army.
Brig. Gen. James A. Musselman [redacted] U.S. Army.
Brig. Gen. James B. Taylor [redacted] U.S. Army.
Brig. Gen. Peter T. Berry [redacted] U.S. Army.
Brig. Gen. Walter J. Bryde, Jr. [redacted] U.S. Army.
Brig. Gen. James T. Scott [redacted] U.S. Army.
Brig. Gen. Dennis V. Crumley [redacted] U.S. Army.
Brig. Gen. Jerry R. Rutherford [redacted] U.S. Army.
Brig. Gen. Jay M. Garner [redacted] U.S. Army.
Brig. Gen. Eugene L. Daniel [redacted] U.S. Army.
Brig. Gen. Alfred J. Mallette [redacted] U.S. Army.
Brig. Gen. Joseph Raffiani, Jr. [redacted] U.S. Army.
Brig. Gen. Thomas W. Robison [redacted] U.S. Army.
Brig. Gen. John H. Tilelli, Jr. [redacted] U.S. Army.
Brig. Gen. Paul J. Vanderploog [redacted] U.S. Army.
Brig. Gen. John P. Otjen [redacted] U.S. Army.
Brig. Gen. Henry H. Shelton [redacted] U.S. Army.
Brig. Gen. Marvin L. Covault [redacted] U.S. Army.
Brig. Gen. William M. Boice [redacted] U.S. Army.
Brig. Gen. Steven L. Arnold [redacted] U.S. Army.
Brig. Gen. Dennis P. Malcor, [redacted] U.S. Army.
Brig. Gen. John R. Landry [redacted] U.S. Army.
Brig. Gen. Robert S. Frix [redacted] U.S. Army.
Brig. Gen. William M. Matz, Jr. [redacted] U.S. Army.
Brig. Gen. Dennis L. Benchoff [redacted] U.S. Army.
Brig. Gen. John F. Stewart, Jr. [redacted] U.S. Army.
Brig. Gen. Richard S. Siegfried [redacted] U.S. Army.
Brig. Gen. William W. Hartzog [redacted] U.S. Army.
Brig. Gen. David J. Baratto [redacted] U.S. Army.

IN THE NAVY

The following-named officer for appointment to the grade of Vice Admiral while assigned to a position of importance and responsibilty under title 10, United States Code, section 601:

To be vice admiral

Rear Adm. William C. Bowes, U.S. Navy, [redacted]

STATEMENT ON THE NOMINATION OF STANFORD E. PARRIS ADMINISTRATOR OF THE ST. LAWRENCE SEAWAY CORPORATION

Mr. WARNER. Mr. President, I am pleased that the full Senate has given its consent to the nomination of my friend and former colleague in the Virginia congressional delegation Stanford E. Parris, who is the President's choice to be Administrator of the St. Lawrence Seaway Corporation.

Several of my colleagues served with Stan in the House of Representatives where he represented the Eighth District of Virginia with distinction for 12 years. Stan also has extensive experience in State government where he served in the General Assembly of Virginia and as Gov. John Dalton's Secretary of the Commonwealth and Director of the Governor's Washington office. He began his political career as a member of the Fairfax County Board of Supervisors.

Stan Parris is particularly skilled at working with the Congress, the States, and the local governments because he has been there and he understands the problems being faced at all levels of government.

In addition to his political career, Stan is an attorney and businessman by profession who was a partner in a northern Virginia law firm and owner of a Lincoln-Mercury dealership. He served with courage and dedication as a fighter pilot with the U.S. Air Force during the Korean war.

Stan, along with his lovely wife, Martie, has been a tremendous asset to Virginia, and I know they will continue to serve us well.

Mr. President, Stan Parris has the judgment, the skills, and the experience to be an outstanding Administrator of the St. Lawrence Seaway Corporation and to continue his record of service to this Nation.

LEGISLATIVE SESSION

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

THE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of calendar numbers 51 and 52, that the resolutions be agreed to and the motion to reconsider be laid upon the table, and that the preamble, where appropriate, be agreed to.

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

Mr. FORD. Mr. President, I further ask unanimous consent that the consideration of these items appear individually in the RECORD.

