SENATE—*Wednesday, April 17, 1991*

(Legislative day of Tuesday, April 9, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska.

The PRESIDING OFFICER. The prayer today will be offered by guest chaplain Father Paul Peter from St. Adalbert Roman Catholic Church in Omaha.

PRAYER

The Reverend Paul F. Peter, St. Adalbert Roman Catholic Church, Omaha, NE, offered the following prayer:

Let us pray:

In a moment of silence let us remember Senator DAVID PRYOR, that he may have a speedy recovery.

We bow before Thee, O, Heavenly Father, the God of all mankind. You alone are the Master of the universe. You alone are the Father of all people.

At this moment of history we humbly stand to acknowledge our complete and total dependence upon You. Watch over America. Preserve her integrity. Grant peace and order to all nations.

Bless our U.S. Senators. May they always walk in justice, integrity, and with honor. Assist them to grow through hard decisions. Direct them to choose not what is easy but what is right; not what is popular but what is true; not what is glittering but what is enduring. For true peace and justice can come about only when facts are substituted for fallacy; when knowledge replaces ignorance and truth negates the false influences of prejudice.

Filled with love for America, knowing how richly we have all been blessed, we ask You this day, to accept our offerings of loyalty, love, and service. 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 17, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

The Chair, in his capacity as a Senator from Nebraska, notes the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Washington is recognized.

Mr. GORTON. I thank the Chair.

(The remarks of Mr. GORTON pertaining to the introduction of S. 832 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from Nebraska [Mr. EXON].

NIOBRARA SCENIC RIVER DESIGNATION ACT

Mr. EXON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 33, S. 248, regarding the Niobrara and Missouri Rivers; that the bill be deemed read a third time and passed, and that the motion to reconsider be laid upon the table.

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

The bill (S. 248), as amended, was deemed read a third time and passed as follows:

S. 248

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 [sited] *cited* as the "Niobrara Scenic River Designation [act] *Act* of 1991".

SEC. 2. DESIGNATION OF THE RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end thereof the following:

"( ) NIOBRARA, NEBRASKA.—(A) The 40-mile segment from Borman Bridge southeast of Valentine downstream to its confluence with Chimney Creek and the 30-mile segment from the river's confluence with Rock Creek downstream to the State Highway 137 bridge, both segments to be classified as scenic and administered by the Secretary of the Interior. That portion of the 40-mile segment designated by this subparagraph located within the Fort Niobrara National Wildlife Refuge shall continue to be managed by the Secretary through the Director of the United States Fish and Wildlife Service.

"(B) The 25-mile segment from the western boundary of Knox County to its confluence with the Missouri River, including that segment of the Verdigre Creek from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara, to be administered by the Secretary of the Interior as a recreational river.

"After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section.

"( ) MISSOURI RIVER, NEBRASKA AND SOUTH DAKOTA.—The 39-mile segment from the headwaters of Lewis and Clark Lake to the Ft. Randall Dam, to be administered by the Secretary of the Interior as a recreational river.".

SEC. 3. STUDY OF 6-MILE SEGMENT.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following at the end:

"( ) NIOBRARA, NEBRASKA.—The 6-mile segment of the river from its confluence with Chimney Creek to its confluence with Rock Creek.".

[(b) WATER RESOURCES PROJECT.—If funds are not authorized and appropriated, within 5 years after the date of the enactment of this Act, for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-year period, the 6-mile segment shall be designated as a component of the national wild and scenic rivers system, by operation of law, to be Administered by the Secretary of the Interior in accordance with sections 4 and 5 of this title and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The Secretary of the Interior shall publish notification to that effect in the Federal Register.]

(b) WATER RESOURCES PROJECT.—If, within 5 years after the date of enactment of this Act, funds are not authorized and appropriated for the construction of a water resources project on the 6-mile segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek, at the expiration of such 5-year period the 6-mile segment shall be

designated as a component of the National Wild and Scenic Rivers System by operation of law, to be administered by the Secretary of the Interior in accordance with sections 4 and 5 of this Act and the applicable provisions of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287). The Secretary of the Interior shall publish notification to that effect in the Federal Register.

SEC. 4. LIMITATIONS ON CERTAIN ACQUISITION.

(a) LIMITATIONS.—In the case of the 40-mile and 30-mile segments of the Niobrara River described in the amendment to the Wild and Scenic Rivers Act made by section 2 of this Act, the Secretary of the Interior shall not, without the consent of the owner, acquire for purposes of such segment land or interests in land in more than 5 percent of the area within the boundaries of such segments, and the Secretary shall not acquire, without the consent of the owner, fee ownership of more than 2 percent of such area. The limitations on land acquisition contained in this subsection shall be in addition to, and not in lieu of, the limitations on acquisition contained in section 6 of the Wild and Scenic Rivers Act.

(b) FINDING; EXCEPTION.—The 5 percent limitation and the 2 percent limitation contained in subsection (a) of this section shall not apply if the Secretary of the Interior finds, after notice and opportunity for public comment, that State or local governments are not, through statute, regulation, ordinance, or otherwise, adequately protecting the values for which the segment concerned is designated as a component of the national wild and scenic rivers system.

SEC. 5. NIOBRARA SCENIC RIVER ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Niobrara Scenic River Advisory Commission (hereinafter in this Act referred to as the "Commission"). The Commission shall advise the Secretary of the Interior (hereinafter referred to as the "Secretary") on matters pertaining to the development of a management plan, and the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of this [title] *Act* which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

(b) MEMBERSHIP.—The Commission shall consist of 11 members appointed by the Secretary—

(1) 3 of whom shall be owners of farm or ranch property within the upper portion of the designated river corridor between the Borman Bridge and the Meadville;

(2) 3 of whom shall be owners of farm or ranch property within the lower portion of the designated river corridor between the Meadville Bridge and the bridge on Highway 137;

(3) 1 of whom shall be a canoe outfitter who operates within the river corridors;

(4) 1 of whom shall be chosen from a list submitted by the Governor of Nebraska;

(5) 2 of whom shall be representatives of the affected county governments or natural resources districts; and

(6) 1 of whom shall be a representative of a conservation organization who shall have knowledge and experience in river conservation.

(c) TERMS.—Members shall be appointed to the Commission for a term of 3 years. A member may serve after the expiration of his term until his successor has taken office.

(d) CHAIRPERSON; VACANCIES.—The Secretary shall designate 1 of the members of the Commission, who is a permanent resident of Brown, Cherry, Keya Paha, or Rock Counties, to serve as Chairperson. Vacancies on the Commission shall be filled in the same manner in which the original appointment was made. Members of the Commission shall serve without compensation, but the Secretary is authorized to pay expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act on vouchers signed by the Chairperson.

(e) TERMINATION.—The Commission shall cease to exist 10 years from the date of enactment of this Act.

SEC. 6. MISSOURI RIVER PROVISIONS.

(a) ADMINISTRATION.—The administration of the Missouri River segment designated in section 2 of this [title] *Act* shall be in consultation with a recreational river advisory group to be established by the Secretary. Such group shall include in its membership representatives of the affected States and political subdivisions thereof, affected Federal agencies, organized private groups, and such individuals as the Secretary deems desirable.

(b) BRIDGES.—The designation of the Missouri River segment by the amendment made by section 2 of this [title] *Act* shall not place any additional requirements on the placement of bridges other than those contained in section 303 of title 49, United States Code.

(c) EROSION CONTROL.—Within the Missouri River segment designated by the amendment made by section 2 of this [title.] *Act*, the Secretary shall permit the use of erosion control techniques, including the use of rocks from the area for streambank stabilization purposes, subject to such conditions as the Secretary may prescribe, in consultation with the advisory group described in subsection (a) of this section, to protect the resource values for which such river segment was designated.

SEC. 7. NATIONAL RECREATION AREA STUDY.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, shall undertake and complete a study, within 18 months after the date of enactment of this section, regarding the feasibility and suitability of the designation of lands in Knox County and Boyd County, Nebraska, generally adjacent to the recreational river segments designated by the amendments made by section 2 of this [title] *Act* and adjacent to the Lewis and Clark Reservoir, as a national recreation area. The Secretary may provide grants and technical assistance to the State of Nebraska, the Santee Sioux Indian Tribal Council, and the political subdivisions having jurisdiction over lands in these 2 counties to assist the Secretary in carrying out such study. The study under this section shall be prepared in consultation with the Santee Sioux Tribe, affected political subdivisions, and relevant State agencies. The study shall include as a minimum each of the following:

(1) A comprehensive evaluation of the public recreational opportunities and the flood plain management options which are available with respect to the river and creek corridors involved.

(2) An evaluation of the natural, historical, paleontological, and recreational resources and values of such corridors.

(3) Recommendations for possible land acquisition within the corridor which are deemed necessary for the purpose of resource protection, scenic protection and integrity, recreational activities, or management and administration of the corridor areas.

(4) Alternative cooperative management proposals for the administration and development of the corridor areas.

(5) An analysis of the number of visitors and types of public use within the corridor areas that can be accommodated in accordance with the full protection of its resources.

(6) An analysis of the facilities deemed necessary to accommodate and provide access for such recreational uses by visitors, including the location and estimated costs of such facilities.

(b) SUBMISSION OF REPORT.—The results of such study shall be transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 8. STUDY OF FEASIBILITY AND SUITABILITY OF ESTABLISHING NIOBRARA-BUFFALO PRAIRIE NATIONAL PARK.

(a) IN GENERAL.—The Secretary of the Interior shall undertake and complete a study of the feasibility and suitability of establishing a national park in the State of Nebraska to be known as the Niobrara-Buffalo Prairie National Park within 18 months after the date of enactment of this Act.

(b) AREA TO BE STUDIED.—The areas studied under this section shall include the area generally depicted on the map entitled "Boundary Map, Proposed Niobrara-Buffalo Prairie National Park", numbered NBP–80,000, and dated March 1990. The study area shall not include any lands within the boundaries of the Fort Niobrara National Wildlife Refuge.

(c) RESOURCES.—In conducting the study under this section, the Secretary shall conduct an assessment of the natural, cultural, historic, scenic, and recreational resources of such areas studied to determine whether they are of such significance as to merit inclusion in the [national park system.] *National Park System*.

(d) STUDY REGARDING MANAGEMENT.—In conducting the study under this section, the Secretary shall study the feasibility of managing the area by various methods, in consultation with appropriate Federal agencies, the [nature] *Nature* Conservancy, and the Nebraska Game and Parks Commission.

(e) SUBMISSION OF REPORT.—The results of the study shall be submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this [title.] *Act*.

Mr. EXON. As I understand, the motion to reconsider has been laid on the table?

The PRESIDING OFFICER. The Senator is correct.

NIOBRARA SCENIC RIVER DESIGNATION

Mr. EXON. Mr. President, I am pleased that the Senate has passed the Niobrara River legislation. The amendments I have offered represent a compromise between several different versions of Niobrara Scenic River legislation.

Scenic river designation will preserve the scenic character and pastoral landscape of the Niobrara for future generations. It is a biological masterpiece very much deserving of this kind of protection and recognition.

The history of the Niobrara River during the past several decades has been a difficult one. The push for scenic river designation began over 10 years ago when a group of landowners began circulating petitions to have a portion of it added to the Wild and Scenic Rivers System. In 1985, I introduced the first Niobrara scenic river bill. A few months later, a group came to me asking that I hold off while they worked for local protections. I held off for over 2 years, but nothing happened.

In recent months, there has been another push for local protections and this bill will serve as a necessary and helpful backstop. This compromise marks a landmark opportunity for a new era of cooperation.

We have worked to meld together several different Niobrara bills in this legislation. Throughout this debate I have worked hard to protect landowner rights along the Niobrara. Some in the area were concerned that scenic river designation would end up giving the Federal Government free rein to grab up land and make any changes it sees fit. That is not the case.

This legislation establishes a limited partnership, if you will, between landowners and the Federal Government. This legislation strictly limits the Federal Government's authority to condemn land as long as local protection efforts are successful. It is not my intention, nor the intention of any sponsors of the various Niobrara bills, for there to be widespread use of condemnation. Condemnation is very rare under the Wild and Scenic Rivers Act. If the local protections and management are successful, there will never have to be any condemnation.

Mr. President, this bill will be very good for Nebraska. With scenic river designation we will preserve for decades to come the beauty of this incredible place. Scenic river designation can also be leveraged into some important economic development. The recreation industry along the Niobrara has been growing in recent years and this legislation will fuel those efforts.

The world is changing at an amazing pace. It is hard to imagine what it will be like in 50 or 100 years. We send our children and grandchildren into a great unknown. By laying groundwork like this, though, we can be assured there will be a safe haven in an uncertain world.

Mr. President, at this time I also thank my good colleague and friend from Nebraska, Senator KERREY, for being cosponsor of this legislation.

I also ask unanimous consent at this time that support of this legislation in the form of a letter from the Governor of Nebraska be printed in the RECORD and also an article from the Omaha World-Herald of April 13, be printed in the RECORD.

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

STATE OF NEBRASKA,
Lincoln, NE, March 13, 1991.

Hon. BRUCE VENTO,
Chairman, Subcommittee on National Parks and Public Lands, Rayburn House Office Building, Washington, DC

DEAR CONGRESSMAN VENTO: I am writing to indicate my support for the passage of H.R. 614.

Over the years the scenic river debate in Nebraska has grown acrimonious. This issue needs to be resolved and we need to move on to preserve the section of the Niobrara River that is the subject of H.R. 614. However, it is important that we protect the river in a way that is consistent with the established farming and ranching lifestyles of the area.

Unfortunately, Nebraska does not have an establishing policy for protecting unique river areas. The last attempt to create a state protected river system occurred in 1980. That attempt failed.

We currently have a bill before the Nebraska unicameral to make it easier for county boards to use zoning to protect rivers or streams with special values. At this point it is not certain if that bill will be approved. However, that bill should be viewed as a supplement to and not as a substitute for the carefully designed federal legislation proposed.

Too often the debate over the Niobrara has been of the either/or variety: either the protection of the river is to be provided at the federal level or it is to be provided at the local level. Too seldom have some of the competing interests given serious though to how well we might do the job if all levels of government work together.

However, it is apparent from a review of H.R. 614 and its companion Senate legislation that Congressmen Hoagland and Bereuter and Senators Exon and Kerrey understand the importance of a cooperative effort. They desire that state and local governments in Nebraska have meaningful involvement in the development of the management plan and that Nebraskans also accept much of the responsibility for managing the river once it is designated. I add my wholehearted concurrence with their desires and my pledge to do whatever I can to obtain active Nebraska participation in protecting the Niobrara following Congressional action.

Sincerely,

E. BENJAMIN NELSON,
Governor.

[From the Omaha World-Herald, Apr. 13, 1991]

NIOBRARA CLAIMS MISLEADING

Rep. Bill Barrett makes claims on today's More Commentary page that deserve to be taken with a measure of skepticism.

Barrett, taking issue with an editorial suggesting that he wants a study of the Niobrara River because he lacks the votes to defeat the scenic river bill, writes that he will do all he can to stop the bill "because a very strong majority of 3rd District residents oppose it."

Barrett says "the most recent poll" showed that 78 percent of Nebraskans don't want federal control of the river.

His reference apparently is to a survey made last June by the Wirthlin Group, a Washington organization. Rep. Doug Bereuter said at the time that the survey used misleading questions.

The question that produced the 78 percent figure indicated that a choice was being debated as to whether to protect the river with federal, state or private methods. The question didn't inform participants that such a thing as a scenic rivers bill existed. And even through no state plan was on the table, state and private options carried equal weight.

True, about 78 percent of the participants said they preferred state or private methods. But whether that result reflects an informed view of the scenic rivers issue remains open to serious doubt.

Barrett understandably didn't mention an earlier World-Herald Poll in which the scenic rivers bill was described to the people who were interviewed. It received indications of support from 74 percent of the participants statewise and 65 percent of the participants in Barrett's congressional district.

Another contention of Barrett's that deserves skepticism is his assertion that the House and Senate scenic rivers bills "don't offer special landowner protection."

The legislation does offer special protection. Its limit on the authority of the federal government to acquire property along the river are much stricter than the current law provides.

Barrett contends that other language in the bill negates the protection. "Negates" is too strong a word for what would be accomplished by the language in question. The Secretary of the Interior would have the authority to suspend the limits in cases where it was demonstrated that the river was not being adequately protected. The rest of the time, the limits would remain in force.

The Niobrara is one of the country's more precious natural assets. It is still relatively unspoiled at a time when private and public interests have developed some other waterways to the point that they can scarcely be called rivers. How tragic it would be if significant portions of the valley fell into the hands of irresponsible developers and the law still contained nothing to preserve its beauty and ecological significance for future generations.

The PRESIDING OFFICER. The Chair recognizes the Republican leader, Senator DOLE.

Mr. DOLE. Mr. President, is my leader's time reserved?

The PRESIDING OFFICER. The Senator is correct.

NATIONWIDE RAIL STRIKE

Mr. DOLE. Mr. President, for over 3 years, the administration, the carriers, and the unions have been working to avoid what has now happened: A nationwide railstrike that threatens the precarious economic recovery we have embarked upon and the livelihood of literally millions of workers whose jobs are dependent upon the efficient transport of parts and finished products.

DIRE CONSEQUENCES OF RAIL STRIKE

To say that the economic consequences of this strike are dire for all Americans is no understatement.

Our automobile industry—already suffering from consumer cutbacks—will be forced to shut down. Ford has said it will begin idling workers within 48 hours and Chrysler has said it will totally shut down in 3 days. I do not need to remind Members that this is in an industry that is already reeling from an unemployment rate that currently hovers around 17 percent.

Other industries that will be dramatically affected by the strike include nonrailroad employees at freight warehousing and transfer points, the wood products industry, and the coal mining industry. And of course, the agriculture industry—which is of particular concern to this Senator from Kansas—will also be hit hard. I have been hearing from lots of agriculture businesses who have indicated the disastrous consequences to their industry which in many cases is already suffering from historically low prices.

Indeed, this is the time of year when fertilizer is shipped for spring planting. Obviously, any prolonged interruption of rail service will impede the efforts of farmers to get their crops planted. The result of all this spells extreme hardship for the agricultural community and ultimately higher prices for consumers.

Finally, let us not forget the impact that this rail strike is having on thousands of commuters who depend on rail service to get to their jobs.

IMMEDIATE ACTION MUST BE TAKEN

Mr. President, the Congress has a job ahead of it, and we must do this job quickly. Railroad workers may be on strike today, but the American people can not afford to have Congress go on strike too in the face of a national emergency.

As the budget negotiations made clear last year with the threatened shutdown of the Federal Government, this great body has a habit of postponing tough decisions and tough votes until a real emergency exists.

The rail industry has now shutdown, and we will very soon see the shutdown of the American economy if we do not act now.

I think everyone agrees that labor disputes are best handled if the parties are able to resolve their differences on their own through the collective-bargaining process.

But this process has reached a stalemate with 8 of the 11 involved unions unable to reach agreement.

The Presidential Emergency Board offered its report in January and all cooling off periods have now expired.

The time has now come for Congress to act based on that report. While I cannot say I agree with everything in it, I believe it is balanced and, as Secretary Skinner has said, should form the nucleus for any congressional settlement of the dispute.

I know that the administration has been working around the clock to avert the disaster we now have on our hands. It is now time for Congress—Republicans and Democrats—to step up to the plate and work with administration to end this rail strike now.

I reserve the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The remainder of the leader time is reserved. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. 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. BIDEN. Parliamentary inquiry, Mr. President, are we still in morning business?

The PRESIDING OFFICER. The Senator is correct. The period for morning business extends until 10:30.

Mr. BIDEN. Mr. President, I ask unanimous consent I be able to proceed for 12 minutes under morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized for up to 12 minutes.

CHINA: ROGUE ELEPHANT ON WEAPONS PROLIFERATION

Mr. BIDEN. Mr. President, I rise today to address a topic that I think is as important to future United States and world security interests as any that I have spoken to. But we seemed not to want to speak to it very much recently.

Mr. President, I rise today to address the topic of Chinese weapons proliferation, a subject that, I am sorry to say, we may be returning to again and again in the days and weeks ahead.

If true, recent press reports of Chinese involvement in the proliferation of medium-range ballistic missiles to Syria and Pakistan and nuclear weapons technology to Algeria, open a very new chapter in Chinese flouting of international norms of behavior, in my opinion.

It appears that China is becoming a rogue elephant among the community of nations. Last year when the Bush administration was defending its policy granting China most-favored-nation trade status, so-called MFN, we heard a great deal from the President and administration spokespersons about the positive effect of maintaining our relationship with the present Chinese leadership. This, as the Presiding Officer knows as well or better than anyone, relates to the events in Tiananmen Square and what our response should and should not be.

For example, we were told by Assistant Secretary of State Solomon that maintaining ties with Beijing enables us to raise our concerns about Chinese proliferation of ballistic missiles and weapons of mass destruction. We were specifically told that.

This was cited as one of the benefits of high-level dialog and why we should not engage in serious activity designed to demonstrate our condemnation of their actions in Tiananmen Square.

We were told: Look, one of the things you are going to have to pay for if you withdraw MFN is that we are going to lose our ties with Beijing and the people in Beijing, and one of the reasons we have to keep those ties, keep the access, is because we, the administration, are concerned about the proliferation of ballistic missiles and weapons of mass destruction.

Let me give some other examples of what the administration told the Foreign Relations Committee—on which the Presiding Officer sits—last year, about Chinese proliferation. We were told at the time, "The Chinese are on record * * * as saying they would not sell a particular class of intermediate range missiles, the M-9, to Syria."

We are also told, "We have no indications that the Chinese have ever delivered intermediate range missiles beyond those previously sold to Saudi Arabia or the M-9 to anyone."

Finally, Assistant Secretary of State Solomon told me, "The Chinese went on record saying that they would be prudent, they would not be exporting these kinds of weapons to unstable areas in the Middle East and we will hold them to that public pledge."

Mr. President, if reports that have been published now in the Washington Times and Time magazine are correct, these Chinese pledges appear to have been worthless. But I fear that this administration may be less than steadfast in holding the Chinese to their pledges if, in fact, as reported, they have been breached by the Chinese. If the Chinese have broken their pledge, my concern now is whether the administration will attempt to hold them to the pledge that they made.

I cannot help but sense that the administration has developed a "China syndrome," marked by a refusal to acknowledge or accept that Chinese diplomats are perfectly willing to tell us one thing while Chinese arms merchants go ahead and do another. One day we are told that the Chinese are prepared to live by "international guidelines" prohibiting the export of medium-range missiles. The next day, we read in the press that the Chinese are selling medium-range missiles to Syria and to Pakistan. I would not suggest that these two regions are stable areas of the world at the moment.

One day we are told that the Chinese will be prudent and responsible in exporting nuclear weapons technology and that such exports will be subject to international inspections. The next day we read in the press that the Chinese are assisting Algeria—that is right, Algeria, that stable nation of Algeria—in producing nuclear weapons technology.

This is not to say that the Bush administration has failed to communicate our concerns to the Chinese. But on Assistant Secretary Solomon's last trip to China, we saw the Bush administration's China syndrome more clearly than ever.

After his meeting with the Chinese leadership, Mr. Solomon said, "The Chinese have indicated that they will honor the parameters" of the missile technology control regime. The very same day, China's foreign Minister said, "Those countries that did not attend the MTCR"—that is the Missile Technology Control Regime—"that did not attend the MTCR meeting should not be called upon to assume corresponding obligations to an agreement reached among some other countries." An apparently contradictory statement on the same day.

In other words, while Mr. Solomon might wish it to be otherwise, apparently the Chinese do not feel bound to live by or live up to this international regime. While in Beijing, Mr. Solomon also said that there was no evidence that the Chinese had completed any new missile deals. A few days later, we read in the press about Chinese plans to sell medium-range missiles to Pakistan and to Syria.

Mr. President, after the Iraqi invasion of Kuwait, we heard speech after speech on this floor about how other nations had helped Saddam Hussein build his deadly arsenal, and how we must make sure that this terrible tragedy is not repeated.

Mr. President, press reports now tell us that what is happening is the Chinese are selling medium-range missiles to Syria. I realize that we have a newfound relationship with Mr. Assad, but let me go on record again and again and again. I see little or no distinction between Mr. Assad and Saddam Hussein, and I caution those who think that Saddam has seen the second coming to look at whether or not Mr. Assad is likely to see the second coming.

I would respectfully suggest, Mr. President, as far as I am concerned, Syria's dictator, Mr. Assad, is little better than Saddam Hussein, and yet according to the press, the Chinese are proceeding to help another Mideast dictator build another deadly arsenal.

That is why I am working with my colleagues on the Foreign Relations Committee, Mr. President, Democrats, and Republicans, to craft legislation to create an arms supplier cartel. If the key nations are willing to participate, and that is a very big if I might add, Mr. President, but several have already indicated their willingness to do so, such a cartel can be effective in controlling the spread of these dangerous weapons.

I might also note parenthetically that no matter what the legislation that I am able to craft, if I am able to craft it, Mr. President, it is going to depend upon a sense of urgency on the part of the President to see to it that such a cartel comes into being.

In this regard, I find myself in total agreement with Assistant Secretary Solomon. On that same trip to China, he said that if we want to try to limit proliferation of deadly weapons to the Middle East "China is going to have to be a player." Skeptics say the Chinese have made a firm decision to sell their missiles and their conventional weapons because they need hard currency that such sales provide. They say that China will never be a member in good standing of an arms supplier cartel, and that may be; that may be how it will turn out.

But China receives a lot more hard currency from trade with the United States than it does from arms sales to the Third World. Last year, the Chinese had a trade surplus with the United States of more than $10 billion, and it is climbing, Mr. President.

So I submit to my colleagues that we do have, in fact, the leverage we need to ensure at least the ear of, if not the active participation and good faith of, the Chinese in terms of their participation in any arms supplier cartel, and it is called MFN. If China continues to behave as a rogue elephant on weapons proliferation, we should be prepared to retaliate with a clear and unequivocal message that they will understand; that is, denying China most-favored-nation status.

We had a similar debate several years ago about dealing with Saddam Hussein, whether we should deny him the economic benefits of Commerce, the United States and other civilized nations. We were told, no, we can work this out. I have seen nothing to indicate the likelihood of the Chinese changing their attitude, short of some reason to change their attitude supplied by us and other Western countries.

Mr. President, we are planning to hold closed hearings with the administration and representatives of the intelligence community in the very near future to get to the bottom of this question to find out whether or not the press reports are accurate.

We will find out what the Chinese are doing and what, if anything, the administration is doing to stop whatever it is the Chinese are doing. I hope we have learned a lesson from the Persian Gulf. I know I have learned some lessons. I voted against an early use of force against Iraq.

I hope others will admit that maybe they should learn some lessons as well, Mr. President. I hope that we will be able to understand that folks like Assad do not change overnight, and patterns of misbehavior in the international community like the Chinese have been engaged in are not going to change absent some significant protests and significant actions by the United States and other Western nations.

I am hopeful about the peace process that Secretary Baker is pursuing between Israel and its neighbors. But I must confess I am not optimistic that we can cure the Bush administration of its "China syndrome." Nonetheless, we must try, Mr. President. The way to start is by confronting the Chinese about their arms sales policy. We must stop this rogue elephant in its tracks, and we must prevent the arming of another Mideast dictator.

I ask unanimous consent that the press articles to which I have referred to be printed in the RECORD.

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

[From the Washington Post, Apr. 11, 1991]

CHINA HELPS ALGERIA DEVELOP NUCLEAR WEAPONS

(By Bill Gertz)

Algeria is developing a nuclear weapons program with the help of the Chinese government, according to U.S. officials.

Details about the nuclear program were disclosed recently in a secret CIA briefing to members of Congress. The disclosure is based on intelligence reports that a nuclear reactor is being built at a site along Algeria's Mediterranean coast.

The CIA also disclosed that despite U.S. diplomatic efforts, the Chinese continue selling ballistic missiles to Third World countries, supplying advanced arms to Pakistan, Iran, Syria and Libya.

According to the CIA, the Chinese have made or plan deliveries of M-9 and M-11 intermediate-range ballistic missiles and Silkworm anti-ship missiles to Iran, Syria and Pakistan in the next several months.

China was the first nation ever to export intermediate-range missiles with the delivery of 1988 of CSS-2 East Wind missiles to Saudi Arabia. Some U.S. officials suspect the Saudi CSS-2 are nulcear-tipped.

The White House voiced its objections to the CIA for holding the congressional briefing because the intelligence information is expected to fuel political opposition from Congress to President Bush's efforts to improve U.S.-Chinese diplomatic relations.

The military nature of the Algerian-Chinese nuclear program could disrupt U.S.-Chinese ties.

U.S. officials have sought Chinese cooperation in halting the proliferation of missiles and weapons technology but have been rebuffed by Beijing, which is more interested in obtaining her currency through the weapons sales, the officials said.

The exact location of the Algerian nuclear reactor facility was not disclosed.

But according to the officials who declined to be named, the Chinese government is providng the nuclear reactor to Algeria and the reactor and a related research facility are the central components of the weapons program.

The reactor facility was photographed by a U.S. spy satellite in the early stages of construction.

More alarming to the officials, however, are intelligence reports that the Beijing government is supplying nuclear-weapons technology and military advice on how to match nuclear weapons to various aerial and missile delivery systems, the sources said.

The Bush administration has protested the Chinese-Algerian nuclear cooperation through diplomatic channels to the Beijing government.

The intelligence indicates that the nuclear program is designed for more than the production of electrical power and will be used to build weapons.

"There are no electrical-power generation facilities at the reactor and no electric-power transmission lines are nearby," said one official. "This is clearly a military nuclear reactor for weapons production."

A key indicator of the military nature of the nuclear facility was the discovery of a Soviet-made SA-5 surface-to-air missile battery nearby, which signaled an apparent defense against aircraft or missiles.

According to the administration sources, the Algerians want to build nuclear weapons to counter a perceived threat from the radical regime of Libya's Col. Moammar Gadhafi. Relations between Algiers and Tripoli have been strained in the past.

Libya is developing a ballistic-missile program known as the Fatah. Mobile transporters and missiles have been photographed by U.S. spy satellites at what is believed to be a missile test center.

China also has provided technical assistance to Iraq and Pakistan for their respective nuclear weapons programs, according to the officials.

The State Department had no immediate comment on the Algerian-Chinese nuclear program.

[From Time magazine, Apr. 22, 1991]

CHINA: FOR SALE: TOOLS OF DESTRUCTION

(By Bruce W. Nelan)

Even if China raised no cheers for George Bush's concept of a new world order, it did not hinder allied action against Iraq during the gulf war. Its acquiescence, though often reluctant, included abstaining in a key vote in the United Nations Security Council. Now that the war is over, however, Beijing is breaking ranks on at least one front. New evidence indicates that the Chinese are peddling missiles and nuclear technology to Third World customers in defiance of multilateral efforts to ban such sales.

Beijing's experts have secretly built a nuclear reactor that is now nearing completion in the Algerian desert, American officials say. U.S. intelligence has also learned that China has sent Pakistan parts for its M-11 missile system, which can propel an 1,100-lb. warhead 180 miles, and is negotiating the sale to Syria of its M-9 missile, with a range of 375 miles. With the Chinese missiles, Pakistan could target major cities and military installations in India, and Syria could put all of Israel under threat.

Mobile launchers for the M-11 arrived in Pakistan last month along with dummy missile frames for practice launches. Pakistani air force technicians are now undergoing training in China. Both of the Chinese missiles are considered more accurate and reliable than the Soviet-designed Scuds that Iraq rained on Israel and Saudi Arabia during the war.

Washington's evidence on the reactor in Algeria comes from satellite photographs and other intelligence data. "Most of the structure is finished," says a U.S. official. "We don't know if any nuclear fuel is there. We don't think it is in operation." What worries the watchers is that the reactor was built in secret and that its capacity—estimated at between 15 and 40 megawatts—is too small for generating electricity but too large for research. The likely conclusion, they say, is that its purpose is to produce plutonium for nuclear weapons.

If China covertly delivers nuclear fuel to Algeria or transfers M-9 missiles to Syria, it is violating specific, public commitments. The sale of missiles to Pakistan would not break any formal Chinese pledges but would overstep the guidelines set by the Missile Technology Control Regime (MTCR) agreed on by 15 countries. Even though China is not a party to that agreement, under U.S. law the violation could trigger economic sanctions against Beijing.

The Chinese Foreign Ministry's traditional reply to reports of such sales is that they are "utterly groundless." One reason for U.S. National Security Adviser Brent Scowcroft's controversial visit to Beijing in December 1989 was his effort to head off the M-9 sale to Syria. He got a general promise that China would not sell medium-range missiles to Middle East countries and a specific statement that China had no plans to sell the M-9 to Syria.

Asked last week about the nuclear-reactor project, a Foreign Ministry official in Beijing said, "We have never heard of that," and promptly changed the subject. Even in public, Chinese leaders make little pretense of being serious about controlling missiles and conventional armaments. They repeat pious slogans about eliminating nuclear weapons but otherwise imply that they will do what they wish with their "prudent and responsible" arms sales.

China never signed the nuclear non-proliferation treaty and did not take part in the recent MTCR conference in Tokyo. Because China did not attend, says Foreign Minister Qian Qichen, "it is not committed to implementing the agreement."

In China's faltering economy, the military has strong incentives to sell weapons abroad, even if it causes political problems. "When an arms deal happens to clash with the country's foreign policy," explains a Chinese defense analyst, "the military may operate independently, leaving damage control to the government." Some experts also believe the generals have had more political influence over such decisions since they crushed the pro-democracy movement by rolling tanks into Tiananmen Square in June 1989.

China's defense budget is so low—officially just in excess of $6 billion for 1991—that the 3.2 million-member People's Liberation Army has for years raised extra money by producing consumer goods for sale at home and expensive weaponry for customers abroad. The defense establishment has thus become a major hard-currency earner, though its overseas sales to Third World countries fell from $4.7 billion in 1987 to $1.1 billion in 1989.

The pressure to modernize the arsenal by raising money through arms sales is stronger than ever. Chinese commanders were shaken by the performance of U.S. high-tech hardware in the gulf war. Just three weeks ago the government decided to increase defense spending 12%.

No matter who is making the decisions in Beijing, China's current recklessness is leading toward confrontation. The U.S. asked Beijing last month for an explanation of the Algerian reactor project but so far has received no reply. If the Chinese continue on their present course and complete the deals with Algeria and Syria, relations between Washington and Beijing could become chillier than at any time since before Richard Nixon first went to China.—Reported by Jaime A. FlorCruz/Beijing and Jay Peterzell/Washington

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[From the Christian Science Monitor, Mar. 29, 1991]

CHINA WILL IGNORE UNITED STATES PRESSURE TO STOP SELLING ITS MISSILES

(By James L. Tyson)

BEIJING. China has spurned an accord limiting the sale of missiles overseas, even though Iraqi missile attacks during the Gulf war attested to the dangers of such trade.

The rejection by China conflicted with assertions by a leading United States diplomat, who met this month with Chinese officials as part of efforts by Washington to develop international restraints on missile sales.

China is one of just a handful of countries that have sold medium-range missiles abroad.

Foreign Minister Qian Qichen noted at a press conference Wednesday that China has not signed the missile technology control regime (MTCR) and did not attend a recent meeting in Tokyo of 15 signatories of the agreement. The MTCR limits sales in medium-range missiles and related technology.

"Those countries that did not attend the meeting should not be called upon to assume corresponding obligations to an agreement reached among some other countries," Mr. Qian said.

However, US Assistant Secretary of State Richard Solomon said after a two-day visit this month that, "we have the missile-technology control regime and the Chinese have indicated that they will honor those parameters."

The US is encouraging Beijing to join its effort to build a broad framework to control the spread of missile technology, Mr. Solomon said.

"As we try to find a multilateral mechanism to prevent the inflow of weaponry, China is going to have to be a player," Solomon said on March 12.

China's missiles sales have long worried US officials seeking to limit the spread into volatile regions of weapon systems capable of delivering nuclear or other devastating warheads.

United States intelligence services learned in 1988 that China had completed a $2 billion sale of CSS-2 medium-range ballistic missiles to Saudi Arabia.

Since then, there has been no evidence that China has completed another similar deal, according to Solomon.

After dismissing the MTCR as unsuitable for China, Qian said, "As for China's arms exports, in this, China has always been acting in a very prudent and responsible way.

"Actually, I think I can say that China's arms sales are very, very limited, so we hope that the largest weapons exporters in the world can adopt responsible and effective measures of self restraint."

The total value of China's arms sales to the third world from 1986 to 1989 exceeded the total for Britain or France, according to the Congressional Research Service.

China's trade in arms has declined in recent years, but it remains a major supplier of weaponry to developing countries.

Mr. BIDEN. I thank the Chair and my colleagues who may be listening.

I yield the floor. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

REGISTRATION OF MASS MAILINGS

The filing date for 1991 first quarter mass mailings is April 25, 1991.

Mass mailing registrations should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116.

The Public Records Office will be open from 8 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Public Records Office on (202) 224-0322.

A SIGNIFICANT ADDRESS BY GEN. NAT ROBB

Mr. HELMS. Mr. President, several weeks ago the North Carolina National Guard Association met for breakfast in the U.S. Capitol, and Nat Robb delivered a significant address.

Nat is a remarkable citizen. His full name is Nathaniel H. Robb, Jr. He is adjutant general of North Carolina. He holds the rank of major general and he is serving our State and the National Guard well.

Mr. President, I believe it is well to include in the RECORD some of Nat Robb's cogent observations relating to the future strategy for America's Armed Forces. Let me offer a few excerpts, and I ask unanimous consent that they be printed in the RECORD at the conclusion of my remarks.

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

FUTURE STRATEGY FOR U.S. ARMED FORCES

The future structure of the armed forces of the United States, to include the reserves and National Guard, is very much on the minds of the members of Congress and our military leaders. But, one of the most valued lessons that has come out of Operation Desert Storm is that the concept of "total force" worked, and it worked well.

National Guard and reserve units of all types, including combat (artillery), stood shoulder to shoulder with the active components in Saudi Arabia, Iraq, and Kuwait. General Carl E. Vuono, Chief of Staff, United States Army testified before the House Armed Services Committee that these units made a substantial contribution to the success of Desert Storm. The ability of the National Guard and reserves to perform under fire was validated and Congress should be more convinced than ever that the cliche, "more bang for the buck," is now fact.

The statistics are impressive. More than 1,000 National Guard and reserve units were mobilized involving more than 160,000 citizen-soldiers. It is interesting that even the National Guard Infantry Brigades that were not deployed had previously been rated by the Army as "deployable."

The point I want to make is that the present force structure of the National Guard and reserves should be preserved to the greatest extent possible. Fiscal contraints alone would dictate this when four reserve units can be supported for the same cost as one similar type active component unit.

I am also very concerned about, and strongly oppose, the so-called "Glenn Provision" of the Defense Authorization Bill. This provision would replace 30 percent of our Active Guard/Reserve personnel with active component personnel. The provision in the Senate bill would replace up to 5 percent of the present AGR force each year over the next six years.

This action would effectively terminate the employment of between 100 and 200 fulltime members of the North Carolina National Guard. Based on the exceptional performance of National Guard and Reserve units presently managed under the AGR program, I fail to see the rationale of the "Glenn Provision."

Finally, there is the important issue of caring for our citizen-soldiers returning from the Middle East. These brave men and women, many on very short notice, left their jobs, businesses, and families to perform their patriotic duty. We, as a grateful country, owe them tangible evidence of our pride and thanks. In this regard, I am proposing that members of the National Guard and reserves who served in the Middle East be allowed a 30-day "transition leave" benefit. This proposal would permit 30-day leave with pay and benefits after returning to their "home of record." This downtime would greatly assist them in assimilating back into their jobs, businesses and, more importantly, family life. I have presented this idea to the National Guard Association of the United States for further research.

Sincerely,

NATHANIEL H. ROBB, Jr.,
Major General (NC),
NCARNG, Adjutant General.

IN REMEMBRANCE OF RICH CASTRO

Mr. WIRTH. Mr. President, this morning in Denver, at the Basilica of the Immaculate Conception, hundreds of people crowded in standing-room only conditions, to pay tribute to one of Colorado's brightest lights, Richard Castro. And I would like to take this opportunity to join in mourning the passing of my friend, Rich Castro—and to say a few words about his life in politics and his passion for human rights.

Rich Castro was a young man when he died suddenly this weekend. His death was a great shock to me—and like many of my fellow Coloradans, I feel a profound sense of loss in his passing.

Although Rich's life was short in years, it was long in terms of public service and activism. Rich was a tireless volunteer, and always found time to play a constructive role in national, State and local community affairs. He was one of Colorado's youngest State legislators, a prolific writer, a municipal official and a champion for public education, equal rights, immigration reform and social justice. His greatest passion was human rights—and he devoted most of his professional life to the cause of racial equality and harmony.

Rich was a very modest man. He was always soft-spoken and seldom confrontational. His style was to conciliate, to heal and to persuade through force of reasoned argument. His greatest gift, I think, was his ability to engage in political debate without diminishing his capacity for friendship and good humor.

Rich was always true to his convictions, and never afraid of a fight—but he placed such a high value on human dignity and compassion for all people—that even his political opponents valued his friendship.

My deep regret is that Rich and I only recently had the opportunity to work more closely together. Rich served as an adviser to the Senate Democratic Task Force on Hispanic issues, and it was only in the last few years that we developed a close friendship. I came to value his judgment and advice a great deal—and will certainly miss the unique perspective he brought to national issues.

Rich Castro was a man who changed lives, who touched people, who made a difference. He was a voice for politics at its very best. His greatest legacy is that he went through life with a passion for doing the right thing—never afraid of controversy—and making friends along the way.

GREAT LAKES SEDIMENT REDUCTION ACT OF 1991

Mr. GLENN. Mr. President, I ask unanimous consent that the text of S. 829, the Great Lakes Sediment Reduction Act of 1991, be printed in the RECORD. I introduced the Great Lakes Sediment Reduction Act of 1991 yesterday on behalf of myself, Mr. LEVIN, Mr. DURENBERGER, Mr. METZENBAUM, and Mr. RIEGLE.

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

S. 829

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 "Great Lakes Sediment Reduction Act of 1991".

SEC. 2. PURPOSES.—It is the purpose of this Act to promote effective and efficient source reduction of sedimentation in federally authorized commercial harbors, channel maintenance project sites, and areas of environmental concern in the Great Lakes basin.

SEC. 3. FINDINGS.—Congress finds that—

(1) sedimentation in the Great Lakes System degrades the aquatic environment through transporting pollutants, increasing turbidity, decreasing oxygenation, destroying fish habitats, and causing other adverse effects;

(2) sedimentation impairs local uses and creates direct costs to the Federal Government, the States, local governments, manufacturers, and the maritime industry in harbor and public waterworks maintenance, decreased shipdraft, and other effects;

(3) the Federal Government spends approximately $33 million each year for maintenance dredging at federally authorized harbors in the Great Lakes System currently total approximately $33,000,000 per year;

(4) because the Great Lakes are a drinking water source, and a relatively closed hydrologic system, the cost of disposal of dredge materials can exceed dredging costs;

(5) over 50 percent of Great Lakes dredge spoils require disposal in confined disposal facilities at a cost 100-700 percent higher than open lake disposal;

(6) a significant portion of such materials originate from upstream erosion and runoff and can be abated through preventive measures;

(7) Great Lakes basin watersheds draining into federally authorized commercial harbors, channel maintenance project sites, and areas of environmental concern are vast with only a small percentage of the total acreage generating significant volumes of sediment.

(8) well targeted upstream erosion and runoff prevention measures could more than pay for themselves in dredging savings;

(9) while there are programs underway to reduce erosion and runoff, none is specifically directed at reducing loads of federally authorized commercial harbors, channel maintenance project sites, and areas of environment concern in the Great Lakes; and

(10) environmental studies in support of the Remedial Action Plans and Lakewide Management Plans lack adequate data about bedload transport from tributaries to the Great Lakes.

SEC. 4. DEFINITIONS.—As used in this Act, the term—

(1) "Materials Balance Model" means a quantitative and qualitative accounting of material flux and hydrodynamics within a river system designed to assess the origin, transport, and characteristics of sediment and related pollutant loadings into specific aquatic sites such as harbors, channels and areas of environmental concern;

(2) "Secretary" means the Secretary of the Army;

(3) "Great Lakes System", "Remedial Action Plan" and "Lakewide Management Plan" shall have the same meaning as that provided in section 118(a)(3) of the Clean Water Act;

(4) "erosion" means the detachment of soil particles by the action of water, wind, and other factors diminishing the productivity of a land resource base;

(5) "Administrator" means the Administrator of the United States Environmental Protection Agency;

(6) "runoff" means non-point source pollution from urban, rural, and other sources, including soil and chemical contaminants; and

(7) "sedimentation" means the deposition of materials which fills harbors, streams, and lakes and degrades water quality; and

(8) "bedload" means sediment that moves downstream in a river at a rate slower than the river discharge rate.

SEC. 5. (a) MATERIALS BALANCE MODELS.—For each major river system or set of major river systems depositing sediment into a Great Lakes federally authorized commercial harbor, channel maintenance project site, or Area of Concern, the Secretary, acting through the United States Army Corps of Engineers, in cooperation and coordination with the Administrator, and in consultation and coordination with the Great Lakes States (acting through the Great Lakes Commission), United States Soil Conservation Service, United States Geological Survey, and United States Fish and Wildlife Service, shall develop a Materials Balance Model which—

(1) includes, based on existing data, all subwatershed areas of each such river system or set or river systems which contribute significant upstream loadings of sediment and related pollutants to such federally authorized harbors, channel maintenance project sites, and Areas of Concern;

(2) measures the stream discharge rate, total suspended solids loadings, and bedload transport;

(3) measures additional parameters, such as nitrate, phosphate, persistent toxic substances and heavy metals on a river-by-river basis in accordance with any agreement between the Secretary and the host State and any other relevant non-Federal entity reached pursuant to section 5(d) of this Act;

(4) estimates the percent of total sediment loadings into such harbors, channels and Areas of Concern originating from each subwatershed of river system; and

(5) characterizes the physical nature of the sediment materials.

(b) METHODS.—In developing such Materials Balance Models, the Secretary shall—

(1) build upon data generated in earlier studies and programs including the Environmental Protection Agency's 1984 Harbor Sediment Program, Assessment and Remediation of Contaminated Sediments Program, Saginaw Bay studies under the Great Lakes Erosion and Sedimentation Program, International Joint Commission's 1982 "Guidelines and Register for Evaluation of Great Lakes Dredging Projects", and other studies;

(2) provide data to the International Joint Commission in a format compatible with the joint surveillance and monitoring program, and other programs contained in Annex 7, 11, 12, 13, and 14 of the Great Lakes Water Quality Agreement of 1978;

(3) support ongoing tributary monitoring programs through utilizing existing tributary loading stations;

(4) coordinate modeling activities, to the extent feasible, with the Environmental Protection Agency's mass balance modeling activities; and

(5) provide tributary bedload transport data to the Environmental Protection Agency in a form that can be readily integrated into present and future mass balance models for Remedial Action Plans and Lakewide Management Plans.

(c) SCHEDULE.—The Secretary shall develop the Materials Balance Models according to the following schedule:

(1) within 26 months following the date of the enactment of this Act, the Secretary shall develop 20 Materials Balance Models, including a model for the river system or set of river systems depositing sediments into each of the following Areas of Concern and commercial ports: the Port of Cleveland (Cuyahoga River), the Port of Toledo (Maumee River), the Port of Ashtabula (Ashtabula River and Harbor), the Ports of Duluth and Superior (St. Louis River), the Port of Detroit (Rouge and Detroit Rivers), the Calument Harbor and Indiana Harbor (Grand Calumet River and Indiana Ship Canal), the Ports of Bay City and Saginaw (Saginaw River and Bay), the Port of Waukegen (Waukegan Harbor), the Port of Buffalo (Buffalo River), the Port of Rochester (Genesee River), the Port of Green Bay (Fox River and Southern Green Bay), the Port of Sheboygan (Sheboygan River), the Port of Tonawanda (Niagara River), the Port of Milwaukee (Milwaukee Estuary), the St. Lawrence River, Port of Lorraine (Black River), Port of Erie (Erie Harbor) and other river systems feeding highly sedimentated commerical ports;

(2) within 48 months following such date of enactment, the Secretary shall develop models for river system depositing sediments into 10 additional federally authorized commerical harbors and channel maintenance project sites; and

(3) within 72 months following such date of enactment, the Secretary shall develop models for river systems feeding all remaining federally authorized commerical harbors and channel maintenance project sites.

(d) ADDITIONAL MODELING PARAMETERS.—For purposes of subsection (a)(3), evaluations of additional modeling parameters shall be carried out on a 50-percent cost share basis with a non-Federal entity.