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

AUTHORIZING PRINTING OF THE REPORT "DEVELOPMENTS IN AGING: 1990"

The resolution (S. Res. 79) authorizing printing additional copies of Senate report titled "Developments in Aging: 1990," was considered, and agreed to; as follows:

S. RES. 79

Resolved, That there shall be printed for the use of the Special Committee on Aging the maximum number of copies of volumes 1 and 2 of its annual report to the Senate, entitled "Developments in Aging: 1990", which may be printed at a cost not to exceed $1,200.

PERMITTING USE OF THE ROTUNDA OF THE CAPITOL

The concurrent resolution (H. Con. Res. 45) permitting the use of the rotunda of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the Holocaust, was considered, and agreed to.

The preamble was agreed to.

APPRECIATION OF AMERICAN INDIAN VETERANS

Mr. FORD. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of Senate Concurrent Resolution 22, extending the appreciation of Congress to all American Indian veterans, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 22) extending the appreciation of Congress to all American Indian veterans for their service in the Armed Forces of the United States.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MCCAIN. Mr. President, I am pleased to submit along with Senators INOUYE, KASSEBAUM, SIMON, COCHRAN, BURDICK, DASCHLE, MURKOWSKI, DECONCINI, GORTON, CONRAD, and NICKLES a concurrent resolution to extend the appreciation of the Congress to all American Indian veterans for their service in the Armed Forces of the United States.

Mr. President, as events in the Persian Gulf draw to a close, the attention of the Nation is focused upon the return of the men and women who have courageously served in Operations Desert Shield and Desert Storm. As America honors these brave men and women, I believe it is also important to acknowledge the unparalleled devotion that American Indians have had to the Armed Forces of the United States. In fact, American Indians continue to be the highest percentage of any ethnic group in the United States to serve our country, including Operation Desert Storm.

Ever since colonial times, American Indians have enlisted in the armed services of the United States. Even in pre-Revolutionary wars, American In-

dians were fighting on the side of the Colonists. Perhaps the most legendary contribution by American Indians occurred during World War II. When communications between Allied Forces were being continuously intercepted by our enemies, the need for a code which could not be broken became of paramount importance to our survival and success. When everything else failed, it was the Navajo code talkers whose native language provided a means of communication that eluded the most expert of codebreakers. Of all the codes developed in World War II, the Navajo language code was the only one not broken during World War II.

In Operations Desert Shield and Desert Storm hundreds of American Indians continued the proud and courageous tradition of service in the Armed Forces. From my own home State of Arizona, the Navajo Nation estimates that it has sent at least 360 men and women to the Persian Gulf. Recently, during a visit to the Tohono O'Odham Nation concerning Indian health issues, Secretary Sullivan and I had the privilege of meeting with the families of the 33 men and women serving in the Persian Gulf. It was a very moving occasion for me, one which showed the pride these families had in their sons and daughters and in the job they had been called to do.

Mr. President, the event I was able to witness in Arizona can be repeated on all, if not most, of the Indian reservations across this country. The young and old have a deep pride in their tribal members who have been or are presently called to duty; they don't take a back seat to anybody in the level of patriotism and love of country. Indeed, it was largely because of the American Indian's record of service in World War I that Congress enacted legislation in 1924 granting U.S. citizenship to all American Indians.

Yet as I reflected on these recent events, I am reminded of the services that we have failed to provide American Indian veterans. This perhaps is all too sadly captured in the life of Ira Hayes. The American public has probably never heard the full story about this American hero. He was a Pima Indian who served in the Marine Corps during the Korean conflict and is depicted in the Iwo Jima Memorial as one of the brave men who planted the American flag. Although that moment is captured in time, Ira Hayes the man was soon forgotten. He eventually died a broken man and a victim of alcoholism.

Another American hero, Senator DAN INOUYE, perhaps said it best:

Even though a great number of Native American veterans have served this country with incomparable bravery and valor, the recognition and level of services which have been provided to Indian veterans remains largely undocumented. It would appear that in our efforts to mainstream our country's veterans, the needs of America's Indian veterans have been forgotten.