SEC. 6. SEDIMENT REDUCTION ANAYLYSES—

(a) Within 18 months following the date of the enactment of this Act, the Secretary, with the concurrence of the Administrator, and in consultation and coordination with the Great Lakes States (acting through the Great Lakes Commission), United States Soil Conservation Service, the United States Geologic Survey, and other relevant Federal agencies, shall—

(1) develop an analytical method to project the effectiveness and efficiency of sediment source reduction approaches and scenarios in reducing upstream sediment loadings into specific Great Lakes federally authorized commerical harbors, channel maintenane project sites and areas of concern;

(2) utilize such method to conduct sediment load reduction anaylses in conjunction with each Materials Balance Model developed pursuant to section 5(a) of this Act to estimate the potential effectiveness and efficiency of upstream sediment source reduction approaches and scenarios to reduce sedimentation in Great Lakes federally authorized commerical harbors, channel maintenance sites and Areas of Concern.

(b) In developing and utilizing such analyses, the Secretary shall consider only those sediment reduction approaches and scenarios which are consistent with the United States Environmental Protection Agency's guidance issued pursuant to section 6217(g) of the Omnibus Budget Reconciliation Act of 1990, the relevant State nonpoint source pollution control programs, recommendations of any relevant Remedial Action Plans and programs and measures contained in Annex 3, and its supplement, of the Great Lakes Water Quality Agreement of 1978.

Sec. 7. Cost-Effective Grants To States.—(1) The Secretary shall make grants available to States for projects at reducing erosion and runoff that leads to sedimentation of federally authorized commerical harbors, channel maintenance project sites, and Areas of Concern. Projects receiving funding under this section must—

(A) be proposed by a State or States, or proposed by a State or States at the request of a remedial action planning committee, local government, port authority, or any other governmental or public or private entity;

(B) be consistent with the recipient State's non-point source pollution control program under applicable provisions of section 319 of the Clean Water Act, the United States Environmental Protection Agency guidance issued pursuant to section 6217(g) of the Omnibus Budget Reconciliation Act of 1990, and the recommendations of any relevant Remedial Action Plans and Lakewide Management Plans;

(C) be administered by agencies designated in the State's nonpoint source management program;

(D) improve water quality; and

(E) have the potential to reduce projected dredging costs, including environmental dredging, to an extent greater than the cost of the project within the lifetime of the project and the impact of the project on the system, as estimated by the relevant Materials Balance Model, where completed. For projects proposed for river systems not yet incorporated into a Materials Balance Model, the Secretary shall use existing data to conduct a preliminary estimate of potential impact on sediment loads, and award the grants to projects with probable cost-effectiveness.

(2) In making such grants, priority shall be placed on projects which—

(A) will reduce sedimentation of materials containing persistent toxic pollutants, as listed by the International Joint Commission; and

(B) are located in watersheds of Areas of Concern, as listed by the Environmental Protection Agency.

(3) Grants under this section shall be in such amounts and subject to such conditions as the Secretary shall determine.

SEC. 8. MEMORANDUM OF AGREEMENT.—

Within 180 days following the date of the enactment of this Act, the Secretary shall enter into a Memorandum of Agreement with the Administrator regarding:

(1) cooperation and coordination with the Environmental Protection Agency in developing Materials Balance Models pursuant to this Act; and

(2) coordination of the Corps of Engineers activities pursuant to this Act with ongoing Environmental Protection Agency activities, including—

(A) mass balance modeling of toxic substances within the Great Lakes System; and

(B) Environmental Protection Agency biological assessments of Great Lakes basin river systems for purposes of developing ecologically relevant water quality criteria for suspended solids;

(C) cooperation and coordination with the Environmental Protection Agency in the development of the sediment load reduction analysis pursuant to section 6 of this Act; and

(D) cooperation and coordination in any other matters relevant to activities pursuant to this Act.

SEC. 9 (a) AUTHORIZATIONS.—For the purpose of carrying out the provisions of sections 5 and 6 of this Act, there are authorized to be appropriated to the Secretary $6,000,000 for each of the fiscal years 1993 through 1997.

(b) AUTHORIZATION FOR GRANTS.—For the purpose of carrying out the provisions of section 6 of this Act, there are authorized to be appropriated to the Secretary $6,000,000 for each of the fiscal years 1993 through 1997.

SADDAM HUSSEIN, UNNATURAL DISASTER

Mr. LIEBERMAN. Mr. President, yesterday the President of the United States announced a policy of establishing safe havens within Iraq for the orderly distribution of food, medicine, clothing, and shelter to the Kurdish refugees. Those havens will be protected, at least on a temporary basis, by United States and allied military forces.

This is an important, significant step in the right direction. In my remarks in this Chamber a week ago, I called for a dramatic increase in our assistance to the Kurds, saying, "there will be no safe havens unless their safety is assured by a military presence (and) protected by the use of force if they are violated." I hope that this new international effort will quickly provide relief for a devastated people. The scale of this disaster is immense, and an enormous, unprecedented humanitarian effort must be made.

But the problem goes beyond hunger, disease, shelter. The problem goes to the doorstep of Saddam Hussein. This is no ordinary relief campaign. We are not dealing with the consequences of an earthquake, tornado, hurricane or other natural disaster. We are dealing with an unnatural disaster by the name of Saddam Hussein. And unlike an earthquake or hurricane that comes and goes, Saddam continues to afflict his people to this day. He is the reason Kurds are dying. He must go. And more can and must be done to get rid of him.

Safe havens are only a temporary solution. The Kurds deserve safe passage home. They have homes, beds, farms, food, clothing in their villages in Iraq—at least in villages that have not been destroyed by Saddam's aggression. But they are afraid to go home. They are risking death from natural causes because of their fear of death by Saddam Hussein. The fact that a human being would choose to confront hunger, thirst, homelessness, and disease rather than confront Saddam Hussein is strong testimony to how evil he is, and how important it is for us to get him out of power. We must do more to lift from there afflicted people the terrible choice they face. We must give them hope, where currently there is none.

I wish we had acted sooner. I wish we have shot down the helicopters the minute we saw them fly against the rebels in Iraq. I wish we had called for a stop to the armed assaults against Iraqi civilians, and used air power to stop them if our warnings did not suffice. While such acts might not have kept the rebels from losing their battle against Saddam's forces, we could have prevented the wholesale slaughter of innocent lives, and perhaps we could have prevented the mass exodus of Kurds from their homeland.

Even now, we should make clear to Iraq's ruler and to his terrorized people that there will be no more killing fields. The Kurds cannot go home until they know they have no more to fear from Saddam Hussein.

We need not get involved in a ground war or a civil war to come out on the side of innocent people and against a one-sided slaughter. But we cannot pretend that we have nothing to do with the internal affairs of Iraq. Yesterday's announcement by the President provides proof that we have been involved in Iraq's internal affairs, and we are about to become more involved.

The people of Iraq want our help. Our troops have been greeted as liberators by nearly every Iraqi they see. The regime in charge of Iraq does not deserve our respect or our deference. A terrorist is claiming to run a country, and the international community of civilized nations cannot let him get away with it. We must use all reasonable economic, diplomatic and military means to bring about the downfall of Saddam's regime.

America, with its allies, must pursue a concerted policy of defeating the menace of Saddam Hussein once and for all, and bringing him to justice for his crimes. The people of America and of Iraq want such justice. International morality demands it.

TRIBUTE TO FORMER SENATOR JOHN TOWER

Mr. HEFLIN. Mr. President, I was profoundly and deeply moved by the tragic and senseless deaths of former Senator John Tower, his daughter Marian and 21 others in that fiery plane crash in my neighboring State of Georgia. His loss weighs heavily upon me and upon this body which is at the same time trying to cope with the death of another of our members, Senator John Heinz. Although Senator Tower has not served in this Chamber for over 7 years, his spirit still lurks these Halls and his influence still shapes any discussion of national defense.

Senator Tower perhaps did more to spur the successful military buildup of the United States during the 1980's than did any other Senator. His commitment to a strong defense was deeply held and his expertise in these matters was sharply honed and second to none. Although many people knew the John Tower who presided over the Senate Armed Services Committee from 1980 until 1984, few knew he served in the Navy in World War II and remained in the Naval Reserve throughout his tenure in the Senate. It was this patriotism and this belief in his convictions that led John Tower to press for the military buildup that he knew would help preserve this country from her foes whether they be cold war powers or Third World dictators. John was a staunch ally to President Reagan and their diligent efforts have been amply rewarded by the dwindling friction between the United States and the Soviet Union as well as our resounding success in both Panama and the Persian Gulf.

When John Tower left the Senate, the people of Texas lost one of their staunchest defenders and ablest legislators. He served four terms while few people expected he would win reelection in the democratic stronghold of Texas. After leaving the Senate, John's beliefs and abilities would not allow him to stray far from public service. He served 2 years as the United States' chief negotiator at the strategic arms reduction talks. John again applied his ability and his drive when he undertook the task of heading the Commission which delved into the Iran-Contra affair.

I am saddened to think that some people might remember John more for the time when he failed to win approval as the Secretary of Defense than for the accumulation of his innumerable successes and achievements. I supported John Tower because I believed strongly in his knowledge and understanding of the Defense Department and because I believed in the man. His patriotism and his work ethic would serve well as an example for us all.

My thoughts and prayers are with the family and friends of John and Marian Tower as they try to cope with this tremendous loss. As I attended services for John Tower in Dallas, I realized that above all, John should be remembered as a loving father, a devoted Texan, and a proud American.

THE POINTS OF LIGHT FOUNDATION—CELEBRATION OF SERVICE AND SERVICE AMBASSADOR AWARDS

Mr. KENNEDY. Mr. President, I commend the Points of Light Foundation for its efforts to encourage all Americans to participate in community service. The Foundation is a private nonprofit organization whose board is composed of 24 Americans from business, industry, the academic world, and voluntary service groups. The foundation's mission is to help make community service a greater part of the lives of every American, and thereby contribute to the ongoing struggle against illiteracy, poverty, homelessness, alcohol and drug abuse, delinquency, and the plight of the elderly.

On Monday, April 15, the foundation launched their 12-day "Celebration of Service" to honor Americans who have been trail-blazers in community service, to enhance public awareness of the problems facing society and the need for personal involvement to alleviate them, and to identify worthwhile programs that can be used in all parts of the country to challenge others to become involved.

Each day during the Celebration of Service, the Points of Light Foundation will recognize one or two Americans as Service Ambassadors, people who have made a difference by participating in service programs. Today, I join with the Points of Light Foundation and Senator BRADLEY in commending Ms. Elizabeth Flood of Newark, NJ, an exemplary American who has made a significant contribution to her community and her country.

It is a privilege to work with the foundation, and I ask unanimous consent that appropriate background information on its good works may be printed in the RECORD.

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

THE POINTS OF LIGHT FOUNDATION—BACKGROUND

The points of Light Foundation is a private non-profit, non-partisan umbrella organization whose board is comprised of 24 Americans drawn from business, industry, academia and voluntary service groups. The Foundation's mission is to help make direct and consequential community service aimed at serious social problems central to the life of every American and to increase the opportunities people have for that kind of service through their workplace, schools, churches and civic organizations. We also will serve as a catalyst in the creation of new voluntary service initiatives.

The Foundation and its board recognize the crucial role government programs must play in this struggle but believe these approaches cannot be the only ray of hope on the horizon. Illiteracy, poverty, homelessness, alcohol and drug abuse, delinquency and the plight of the elderly are problems that continue to defy government's best efforts. This void can only be filled by a redoubled effort from the private sector, by the profound and personal commitment of individuals to helping others.

Beginning Apr. 15, the Foundation is launching a 12-day Points of Light Celebration that is designed to honor those people who have been trailblazers in the community service effort; to sharpen public awareness of the problems facing society and the need for personal involvement to help alleviate them; and to identify worthwhile programs that can be replicated in other parts of the country and challenge others to get involved. Literally thousands of disparate groups and individuals have already been mobilized as part of this effort.

In conjunction with the Celebration, the Foundation will unveil a nationwide advertising campaign, created pro bono by Saatchi & Saatchi and the Advertising Council, that will bring the message of service into the home of every American. The slogan, "Do Something Good, Feel Something Real," stresses the sense of personal accomplishment that volunteers get from their work. The campaign will seek the help and cooperation of the media, businesses, schools, unions, religious groups and individuals. In addition, a toll-free 800 number will act as a national center for providing key information for community service efforts.

The Foundation is assisting or has helped to establish numerous successful service programs. These include:

One-to-One, a mentoring program for disadvantaged youth.

StarServe, a school-based community service effort.

Into the Streets, a college-based community service program operated by the Campus Outreach Opportunity League.

Naming of individual Points of Light Representatives, Leadership Companies and Partnerships.

The Foundation's mandate is long-term. After the Celebration of Service is over, we will pursue our mission on several fronts. First, we will evaluate our advertising campaign and toll-free telephone service in an effort to improve the response; and second, we will continue and improve our efforts to serve as a broker and coordinator for new programs. There are no easy answers. We are engaged in a day-to-day struggle that requires day-to-day commitment and energy.

POINTS OF LIGHT FOUNDATION HONORS ELIZABETH FLOOD

Mr. BRADLEY. Mr. President, our Nation's greatest resource is its people. Nowhere is this more evident than in our tradition of volunteers—the thousands of people who contribute their time, energy, and talents to improve the lives of others.

Everyday, in towns across the country, volunteers work in schools, hospitals, shelters, parks, and service organizations. They work with children, the elderly, the handicapped—and those who just need help in getting back on their feet. They ask for nothing back—other than to improve the quality of life for others.

The Points of Light Foundation was created to spotlight the contribution of volunteers in our society and to encourage others to get involved in projects in their communities. This week, the Points of Light Foundation is honoring volunteers from throughout the country who are making a difference in the lives of others.

I am proud that one of the recipients of the Service Ambassador Award, as well as the Presidential Volunteer Action Award, is Elizabeth Flood of Newark, NJ. For Ms. Flood, volunteering is a way of life. Since 1978, she has conducted a daily after school care program for the children who live in her public housing unit in Newark.

Over the years, the program has grown to help over 250 children. Ms. Flood has designed projects that help direct the childrens' energy and creativity toward music, dance, and art. Older children tutor younger children, helping schoolwork as well as instilling a sense of responsibility.

Each year, Elizabeth Flood and her family help to feed the homeless in Newark. This is done as a lasting tribute to the memory of her son, who died of asthma and who had showed a deep concern for the homeless.

Elizabeth Flood epitomizes the spirit of volunteerism. She shows us the impact that one individual can have on improving the quality of life in her community. She can take great pride in the many lives she has touched—and I am proud to be her Senator.

People like Elizabeth Flood and the other recipients of the Service Ambassador Award and Presidential Volunteer Action Award enrich our lives and our communities. They deserve our gratitude and our appreciation for their selfless and compassionate response to so many of the challenges facing our Nation.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period of morning business is now closed.

FUTURES TRADING PRACTICES ACT

The PRESIDING OFFICER. Under the previous order the Senate will proceed to the consideration of S. 207, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 207) to amend the Commodity Exchange Act to authorize appropriations for and enchance the effectiveness of the Commodity Futures Trading Commission, to curb abuses in the making of trades and the execution of orders at designated contract markets, to provide greater representation of the public interest in the governance of such contract markets, to enhance the integrity of the United States financial markets by providing for Federal oversight of margins on stock index futures, clarifying jurisdiction over innovative financial products and providing mechanisms for addressing intermarket issues, and for other purposes.

The Senate resumed consideration of the bill.

COMMITTEE MODIFICATION

Mr. LEAHY. Mr. President, in behalf of myself and Senator LUGAR, and for the Committee on Agriculture and Forestry, I send a modification of the committee substitute to the desk and ask that the committee substitute be so modified.

The PRESIDING OFFICER. The amendment is so modified.

The committee modification is as follows:

Beginning on page 159, strike line 4 and all that follows through page 168, line 11, and insert the following new title:

TITLE III—INTERMARKET COORDINATION

SEC. 301. MARGIN ON STOCK INDEX FUTURES.

Section 2(a)(1)(B) (7 U.S.C. 2a) is amended by adding at the end the following new clause:

"(vi)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for the stock index futures contract (or option thereon).

"(II) The Board may at any time request any contract market to set the margin for any stock index futures contract (or option thereon) at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or its clearing system or to prevent systemic risk. If the contract market fails to do so within the time specified by the Board in its request, the Board may direct the contract market to alter or supplement the rules of the contract market as specified in the request.

"(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority under this clause only to the Commission.

"(IV) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market, on finding an emergency to exist, to raise temporary emergency margin levels on any futures contract or option on the contract covered by this clause.

"(V) Any action taken by the Board under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board at the time the determination was made. The court reviewing the Board's action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

SEC. 302. EXEMPTION AUTHORITY.

Section 4 (7 U.S.C. 6) is amended—

(1) in subsection (a), by striking "It shall be unlawful" and inserting "Unless exempted by the Commission pursuant to subsection (c) or (d), it shall be unlawful"; and

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

"(c)(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, may (on application of any person) exempt any agreement, contract, or transaction (or classes thereof) otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods, from any of the requirements of subsection (a), or from any other provision of this act except section 2(a)(1)(B), if the Commission determines, after notice and opportunity for hearing, that the exemption would be consistent with the public interest.

"(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the person seeking the exemption demonstrates to the satisfaction of the Commission that—

"(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

"(B) the agreement, contract, or transaction—

"(i) will be entered into solely between institutional participants;

"(ii) will be entered into in connection with a line of business or for hedging or risk management purposes; and

"(iii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

"(3) For purposes of this subsection, the term 'institutional participant' shall be limited to the following persons or classes thereof that the Commission determines have the financial and other qualifications adequate to fulfill the terms and conditions of the agreement, contract, or transaction:

"(A) A bank or trust company (acting in an individual or fiduciary capacity).

"(B) A savings and loan institution.

"(C) An insurance company.

"(D) A registered investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(E) A commodity pool subject to regulation under this Act.

"(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K).

"(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1 et seq.), or a commodity trading advisor registered under this Act.

"(H) If otherwise authorized to engage in such transactions by law, any governmental entity (including the United States, any State, or any foreign government) or political subdivison thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

"(I) A broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another institutional participant.

"(J) A futures commission merchant, floor broker, or floor trader registered under this Act acting on its own behalf or on behalf of another institutional participant.

"(K) Such other persons that the Commission determines have such financial and other qualifications.

"(d)(1) To the extent that a swap agreement or class of swap agreements (as defined in section 101 of title 11, United States Code) may be considered to be subject to regulation under this Act, the Commission shall, by rule, regulation, or order, following notice and an opportunity for a hearing, exempt (effective as of October 23, 1974) from all of the prohibitions and requirements of this Act, including section 2(a)(1)(B), such swap agreement or class of swap agreements if—

"(A) the Commission determines that the exemption is consistent with the public interest;

"(B) each party to the swap agreement is a person included in one of the categories specifically enumerated in subparagraphs (A) through (K) of subsection (c)(3) at the time it enters into the swap agreement;

"(C) the creditworthiness of any party having an actual or potential future obligation under the swap agreement would be a material consideration in entering into or determining the terms, including pricing, cost or credit enhancement terms, of the swap agreement; and

"(D) the swap agreement is not one of a fungible class of agreements that is standardized as to its material economic terms and is not entered into and traded on or through a multilateral transaction execution facility: *Provided, however,* That the foregoing shall not be deemed to preclude any arrangement or facility, between and among parties to swap agreements, that provides for netting of payment obligations resulting from such swap agreements.

"(2) To the extent that any demand deposit, time deposit, or transaction account (as defined in subsections (b)(1), (c)(1), and (e), respectively, of section 204.2 of title 12, Code of Federal Regulations (as in effect on the date of enactment of this subsection)) whether indexed or otherwise, may be considered to be subject to regulation under this Act, the Commission shall, by rule, regulation, or order, following notice and an opportunity for a hearing, exempt from all prohibitions and requirements of this Act, including section 2(a)(1)(B), any such deposit or account if—

"(A) the deposit or account is offered by—

"(i) a United States financial institution that is insured by a United States governmental agency or United States chartered corporation; or

"(ii) a United States branch or agency of a foreign bank that is licensed under the laws of the United States and regulated, supervised, and examined by United States Federal authorities having regulatory responsibilities for the financial institutions or under the laws of any State and regulated, supervised, and examined by State authorities providing regulatory supervision comparable to that provided by United States banking authorities, and the regulators oversee the financial integrity and customer protection of the deposits; and

"(B) the Commission determines that the exemption would not be contrary to the public interest.

"(e) The granting of an exemption under this section shall not affect the authority of the Commission under any other provision of this Act to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this Act or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.".

SEC. 303. HYBRID COMMODITY INSTRUMENTS.

Section 4c (7 U.S.C. 6c) (as amended by section 203(a) of this Act) is further amended by adding at the end the following new subsection:

"(h)(1) Nothing in this Act shall be considered to govern or in any way be applicable to any transaction in or involving an instrument which meets the following requirements.

"(A) To the extent that an instrument has an embedded or otherwise attached commodity option, the instrument derives less than 50 percent of its value at the date of issuance from the value of the commodity option; and

"(B) To the extent that an instrument has an embedded or otherwise attached contract of sale or a commodity for future delivery, on the date of issuance, it is expected that less than 50 percent of the value gained from and payable on the instrument will be due to movement in the price of the commodity or commodities specified in the instrument or in the terms and conditions of the transaction pursuant to which the instrument was issued.

This subsection shall not affect any other exclusion or exemption from this Act, of any transaction, including exemptions granted by any rule, regulation or order of the Commission.

"(2) Except as provided in paragraph (1), nothing in this subsection shall affect the jurisdiction granted to the Commission over any transaction under this Act.".

SEC. 304. INDEX PARTICIPATIONS.

Subsection (f) of section 4c (7 U.S.C. 6c(f)) is amended to read as follows:

"(f)(1) Nothing in this Act shall be considered to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

"(2) Nothing in this Act shall be considered to govern or in any way be applicable to any contract traded on a national securities exchange whereby any party to the contract acquires any interest in a stock index participation unit approved for trading by the Securities and Exchange Commission by order dated April 11, 1989, or pending such approval on or prior to December 31, 1990.

"(3) The Commission shall utilize its authority under this Act to facilitate the registration of any person who is a person associated with a broker or dealer, or an associated person of a broker or dealer (as defined in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) for the purposes of marketing stock index futures (or options thereon) to the public.".

Mr. LEAHY. I thank the Chair.

Mr. President, we discussed this issue at some length yesterday. Senators spoke also at some length about it. I will reiterate that we have before the Senate a major piece of legislation, one designed to do everything from audit trails to substantially strengthen enforcement procedures under the CFTC to make sure the people of this country can have confidence in the futures markets of the United States.

The futures markets of the United States have been one of the major commercial factors allowing the United States to grow as the No. 1 trading country of the world. It has certainly been vitally important in the United States, being the major agricultural producer and exporter in the world, as well as its involvement in everything from precious metals to other commodities.

I will not go over again some of the reasons why this legislation has been stalled for several years, in the face of the turf fights and unfortunately the ego of at least one, perhaps more people, not within this Chamber, but within the executive branch of government.

But having said all of that, I think we have put together a piece of legislation supported by every member of the Senate Agriculture Committee, Republican and Democrat alike, that is designed to do the one thing we set out to do, to make sure, notwithstanding the fact that the vast majority of the men and women who work in the commodities markets are totally honest and follow the rules, to make sure those few who are tempted to do otherwise will find if they succumb to temptation, it will bring about immediate action, enforcement, and very severe penalties.

This is necessary to protect the honest people who work in these markets, but also to protect the thousands and thousands of Americans, individual Americans, and American businesses who rely upon these markets either for their own personal investment or just to carry forward the commercial aspects of the United States itself.

Mr. President, I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana [Mr. LUGAR].

Mr. LUGAR. Mr. President, I rise to support the committee modification introduced by the chairman of the Agriculture Committee, Senator LEAHY. This modification makes minor changes to the Agriculture Committee-reported bill to reflect more completely the agreement between the CFTC and the Treasury Department.

Members will recall, in our recitation yesterday of the history of this legislation, that we pointed out the enormous efforts to bring compromise with elements of the administration, various agencies involved, Members of Congress. As a matter of fact, this bill as a whole represents very substantial compromise supported by Wendy Gramm, Chairman of the CFTC, and the Treasury Secretary, Nicholas Brady on issues dealing with the jurisdiction and coordination of regulatory efforts between the CFTC and the SEC.

The modification also has CFTC and Treasury concurrence. It is an appropriate fine-tuning of the overall compromise. This modification may not be embraced by all parties, but it strikes, in my judgment, a reasonable balance between the competing interests and addresses some of the criticisms leveled at the Agriculture Committee.

The committee amendment amends S. 207, the basic underlying bill, as reported from the Agriculture Committee, in basically two respects. First of all, in the section dealing with hybrid instruments, this modification clarifies that the objective of the legislation is to shift jurisdictional authority from the CFTC to the SEC if an instrument is more like a security than a futures contract. This clarification is needed because the Agriculture Committee's version prompted concern that the Agriculture Committee was trying to effectuate a massive transfer of the SEC's existing jurisdiction in stock index options and other options to the CFTC.

In fact, nothing could be further from the truth. The objective of the committee-passed version was to exclude from the reach of the Commodities Exchange Act and thus the CFTC those instruments that were more like the security than like a commodity futures contract. This modification clarifies that position.

Second, the modification clarifies the language dealing with swaps transactions to ensure that the overall bill does not unintentionally adversely impact the growing swaps industry.

It provides flexibility to the swaps industry while seeking to ensure we do not inadvertently permit the creation of the equivalent of a nonregulated futures market.

I emphasize, Mr. President, the discussion preceding this portion of the bill brought about very highly technical but likewise agreeable results. It was a listening process and a learning process.

In my opinion, this clarification will be helpful to those involved in the swaps industry and at the same time not inadvertently create a situation where there is no regulation and such instruments literally fall between the cracks even while the two large agencies are thinking about their jurisdiction.

I conclude, Mr. President, by saying that the contentions issues of this debate comes in the areas in which the CFTC has clearly had jurisdiction regarding the futures products. There is clear recognition on the part of the Agriculture Committee, on the part of Senator LEAHY and myself, that we are trying to make clear as best we can that new products should be accessible to investors.

These new products are called hybrids, a hybrid between a security and a future. And the basic question is which agency the CFTC or the SEC should regulate the product. In yesterday's debate, I went into detail on the type of hybrid instrument we were likely to see. In fact, it was an instrument that was become quite common, a debt security, which looks like a bond, has a term of maturity, has a regular interest payments, and has a stated interest on the face of the security. It looks like a security. But it also has a futures component.

The example I used yesterday suggested that the payment of interest would vary from the regular 8.4 percent in the illustration that I had, up and down, depending upon the price of oil, from a base price of $30 a barrel.

The hybrids are created to give investors the benefit of a security and normal payments, and at the same time give the benefits of the fluctuation of various markets, such as energy or agricultural, markets.

The question is, clearly, who should regulate these new instruments. The bill, S. 207, says they should be regulated by the SEC or the CFTC, depending upon the preponderance of the value coming from that particular instrument. And the bulk of the instruments that have come forward, these hybrids, these new innovations, are valued predominantly as securities.

What I have mentioned again today clearly falls into that category. Ultimately, in all, the differentials created by the futures component amount to about $96 in the illustration yesterday, and the bond finally pays out $1,000. So it turns out as a security under S. 207, the CFTC gives over jurisdiction to SEC under this example.

I do not want to characterize or dispute what is in front of us, Mr. President. It is a tempest in the teapot, although I fail to see why there has been such unusual contention over a fairly common sense demarcation line. If something, is valued as a security, it goes to SEC, or if it is valued primarily as a futures component, to the CFTC.

Nevertheless, the amendment we have now clarifies this even further and makes clear that we are trying in every way we can to bring about correct jurisdictional assignment.

For all of these reasons, Mr. President, I favor adoption of this amendment.

The PRESIDING OFFICER. Who seeks recognition? Does any other Senator seek recognition at this time?

If no Senator seeks recognition, the Chair, in his capacity as a Senator from Virginia, suggests the absence of a quorum.

Mr. LEAHY. Will the Chair withhold? Parliamentary inquiry. If there is no Senator seeking recognition, and if a quorum call is not in, what would be the regular order?

The PRESIDING OFFICER. The question would occur on the substitute amendment as modified.

Mr. LEAHY. Mr. President, I have been in many discussions, and I certainly do not want to preclude any rights of anybody, since the distinguished chairman of the Banking Committee is here, and he intends to speak.

I do not suggest at this moment that we go to the conclusion of this matter which, as the Chair has rightly noted, would be the regular order. But every one of us, when we have meetings within our caucuses, and discussions of how we streamline procedures in the Senate, how we move things along, invariably somebody says, "Yesterday we had x number of hours of quorum calls," or x amount of time in quorum calls.

Or many times, we will have Senators standing on the floor, if we are here in the evening voting on something, saying, "Why are we voting here in the evening, when we had 2 hours of quorum calls this morning," or this afternoon, or whatever. "Why do we do it now?"

The distinguished Presiding Officer and I both know that many times those quorum calls allow negotiations to go on. Maybe during an hour's worth of quorum calls, you can have negotiations that may save us 10 hours of time on the floor. That is perfectly justifiable.

But I urge Senators, if they want to speak on this matter or are going to offer amendments, come and do it. I am willing to enter into short time agreements, if other Senators are willing. That would require unanimous consent of all the other 99 Members. But this was well laid out yesterday.

We have been talking about this for 3 years. We talked about it at some length prior to the most recent recess, and I hope that Senators will come, say their piece, vote this up or down, and let the legislative process work its way.

I do not see why we need to spend a lot of time in quorum calls. If Senators want to cooperate and get going on this, we can be done by 2 o'clock this afternoon. I mention that because I do not want Senators coming up to me on the floor, if we are here this evening, saying, "Why is this taking so long," that we are ready to wrap it up right now.

I yield the floor.

Mr. RIEGLE addressed the Chair.

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

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

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I am going to make a formal presentation here on the issue that is before us. I want to make some preliminary comments to provide some background as to what brings us to the floor at this time with respect to a portion of the bill that has been brought before the Senate by the Agriculture Committee.

I want to particularly appeal to my colleagues and to professional staff that are assisting Members on this issue to give some very considerable, careful thought to the debate and the discussion as it ensues over the hours ahead. I say that because part of the bill that is in contention, the Title 3 area of the bill, is very technical. It is also very important. It is something that I think each Member has to understand in some considerable detail in order to cast a vote finally that they will have confidence is the best vote and the vote that will serve public policy ends best over the years ahead.

I do not relish the fact that we have a strong difference of opinion here. On one side of this issue is the Banking, Housing, and Urban Affairs Committee, the Agriculture Committee on the other side. But the fact is that we do have a sharp difference of opinion, not universally held, but majority held by Members of the two respective committees on this title III.

I think it is also important to note that in the normal course of events here in Senate when you have an issue that has been around for a long time and an effort is made within a given committee to strike a compromise, and when the administration, in this case in the form of the Treasury Department, gets involved to try to work out a series of unresolved issues, that you can end up late at night, as happened in this case, with a compromise being developed that is a compromise that is the product of fatigue, is the product of frustration, is the product of whomever the parties are to the discussion.

In this instance, not all of the parties that ought to have been in the discussion were in the discussion. It was essentially a sort of a three-cornered discussion between the CFTC on the one hand, the Commodities Futures Trading Commission, the administration on the other hand, and members of the Agriculture Committee providing sort of the third party at interest in the discussion. The matters, however, range out far more broadly than just those three parties at interest. In fact, in order to argue out and settle this issue in any kind of a reasonable and well-balanced, I think, long-term way, would have required other parties at interest to be present for those discussions and that negotiation. I would include in that group the Chairman of the Federal Reserve, the Chairman of the Securities and Exchange Commission and I think, as well, the Banking Committee in the Senate which, of course, has jurisdiction in the area of securities law.

So at a minimum, instead of a three-cornered discussion yielding the compromise, there should have been, in my view, at least six participants representing various vantage points collected in that discussion and from which the consensus should have been developed.

That did not happen. So the Agriculture Committee, working with the administration and with the CFTC, came up with an approach to its liking in title III and under the normal course of events has now brought this package to the floor and would like to steamroller this package on through.

I am all for the Agriculture Committee in carrying out its work. In fact, I think the remainder of their bill is very well done and I applaud them for it. I think the remainder of their bill, in terms of taking the margin setting requirements for stock index futures and putting that over in the Federal Reserve and doing other things in the reporting and recordkeeping area are important advances. They are things that I enthusiastically support and I think are valuable additions to the law. But that does not solve the problem in title III nor does it relieve any of us from the duty and burden of understanding the intricacies of that title so that we really are in a position to decide how it ought to be done.

I must say to my colleagues in the Senate that I regret this issue was not resolved prior to this time because I think it becomes very difficult to resolve a highly technical issue of that kind on the Senate floor. It is much better done between committees and the respective parties at interest prior to the time that a legislative proposal is fully brought to the floor. But we did not have that opportunity. We were not invited to participate; we were not allowed to participate. And so in a sense we are having to now participate at this point in the process, which makes it more difficult for all involved.

I might say, too, that having been through a lot of legislative efforts over 25 years now in the House and the Senate, I am well aware of the fact that, in a situation like this, a committee that has the bill under its jurisdiction and it is brought to the floor, even if a part of the bill like title III encroaches over into another area under the jurisdiction of a separate and different committee, that the committee bringing the bill to the floor, in this case the Agriculture Committee, has an obvious advantage. They have a head of steam in terms of bringing it here and find themselves in a position where just the general nature of the legislative flow is very favorable to them being able to enact their package, with whatever defects that it may carry.

There is one defect here that I think we really have to try to focus upon and deal with and change. In that regard, I want to cite the leadership of Senator TIM WIRTH and Senator KIT BOND, in a bipartisan way, both members of the Senate Banking Committee, who have been working with others on our committee, including the chairman of the Securities Subcommittee, Senator DODD from Connecticut, and I say with great sadness also the late Senator John Heinz, who was very much involved in the issue and would have been an active participant in support of what is now being offered as an alternative in this title III by Senators WIRTH and BOND.

Those Senators particularly have been very active in attempting to address and resolve this issue going back over a period now of some 2 years. In the previous discussions, the members of the Banking Committee has worked actively with members of the Agriculture Committee and with the administration and the various regulatory agencies to try to come up with a reasonable package that really, in the end, could enlist a consensus and in fact would produce what all could feel was very sound, long-term public policy.

As I said—and I do not want to be unduly repetitive here—unfortunately, in this latest round producing this title III before us now, there was not that kind of participation and so it now has to take place here on the Senate floor in this setting.

I might also say that in our caucuses, in the Democratic caucus over the last 2 weeks, we have had some discussion in the caucus on this issue. I want to just speak to that for a moment and so my remarks for the next short period of time are really addressed to my Democratic colleagues here in the Senate. Those of you that were present at those two caucus luncheons will recall that we had some debate, some animated debate, particularly the one 1½ weeks ago and then again yesterday—on this issue. We talked at that time about the complexity of this issue in just a sheer legal sense.

At the time of the first discussion in the caucus, I indicated then to the majority leader and to my colleagues in the caucus that we would endeavor to hold a hearing at the earliest possible moment in the Senate Banking Committee where we could have present Alan Greenspan, the Chairman of the Federal Reserve Board; a representative of the Treasury Department—unfortunately it could not be the Treasury Secretary, because he is out of the country, so Under Secretary Robert Glauber would have to stand in for him—and also then the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission as well.

So the first oppportunity that we could have those four parties, three regulators and the Treasury Department, present on the same day for a hearing was yesterday morning at 10 o'clock. Prior to that time Chairman Greenspan was traveling and unavailable so we were unable to accommodate him. In any event, the earliest chance for that hearing was yesterday, and so we had that hearing yesterday morning.

Unfortunately, because of the need to get the hearing record reproduced, we cannot have it in its entirety available for distribution to Members as a whole. It would number some dozens of pages, several dozens of pages, that would have to be read in any case. But I am going to summarize part of the testimony of these critical regulatory representatives and the administration, in terms of what they had to say to us yesterday.

I take the time to relate that history because I wish I had been in a position to give this information to our colleagues at an earlier time, 2 or 3 weeks ago. Had this situation been one in which we had been asked to participate at an earlier time we would have done so and, therefore, the information we have now since developed would have been developed at an earlier time and people would not be in a position to have to try to absorb it today or—if the issue is settled today or tomorrow or whenever it is settled—in that very short space of time. But that is the way it is, so it is important people understand that the hearing record of yesterday is a very important part of the, I think, basis for decision that we ought to have available and we ought to clearly understand before we vote.

I will do my best to summarize the high points of that testimonial record from yesterday because I think it goes directly to the heart of the defects of title III, and how those defects are corrected by the Wirth-Bond alternative that will be offered later and cosponsored by myself and several other colleagues on both sides of the aisle.

Having said all of that by way of background, then, I rise in opposition to title III of S. 207, the Futures Trading Practices Act of 1991.

I would say the Banking Committee has received letters expressing concerns about or outright opposition to title III of S. 207 from the following people: from Alan Greenspan, Chairman of the Federal Reserve, from FDIC Chairman William Seidman, from SEC Chairman Richard Breeden, from Mary L. Shapiro, a Commissioner on the SEC, and also a former staff member of the CFTC, and former general counsel of the Futures Industry Association.

We have also received communications of that sort from representatives of the Office of the Comptroller of the Currency, from three former general counsels of the SEC, from the American Bankers Association, the Securities Industry Association, the New York Stock Exchange, the American Stock Exchange, Fannie Mae, and Freddie Mac, as well as numerous others. These letters all raise substantial questions about title III.

It is important to reflect on who it is that is expressing these concerns because they obviously have to be considered as a counterweight or counterbalance to what has already been said yesterday and this morning by representatives of the Agriculture Committee in behalf of their bill.

After reading the letters I just cited and listening to the arguments on both sides of the issue, I myself have come to believe that title III of S. 207 is not flexible enough as written to allow the continuing development in an appropriate way in our financial markets in the United States. Instead, this bill in that area, that narrow area, would freeze an extremely broad interpretation of the current regulatory authority and does not, in my view, leave enough room for innovation and growth in the future.

I think title III will discourage the development of new products because of uncertainty as to where they will trade and who will regulate them. It continues a feature of current law that has continually led to problems and is why we are struggling once again to resolve this issue today, and that is a requirement that a product either be a future or a security and thus trade solely under one or the other regime.

Let me try to explain that in as plain language as I can. In our financial markets today we have securities that are direct, clear security instruments that trade in our securities markets and under the regulatory structure of the SEC.

Over here we have what we call futures contracts. They originally started out with agricultural commodities in this country. Futures contracts are traded on futures exchanges which are regulated under the CFTC. Futures have separate regulatory structures and treatment.

What has happened over the years is that the so-called hybrid products have been developed that mix the two together so we have a new product that is developed, part of which has a securities characteristic and part of which also has a futures characteristic. That is why it is called a hybrid, because it is part of both.

Depending upon how much it is one versus the other raises a question, then; where does it fit in? Where should it trade, in terms of what kind of market should it trade in, but also what kind of regulatory regime will it be treated with? Will it fall over on the securities side, or will it fall over on the futures and the commodity side?

Because this issue has been very contentious over a long period of time, and because of an interpretation of a law that has been in place for some years, we have not been able to crisply and cleanly settle the question of deciding how we deal with these hybrid situations.

If I can try to simplify it to one more level: Many of these hybrid products are so substantially of the securities character that it is easy to make a decision where they fit, so it is easy to decide that it falls over into the securities area and ought to be under the securities regulation system. The same is true of some futures contracts, new ones that are developed, where it is so predominantly a futures contract that there really is no question about it, that it falls over into the other category and falls under that regime.

The problem that is left is ones that are very close and very hard to judge, where there is a large element of futurity, as it is called—the futures element in that product—and also a large amount of securities identification and product in that same particular item that is under question. So it is the ones that are very closely balanced, as between securities and futures, that are the ones we are trying to deal with here in this title III today.

It is very hard to decide how to do it because three different people can look at the same product, a hybrid that has a lot of securities in it and a lot of futures in it, and one of the three people might say, I think it is principally a securities product. Let us put it under the securities regime. The second person might look at exactly the same thing and say, no, I do not agree with that. That is more a futures product. Let us put it under the futures regime. And the third person might look at it and say, I just cannot decide because it is almost 50/50, or it is 51/49. It is such a close call and relates to definitions of, generally, highly technical items. So the third person might say, I am not sure. So we have three people, all experts, looking at the same instrument and coming up with three different judgments.

How do we settle that? One of the ways we try to settle it now is if there is that kind of disagreement, people take the disagreement to court. Anybody who has ever gone to court knows that it is no fun and can take a long time. Additionally, it can cost a lot of money and can take 2 or 3 years, sometimes longer, to resolve an issue.

Somebody who wants to bring that new product to market, looking at the likelihood of a legal fight, may very well say: I do not need this hassle. I will not trade this new product in the United States because the United States cannot get its act together in this area. I will take this particular product and I will go overseas to Europe and I will trade this in Luxembourg, or I will trade this in France, or in Germany, or some other place.

That is what has been happening. What section 3, offered by the Ag Committee, would do is, they say, look, we will figure out how to deal with these middle cases, these situations that are kind of in the middle. We will have a 50-percent test and we will say if it is more than 50 percent securities, it falls on the securities side of the line; if it is more than 50 percent futures, it falls on the futures side of the line. So we will just set a nice 50-percent test and that will solve the problem.

That does not solve the problem. That is fiction and a myth of a solution. Because if you go back to my illustration and you are trying to decide which side of the line it falls on, if you go back to the case with the three experts and one of the experts said it falls on the securities side, and the second expert said, no, it falls on the futures side, and the third expert is pulling out his hair saying I do not know which side of the line it falls on, then you have not settled it. Many of these products are going to fall right close to the center in terms of this combination, this hybrid effect. So it is one thing to say there is a 50-percent test; it is another thing to be able to apply it as a practical matter.

So I say, now I really am in a dilemma because if these products are going to be developed and they have a certain value and we have to make a regulatory decision, how do we go about doing it in the case where it is a very close call and different people see it different ways?

We thought about that for a long time and we have come up with an answer, which is in the alternative being offered by members of the Banking Committee under the heading of the Wirth-Bond proposal, which we think provides a better answer.

By the way, when we put that alternative to our witnesses in the hearing yesterday, when we put it before Alan Greenspan and asked him whether our alternative was better, he said, yes, he thought it was better public policy.

Then we asked Mr. Glauber, speaking for the administration, if he thought it was better public policy, and he acknowledged as well that, in fact, the alternative that we are offering is better public policy.

So then we asked the head of the SEC and he also said the alternative that we were offering is a better answer to that problem. That was three of the four witnesses.

Not surprisingly, when we got to the fourth witness, who was the head of the Commodity Futures Trading Commission, the response from that person was, no. The alternative in the Agriculture Committee's version was preferred and, not surprisingly so, because it tilts in the CFTC's favor. So they like that one better.

But it was very significant that the other three, three out of the four, clearly expressed themselves as saying that the Wirth-Bond alternative in section 3 was the better public policy and would serve the country better into the future if enacted.

We say, how would it work? The way the Wirth-Bond alternative would work is we would say, look, if you have a new product that is almost evenly balanced between its composition as a security and a future and is in this 51–49 or 48–52 category as a blended product, that rather than try to fight it out in court, that may take a long period of time and may actually drive the product out of the United States into a foreign market where they do not have these hassles, why do we not have a situation where those middle situations can trade either place? In other words, let the market itself, the people who are bringing that product into existence decide whether they want to trade it in the securities markets under the securities law regime or in the futures market under the futures law regime and let the market itself decide.

I realize sometimes it almost seems like an alien notion to say that the market should decide rather than a group of law writers sitting here in the U.S. Congress. But in effect, what we are trying to do here, if we accept the proposition in the Agriculture Committee's bill, is to say, look, we will figure this out for the market; you market folks, stand aside; we are going to have a nice bright line here that is going to make it clear as to where the jurisdictions begin and end, and where you can trade and where you cannot.

Our view is fundamentally different. We say in this category in the center, the jump-ball category where you have nearly an equal mix between securities or futures, that the market itself will decide where it wants to go. If it opts to go over into the securities area and trade there, and that is where the market traffic moves and it can become robust in that area and become a new product that has financial significance and economic value to our country, then so be it. That will be the choice that the market itself makes.

If, on the other hand, the market forces decide to take it to the futures market and it developes and becomes robust and a significant item, fine and dandy. In other words, the market itself can make the judgment as to whether this blend should take that particular kind of hybrid product.

Someone might say, well, that is not a perfect answer either. We live in a world that very seldom gives us perfect answers. We live in a world of less than perfect answers. But I think in a situation like this where there is going to have to be an arbitrary line drawn under the approach suggested by the Agriculture Committee, which in turn will set off endless legal fights and battles and will create lots of income for high-priced lawyers that are paid $400 an hour, $500 an hour, $600 an hour and leave these issues up in the air for 2, 3, or 4 or 5 years, will virtually guarantee that they leave the United States and go to a foreign market where they can do that literally overnight. That is just not good, sound national policy. It is not good, sound national financial market strategy.

I think if we are going to have to rely on somebody to make the judgment, and I do not think it ought to be a staff member at 11 o'clock at night who comes up with an idea—with no disrespect to any Senate staff member—I do not think it should be somebody who works for one or the other regulatory bodies; I do not think it should be a member of the administration who may be fatigued, frustrated, has a backache at 11 o'clock at night and finally says, all right, let us do it this way; I'm sick of this; let us get it over with. I do not think we can decide it that way and cannot imbed it in law for years and years to come based on that kind of a process, especially when a number of the key parties of interest were not present and participating.

I think it is far more preferable in a situation like that to let the market itself decide. Markets are not perfect either, but markets have the great value of sorting out, in a sense equilibrating the judgments of everyone who wants to participate. In financial markets, in order to participate, you have to have a financial stake, you have to put some money on the table at some point if you want to participate. When people are putting their own money at risk in a financial market, they tend to pay more attention and be more careful about it.

So if I have to trust somebody's judgment in the end, I think the market forces, the whole blend of market forces, will probably tend to lead in a direction that gives us a durable and sounder long-term answer than we will get any other way.

Bear in mind, we are talking only about hybrid instruments that have elements of both securities and futures.

But also it is important to think about this point: If you leave that kind of a definition, the 50-percent definition test, which is subject to dispute and interpretation, you also create, I think, a perverse incentive for someone who is formulating a new product, to craft that product and take it right up to the 50-percent line, in a sense get your nose pressed right against that window as much as one can without presumably going over the 50-percent line into the other guy's backyard.

I do not think it is wise for us to create a legal line here that is so fixed in terms of establishing this jurisdiction that it encourages people to work up to the line and try to find a way to in effect create a situation where maybe they can inch over the line and somehow have the effect through the interpretive process of pulling that over into their backyard.

There is a lot of money at stake. These are markets that can develop into multibillion-dollar markets, and so you have financial incentives driving the creation process and the effort to try to secure market dominance or monopoly of that particular instrument, if you are clever enough to devise it.

So I think if we are going to have hybrid situations that are right in the middle, we probably ought to have them be in a situation where the market itself decides. I think that would give us the best answer in the end. And I think it will keep those products in the United States. It will provide jobs for American people, provide income for American people, as well as provide tax revenue for our Government. I think in that sense it is good economics as well.

Let me move ahead with some more of my prepared remarks.

A second problem on which we have to focus is that both versions of S. 207, the agriculture bill, fail to grant the CFTC sufficient exemptive authority. The financial products are now extensively regulated under Federal and State law. As a result, the CFTC should be authorized to grant exemptions from some or all or none of the requirements of the Commodities Exchange Act as they deem such exemptions to be in the public interest.

For example, the CFTC should be able to determine that a new product is not conducive to exchange base trading but should still be subject to other provisions of the CEA.

I want to be clear. I would strongly resist any exemptive provisions that would exempt financial products from appropriate regulation. We need regulation. We have it for a reason. We want it to be strong, fair, and balanced. But I think, at the same time, we should avoid regulatory structures that result in duplicative regulation. We often fall into that quandary without so intending.

Having said this, I want to again commend the Agriculture Committee for their efforts to resolve the jurisdictional uncertainties that currently surround new products. I think the efforts of that committee to undertake these complex and highly technical and contentious issues are commendable and they do help improve public policy in that area.

I say again it is clear that title III of S. 207 moves in the wrong direction. So it has to be treated separate and apart from the remaining very positive elements of this Agriculture Committee bill.

I mentioned we had before us yesterday in our hearing these key regulators, all of whom are the prinicipal parties at interest. I asked them for their professional opinion on the Wirth-Bond substitute as opposed to title III now in the agriculture bill. When I asked them which proposal would be better public policy for our country—and I had to squeeze a little bit with respect to Mr. Glauber to get an answer, but he was forthcoming—when I asked them to measure it by the yardsticks of which proposal would give us more innovation, would foster competition, and would provide regulatory certainty for a broad range of financial products, three of the four, including Glauber, said the Wirth-Bond alternative was the better alternative and was preferable.