As this concurrent resolution extends the appreciation of the Congress, I can think of no more appropriate subsequent action that the Congress can take than to examine the problems, assess current services, and explore the solutions necessary to fulfill the needs of Native American veterans. I look forward to working with my colleagues to do just that in this Congress.

The PRESIDING OFFICER. Without objection, the concurrent resolution is agreed to, and the preamble is agreed to.

The concurrent resolution (S. Con. Res. 22), with its preamble, is as follows:

S. CON. RES. 22

Whereas, American Indians, of various Indian tribes across the nation, have a long, proud and distinguished tradition of service in the Armed Forces of the United States;

Whereas, American Indians have historically served in the Armed Forces of the United States in numbers which far exceed their representation in the population of the United States;

Whereas, American Indians have lost their lives in the service of their nation, and in the cause of peace, including Operations Desert Storm and Desert Shield; and

Whereas, American Indians currently deployed in the Persian Gulf have continued this proud and courageous tradition of service in the Armed Forces of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. APPRECIATION.

The Congress expresses its appreciation to:

(1) all American Indian veterans for their long, proud, and distinguished tradition of service in the Armed Forces of the United States;

(2) all American Indian service men and women currently or heretofore deployed in the Persian Gulf region as part of Operations Desert Shield and Desert Storm; and

(3) the families of American Indian service men and women and members of Indian tribes nationwide who have supported their loved ones through traditional ceremonies and have prayed for the safety and continued strength of all American forces and Allied partners.

SEC. 2. CONDOLENCES.

The Congress expresses its condolences to the families whose loved ones have made the ultimate sacrifice in the service of their nation and in the cause of peace.

Mr. FORD. Mr. President, 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.

EXTENSION OF DEADLINE FOR FILING REPORTS

Mr. FORD. Mr. President, I ask unanimous consent that the deadline for filing reports of committee activities during the 101st Congress by the standing committees pursuant to rule XXVI 8(b) of the Standing Rules of the Senate be extended from March 31 to April 9, 1991.

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

VITIATION OF SENATE ACTION

Mr. FORD. Mr. President, as if in executive session, Calendar 45 was inadvertently forwarded to the floor on March 19 and placed on the Executive Calendar.

I ask unanimous consent that yesterday's action be vitiated.

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

Mr. DOLE. Mr. President, will the acting majority leader yield?

Mr. FORD. Yes, I am glad to yield.

Mr. DOLE. I wonder if I could learn whether or not the nomination of Pat Saiki might be on the calendar tomorrow to be Administrator of the Small Business Administration.

Mr. FORD. If the Senator will let me proceed with these, we will check and notify you in just a few moments.

ORDERS FOR TOMORROW

Mr. FORD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 a.m., Thursday, March 21; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond the hour of 11:20 a.m., with Senators permitted to speak therein; that the time between 9:30 and 10:30 a.m. be under the control of the Republican leader or his designee; and that the time from 10:30 to 11:30 a.m. be under the control of the majority leader or his designee.

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

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

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

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. FORD. Mr. President, if no other Senator wishes to speak this evening and it is all right with the Republican leader, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as under the previous order until 9:30 a.m. on Thursday, March 21, 1991.

There being no objection, the Senate, at 8:12 p.m., recessed until Thursday, March 21, 1991, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 20, 1991:*ERR08*

BOARD FOR INTERNATIONAL BROADCASTING

LANE KIRKLAND, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD FOR INTERNATIONAL BROADCASTING FOR A TERM EXPIRING APRIL 28, 1993. (REAPPOINTMENT)

INTER-AMERICAN FOUNDATION

ANN BROWNNELL SLOANE, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING OCTOBER 6, 1996, VICE LYNDA ANNE BARNESS, TERM EXPIRED.

PEACE CORPS NATIONAL ADVISORY COUNCIL

NIARA SUDARKASA, OF PENNSYLVANIA, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1991, VICE JOHN J. PETILLO.

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

ROBERT W. NAYLOR, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION FOR A TERM OF 4 YEARS, VICE DELBA WINTHROP.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 20, 1991:*ERR08*

EXPORT-IMPORT BANK OF THE UNITED STATES

CECIL B. THOMPSON, OF VIRGINIA TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 1991.