I asked them which one would give us greater legal certainty so we would keep these issues out of court, and again they indicated, three of the four, that the Wirth-Bond alternative would give us greater legal certainty than would the proposal as drafted in title III of the administration's bill and is now incorporated in the Agriculture Committee version.

I want to quote a little bit from Alan Greenspan because he is the regulator who I think is most at arm's length on this. He is the one who does not have a direct jurisdictional stake in this and therefore I think can be fairly said to be the most detached and the most dispassionate in looking at the sheer merits of the issue.

Yesterday he said as follows:

In recent years a wide variety of new products have been developed to serve the investment and risk management needs of the public. Many of these products have had some of the economic attributes of futures and their legality has been called into question by the exclusivity provisions of the CEA. For example, over the last 10 years, the swaps market—have developed and grown to involve transactions with $3 trillion in notional principal amount.

Just to explain, a swap transaction is an individually customized agreement in which parties agree to make payments to each other based on changes in interest rates or the value of oil or other products.

Swaps are used to manage risk by protecting financial institutions and others from fluctuations in interest rates or the prices of goods and instruments in which they deal.

Returning to Chairman Greenspan's testimony, and I again quote him, he said:

The exclusivity provisions of the Commodities Exchange Act have cast a pall over this market, particularly in the area of swaps linked to prices for goods such as oil. Investors and financial institutions have been concerned that such transactions might be interpreted to be the economic equivalent of contracts of sale for future delivery under the CEA and therefore be considered illegal off-exchange futures. Thus, an active market in swaps related to prices of goods did not develop until the CFTC took administrative action to indicate that it would not view them as illegal off-exchange futures. Even with this exemption, there continues to be concern that developments in the swaps markets may run afoul.

This is still Greenspan speaking. He then said:

This specter has almost surely inhibited innovation, not only in the swaps markets, but in other financial markets.

This is not the first time Chairman Greenspan has expressed that concern. He did so in a letter to me dated March 27, where he expressed his strong concerns about S. 207 as it had been reported out of the Agriculture Committee. He said in that letter:

The approach taken by S. 207 will continue to preserve impediments to innovation and hybrids and risk management products and may well forestall developments in the swaps markets that could reduce systemic risk.

There he is talking about something bigger than just losing a market. He is talking about systemic risk, which means the chance for a financial and an economic catastrophe. He goes on to say:

The 50-percent value test embodied in the bill is arbitrary, as will be any procedure for determining the value of the commodity component of a financial instrument, and could yield anomalous results for similarly structured instruments.

The exemptive authority given to CFTC under this bill is narrow, and in some cases would prohibit the Commission from making appropriate exemptions.

This is Greenspan talking. He continues:

The hearing requirement could lead to a cumbersome exemptive authority, which itself would pose an obstacle to innovation. Further, the regulatory exemption, once granted, itself creates uncertainty, as they may be revoked at a future date.

In a separate letter from Greenspan comparing the Wirth-Bond alternative to S. 207 as revised by the CFTC, Greenspan wrote this:

The approach taken by the Bond-Wirth alternative goes further than the CFTC alternative to alleviate the difficulties for the financial markets created by the provisions of the CFTC, and therefore is, in our judgment, preferable, particularly in the area of swaps, bank deposits, and lending instruments.

I ask unanimous consent to make those two letters from Alan Greenspan and his testimony at yesterday's hearing part of the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. RIEGLE. As I noted earlier, Mr. Glauber, who is the Under Secretary of the Treasury for Finance, testified at yesterday's hearing that he believes that the Wirth-Bond alternative is better public policy than S. 207 as reported or as revised.

I think this is important in light of the statements that we have been hearing that the administration, really Treasury, supports S. 207 as revised by the CFTC.

So the Treasury's position on S. 207 is really two positions. On the one hand, they say they support the dead of night agreement, and on other hand, when they came up to testify yesterday before our committee, and were asked directly and point blank whether the alternative fashioned by the Senator from Missouri and the Senator from Colorado is better public policy in this area, the Treasury Department had to testify that the alternative developed by Bond and Wirth is better public policy.

That is what we are here to try to do, it seems to me—to try to enact better public policy. That is the test we have to meet, not some other test. I know sometimes the steamroller gets rolling. The steamroller can really get rolling.

We can end up saying, well, we are for public policy; that this is as good as it should be. And here is a chance for public policy that is better than that, but we cannot take the better policy because we are locked into the public policy that is not so good. This may be better than what we have now, but if we are going to change the law, and I think we ought to, then let us change it so we do the best possible job. Let us not just cave in to the pressures from the CFTC.

I respect that organization. There is a very aggressive chairperson there, as there is at the SEC. I do not want to tilt the equation for one as against the other. They are both important. But I will tell you this: You cannot make these decisions on who the regulator is today, whether they are good or not, because regulators come and go.

So we cannot make the decision on that basis. We have to make the decision on the basis of what is the permanent pattern of law going to do for us in the public policy area over a period of years, not which strengthens one agency or diminishes another agency. That is not the issue.

The question here is what constutites good public policy? What gives us good, strong, well-regulated financial markets? What keeps those financial markets here in the United States?

So we cannot decide this on the basis of whether we like one regulator or dislike another regulator; one's ego is bigger than somebody else's ego. I have heard all of these arguments in both ways in this case. They have no relevance in this debate. They ought to be tossed into the ash can.

We ought to be making this decision based on what sets a pattern of public policy that is solid and strong for the next 2 years, 5 years, as far out as we can see. That is what the Wirth-Bond alternative, cosponsored by many of us on both sides of the aisle, will do. It will give us what Alan Greenspan yesterday said was better public policy, what Mr. Glauber, speaking for the Treasury Department yesterday, said was better public policy, and what the Chairman of the SEC said yesterday was better public policy.

So 3 out of 4 of the people on the working group designed and set up precisely to address and settle these issues were clear cut on that issue. If three out of four think it is better, then I think it is reasonable to say that it is better. There is no good, solid, relevant reason to throw aside what we know to be better, not particularly when it comes out of the kind of procedure and process which I have already described.

We do not do our best work in the dead of night around here, as a rule, and especially only when some of the relevant parties of interest are present.

I am going to end with a reference—I have others; I will insert those in the RECORD because others want to speak. I have spoken at sufficient length here, I believe. I think it is time for others to speak.

But I want to refer to one letter that I found particularly persuasive which came to us from Mary Schapiro. Mary Schapiro is in a unique position because, on the one hand, she now serves as a Commissioner on the Securities and Exchange Commission. But she is a person whose background is such that, prior to joining the SEC, she served as Executive Assistant to the Chairman of the CFTC. So she was in, what at times, are these two competing agencies.

Ms. Schapiro also served as the general counsel of the Futures Industry Association. So she is no stranger to futures. She understands them probably as well as anybody in this town. She has been able to look at it from both vantage points. She has been on both sides of this division: the futures side and the securities side.

What did she write? She is a highly respected regulator. In her letter to us, she said this:

The exclusivity clause of the Commodities Exchange Act is doing damage to the capital raising ability of U.S. corporations. Quite simply, the exclusivity clause deprives U.S. corporations of needed flexibility in designing their capital instruments and hurts U.S. investors, particularly retail investors, by denying them the opportunity to invest in the financial instruments of their choice.

But we have a terrible problem in our economy right now of saving enough, and diverting the savings over into capital investment, into the private sector of our economy.

We see that manifestation all across the board. So anything that makes it more difficult to really attend to the capital investment needs of the United States and get the capital moving to create jobs and to create new economic strength—we do not want things to get in the way of that. We want things to foster that in a fully regulated, fair, open, proper way.

I want to read one other thing from her letter. This goes back to the way things were done prior to 1974. She says, that the exclusivity clause was enacted in 1974 for two reasons. The first was to ensure that all commodity futures traded on exchanges would be regulated to the same extent. She notes that, prior to 1974, unregulated futures contracts traded alongside of regulated futures contracts. So they wanted to get rid of that, and wisely so.

The second reason was: To protect exchange-traded futures from interference by State regulators and the potentially adverse, costly impact with compliance with 51 different regulatory schemes. Congress recognized and repeatedly reaffirmed the industrial use of a nationally uniform body of standards governing futures trading coupled with State antifraud legislation.

She notes that the exclusivity provision was not intended to and should not be used to prevent securities products from trading on regulated securities exchanges—we are talking about the hybrids in the middle again—or to prevent the institutions from utilizing swaps or other legitimate instruments specifically tailored to their needs. Yet, that is the situation that we now are finding ourselves being put into by virtue of this defect in title III in this particular matter before us.

My last thought would be this. We are here to set policy for the future. We are not trying to help one market as against another. We are not trying to help one regulator as against another. We are trying to construct a balance of regulatory treatment and definition and a manner of operation that keeps the markets fair, aspires investors' confidence, and enables the capital investment process in the United States to go ahead as fully as it possibly can, and to not see these markets through inadvertence or through poorly written law hightail it out of the United States and go somewhere else.

I am not here to try to tilt the balance toward anyone or against anyone. I am absolutely firmly of the view that that ought not to be any part of this legislation. But I think, unfortunately, given the way it has been constructed in the agriculture bill, it now has that characteristic to it. That, I think, has to be addressed and changed.

The rest of the bill, I think, is fine. I congratulate the Agriculture Committee. They have done a good job. The margins part, I believe, is right on target. They have done a good job in the other areas. But title III has to be changed, or we are going to pay a real price for it as we go down the road in terms of the economic vitality of this country. And that is something that ought not to happen.

I yield the floor.

EXHIBIT 1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, March 27, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter requesting my views on Title III of S. 207, the Futures Trading Practices Act, as reported out of the Senate Agriculture Committee. In that letter you ask several specific questions about the regulation of hybrid instruments, including swaps, prescribed by the bill. I would like to focus on those matters on which I believe I can be of most assistance to you and give special attention to the treatment of swaps and deposits.

As I have noted in testimony and previous correspondence on these issues, various problems arise from a basic principle underlying the current approach to the implementation of the Commodity Exchange Act (CEA), under which instruments with elements of futurity may be considered to be futures contracts and therefore required to be traded on futures exchanges. This approach has led to confusion in financial markets and involvement of the courts, of which the situation involving index participations is a good example. The developers of new financial instruments—including risk-shifting products—are responding to perceived economic needs, but the uncertainty about the treatment of new financial instruments in the United States under the CEA tends to discourage such efforts and to give an edge to financial centers abroad.

Clearly, these provisions of the CEA are in need of repair, and I commend the Senate for seeking to make needed changes. However, as I indicated previously, the approach taken by S. 207 will continue to preserve impediments to innovation in hybrids and risk-management products and may well forestall developments in swap markets that could reduce systemic risk. The 50 percent value test embodied in the bill is arbitrary, and could yield anomalous results for similar structured instruments. The exemptive authority given to the Commodities Futures Trading Commission (CFTC) under this bill is narrow and in some cases would prohibit the Commission from making appropriate exemptions. The hearing requirement could lead to a cumbersome exemptive process which itself would pose an obstacle to innovation. Further, the use of regulatory exemptions, once granted, itself creates uncertainty, as they may be revoked at a future date.

Instead of this approach, which seeks to exempt certain hybrids from the CEA, it would be preferable, as I have noted previously, to allow such instruments to trade on markets selected by the parties. Thus, equity-related derivative products could trade on either securities or futures exchanges and banks and other financial institutions could offer commodity derivative products where appropriate prudential and investor protection safeguards are in place. In this way, owing to different customer bases, similar products could evolve in ways that best meet the needs of those customers.

In the case of the swap markets, I am concerned not only about the potential adverse effects of S. 207 on competition and innovation but also about its potential to impede the development of netting arrangements designed to reduce counterparty credit risks and, therefore, systemic risks in the financial markets. Last November, the Governors of the central banks of the Group of Ten countries released a report that concluded that netting arrangements, if properly designed, have the potential to reduce the size of credit and liquidity exposures incurred by participants in interbank and other wholesale financial markets, including the swap markets, and thereby contribute to the containment of systemic risk. However, the provision of S. 207 that limits the exemptive authority of the CFTC to swap agreements that are "not designed to and would not result in a trading market in the swap agreement" could prevent the development within the United States of multilateral netting arrangements for swap obligations. Other conditions of this swap exemption authority may also result in a failure to exempt certain existing swap transactions. The enactment of these provisions could push multilateral netting arrangements for swap obligations and the swap markets themselves offshore.

Proponents of the prohibition of multilateral netting of swap obligations have argued that such a system would, in effect, be a futures exchange and, therefore, should be subject to CFTC regulation. There are important differences, however, between a traditional futures exchange and the multilateral netting systems that have been developed in other financial markets. Participation in these netting systems generally is limited to commercial banks and other regulated financial institutions that traditionally have taken an approach to risk management that is fundamentally different from the approach used by futures exchanges. In designing multilateral netting systems, generally these institutions have adopted decentralized systems that preserve incentives for bilateral risk management (by allocating losses from a default in the first instance to the original counterparties of the defaulting participant) rather than adopting the centralized systems used in the futures industry that mutualize losses without regard to the original counterparties. For such decentralized systems, the regulatory framework developed by the CFTC for futures exchanges seems inappropriate. The case for CFTC regulation is further reduced if those other systems are subject to regulation by another federal agency.

In addition to extending the coverage of the act to swap transactions, Title III also suggests that the CFTC will have jurisdiction over some depository instruments and lending transactions. We do not believe that it is appropriate for banking activities of federally regulated institutions to be subject to the jurisdiction of the CFTC. Banks are subject to a comprehensive system of federal regulation designed to ensure the safety of the institutions and to protect their customers; there is no need to impose another layer of regulation on their activities, especially where that regulation is designed to meet concerns that are not relevant to banking activities. Further, the bill could be read to preclude banking regulators from overseeing banking transactions that are exempt by the CFTC, a situation that would be inadvisable.

I hope you find these comments to be helpful.

Sincerely,

ALAN GREENSPAN.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, April 15, 1991.

Hon. TIMOTHY E. WIRTH,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR: Thank you for your letter of April 12, 1991, requesting my views on two proposed alternatives to the exclusivity provisions of S. 207 as reported by the Committee on Agriculture, Nutrition and Forestry. One alternative was transmitted by Chairman Gramm of the Commodity Futures Trading Commission to the Chairman of the Senate Agriculture Committee by letter dated April 9, 1991 ("CFTC Alternative") and the other alternative accompanied your letter to me of April 12, 1991 ("Bond-Wirth Alternative").

Under the current approach to the implementation of the Commodity Exchange Act ("CEA"), instruments with elements of futurity may be considered to be futures contracts and therefore required to be traded on futures exchanges. This approach has led to confusion in financial markets and involvement of the courts, of which the situation involving index participations is a good example. The developers of new financial instruments—including risk-shifting products—are responding to perceived economic needs, but uncertainty about the treatment of new financial instruments under the CEA tends to discourage such efforts and to give an edge to financial centers abroad.

As I have previously indicated, S. 207, as passed by the Agriculture Committee, would continue to preserve impediments to innovation in hybrid's and risk management products and would forestall developments in swap markets that could reduce systemic risk. The exemptive authority given to the Commodity Futures Trading Commission ("CFTC") under this bill is narrow and in some cases would prohibit the CFTC from making appropriate exemptions. The hearing requirement could lead to a cumbersome exemptive process which itself would pose an obstacle to innovation. Further, the use of regulatory exemptions, once granted, itself creates uncertainty, as they may be revoked at a future date.

In my view, the approach taken by the CFTC Alternative generally addresses the difficulties created by the exclusivity provisions of the CEA more effectively than the provisions of the Agriculture Committee version. Nevertheless, it continues to rely on discretionary, and potentially restrictive exemptive procedures for dealing with swaps and bank deposits rather than the exclusionary approach of the Bond-Wirth Alternative. Further, it does not address lending transactions at all.

The Bond-Wirth Alternative, on the other hand, excludes certain swap transactions as well as certain deposit and lending transactions from the coverage of the CEA altogether, thus avoiding problems that may arise from a cumbersome exemptive process and the potential for revocation of any exemptions that may be granted for these transactions. It also would provide the CFTC with broader discretionary authority to exempt any instrument if the CFTC determines the exemption is consistent with the public interest. The approach taken by the Bond-Wirth Alternative goes further than the CFTC Alternative to alleviate the difficulties for the financial markets created by the provisions of the CEA, and therefore is in our judgment preferable, particularly in the areas of swaps, bank deposits and lending instruments. The exclusion approach also would remove possible conflicts in regulatory jurisdiction that might arise from continued CFTC jurisdiction over swaps. At the same time, the limitations on the exclusions ensure that these transactions are subject to Federal oversight or are limited to sophisticated investors.

I hope you find these comments to be helpful.

Sincerely,

ALAN GREENSPAN.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, yesterday, we began debate on reauthorization for CFTC, and some more reforms to address the many abuses which have occurred in the futures market during the past few years. If this were all S. 207 accomplished, I expect that we would have nearly unanimous support for the legislation. However, the real issue, as everyone in this Chamber well knows, is the continued jurisdictional squabbling between the SEC and the CFTC, and the concerns raised about the effects of the provisions in title III of this legislation on the capital markets.

So, as we begin debate on title III today, it is important to keep in mind what we are discussing is whether we want capital markets that are competitive in the global arena, which will encourage innovation, and which will provide legal certainty for market participants.

Before talking about the substantive concerns I have regarding the provisions in title III, I believe it is important to emphasize four points.

First, neither Senator RIEGLE nor I, nor any of our colleagues who have concerns about title III, oppose the enactment of S. 207. We do not wish to kill the bill or indefinitely delay its consideration. To the contrary, I will fully support the enactment of title I and title II and the margin provisions of title III.

I cannot support, however, sections 302, 303, and 304 of title III in their current form, or as revised by the proposed manager's amendment. These are the provisions which address the problems raised by the so-called exclusivity clause of the Commodity Exchange Act. These sections of the bill need to be amended. I believe the Bond-Wirth amendment corrects most of those problems, and I support the efforts of Senator BOND and Senator WIRTH to correct these problems.

The second matter which I call to the attention of this body, Mr. President, relates to the interests of farm groups. A number of my colleagues have indicated that they agree as a matter of policy with the concerns the financial regulators and others have expressed. However, they have also received letters and visits from several farm groups which have indicated their support for the passage of S. 207 as reported out of the Agriculture Committee. This has put them in a difficult position.

Let me allay their concerns. Quite simply, title III does not affect farmers at all. Most of the farmers that I have talked to, and who have encouraged me to back off my positions, think it does. They have been misled. Title I and II do, and I want to repeat that we do not object to title I or title II or the margin provisions of title III. But these provisions have absolutely no impact on farmers. They deal solely with margins on stock index futures, index participations, swaps, and hybrid securities. They deal with financial instruments, not agricultural commodities.

That is the point I want to make very strongly.

A lot of people talk about just a turf battle on this between the Agriculture Committee and the Banking Committee. It is not that. I am not interested in wasting time on turf battles. Agricultural commodities are their business. Financial instruments and hybrid securities are the business of the Banking Committee. I make the point very strongly that our staff, our people, are hired on that committee to deal with those kinds of instruments. I do not pretend to know all of the details of the Agriculture Committee's business, nor should I. Their staff is hired because they are experts in the area of agricultural products, and dealing with futures. We are not. That kind of separation needs to be made. The expertise is not there.

We have plenty of testimony that the chairman of the Banking Committee has already talked about, and letters from various groups that talk about how this is hurting our financial institutions. The last thing we need right now in this financial crisis with the S&L's and problems with the banks is legislation that further hampers our financial institutions.

So again I want to be very repetitious and indicate that our concern on the Banking Committee is dealing with financial instruments, not agricultural commodities. I must say how very disappointed I am that we cannot make that separation and that it is necessary to be out on the floor making these points, because for several years we have been trying to separate financial instruments from commodities and apparently have not been able to do so. The CFTC does not seem to want to keep their hands off financial instruments.

At a Banking Committee hearing just yesterday, Federal Reserve Chairman Greenspan and Treasury Undersecretary Glauber both said that title III does not affect farmers. Even Wendy Gramm, Chairman of the CFTC did not disagree that title does not affect farmers. Therefore, amendments to improve title III would not affect farmers either.

Again I sound like a broken record, but I hope some of the staff Members of my colleagues will get that point straight. They may still not agree with these changes that are proposed but they should not buy the argument from farm groups that changing title III has anything to do with farmers. It does not. No matter how many times I have to repeat it. The Ag Committee has done a good job on title I and title II. We are in favor of those. I wish the Ag Committee would recognize where they are intruding into financial products and be willing to come to a reasonable compromise.

The third issue which is important to emphasize at the outset of this debate is the breadth and depth of concern that has been expressed about the effects of title III. With the sole exception of the CFTC, every one of this country's principal financial regulators has written or testified that the language in title III of S. 207 will do irreparable harm to our capital markets.

Why are we being stampeded into this compromise by Treasury and the CFTC when all of the other major regulators disagree? Three out of four, yesterday, testified to that. S. 207 will do irreparable harm to our capital markets. Again we continue down this path.

This list includes the Federal Reserve, the Securities and Exchange Commission, the Comptroller of the Currency, and the FDIC. Again, the Federal Reserve, the Securities and Exchange Commission, the Comptroller of the Currency, and FDIC say it will do irreparable harm for our capital markets. The CFTC does not agree. Yet we are going to continue on this path with no cooperation from the CFTC in resolving this problem of financial instruments and hybrid securities and apparently no cooperation from the Ag Committee willing to look at the fact that there is some expertise in financial instruments on the Banking Committee that does not exist in the Ag Committee. We are not interfering with title I or title II. I do not know enough about it to interfere. I wish the Ag Committee would take the same attitude as far as financial instruments are concerned.

For example, Federal Reserve Chairman Alan Greenspan has written three letters and just yesterday testified before the Senate Banking Committee.

To quote Chairman Greenspan:

> Clearly, these provisions of the CEA are in need of repair. * * * However, the approach taken by S. 207 will continue to preserve impediments to innovation in hybrids and risk-management products and may well forestall developments in swap markets that could reduce systemic risk.

At this point I ask unanimous consent that a letter of April 15, 1991, from Chairman Greenspan be printed in the RECORD.

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

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, April 15, 1991.

Hon. TIMOTHY E. WIRTH,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR: Thank you for your letter of April 12, 1991, requesting my views on two proposed alternatives to the exclusivity provisions of S. 207 as reported by the Committee on Agriculture, Nutrition, and Forestry. One alternative was transmitted by Chairman Gramm of the Commodity Futures Trading Commission to the Chairman of the Senate Agriculture Committee by letter dated April 9, 1991 ("CFTC Alternative") and the other alternative accompanied your letter to me of April 12, 1991 ("Bond-Wirth Alternative").

Under the current approach to the implementation of the Commodity Exchange Act ("CEA"), instruments with elements of futurity may be considered to be futures contracts and therefore required to be traded on futures exchanges. This approach has led to confusion in financial markets and involvement of the courts, of which the situation involving index participations is a good example. The developers of new financial instruments—including risk-shifting products—are responding to perceived economic needs, but uncertainty about the treatment of new financial instruments under the CEA tends to discourage such efforts and to give an edge to financial centers abroad.

As I have previously indicated, S. 207, as passed by the Agriculture Committee, would continue to preserve impediments to innovation in hybrid's and risk management products and would forestall developments in swap markets that could reduce systemic risk. The exemptive authority given to the Commodity Futures Trading Commission ("CFTC") under this bill is narrow and in some cases would prohibit the CFTC from making appropriate exemptions. The hearing requirement could lead to a cumbersome exemptive process which itself would pose an obstacle to innovation. Further, the use of regulatory exemptions once granted, itself creates uncertainty, as they may be revoked at a future date.

In my view, the approach taken by the CFTC Alternative generally addresses the difficulties created by the exclusivity provisions of the CEA more effectively than the provisions of the Agriculture Committee version. Nevertheless, it continues to rely on discretionary, and potentially restrictive exemptive procedures for dealing with swaps and bank deposits rather than the exclusionary approach of the Bond-Wirth Alternative. Further, it does not address lending transactions at all.

The Bond-Wirth Alternative, on the other hand, excludes certain swap transactions as well as certain deposit and lending transactions from the coverage of the CEA altogether, thus avoiding problems that may arise from a cumbersome exemptive process and the potential for revocation of any exemptions that may be granted for these transactions. It also would provide the CFTC with broader discretionary authority to exempt any instrument if the CFTC determines the exemption is consistent with the public interest. The approach taken by the Bond-Wirth Alternative goes further than the CFTC Altnerative to alleviate the difficulties for the financial markets created by the provisions of the CEA, and therefore is in our judgment preferable, particularly in the areas of swaps, bank deposits and lending instruments. The exclusion approach also would remove possible conflicts in regulatory jurisdiction that might arise from continued CFTC jurisdiction over swaps. At the same time, the limitations on the exclusions ensure that these transactions are subject to Federal oversight or are limited to sophisticated investors.

I hope you find these comments to be helpful.

Sincerely,

ALAN GREENSPAN.

Mr. GARN. Should we not be concerned, or even alarmed, when the agencies we have entrusted with overseeing our capital markets, those with the expertise to properly address these highly complex and difficult issues, tell us that action we might take could impede the efficient and effective functioning of the capital markets? Are are going to ignore these expert witnesses?

Even more importantly is that the users of the capital markets have expressed these same concerns. This includes the securities industry, the banking industry, Government-sponsored enterprises, such as Fannie Mae and Freddie Mac, the legal community and the corporate community. This is not a narrow or parochial group of players. It is broad-based and cuts across industries.

In fact, many of these entities operate in both the securities and futures markets, so they do not have a vested interest in choosing one market over another. These are the market participants who are most directly affected by what we do, and who have the best understanding of the practical ramifications of the changes that would be wrought by title III.

I think the best discussion of these issues was that provided by Mary Schapiro. Ms. Schapiro is currently a Commissioner of the SEC and was formerly counsel to the Chairman of the CFTC and general counsel of the Futures Industry Association. She obviously has a unique background, and probably is in a better position than about anyone to understand these issues. She notes that "whatever it merits for the regulation of futures contracts, I believe that the exclusivity clause of the CEA is doing damage to the capital-raising ability of U.S. corporations."

Mr. President, I ask unanimous consent to print her letter in the RECORD.

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

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 5, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Senate Subcommittee on Securities, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: I am writing as a member of the Securities and Exchange Commission and former staff member of the Commodity Futures Trading Commission ("CFTC") and General Counsel of the Futures Industry Association, to express my concerns with Title III of S. 207. I do so separately because I would like it to be clear that my concerns arise not out of any issue of jurisdiction or prior debates which have been characterized as turf wars; rather, given my experience with both futures and securities markets, I believe it is important that I express my views on the implications of S. 207 for the securities markets specifically, and the capital markets in general.

At the outset, let me state that whatever its merits for the regulation of futures contracts, I believe that the exclusivity clause of the Commodity Exchange Act is doing damage to the capital-raising ability of US corporations. Quite simply, the exclusivity clause deprives US corporations of needed flexibility in designing their capital instruments, and hurts US investors, particularly retail investors, by denying them the opportunity to invest in the financial instruments of their choice.

The effects of the exclusivity clause are even more troubling because these effects were neither contemplated nor intended when the exclusivity clause was first drafted. For these reasons, I believe that many of the efforts to limit the impact of the exclusivity clause of the Commodity Exchange Act are to be commended. The exclusivity clause, contained in the Commodity Futures Trading Commission Act of 1974, that created the CFTC and introduced the modern scheme of regulation, was an important provision with two primary purposes. The first was to ensure that commodity futures contracts such as silver, copper, sugar and cocoa traded on exchanges would be regulated to the same extent as other, already regulated, exchange traded futures such as wheat or soybeans. Prior to the 1974 amendments, a rather curious situation had developed in which a growing number of nonregulated futures contracts traded alongside of regulated futures contracts. Congress sought to remedy this anomalous situation by bringing exchange-traded futures under the CFTC umbrella.

The second principal reason for enactment of the exclusivity provision was to protect exchange-traded futures from interference by state regulations and the potentially adverse and costly impact of compliance with 51 different regulatory schemes. Congress recognized and repeatedly reaffirmed the value of a nationally uniform body of standards governing futures trading coupled with state antifraud enforcement.

Giving effect to these two purposes has been extremely important to the successful development of the futures markets. Preemption of state law, with the very wise carve-out for state antifraud provisions, has likely saved the futures exchanges, and financial intermediaries, enormous sums of money. In addition, the credibility, safety and soundness of transactions on futures exchanges have been promoted and enhanced by the inclusion of all types of exchange-traded futures contracts under the umbrella of federal regulations. I believe that the phenomenal growth of the U.S. futures markets since enactment of the 1974 law is testament to the salutary effect of comprehensive regulation. Indeed an increase of nearly 800% in transaction volume would not have been possible if institutional users did not have confidence in these markets—confidence that I believe is born of a belief that the markets are comprehensively regulated.

As the SEC savings clause demonstrates, however, I do not believe that the exclusivity provision was intended or should be used to prevent securities products from trading on regulated securities exchanges or to prevent institutions from utilizing swaps and other legitimate instruments specifically tailored to their needs. This Committee and the CFTC have rightly recognized that the exclusivity provision now impedes the development of useful, innovative financial products. Unfortunately, the proposed solution does not address the problem and, indeed, makes matters worse.

The basic problem with the exclusivity clause in today's markets is well recognized: it requires that all instruments (even securities) with elements of futurity be treated as futures contracts and therefore required to be traded on designated contract markets or futures exchanges. As Chairman Greenspan has pointed out, the potential for the strict application of this principle has led to confusion in financial markets and the involvement of the courts, which in turn has discouraged efforts to develop new and innovative instruments.

The 50% value test proposed by S. 207 seeks to utilize a simple, seemingly objective calculation to determine when an instrument is a security or a future. In reality, however, a 50% value test is not a useful or objective measure because various arbiters can measure the value of different parts of the instrument in a variety of ways based on different sets of assumptions. More importantly, certain products, such as equity hybrid instruments, simply cannot be broken into intellectually distinct pieces that can then be valued separately. As a result, the percentage test effectively guarantees that no new equity hybrid product will be able to trade. Further, I do not believe that such a test reduces the risk that there will be litigation over each new hybrid product. Hence, the chilling effect of the exclusivity clause will remain intact.

But, there is a further structural problem: if a securities exchange trades a product that the SEC has approved as a security and that exchange is sued on the grounds that the product has more than 50% of its value derived from a commodity, a court will not accord the SEC any deference for its determination because the SEC will be interpreting a commodities and not a securities statute. Rather, the CFTC likely will be asked for its view, and the CFTC will be accorded deference. In effect, the CFTC replaces the SEC as the agency with authority to determine what is a security. Thus, the chances that the innovators in our marketplaces will risk the introduction of new hybrid equity instruments are very small. That would be a very tragic and costly result.

Rather than employing an imprecise and perhaps unworkable exemptive test, I believe the best approach would be one that permits hybrid financial instruments to trade on either type of exchange. So long as the markets are regulated, and the public is protected, it is hard for me to discern any legitimate reason not to allow the exchanges and the regulated over-the-counter market to fully develop new products that meet the needs of investors. Let the SEC approve hybrid products for securities exchanges and let the CFTC approve hybrid products for futures exchanges, and I believe we will see that the ingenuity and variety of new instruments will enhance and enrich our capital markets.

S. 207 also has the potential to dramatically impact the swaps market. The same fundamental problem created by the exemptive authority for hybrids flows through the exemptive authority that S. 207 grants the CFTC in dealing with the swaps markets and even some banking products, such as demand deposits. Swaps and banking products have never before been subject to the regulation of the CFTC or dependent for their continued existence on an exemption from the CFTC. There is no doubt in my mind that the CFTC has tremendous institutional experience regulating the futures markets and in exercising reasoned and sound judgment over the areas under their existing authority. But, I do not believe that expertise extends to the swaps or banking industries, nor do I believe there is any logic in doing so.

Finally, the limitations of S. 207 on Index Participations ("IPs") lack any grounding at all in logic. The bill would deem *all* index participations to be futures and then would exempt from CFTC regulation only the eight IPs that were approved or pending before December 31, 1991. There are three fundamental problems with this: First, three of the "grandfathered" IPs are based on the S&P 500 index. S&P has an exclusive licensing agreement for S&P 500 futures with the Chicago Mercantile Exchange. Thus, if an IP is defined as a future, an IP on the S&P cannot trade. Second, all non-grandfathered IPs proposed by any other securities exchanges or based upon any other indices would be prohibited. The logic of this escapes me. If it is good for the public to be able to trade an IP at the AMEX, why not also at the Pacific Stock Exchange? If it is in the public interest to allow trading of an IP based on a grandfathered index, such as the NYSE Composite, why isn't it equally in the public interest to allow trading of an IP on other indexes, such as the Value Line Average or the Nikkei? Third, it is unclear whether the legislation would permit any modifications to the grandfathered IPs. These are not results driven by solid, reasoned public policy but rather by political compromise grounded in protectionism. The public is clearly the loser as it is deprived of the ability to trade IPs. I believe a better result would be to exempt all index participations from CFTC regulation.

This Committee, the SEC and the CFTC share a deep and abiding interest in maintaining the efficiency, soundness and competitiveness of the US markets for futures and securities. These provisions, however well intentioned, do not achieve those purposes and indeed will handicap our markets far into the future. It is vitally important that the full significance and potential impact of this bill be understood before it becomes law. Hearings should be held to analyze these issues and enable the Congress to explore fully the ramifications of this bill. Once done, I am certain that we will see that some basic changes need to be made to Title III in order to best serve the public interest. In any event, the SEC stands ready, as always, to work with you to develop alternative solutions to the problems created by the exclusivity clause.

Sincerely,

MARY L. SCHAPIRO,
Commissioner.

Mr. GARN. Mr. President, the fourth observation I would make is that we should not even be here. These are obviously highly technical and complex issues which are difficult for Members to understand, and which are going to be difficult to discuss here on the floor. The people who should be resolving these kinds of jurisdictional questions are the expert agencies.

I fail to understand why they have not been able to come to some agreement among themselves. There certainly is precedent. In 1982, then Chairmen Shad and Johnson resolved a similar, though less important, jurisdictional dispute, which was promptly ratified by Congress.

Maybe its simply that Congress has not put enough pressure on the interested parties to come to a reasonable, rationale division of responsibilities. Two years ago, when the disagreement between the SEC and CFTC over index participations first began brewing, I wrote a letter to both agencies urging them to resolve their differences amicably and avoid unnecessary and counterproductive litigation. I did not have a preference how they carved up the regulatory pie, just that they eliminated the uncertainty in the marketplace. Remember that was 2 years ago. This is not a new issue.

Obviously, my advice was not heeded and that of other Members of this body was not heeded. Maybe the outcome would be different if every Member of this body, especially those who do not want to vote on this issue, wrote to the Treasury Secretary and the Chairmen of the Federal Reserve, SEC and CFTC telling them they wanted them to reach a consensus view.

Mr. President, while this may appear to be simply a case of jurisdictional squabbling, as I noted at the outset, much more is at stake. This was acknowledged by each of the witnesses at yesterday's Banking Committee hearing.

However, to put these issues in the proper context, I think it is useful to provide a brief history of the division of jurisdictional responsibilities, and how we got where we are today. Virtually all the problems that have arisen under current law, and with Title III of S. 207, can be traced to the exclusivity clause of the Commodity Exchange Act.

The Commodity Futures Trading Commission was created in 1974. At that time, the Securities and Exchange Commission had been in existence for 40 years. The exclusivity clause, which was contained in the CFTC Act of 1974, was not intended to give the CFTC expansive jurisdiction over financial markets. There were two specific and limited reasons for giving the CFTC exclusive jurisdiction over commodity futures.

The first was to correct the anomaly that had resulted in some commodity futures which were traded on exchanges, such as silver and gold, be free from any regulation, while others which were also traded on exchanges, such as wheat and soybeans, were subject to regulation. The second reason for the exclusivity clause was to preclude the States from establishing 50 different regulatory schemes for exchange-traded futures.

The legislative history of the CFTC Act drives home the point that Congress never intended the jurisdiction of the CFTC to range beyond commodity futures traded on futures exchanges, and certainly not to spill over into the securities markets.

I quote from the committee report accompanying passage of the CFTC Act:

> While the Committee did wish the jurisdiction of the CFTC to be exclusive with regard to the trading of futures or organized contract markets, it did not wish to infringe on the jurisdiction of the SEC or other Government agencies.

The report goes on to say:

> Likewise, the Committee believes that regulation by the Commission of transactions in the specified financial instruments (i.e., security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, mortgages and mortgage purchase commitments), which are generally between banks and other sophisticated institutional participants, is unnecessary, unless executed on a formally organized futures exchange.

Thus, the legislative history is absolutely clear that Congress did not intend for the CFTC to tread upon the jurisdiction of the SEC or other agencies like the banking regulators, nor regulate transactions, such as swaps, between sophisticated institutional investors.

However, since that time, a few courts and the CFTC have interpreted the exclusivity clause in an overly expansive manner which has called into question the regulatory scheme applicable to a wide range of financial products, including securities, banking transactions, insurance products and private agreements.

This is largely because of recent CFTC interpretations and a single Federal appeals court decision which basically stated that any product which has an element of futurity will be deemed a contract of sale for future delivery, and thus, according to the commodity laws, have to be traded on a futures exchange.

As Chairman Greenspan has noted, this reading of the CEA has adverse consequences for U.S. financial markets. It affects the multitrillion-dollar swaps and index options markets, financial institution depository accounts, and innovative financial products which have not yet been invented.

Therefore, it is vitally important that we resolve the problems stemming from the exclusivity provision of the Commodity Exchange Act, and the overly expansive readings of that statute by the courts. Unfortunately, however, rather than resolve the jurisdictional problem, title III of S. 207 exacerbates it.

At best, these provisions codify the current overreaching interpretations of the scope of the Commodity Exchange Act. At worst, they may grant the CFTC authority over a broad range of securities and banking products.

This is unacceptable. These provisions of title III must be substantially revised. I anticipate that there will be a number of amendments that will be offered to accomplish that goal. While I have no qualms with CFTC regulation of the futures markets, nor with the handling of the margins question, I oppose creating a new layer of regulation for banking and securities products.

We should make absolutely clear that the CEA does not apply to, and the CFTC has no jurisdiction over, demand deposits, time deposits or transactions accounts which are subject to regulation by the appropriate Federal banking agency, nor index options, nor swaps, nor insurance products regulated by the States, nor similar financial transactions other than those conducted on an organized futures exchange. This approach is entirely in keeping with the congressional intent underlying creation of the CFTC in 1974.

Does anyone in this body believe that the CFTC should be able to decide whether certain securities are able to be traded on a securities exchange? Or that the CFTC should have jurisdiction over bank depository instruments? Or over arms-length financial agreements entered into by two institutional investors, such as a bank and a pension fund? Or over certain annuities offered by insurance companies?

The drafters of S. 207 are obviously operating under those misconceptions, because the language currently in the bill is so broad as to give the CFTC authority to regulate such products or transactions. While I do not object to the CFTC regulating the commodity futures markets, I do not believe they, or the Agriculture Committee, should be overseeing banking, securities, insurance, and housing. We have no desire on the Banking Committee to intrude on the jurisdiction of the Agriculture Committee.

I have heard the arguments made that the CFTC is actually ceding jurisdiction under S. 207. That argument is only true if you accept that the CFTC currently has statutory authority to regulate the financial universe. I do not think anyone accepts that notion.

Mr. President, with respect to hybrid products, those which are not clearly securities or futures, we should craft a regulatory structure which promotes competition and encourages product innovation. Title III of S. 207 fails on both accounts. As Chairman Greenspan has noted, the test is "arbitrary" and could "yield anomalous results for similarly structured instruments."

I submit that if all interested parties are truly interested in resolving the problems raised by the exclusivity provision in a reasonable, rational and responsible manner, we can do so very quickly.

Very simply, the regulatory structure should provide that if the CFTC authorizes a hybrid product for trading on a futures exchange, it should be able to trade there. And if the SEC authorizes a hybrid product to trade on a securities exchange, it can trade there. If both agencies want to authorize similar products for trading, then the marketplace will be the ultimate determinant.

It is a two way street, and it is competition at its best. I would be pleased to sit down with Senator LEAHY, Senator RIEGLE, Senator DIXON, Senator BOND, Senator WIRTH, Senator GRAMM, and any other interested party to try to achieve a truly responsible solution to this issue.

In closing, Mr. President, I want to make my position very clear. The Agriculture Committee has done a good job on title I and title II. It is long overdue to have a reauthorization of CFTC. That farm group certainly should push for passage. All of the members of the Banking Committee that I am aware of feel very strongly about that. Again our problem is with certain parts of title III which I think Bond-Wirth would correct, or some other accommodation if that is not acceptable to the Senate.

But we simply must have an understanding of this separation between agriculture products and commodities futures and banking products. I cannot emphasize enough after 17 years on that Banking Committee, and what this country is going through, the disastrous losses that we have suffered in the S&L's and potential losses in the banking industry, rather than doing something—and that certainly is not the intent of the chairman or anyone on the Agriculture Committee to do that, not in any way whatsoever. But the language in title III, when you have all these regulators except one testify that it will harm the capital markets and hurt the banking industry, I do not know why we are here. I do not know why we are out here on the floor and why we do not sit down and resolve that, not as a jurisdictional dispute; that makes no difference to me.

But I cannot sit back as a member of the Banking Committee and have a law passed that does that harm, or even the potential for that harm. So I am a little bit puzzled as to why we are here on the floor and why we cannot sit down and resolve this rather than going down the path of following one regulator to the exclusion of every other financial institution regulator.

Their testimony is very pointed, very specific, and very damaging. So I would appeal to all those involved after 2 years of this struggle, let us recognize that overwhelmingly we all agree on title I and title II, and make the changes in title III that we can all be happy with and not have the unintended impact of causing further damage to the banking institutions and securities firms of this country.

(Mr. HEFLIN assumed the chair.)

Mr. LEAHY. Mr. President, obviously we are not debating the banking bill. We are debating an agriculture bill and the Commodity Futures Trading Commission.

I will allow the Banking Committee and others, as they should, to use their expertise to oversee the banking community as they always have. But I want to try to make sure that what we see in the area under the jurisdiction of the Agriculture Committee, whether it is commodities futures or anything else, is handled very well.

I will not speak to whatever situation the banking industry finds itself in today, but I am concerned about avoiding any problems in the area of commodities trading. We have worked very, very hard to do that here putting in tough regulations, by making sure that there is real oversight. I would suggest that in various financial markets there is probably a wish today that there had been that same kind of tough oversight and tough mechanisms there. I want to make sure that we have it in the futures area. It is an area where every Senator can make up his or her mind and vote the issue up or down and we can do that today.

DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PERSONNEL ACT OF 1991

Mr. LEAHY. Mr. President, I ask unanimous consent on behalf of the leadership that the Senate proceed to the immediate consideration of Calendar No. 44, S. 675, a bill regarding the Department of Veterans Affairs ability to recruit and retain physicians and dentists.

The PRESIDING OFFICER. Without objection the clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (S. 675) to amend title 38, United States Code, to improve the capability of the Department of Veterans Affairs to recruit and retain physicians and dentists through increases in special pay authorities and to authorize collective bargaining over conditions of employment for health-care employees of the Department of Veterans Affairs, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 65

(Purpose: To make technical corrections)

Mr. LEAHY. Mr. President, on behalf of Senator CRANSTON, I send a technical 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 Vermont [Mr. LEAHY], for Mr. CRANSTON, proposes an amendment numbered 65.

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:

On page 55, line 14, strike out "(d)" and insert in lieu thereof "(c)".

On page 55, line 17, strike out "(e)" and insert in lieu thereof "(d)".

On page 55, line 20, strike out "(f)" and insert in lieu thereof "(e)".

On page 88, line 11, insert ", respectively" before the period.

On page 95, line 2, strike out "Expanded-duty" and insert in lieu thereof "Expanded-function".

On page 110, line 10, strike out "201" and insert in lieu thereof "202".

On page 134, line 6, strike out "and".

On page 134, line 8, strike out "respectively." and insert in lieu thereof "respectively; and"

On page 134, between lines 8 and 9, insert the following new subclause:

(E) by redesignating section 5096 as section 8241.

On page 137, line 5, strike out "8270(f)" and insert in lieu thereof "8201(f)".

On page 137, line 9, strike out "8296" and insert in lieu thereof "8241".

On page 138, in the matter between line 22 and line 23, strike out "7001" and insert in lieu thereof "7101".

Mr. CRANSTON. Mr. President, as chairman of the Veterans' Affairs Committee, I am delighted to bring before the Senate today S. 675, the proposed Department of Veterans Affairs Health-care Personnel Act of 1991. This measure, which I introduced on March 14, 1991, with the cosponsorship of Senators DECONCINI, ROCKEFELLER, GRAHAM, AKAKA, SPECTER, JEFFORDS, and DURENBERGER, is the final stage in an extended process dating back over the last several years, to enact legislation in two key areas involving VA health-care personnel—special pay for VA physicians and dentists and labor relations matters involving VA health-care personnel.

Mr. President, because the provisions of the pending measure—which I will refer to as the compromise agreement—are described authoritatively in an explanatory statement developed by the two Veterans' Affairs Committees which I will insert in the RECORD at the conclusion of my remarks, I will provide only an overview of the two key elements of the bill and discuss in detail only certain specific provisions.

TITLE I—THE DEPARTMENT OF VETERANS AFFAIRS PHYSICIAN AND DENTIST RECRUITMENT AND RETENTION ACT OF 1991

Mr. President, title I of this measure, the proposed "Physician and Dentist Recruitment and Retention Act of 1991", reflects my and others' efforts over the last two sessions of Congress to reach the goal of giving VA's Secretary and Chief Medical Director the tools with which to act with flexibility and speed in setting the levels of pay for physicians and dentists that I believe are necessary to ensure the effective functioning of VA facilities and the high quality of care that the Nation desires VA to provide. The bill would substantially raise the upper limits on the categorical rates, and total amounts, of special pay for VA physicians and dentists. This measure reflects the same goal as the committee sought to achieve in the Department of Veterans Affairs Nurse Pay Act of 1990, Public Law 101-366, that is, enabling VA to recruit and retain highly qualified health-care professionals, while not paying more than it must in order to do so.

Mr. President, the physician and dentist pay provisions in the compromise agreement rely heavily on the deliberations and recommendations of a VA task force report which is part of the quadrennial report to the President on the adequacy of special pay for physicians and dentists submitted to the Office of Management and Budget on October 10, 1989, as required under the provisions of Public Law 96-322. That task force report relied on data and recommendations contained in a study completed by a private firm—the Klemm Analysis Group—with which VA had contracted to analyze the adequacy of VA physician and dentist pay compared to the compensation of those working in non-VA facilities. Building upon the recommendations contained in these reports, the committee has developed a bill which I believe will enable VA to improve the recruitment and retention of high-quality physicians and dentists.

Mr. President, I first introduced the bill's physician and dentist pay provisions as S. 2701 on May 24, 1990. S. 2701 was derived in substantial part from title I of H.R. 4577 as passed by the House of Representatives on May 1, 1990. The Senate Veterans' Affairs Committee received testimony on S. 2701 and H.R. 4557 at its June 14, 1990, hearing. Based on the testimony and other information, I made certain revisions to the bill which were adopted by the committee at its June 28, 1990, meeting and incorporated into S. 2100, the proposed Veterans Benefits and Health Care Amendments of 1990, as reported on July 19.

Unfortunately, as my colleagues know, objections of Senators on the other side of the aisle to the agent orange and certain other provisions contained in S. 2100 prevented the Senate from considering the bill before the end of the 101st Congress and precluded the House and Senate Committees on Veterans' Affairs from reaching a compromise on a number of legislative proposals, among them physician and dentist special pay. On January 15, 1991, I introduced S. 127, the proposed Veterans Benefits and Health-Care Amendments of 1991, which include the same physician or dentist special pay provisions as S. 2100 in the 101st Congress. Representative SONNY MONTGOMERY, chairman of the House Veterans' Affairs Committee introduced H.R. 588 on January 23, 1991, a bill which in large part reflected agreements reached in House-Senate negotiations by the end of the 101st Congress. The House passed H.R. 598 by a vote of 399 to 0 on January 30, 1991. On March 14, 1991, introduced S. 675, cosponsored by Senators DECONCINI, ROCKEFELLER, GRAHAM, AKAKA, SPECTER, JEFFORDS, and DURENBERGER, the final Senate-House compromise agreement on physician and dentist special pay.