CECIL B. THOMPSON, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JNAURY 20, 1995.

SECURITIES INVESTOR PROTECTION CORPORATION

GEORGE H. PFUA, JR., OF CALIFORNIA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1993.

NATIONAL RAILROAD PASSENGER CORPORATION

CARL W. VOGT, OF MARYLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL RAILROAD PASSENGER CORPORATION FOR A TERM OF 4 YEARS.

INTERSTATE COMMERCE COMMISSION

J.J. SIMMONS III, OF OKLAHOMA, TO BE A MEMBER OF THE INTERSTATE COMMERCE COMMISSION FOR A TERM EXPIRING DECEMBER 31, 1995.

DEPARTMENT OF TRANSPORTATION

STANFORD E. PARRIS, OF VIRGINIA, TO BE ADMINISTRATOR OF THE SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION FOR A TERM OF 7 YEARS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENTS TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

CAPT. CHRISTIAN ANDREASEN FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY AS DEPUTY DIRECTOR, OFFICE OF NOAA CORPS OPERATIONS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, AND

CAPT. FREDDIE L. JEFFRIES FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY AS DIRECTOR, ATLANTIC MARINE CENTER, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, UNDER THE PROVISIONS OF TITLE 33, UNITED STATES CODE, SECTION 853U.

REAR ADM. JAMES A. YEAGER FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (O-8), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE SECRETARY OF COMMERCE AS WARRANTING THAT GRADE IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, AND

REAR ADM. RAYMOND L. SPEER FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF) (O-7), WHILE SERVING IN A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE SECRETARY OF COMMERCE AS WARRANTING THAT GRADE IN THE NATIONAL OCEANIC AND ATMOSHPERIC ADMINISTRATION, UNDER THE PROVISIONS OF TITLE 33, UNITED CODE, SECTION 853U.

COAST GUARD

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL:

ARTHUR E. HENN.
PETER A. BUNCH.
DAVID E. CIANCAGLINI.
WILLIAM J. ECKER.

THE FOLLOWING OFFICERS OF THE U.S. COAST GUARD FOR APPOINTMENT TO THE GRADE OF REAR ADMIRAL (LOWER HALF):

JOHN L. LINNON, JR.
RUDY K. PESCHEL.
GERALD F. WOOLEVER.
RICHARD D. HERR.

AIR FORCE

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

GEN. JOHN M. LOH [redacted] U.S. AIR FORCE.

THE FOLLOWING NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. LEO W. SMITH, II [redacted] U.S. AIR FORCE.

ARMY

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE REGULAR ARMY OF THE UNITED STATES TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 611(A) AND 624:

To be permanent major general

BRIG. GEN. ROLAND LAJOIE [redacted] U.S. ARMY.
BRIG. GEN. WILLIAM A. STOFFT [redacted] U.S. ARMY.
BRIG. GEN. WILLIAM W. CROUCH [redacted] U.S. ARMY.
BRIG. GEN. EDISON E. SCHOLES [redacted] U.S. ARMY.
BRIG. GEN. ARTHUR E. WILLIAMS [redacted] U.S. ARMY.
BRIG. GEN. THEODORE G. STROUP, JR. [redacted] U.S. ARMY.
BRIG. GEN. JAMES A. MUSSELMAN [redacted] U.S. ARMY.
BRIG. GEN. JAMES B. TAYLOR [redacted] U.S. ARMY.
BRIG. GEN. PETER T. BERRY [redacted] U.S. ARMY.
BRIG. GEN. WALTER J. BRYDE, JR. [redacted] U.S. ARMY.
BRIG. GEN. JAMES T. SCOTT [redacted] U.S. ARMY.
BRIG. GEN. DENNIS V. CRUMLEY [redacted] U.S. ARMY.
BRIG. GEN. JERRY R. RUTHERFORD [redacted] U.S. ARMY.
BRIG. GEN. JAY M. GARNER [redacted] U.S. ARMY.
BRIG. GEN. EUGENE L. DANIEL [redacted] U.S. ARMY.
BRIG. GEN. ALFRED J. MALLETTE [redacted] U.S. ARMY.
BRIG. GEN. JOSEPH RAFFIANI, JR. [redacted] U.S. ARMY.
BRIG. GEN. THOMAS W. ROBISON [redacted] U.S. ARMY.
BRIG. GEN. JOHN H. TILELLI, JR. [redacted] U.S. ARMY.
BRIG. GEN. PAUL J. VANDERPLOEG [redacted] U.S. ARMY.
BRIG. GEN. JOHN P. OTJEN [redacted] U.S. ARMY.
BRIG. GEN. HENRY H. SHELTON [redacted] U.S. ARMY.
BRIG. GEN. MARVIN L. COVAULT [redacted] U.S. ARMY.
BRIG. GEN. WILLIAM M. BOICE [redacted] U.S. ARMY.
BRIG. GEN. STEVEN L. ARNOLD [redacted] U.S. ARMY.
BRIG. GEN. DENNIS P. MALCOR [redacted] U.S. ARMY.
BRIG. GEN. JOHN R. LANDRY [redacted] U.S. ARMY.
BRIG. GEN. ROBERT S. FRIX [redacted] U.S. ARMY.
BRIG. GEN. WILLIAM M. MATZ, JR. [redacted] U.S. ARMY.
BRIG. GEN. DENNIS L. BENCHOFF [redacted] U.S. ARMY.
BRIG. GEN. JOHN F. STEWART, JR. [redacted] U.S. ARMY.
BRIG. GEN. RICHARD S. SIEGFRIED [redacted] U.S. ARMY.
BRIG. GEN. WILLIAM W. HARTZOG [redacted] U.S. ARMY.
BRIG. GEN. DAVID J. BARATTO [redacted] U.S. ARMY.

NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. WILLIAM C. BOWES, U.S. NAVY [redacted]

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING RALPH A. HOEKSTRA, AND ENDING JOHN A. GAUGHAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

COAST GUARD NOMINATIONS BEGINNING KARL E. SANDERS, AND ENDING HARDY D. JONES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF MARCH 5, 1991.

IN THE AIR FORCE

AIR FORCE NOMINATIONS BEGINNING BRIAN D. AFFLECK, AND ENDING RICHARD M. ZWIRKO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JANUARY 11, 1991.

AIR FORCE NOMINATIONS BEGINNING DONALD H. ANKOV, AND ENDING LYMAN A. ADRIAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

IN THE ARMY

ARMY NOMINATIONS BEGINNING BENJAMIN M. ADAMS, AND ENDING ANTHONY R. STRICKLER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 5, 1991.

ARMY NOMINATIONS BEGINNING RAYMOND P. ORWIG, AND ENDING *RANDAL C. KUMM, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 5, 1991.

ARMY NOMINATIONS BEGINNING JOSEPH H. STRIBRNY, AND ENDING ROCKY L. MCELWAIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 5, 1991.

ARMY NOMINATIONS BEGINNING MARC A. ABRAMOWITZ, AND ENDING ROBERT J. WYGONSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 19, 1991.

ARMY NOMINATIONS BEGINNING JOSEPH A. INTILE, JR., AND ENDING KENNETH C. YOHN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

ARMY NOMINATIONS BEGINNING BARNEY E. CREWS, JR., AND ENDING MICHAEL R. SNOW, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

ARMY NOMINATIONS BEGINNING RICHARD A. ELLIOTT AND ENDING *DONALD T. ZAJACKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

IN THE NAVY

NAVY NOMINATION OF WILLIAM A. MCMANUS, WHICH WAS RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JANUARY 31, 1991.

NAVY NOMINATIONS BEGINNING FRANCIS D. HURRY, AND ENDING SYLVIA MAXWELL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 19, 1991.

NAVY NOMINATIONS BEGINNING DAVID D. HINSPATER, AND ENDING ANTHONY A. VEIGA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

NAVY NOMINATIONS BEGINNING ALAN WILLIAM ABBS, AND ENDING MICHAEL WILLIAM ZUNA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.

NAVY NOMINATIONS BEGINNING MARLON Q. ABREU, AND ENDING MICHAEL S. PINETTE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 26, 1991.