Mr. President, I acknowledge the debt that the Senate Veterans' Affairs Committee owes in the crafting of the special pay provisions in S. 2100 of the 101st Congress and in the compromise agreement to the excellent work of the House Committee and its leadership, Chairman SONNY MONTGOMERY and ranking minority member BOB STUMP. The invaluable work done by the House Committee in developing title I of H.R. 4557 provided a strong foundation upon which our committee could build. The committee has also had the benefit of numerous comments on H.R. 4557 and S. 2701 from affected parties. Finally, the committee is indebted to many VA officials for their outstanding cooperation in answering numerous inquiries and providing a large volume of technical data. The provisions contained in S. 675 reflect carefully coordinated views of the various participants and, I think represent excellent policy.

LEGISLATIVE BACKGROUND OF VA PHYSICIAN AND DENTIST PAY

Until 1975, VA physicians and dentists were paid generally in accordance with a pay schedule that applied to most Federal employees. During that year, legislation derived from provisions I authored was enacted in Public Law 94-123, the Veterans' Administration Physician and Dentist Pay Comparability Act, which established a temporary special pay mechanism for VA physicians and dentists. The administration's plan at the time was to develop a permanent, unified salary structure applicable to all Federal physicians. However, by 1979, administration officials had concluded that a unified structure was inappropriate, because it would not take into account the specific recruitment and retention needs of individual agencies.

In response, I introduced S. 2534 to establish a permanent VA special-pay program. I worked closely with my colleagues in both the Senate and the House to develop a measure which was enacted over a Presidential veto in 1980 as Public Law 96-330, the Veterans' Administration Health-Care Amendments of 1980.

We took great pains in that legislation to provide VA with flexible pay authorities designed to enable it to recruit and retain talented, dedicated employees. Today's compromise agreement would expand on the foundation established in 1980 and would also build several new structures of vital importance to the alleviation of VA's physician and dentist recruitment and retention difficulties.

CURRENT STATE OF VA PHYSICIAN RECRUITMENT AND RETENTION

Mr. President, on December 31, 1989, there were 12,734 physicians employed in the Veterans Health Services and Research Administration [VHS&RA]. Of those, 55 percent served full-time. Board-certification was held by 65.3 percent of full-time physicians and 72.2 percent of part-time physicians. Graduates of foreign—neither United States nor Canadian—medical schools held 36.7 percent of the full-time positions and 17.9 percent of the part-time positions in VHS&RA in 1989. The proportion of VA-employed physicians who held faculty appointments at universities was 29.6 percent of full-time employees and 49.3 percent of the part-time employees.

Mr. President, the Klemm report and the VA task force analyses demonstrate that VA has a doctor recruitment and retention problem. Such problems are clear to patients, physicians, nurses, administrators, and others in the medical center setting even though quantifying that sense may not always be possible. Numbers such as vacancy rates, time until an open position is filled, and turnover rates all shed some light on VA's difficulties.

Mr. President, a major reason for VA's physician recruitment and retention problem is the disparity between VA salaries and those earned by non-Federal physicians. While it is generally accepted that private practice is not the appropriate comparison group for VA physician salaries, reasonable comparisons may be made with academic physicians or physicians employed by health maintenance organizations. Data presented in the Klemm report indicates that VA physicians' and dentists' salaries are considerably lower, especially for specialists and those with many years' experience.

The inadequacy of the existing special pay authority has contributed to severe salary compression which has made disparity in salaries especially acute among experienced practitioners. VA hires many physicians at or near the maximum level of basic and special pay available and is then unable to provide them with salary increases commensurate with their length of service to VA. For example, the Klemm report shows that, although VA provides a greater rate of total compensation for physicians at the instructor level—usually physicians who have recently completed residency training—than do universities, salary compression within the VA system results in a great disparity between the salaries paid to VA physicians and medical school professors. The average full professor earns over $30,000 more than the average VA physician of comparable rank.

SPECIAL PROBLEMS WITH THE RECRUITMENT AND RETENTION OF PSYCHIATRISTS

Mr. President, the need to revise VA's special pay authority is illustrated by the great difficulties VA has placed in the recruitment and retention of psychiatrists. I have been concerned for quite some time about the quality of mental health services provided to our Nation's veterans. Surveys conducted by the National Association of VA Chiefs of Psychiatry [NAVACOP] and VA central office have shown increasing vacancy rates for psychiatry positions: 8 percent in 1986, over 14 percent in 1988, and almost 20 percent in January 1990. VA's February 1991 recruitment bulletin lists 76 psychiatry vacancies at 39 facilities. Despite this evidence, VA has not, up to this point, considered psychiatry a specialty as to which it encounters extraordinary recruitment and retention difficulties.

The main competitors for psychiatrist employees are the State mental health systems. Having been faced with chronic recruitment and retention problems of their own, many States are revising their pay scales upward. These actions are placing VA in very uncompetitive situations in increasing numbers of States. According to data compiled in 1989 by the National Association of State Mental Health Program Directors, there are 10 States where psychiatrists would be paid more than $100,000 for a 40-hour work week. For a full-time VA staff psychiatrist to be paid the maximum allowed—$98,982—that physician would have to be board-certified, have at least 8 years of VHS&RA service, and work at a location to which VA had granted the maximum geographic special pay. Furthermore, unlike psychiatrists employed by State facilities, full-time VA psychiatrists are considered on call 7 days a week and generally are prohibited from supplementing their income through outside clinical endeavors.

I note that in the cost estimate accompanying the July 11, 1990, VA report on S. 2701, VA listed psychiatry as one of the specialties for which it intends to exercise its authority to pay scarce specialty pay. Information gleaned from this report and from conversations with VA central office staff leads the committee to believe that if S. 2100 were enacted, VA would pay scarce specialty pay to psychiatrists at a rate of $15,000 per annum.

CURRENT STATE OF VA DENTIST RECRUITMENT AND RETENTION

Mr. President, full-time dentists face a salary compression problem nearly as serious as that faced by physicians. For example, 82.4 percent of full-time VA dentists in 1989 were in the chief grade; 1.1 percent were in higher grades, 16.5 percent in lower.

Special pay is paid to 98.9 percent of all VA full-time dentists and to 58.7 percent of the part-time dentists. All full-time dentists are eligible for special pay for full-time status, tenure, and geographic locality. Dentists in designated scarce dental specialties—oral surgery, periodontics, prosthodontics—may also receive scarce specialty pay. American Dental Association data indicate that even with scarce specialty pay VA dental specialists are paid approximately $30,000 less than their counterparts in private practice.

Despite the thorough and useful job the Klemm Analysis Group did regarding physician staffing, comparable information was not provided for the dental services. There are disputes, moreover, between representatives of dental associations and VA regarding data on turnover, replacement, and vacancy rates which the committee has not been able yet to unravel. In view of the dramatic 37-percent decline in first year enrollments in dental schools since 1978, as noted by the American Association of Dental Schools in its June 1990 testimony prepared for the committee, I believe that VA dentist recruitment must be closely monitored. Dental services are an important part of VA health care, and we must guard against a replication among dentists of the recruitment and retention problems faced by VA with respect to physicians.

MAJOR PROVISIONS OF PHYSICIAN AND DENTIST PAY LEGISLATION

Mr. President, the data and analyses I have discussed led me to believe that the time has come for significant revision of VA's special pay authority for physicians and dentists. Substantial increases in special-pay levels are needed if VA is to stem recruitment and retention problems. The cap on total special pay at $22,500, which was deemed sufficient in 1980, is simply inadequate for VA to provide salaries that are competitive with those which physicians and dentists can earn elsewhere. Maintaining competitive employment conditions is essential to maintaining the quality and quantity of clinicians veteran patients deserve.

The special pay categories established in Public Law 96-330 provide a coherent framework for the awarding of special pay to physicians and dentists. However, the amounts of special pay provided under each category, which have not been revised since 1980, are no longer adequate. Special pay for specialties in which VA has extraordinary difficulty in recruitment and retention, such as anesthesiology, radiology, and cardiac surgery is particularly inadequate. Under current law the maximum amount of special pay available under this category is $15,500. Even when combined with basic pay and other categories of special pay, this amount results in total salaries that are considerably lower than those offered by VA's competitors to similarly qualified physicians. The same is true for the category of special pay used to compensate physicians for service in geographic areas in which VA has had great difficulty in recruiting either physicians generally or specific categories of physicians. Increasing the maximum amount of scarce specialty special pay to $40,000 and the maximum amount of geographic special pay to $17,000 may seem high, but VA must be able to pay that price in some circumstances in order to remain competitive with other employers. Unless VA salaries are competitive with those offered by universities and by other Government agencies, VA will be forced to either spend large sums of money for contract care or reduce the quality and quantity of health-care services it provides to veterans.

In the case of special pay for length of service, a similar problem has arisen. Under current law physicians may receive $1,000 for 2 to 5 years of service, $2,000 for 5 to 8 years of service, and $3,000 for 8 or more years of service. These small increases do not provide experienced clinicians with sufficient incentive to remain with VA. Physicians who have recently completed medical school come to VA with the latest and most advanced training available, but they lack the experience in patient care and familiarity with the VA system which their more senior colleagues possess. Experienced physicians also play a valuable role in supervising and training residents. The compromise agreement would address the concerns about special pay for length of service by increasing the amounts of special pay in that category to ranges of $4,000 to $6,000 for 2 to 4 years, $6,000 to $12,000 for 4 to 8 years, $12,000 to $18,000 for 8 to 12 years, and $12,000 to $25,000 for 12 or more years.

Along the same lines, we included in the compromise agreement provisions which would increase the rates of special pay for service in executive positions. The maximum amount of special pay available to a physician serving as a service chief would be increased to $15,000 and the maximum available to a physician serving as a chief of staff or in an executive or director grade position to $25,000. Increasing the rates of executive medicine special pay should encourage more physicians to seek such positions.

Mr. President, the compromise agreement also contains provisions that would ease the current special pay authority's disincentives to part-time service. VA would be required to pay physicians and dentists working less than full time but more than half time with amounts of special pay directly proportional to those available to similarly qualified full-time physicians, with the exception of full-time status special pay, subject to a cap at three-quarters' time. A physician or dentist working less than half-time but at least one-quarter time would also be eligible to receive special pay, if the Chief Medical Director determines that paying special pay to such a physician or dentist would be the most cost-effective way to provide necessary medical or dental services. Although VA should endeavor to recruit and retain as many full-time physicians and dentists as possible, prohibitions against outside income for full-time employees cause many physicians and dentists to choose the more lucrative option of a combination of a part-time VA position and private practice or a university appointment.

Mr. President, the pending legislation includes a new basis on which VA would be able to pay special pay: the potential of additional pay for exceptional qualifications. This category would allow the Chief Medical Director to decide, personally and on a case-by-case basis, to pay up to $15,000 to a physician or up to $5,000 to a dentist solely on the basis of exception qualifications. This new category is designed to provide needed flexibility in various situations.

Mr. President, to ensure that VA does not pay physicians and dentists any more than it has to in order to recruit and retain qualified personnel, the compromise agreement contains provisions which would require VA Central Office to exercise oversight with regard to the administration of the special pay provisions at VA medical centers. The bill would require the Secretary of Veterans Affairs, after receiving the recommendations of the Chief Medical Director, to prescribe regulations that medical center directors would be required to follow when negotiating special pay agreements with physicians and dentists. The bill also requires the Chief Medical Director to set nationwide rates for length-of-service special pay, and for the Secretary, after receiving recommendations of the Chief Medical Director, to promulgate regulations regarding the determinations to designate nationwide scarce specialties, and to review all requests from medical center directors for provision of special pay for difficult to recruit and retain specialties on an individual-facility basis.

Other provisions in the compromise agreement would establish safeguards to protect against VA paying physicians and dentists unnecessarily high salaries. The compromise agreement would require a facility director to submit to the Secretary, via the Chief Medical Director, any special pay agreement that would cause a physician or dentist's total pay—basic pay and special pay—to exceed the annual rate of basic pay for executive level I, $134,100 for calendar year 1991. The Secretary would have 60 days within which to approve or disapprove the agreement. The Secretary could disapprove such an agreement only after determining that the agreement provides a physician or dentist with a greater amount of special pay than is necessary for recruitment or retention. Such a determination must be based on findings of fact regarding the specific position and the experience and qualifications of the individual physician or dentist. To assure adherence to the intent of this provision, the proposed new section calls for the Secretary to report annually to the Congress regarding VA's experience under this new subsection and to include in the report a detailed explanation of the basis for each disapproved action taken under this provision.

The committee does not intend for this requirement for central office approval to serve as a cap on special pay agreements. That function would be served by a provision which prohibits any physician or dentist's total salary from exceeding the amount specified in section 102 of title III, United States Code. Rather, central office oversight of special pay agreements that would cause total pay to exceed executive level I should serve as a guarantee that large amounts of special pay are provided to physicians and dentists only in those situations in which there is clear and strong evidence that such salaries are necessary for VA to recruit or retain highly qualified clinicians.

To further ensure that VA is not required to pay unnecessarily high salaries, the compromise agreement contains a provision which permits the Secretary, after receiving the recommendations of the CMD, to designate as ineligible for special pay certain categories of physicians and dentists with respect to which VA has no significant recruitment and retention problems. Not later than 1 year after determining that a specific category of physicians or dentists is ineligible for special pay, the Secretary must make a redetermination as to whether the category should remain ineligible.

This provision would apply only to a physician or dentist hired by VA after the effective date of this act. A physician and dentist in a category the Secretary determines to be ineligible for special pay who has a current section 4118 special pay agreement on the day before the effective date of this act would receive retention pay. A physician's or dentist's retention pay would be set at a rate which would not exceed the rate which, when added to basic pay, is equal to the sum of the annual rate of basic pay and the annual rate of special pay paid to that individual pursuant to the individual's final special pay agreement under section 4118. If the Secretary determines after a physician or dentist has entered into a contract under the new special pay authority that the category of physicians or dentists to which a physician or dentist belongs is ineligible for special pay, the determination would take effect at the end of the current contract.

In this regard, I note that this authority to designate categories of physicians or dentists as to which there are no recruitment and retention problems exists under current law and that VA has never exercised this authority. It is my intent, which I believe is shared by members of our committee and the House committee, that this authority be exercised only in those isolated instances where the Secretary has clearly documented, for a specific category of physicians or dentists, that there are no significant recruitment or retention problems. The Secretary should, in my view, exercise broadly the special pay authority contained in the compromise agreement and should not use retention pay or other authorities in such a way as to exclude large numbers of physicians and dentists from the new special pay benefit.

The compromise agreement also includes some modifications in the annual report on special pay which VA is required to submit to the House and Senate Committee on Veterans' Affairs. One of these modifications was prompted by testimony received by the committee at its June 14, 1990 hearing. Dr. Mark Tucker of the National Association of VA Physicians and Dentists [NAVAPD] stated that over the last 4 years 102 dentist positions—and 228 dental auxiliary positions—have been abolished at 129 of the 170 facilities which responded to a NAVAPD survey. Dr. Spencer Falcon, testifying on behalf of the American Psychiatric Association and the National Association of VA Chiefs of Psychiatry, expressed similar concerns, noting an alarming trend in large, unaffiliated facilities of replacing psychiatrists with physicians' assistants and nonpsychiatrist physicians. VA claims that positions are abolished when workload justifies it, whereas representatives of physicians and dentists' associations contend that positions often are abolished because either qualified replacements cannot be found at the going salary or VA does not want to fill the positions. Modifications of the reporting requirement to include information on abolished positions will enable Congress to better monitor the recruitment and retention of VA physicians and dentists.

COSTS OF PHYSICIAN AND DENTIST SPECIAL PAY REFORM

Mr. President, the Congressional Budget Office [CBO] estimated the cost of the physicians and dentist special pay provisions in the House bill, H.R. 598, at $63 million for the first year—fiscal year 1992—and a total of $352 million over the first 5 full years. The first year cost of $21.5 million above what the administration has proposed in its fiscal year 1992 budget request for the more restrictive administration-proposed special pay legislation. Our committee has attempted to follow the sense of the recommendations of VA's own panel of experts, the task force which reviewed the Klemm report data and recommendations and incorporated them to be the quadrennial report to the President on the adequacy of physicians and dentist special pay, to which I have referred earlier. I believe that the recommendations of a professional panel should be given more credence than a proposal that had to be approved by the Office of Management and Budget, which all too frequently favors short-sighted cost savings over investment of funds to attain long-term goals. The administration-proposed amount would be inadequate to achieve the type of recruitment and retention encouragement the committee have intended to provide.

Mr. President, some Senators have expressed reservations about the cost of the physician and dentist pay provisions in the bill. I note that the predominant rate-setting mechanism of this bill involves wide authorized ranges of rates of pay for various categories of special pay. Therefore, within the confines of the compromise agreement, VA would have considerable discretion in setting pay levels that it considers prudent but still adequate. While I share a deep interest in holding down costs, I believe that if VA is to continue to provide high-quality medical care to our Nation's veterans—and I'm certain every Member of the Senate wants that result—we must be willing to pay the salaries necessary to recruit and retain highly qualified physicians and dentists.

To continue to fail to pay VA doctors salaries which are competitive with those offered by other comparable facilities would be highly cost-effective because that practice requires VA to spend exorbitant sums to contract for care not available from VA staff doctors. Moreover, there is another cost of unwise frugality in physician pay. That cost—declining morale and a diminishing, dedicated full-time core of VA clinicians—is high and, although not precisely measurable, has very adverse implications for patient care. The testimony this committee has received showed the anger and hopelessness that VA clinicians feel and which many say is about to explode into a mass exodus which would make the already dramatic recruitment and retention problems pale by comparison.

Many highly skilled doctors work for VA; not all of them can be rewarded financially at a level that would match what some physicians and dentists can earn in the private market. What should be offered to all of them, however, is pride in VA and trust that VA and Congress are trying their best to provide fair and appropriate compensation. The approach in the committee bill would work to the benefit of all veterans receiving VA health care.

TITLE II—THE DEPARTMENT OF VETERANS AFFAIRS LABOR RELATIONS IMPROVEMENT ACT OF 1991

Mr. President, the compromise agreement before us today addresses issues of great importance to those who provide care and services to veterans in VA's health-care system. Whereas the provisions contained in title I address issues of pay for certain VA health-care employees, the provisions in title II relate to the equally important issues of the rights of health-care workers employed under VA's title 38 personnel system—physicians, dentists, nurses, optometrists, podiatrists, physicians' assistants, and expanded function dental auxiliaries—to engage in collective bargaining and the manner in which disciplinary actions are imposed on these employees and how such actions and other grievances are appealed.

In light of VA's well documented problems in recuiting and retaining qualified health-care professionals, it is fitting that this legislation encompasses both pay issues and these other important aspects of employment in VA's health-care system. I am extremely pleased that my longstanding efforts, which have been supported by the Veterans' Affairs Committee and the entire Senate over the past 4 years, to ensure collective bargaining rights for VA health-care professionals have finally led to comprehensive legislation that is agreeable to both Houses, the administration, and the many unions which represent VA employees.

SUMMARY OF PROVISIONS

Mr. President, title II would codify collective bargaining rights for health-care professionals appointed under the title 38 personnel system and would improve the mechanisms through which VA disciplines these employees and through which these employees may grieve disputes and appeal disciplinary actions brought against them. Included in this title are provisions which would:

First, provide that the Secretary's authority to prescribe by regulation the hours and conditions of employment and leaves of absence of title 38 employees is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5, which relates to labor-management relations.

Second, provide that collective bargaining and any grievance procedures provided under a collective bargaining agreement may not cover, or have any applicability to, any matter or question concerning, or arising out of: First, professional conduct or competence, which is defined as direct patient care or clinical competence; second, peer review; or third, the establishment, determination, or adjustment of employee compensation.

Third, grant the Secretary authority to determine, not subject to collective bargaining or review by any other agency, whether a matter concerns, or arises out of, professional conduct or competence.

Fourth, require that a petition for judicial review or petition for enforcement under section 7123 of title 5 in any case involving title 38 employees, or arising out of the applicability of title 5 to title 38 employees, be pursued only in the U.S. Court of Appeals for the District of Columbia Circuit.

Fifth, replace the current disciplinary board system through which are determined all charges of ineptitude, inefficiency, or misconduct of any full-time permanent VA title 38 health-care employee with new procedures based on the general Federal personnel system under title 5, United States Code.

Sixth, require that, whenever the Chief Medical Director brings charges based on conduct or performance against a full-time title 38 health-care professional, the employee has the right to appeal the action.

Seventh, require, if the case involves or includes a question of professional conduct or competence in which a major adverse action defined as any action which includes suspension, transfer, reduction in grade, reduction in basic pay, or discharge was taken, that the appeal be made to a Disciplinary Appeals Board.

Eighth, require that, in any other case which invoves or includes a question of professional conduct or competence in which a major adverse action was not taken or in any case of an employee not covered by a collective bargaining agreement, the appeal be made through Department grievance procedures.

Ninth, provide first that, in a case which involves an employee covered by a collective bargaining agreement and does not include a question of professional conduct or competence, the employee may elect to appeal the case through either the Department grievance procedures or grievance procedures provided through collective bargaining, and second that the election of which procedure to pursue is irrevocable.

Tenth, provide that, for disciplinary procedures, a question of professional conduct or competence is a question involving direct patient care or clinical competence and that the Secretary will make the determination, which is not reviewable by any other agency, as to whether professional conduct or competence is involved.

Eleventh, require that, whenever the Secretary proposes to prescribe regulations affecting disciplinary and grievance procedures, the Secretary shall publish the proposed regulations in the Federal Register not less than 30 days before the day on which they take effect.

Twelfth, require that a Disciplinary Appeals Board include in its record of decision in any mixed case—defined as a case that includes both major adverse action arising out of a question of professional conduct or competence and an adverse action which is not major or does not arise out of a question of professional conduct or competence—a statement of the Board's exclusive jurisdiction and the basis for the exclusive jurisdiction.

Thirteenth, require that, whenever charges are brought against a title 38 employee which could result in a major adverse action being imposed, the employee is entitled to at least 30 days advance written notice from the Chief Medical Director or other charging official specifically stating the basis for each charge, the adverse actions that could be taken if the charges are sustained, and a statement of any specific law, regulation, policy, procedure, practice, or other specific instruction that has been violated with respect to each charge, except that the notice requirement could be waived if there is reasonable cause to believe that the employee has committed a crime for which the employee may be imprisoned.

Fourteenth, provide that an employee would have a reasonable time, but not less than 7 days, to respond orally and in writing to the Chief Medical Director or other deciding official, who would be required to be an official higher in rank than the charging official.

Fifteenth, provide that an employee is entitled to be represented by an attorney or other representative at all stages of the case.

Sixteenth, require that, if a proposed adverse action is not withdrawn, the deciding official render a decision in writing within 21 days of receipt of the employee's answer and that the decision include a statement of the specific reasons for the decision with respect to each charge.

Seventeenth, require that, if a major adverse action is imposed, the decision state whether any of the charges sustained arose out of a question of professional conduct or competence and, if any charges are sustained, that the notice of decision to the employee include notice of the employee's rights of appeal.

Eighteenth, authorize, notwithstanding the 21-day deadline for a decision, that a proposed adverse action be held in abeyance if the employee so requests, and the deciding official agrees, that the employee so requests, and the deciding official agrees, that the employee shall seek counseling or treatment for a condition covered under the Rehabilitation Act of 1973, provided that any such abeyance could not extend for more than 1 year.

Nineteenth, provide to employees against whom charges are brought the same notice and opportunity to respond as is provided to title 5 employees.

Twentieth, authorize the Secretary, if the Secretary finds a decision of the Disciplinary Appeals Board to be clearly contrary to the evidence or unlawful, to reverse the decision or vacate the decision and remand the case to the Board for further consideration.

Twenty-first, authorize the Secretary, if the Secretary finds the decision of the Board to be not justified by the nature of the charges, to mitigate the adverse action imposed.

Twenty-second, provide that an employee adversely affected by a final order of a Disciplinary Appeals Board may obtain judicial review of the decision.

Twenty-third, establish new disciplinary procedures and a new disciplinary appeals process, similar to those provided for under title 5, for cases that do not involve major adverse actions and a question of professional conduct or competence.

Twenty-fourth, preserve existing collective bargaining agreements and require that cases pending as of the date of enactment proceed as if the act had not been enacted.

BACKGROUND

In the last two Congresses, the Senate has gone on record as supporting legislation to extend meaningful collective bargaining rights to, and improve the disciplinary procedures applicable to, VA's title 38 employees—physicians, dentists, nurses, optometrists, podiatrists, physicians' assistants, and expanded function dental auxiliaries. Currently, VA employs nearly 69,000 health professionals appointed under title 38.

Beginning with the committee's May 21, 1987, hearing on various measures dealing with the VA health-care system and in subsequent activity both in followup to that hearing and in connection with the committee's April 28, 1988, hearing, the committee has heard from a variety of sources about problems in VA's personnel system as it relates to title 38 employees—physicians, dentists, nurses, optometrists, podiatrists, physicians' assistants, and expanded function dental auxiliaries. These concerns were reiterated during the committee's May 18, 1989, hearing and again at the committee's June 14, 1990, hearing.

For the past 4 years, both VA and witnesses representing employee groups have raised concerns about the current procedures under section 4110 of title 38—the provision under which disciplinary actions involving title 38 employees are carried out—the fairness and timeliness of the overall title 38 personnel system—especially in contrast to the system under title 5 which applies to other Federal employees, including other VA employees not covered by the title 38 system—and the ongoing, costly, and time-consuming litigation over issues relating to the relationship between title 5 and title 38 provisions.

As was discussed in detail in the committee's reports accompanying provisions reported by the committee and passed by the Senate in the last two Congresses (S. Rept. 100-215, pages 145-150, accompanying S. 9; S. Rept. 100-439, pages 164-167, accompanying S. 2011; and S. Rept. 101-126, pages 202-207, accompanying S. 13) the key issue underlying this matter is the relationship between the VA personnel system under title 38 and the general civil service system under title 5.

When VA's Department of Medicine and Surgery was established in 1946, the Congress created the separate VA personnel system, distinct from the general civil service system, in order to provide VA with greater flexibility in recruiting and employing health-care professionals. It was the view at that time that the civil service system was too cumbersome to permit the timely hiring that was felt to be necessary in order to enable VA to meet the health-care needs of the returning World War II veterans and also that the other attributes of the civil service system were not compatible with running a large health-care organization. The elements of this system, which are set out in chapter 73 of title 38, United States Code, and in regulations and guidelines issued by VA, have generally served the purpose of enabling VA to employ needed health-care professionals to operate its health-care system.

Among the areas addressed in current chapter 73 are those relating to employer/employee relations, such as those involving terms and conditions of employment, including how employee grievances over such terms and conditions are resolved, and disciplinary procedures. Specifically, current section 4108(a) gives the Secretary exclusive authority over the conditions of employment of title 38 personnel "[n]otwithstanding any law, Executive order, or regulation," and current section 4110 sets out the process by which disciplinary actions involving title 38 employees are to be conducted.

Many of these provisions date back to 1946 and, although there have been many significant changes in employee relations in the intervening years—most especially, the enactment in 1978 of the Civil Service Reform Act [CSRA], Public Law 95-454—VA authorities and practices have remained largely unchanged.

Meanwhile, in the 1978 CSRA, other Federal employees gained significant new rights to negotiate with regard to the terms and conditions of their employment and to utilize new methods to resolve grievances, including negotiated grievance procedures and binding arbitration. Title 38 employees, by way of contrast, remain limited, under the U.S. Court of Appeals decision in the Colorado Nurses case, which I will shortly discuss in detail, by section 4108 to whatever rights the Secretary of Veterans Affairs is willing to accord to them and have been unable to negotiate grievance procedures comparable to those available to other Federal employees. Likewise, under section 4110, all disciplinary actions involving title 38 employees, however minor, must be heard by a disciplinary board of 3 to 5 primarily peer employees, a trial-like adversarial process that frequently takes many months to reach a resolution and from which the only appeal available is in an internal VA action, with no recourse to outside judgment except in a court action. Civil service employees, on the other hand, have various methods for contesting disciplinary actions, both within and outside of their particular departments or agencies.

As is described in detail in the committee report accompanying S. 9 (S. Rept. 100-215, pages 141-150), challenges have been brought in recent years, including those brought by the American Federation of Government Employees [AFGE] and the National Federation of Federal Employees [NFFE], to the legality, in light of the enactment of CSRA, of certain aspects of the title 38 separate VA personnel system, particularly to those relating to the resolution of employee grievances and disciplinary actions. These challenges have been based on the theory that CSRA established Governmentwide procedures in the area of labor-management relations and, in so doing, superceded VA-specific laws. Although this legal theory was accepted in some cases before the Federal Labor Relations Authority [FLRA] involving VA disciplinary procedures in which the FLRA ruled that the VA was obligated to adhere to CSRA procedures, these results were reversed on appeal to Federal appellate courts.

In July 1988, the U.S. Court of Appeals for the District of Columbia Circuit, in the case *Colorado Nurses Association and VA Medical Center, Fort Lyon, Colorado* v. *Federal Labor Relations Authority*, 851 F.2d 1486 (D.C. Cir. 1988), reversed a prior decision of the FLRA which held that VA has a duty under the CSRA to bargain over conditions of employment for title 38 employees. The court ruled that the VA Administrator, now Secretary, has exclusive discretion to establish regulations concerning the working conditions of those employees appointed under the title 38 personnel system and is, therefore, not under any obligation to bargain with such employees based on the CSRA.

In response to the concerns raised at the 1987 hearing and in followup activity, I introduced legislation in 1987 that the committee reported, in section 324 of S. 9, and the Senate passed that year. Despite the good intentions of all those involved in that effort, it was not possible to develop an approach that was satisfactory both to VA and the employee organizations, and ultimately the decision was made, in conferring with the House, not to include any provisions on this subject in the legislation that ultimately was enacted as Public Law 100-322. However, because I and my colleagues on the committee remained interested in trying to resolve the problems that were identified in 1987 in the VA's disciplinary and grievance processes and procedures relating to title 38 employees, on August 1, 1988, the committee—and on October 18 the Senate—again voted its support for these provisions, as set forth in section 627 of S. 2011. Then, following the court's decision in Colorado Nurses, the Senate adopted, in a floor amendment on October 18, a provision which would have maintained the status quo while the parties negotiated a permanent resolution of the issues involved. Unfortunately, neither of these provisions was included in the legislation that ultimately was enacted as Public Law 100-687.

The effort to develop the provisions in the Senate-passed measures in 1987, 1988, 1989, and again in sections 249 and 250 of S. 2100, which was reported by the committee on July 19, 1990, have included significant consultation with many concerned parties, has been carried out with two fundamental, and sometimes conflicting, principles in mind. These are, first, that the separate title 38 personnel system for VHS&RA generally serves a valid and valuable purpose of permitting the VA to staff and manage a very large, complex, health-care system and, as such, should be maintained; and second, that as the Congress recognized with the enactment of the CSRA, there can and should generally be significant opportunity for employees to have disciplinary actions and grievances related to their employment resolved in a timely fashion with an opportunity for outside review.

The need for these provisions is essentially twofold: To ensure that title 38 employees are afforded the same fundamental rights as other Government employees in terms of their employee-management relations, while protecting the special professional nature of title 38 employment; and to provide VA with an important tool in its ongoing efforts to recruit and retain qualified health-care personnel.

I am extremely pleased when, in the 101st Congress, the House finally initiated legislation to address the problems in VA's labor-management relations. That legislation, which was contained in title III of H.R. 4557, was introduced on April 19, 1990, reported by the House Veterans' Affairs Committee on April 26, 1990, and passed the House on May 1, 1990. Prior to House passage, the provisions contained in title III of H.R. 4557 were never addressed at a legislative hearing and there had been no public comment by interested groups on the specific provisions. Thus, the Senate Veterans' Affairs Committee, to which the bill was referred, included the provisions of title III in the committee's June 14, 1990, legislative hearing.

At that hearing, the committee received testimony from the AFGE, the National Federation of Federal Employees [NFFE], and the American Nurses Association [ANA]. All of the organizations expressed support for the intent of, and the general approach taken in, H.R. 4557 to provide collective bargaining rights to title 38 employees and to improve the methods of considering disciplinary actions brought against such employees. However, each of the organizations expressed concern over provisions limiting the scope of collective bargaining and granting to the Secretary exclusive, nonreviewable discretion as to what could be excluded from collective bargaining.

Secretary's determinations regarding negotiability: As passed by the House, section 301 of H.R. 4557 would have excluded from collective bargaining any matter that covered, or had any applicability to, or arose out of "professional conduct or competence," which was defined as "direct patient care, clinical competence, professional judgment, or peer review." Section 301 further provided that the determination of whether a matter or question concerned or arose out of professional conduct or competence would be determined by the Secretary and that the Secretary's determination would not be reviewable by any other agency or by any court. It was the unanimous opinion of the organizations testifying at the June 14 hearing that the Secretary's determinations as to those issues—essentially, determinations as to their negotiability—should be subject to independent review by either the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, or the Federal Services Impasses Panel, as is done for bargaining agreements concluded under title 5.

Although the compromise agreement does not provide for independent agency review of the Secretary's negotiability decisions based on a "professional conduct or competence" interpretation, the prohibition against court review of such decisions has been eliminated. Thus, the Secretary's determination that a matter or question involves, or arises out of, professional conduct or competence would be reviewable by a court of competent jurisdiction—most likely a Federal district court. I would have preferred that the Senate bill's approach be included—providing for agency review of negotiability decisions except in matters falling within the jurisdiction of disciplinary boards, but the compromise agreement does provide for a check on the Secretary's exercise of discretion in this area, which is of critical importance to maintaining a situation of good faith bargaining.

Scope of collective bargaining: Another concern raised by each of the organizations testifying at the June 14 hearing was the definition of "professional conduct or competence." Section 301 of H.R. 4557 as introduced defined professional conduct or competence as "direct patient care, clinical competence, professional judgment, or peer review." The American Nurses Association testified that such a definition "too broadly defines professional conduct or competence" and expressed that concern on the basis of their belief that "most of what professional nurses bargain for relates to professional competency and conduct" (S. Hrg. 101-1082, pages 435-36). Other organizations requested a clear indication of what types of activities would be considered related to professional conduct or competence.

The compromise agreement has deleted the reference to "professional judgment" as a definition for professional conduct or competence and is drafted so as to clarify that professional conduct or competence means only "direct patient care" or "clinical competence." Matters concerning peer review, most significantly the operations of the Professional Standards Boards, would be excluded from collective bargaining under the compromise agreement, as would be matters related to the establishment, determination, or adjustment or employee compensation under title 38.

The exclusion from collective bargaining of matters concerning professional conduct or competence is designed to be limited to those matters that involve the manner in which health care is provided. Thus, the compromise agreement clarifies that professional competence and conduct relates only to matters involving direct patient care and clinical competence.

The compromise agreement would establish new disciplinary procedures and new procedures for employees to appeal adverse actions taken against them. These procedures are outlined in detail in the explanatory statement, which, as I noted earlier, I will ask to be inserted in the RECORD following my remarks. The new procedures are based upon the procedures generally applicable to Federal civilian employees under title 5 and would provide to title 38 employees the same notice, opportunity to respond, and representation rights as are provided to title 5 employees.

Under the compromise agreement, Disciplinary Appeals Boards would be created to consider appeals of major adverse actions which involve questions of professional conduct or competence. These Boards would replace the current disciplinary boards mandated under section 4110 of title 38. Whereas the section 4110 disciplinary boards determine charges and make recommendations to the Secretary regarding suitable disciplinary actions in a case, the Disciplinary Appeals Boards would hear appeals of cases in which a major adverse action involving an issue of professional conduct or competence had already been taken. Disciplinary Appeals Boards would be comprised of three VA employees, each of whom would be required to be of the same grade or senior to the employee appealing the action and at least two of whom would be required to be employed in the same category of position as the employee. The latter requirement is included in light of the fact that the Boards would be evaluating issues of clinical competence and direct patient care, for which a knowledge of the specific profession would be needed. All members of a Disciplinary Appeals Boards would be appointed by the Secretary and would receive appropriate training in the functions and duties of Disciplinary Appeals Boards.

Mr. President, I believe the changes made by the compromise agreement will preserve the due process rights of title 38 employees against whom adverse actions are brought and ensure that disciplinary actions are concluded in a more timely fashion than under the current system, which all parties agree is far too time consuming and is inefficient. Under the new procedures, title 38 employees would not be forced to wait for as long a year, as is commonplace under the current system, to have their cases determined and the appeal process to begin. They would know the specific basis of any charge brought against them and would be assured that the Department present its findings and decisions within set periods of time. They would be afforded the right to be represented by an attorney or other representatives at all stages of a case, to have oral hearings, to present their cases fully before persons trained in evaluating such cases, and to obtain judicial review of a case in which a major adverse action has been imposed.

Mr. President, I am very pleased that we have reached an agreement that provides collective bargaining rights and improved disciplinary and grievance procedures for the nearly 69,000 title 38 employees who provide health care to our veterans. This agreement would not have been possible without the active involvement of the organizations which represent title 38 employees, and I think the American Nurses Association, the National Federation of Federal Employees, and the American Federation of Government Employees and AFGE's president, John Sturdivant, for their consistent and persistent thoughtful advocacy on these matters. The important issues affecting VA health care employees will continue to be among my highest priorities in my capacity as chairman of the Veterans' Affairs Committee.

ADMINISTRATIVE REORGANIZATIONS

Mr. President, section 303 of the compromise agreement would modify section 210(b) of title 38, which contains report-and-wait requirements for VA administrative reorganizations, in order to establish a better balance between the need for VA to change and adapt and the needs of oversight committees to have advance notice of significant VA reorganizations. An administrative reorganization is defined under current law as one that involves a loss or transfer of functions away from a covered VA facility or office resulting in personnel reductions that exceed specified levels. VA cannot implement an administrative reorganization during a given fiscal year unless a detailed plan and justification has been sent to Congress not later than the date on which the President's budget for that fiscal year is submitted to Congress.

The compromise agreement would amend the report-and-wait restrictions in three ways. First, wherever VA submits a reorganization proposal to Congress, the waiting period before implementation would be only 90 days. Second, administrative reorganizations involving the transfer of personnel between the Veterans Benefits Administration and the Veterans Health Administration at the same facility would be exempt if the number of employees at the facility remained the same. Third, this measure would increase the level of personnel reductions at which report-and-wait restrictions would be triggered.

TECHNICAL RESTRUCTURING OF VA HEALTH CARE SYSTEM PROVISIONS

Mr. President, the compromise agreement also includes a technical restructuring of the provisions in current chapter 74 of title 38, relating to the organization of VA's health-care system.

These changes, which are purely technical in nature and meant to have no substantive impact, are the first of what will be a number of technical revisions to title 38 to reflect and codify the elevation of VA to a Cabinet-level department which occurred on March 15, 1989, pursuant to Public Law 100–527. Other, related changes to other chapters of title 38 will be proposed in the coming months.

Mr. President, the changes which are proposed in the pending measure would divide existing chapter 73 into two new chapters—chapter 74, entitled "Veterans Health Administration—Organization and Functions," which, as the title suggests, contains the provisions dealing with the overall organization of VA's health system, and chapter 74, entitled "Veterans Health Administration—Personnel," which includes all of the personnel-related provisions relating to VA's health-care system.

In addition, the measure would make various technical, stylistic changes at appropriate points in the two new chapters, such as substituting "Secretary" for "Administrator" and redesignating the Veterans Health Service and Research Administration as the Veterans Health Administration. Also, as the first step in what will be an overall renumbering of title 38 sections so that the section numbers conform to the chapters in which they are placed, the existing sections of chapters 73, which all are numbered in the 4100's, would be renumbered to begin with 73 or 74 as the first two digits depending on the new chapter in which they appear. This same renumbering process would also be carried out in current chapters 51, 53, 55, 57, 59, 61, 71, 72, 76, 78, 81, 83, and 85 so that the provisions in each of those chapters would be renumbered to begin with the first two digits of the chapter.

CONCLUSION

Mr. President, in closing I express my deep appreciation to the distinguished chairman and ranking minority member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, as well as the ranking minority member of the Senate committee, Mr. SPECTER, and his predecessor, Mr. MURKOWSKI, for their cooperation and many courtesies on this measure.

Mr. President, it has been a pleasure to work with Senators SPECTER and MURKOWSKI and all the members of the Senate committee in the development of this legislation and I thank them all for their contributions to it.

I want also to note the contributions of, and express my deep gratitude to, the committee staff members who have worked on this legislation: on the minority staff, Doug Loon, Scott Waitlevertch, Carrie Gavora, and Todd Mullin, as well as Lisa Moore, who recently left the committee staff to serve on Senator MURKOWSKI's personal staff; Roy Smith, and Jim Rankin who so ably provide editorial support to the committee; and on the majority staff, Chuck Lee, Susan Thaul, Thomas Tighe, Janet Coffman, Brett Hansard, Shannon Phillips, Charlotte Hughes, Kelly Cordes, Michael Burns, Bill Brew, and Ed Scott.

I also wish to the as-always fine work and cooperation of the staff of the House Committee on Veterans' Affairs—Ralph Ibson, Greg Matton, Tina Alvarado, Carl Commenator, Kingston Smith, Pat Ryan, and Mack Fleming, as well as former staff member Vic Raymond, who left the House Committee last September to serve as the Deputy Director of the Commission on the Future Structure of Veterans Health Care, in working with us to reach the final agreement on this measure.

Finally, we are deeply indebted to Bob Cover and Joe Womach of the House Legislative Counsel's Office and to Charlie Armstrong and Greg Scott of the Senate Legislative Counsel's Office for their excellent assistance.

Mr. President, I ask unanimous consent that the text of the joint explanatory statement on the compromise agreement be printed in the RECORD at this point.

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

EXPLANATORY STATEMENT ON H.R. 598

H.R. 598 as amended by the Senate reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills relating to Department of Veterans Affairs physician and dentist pay and labor relations considered in the Senate and the House of Representatives, but not enacted, during the 101st Congress. Those bills are H.R. 4557, which the House passed on May 1, 1990, and S. 2100, which the Senate Committee on Veterans' Affairs reported on July 19, 1990, but which did not receive Senate consideration prior to the end of the 101st Congress.

The Committees on Veterans' Affairs of the Senate and the House of Representatives have prepared the following explanation of H.R. 598 as amended. Differences between the provisions contained in H.R. 598 as amended (hereinafter referred to as "Compromise agreement") and the related provisions in the House-passed version of H.R. 4557 (hereinafter referred to as the "House bill") and S. 2100 as reported in the Senate (hereinafter referred to as the "Senate bill") are noted in this document, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical and clarifying changes.

REVISION OF PHYSICIAN AND DENTIST SPECIAL PAY PROVISIONS

Current law: Section 4118 of title 38 United States Code, provides for a program of special pay for physicians and dentists employed in the Veterans Health Services and Research Administration (VHS&RA) of the Department of Veterans Affairs.

House bill: Section 101 would provide for a new program of special pay in a new subchapter III (consisting of proposed new sections 4131 through 4140) of chapter 73.

Senate bill: Section 262(a) would establish a new special-pay program in a new subchapter II (consisting of proposed new sections 4121-4130) of chapter 73.

Compromise agreement: Section 102 would provide for a new program of special pay in subchapter III (consisting of proposed new sections 7431 through 7440) of a new chapter 74.

REGULATIONS GOVERNING ADMINISTRATION OF SPECIAL PAY

Current law: Section 4118(a)(1) of title 38 requires that the Secretary, pursuant to the provisions of section 4118 and regulations prescribed by the Secretary, in order to recruit and retain highly qualified physicians and dentists, provide special pay to eligible physicians or dentists, in addition to any pay or allowance to which they are entitled, upon their execution of and for the duration of written agreements to complete specified periods of service in VHS&RA.

House bill: Proposed new section 4131(a) of title 38 would require the Secretary, pursuant to the provisions of proposed new subchapter III and regulations prescribed by the Secretary, to provide special pay to eligible physicians or dentists, in addition to any pay or allowance to which they are entitled, upon their execution of and for the duration of written agreements to complete specified periods of service in VHS&RA.

Senate bill: Proposed new section 4121(a) would authorize the Secretary, pursuant to the provisions of proposed new subchapter II and regulations prescribed by the Secretary after receiving the recommendations of the Chief Medical Director, to provide special pay to eligible physicians or dentists, in addition to any pay or allowance to which they are entitled, pursuant to a written agreement entered into by the physician or dentists with the Department.

Compromise agreement: Proposed new sections 7431(a) and 7431(b) would require the Secretary, pursuant to the provisions of proposed new subchapter III of proposed new chapter 74 and regulations prescribed by the Secretary after receiving the recommendations of the Chief Medical Director, to provide special pay to eligible physicians or dentists, only upon the execution of, and for the duration of, written agreements entered into by the physicians or dentists.

DESIGNATION OF CATEGORIES WITH NO RECRUITMENT AND RETENTION PROBLEMS

Current law: Section 4118(a)(3) of title 38(a) permits the CMD, in accordance with regulations prescribed by the Secretary, to determine categories of physicians and dentists for which there are no significant recruitment and retention problems, (b) makes such physicians and dentists ineligible for special pay, and (c) requires the CMD to make a redetermination in accordance with those regulations not later than one year after making any such recruitment and retention determination and each year thereafter.

House bill: Proposed new section 4131(d) would follow current law, except that the determinations would be made by the Secretary rather than the CMD.

Senate bill: Proposed new section 4121(d) would follow current law, except that it would also expressly state the CMD's authority to withdraw the designation made with respect to any category of physician or dentist positions if the CMD determines, on the basis of an annual review, that a significant recruitment or retention problem exists for physicians or dentists in that category.

Compromise agreement: Proposed new section 7431(d) follows the House bill, except that it would permit the Secretary to make the determinations only after receiving the recommendations of the CMD. In addition, proposed new section 7431(g) would, in the case of a physician or dentist who has a current section 4118 special pay agreement on the day before the effective date of this Act and who is in a category of physicians or dentists for which the Secretary has determined there is no recruitment and retention problem, authorize the Secretary, in accordance with regulations the Secretary is to prescribe, to pay "retention pay" in an amount not to exceed the rate which, when added to the basic pay payable to that individual, is equal to the sum of the annual rate of basic pay and the annual rate of special pay paid to that physician or dentist pursuant to the final agreement with that individual under section 4118. If such a determination is made after a physician or dentist has entered into a contract under this title, this determination would take effect at the end of the current contract.

PHYSICIANS OR DENTISTS PROHIBITED FROM RECEIVING SPECIAL PAY

Current law: Section 4118(a)(2) of title 38 prohibits the payment of special pay to any physician or dentist who (a) is employed or less than a half-time or on an intermittent basis, (b) occupies an internship or residency training position, or (c) is a reemployed annuitant.

House bill: Proposed new section 4131(e) 38 would follow current law.

Senate bill: Proposed new section 4127(e) would follow current law except that the CMD would be authorized to pay special pay to a physician or dentist employed on a less than half-time basis on the basis of the same factors as apply to those working full-time (except for full-time status) in proportion to hours worked if the CMD determines that payment of special pay to such a physician or dentist is the most cost-effective way for VA to acquire needed services.

Compromise agreement: Proposed new sections 7431(e) and 7431(f) follow the Senate bill, except that a physician or dentist employed on a less than one-quarter time basis would be prohibited from receiving special pay.

DURATION OF SPECIAL PAY AGREEMENTS

Current law: Section 4118(e)(1) of title 38 requires that any agreement entered into by a physician or dentist under this section be for a period of one year of service unless the physician or dentist requests an agreement for a longer period of service not to exceed four years.

House bill: Proposed new section 4132(a) would provide for written agreements entered into by a physician or dentist for special pay to cover a period of one year of service unless the physician or dentist agrees to a period of two, three, or four years of service.

Senate bill: Proposed new section 4122(a) would require a physician or dentist who enters into a special pay agreement to agree to serve for a period of one to four years.

Compromise agreement: Proposed new section 7432(a) follows the Senate bill.

REFUND OF SPECIAL PAY FOR BREACH OF CONTRACT

Current law: Section 4118(e)(2) of title 38 requires that a physician or dentist who voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to a special pay agreement refund the total amount received under section 4118, unless the CMD determines, in accordance with regulations prescribed by the Secretary, that the failure is necessitated by circumstances beyond the control of the physician or dentist.

House bill: Proposed new section 4132(b) would require a physician or dentist who fails to complete any one of the years of obligated service under the physician or dentist's contract to refund the amount of special pay received since the last anniversary date of the agreement in any year of the agreement, unless the Secretary waives the refund requirement in whole or in part on the basis of a determination, in accordance with regulations prescribed by the Secretary, that the failure is necessitated by circumstances beyond the control of the physician or dentist.

Senate bill: Proposed new section 4122(b) is identical to the House provision, except that (a) the refund requirement would apply to a failure to complete only the first year of the physician or dentist's agreement, and (b) the CMD would make determinations regarding waivers of the refund requirement.

Compromise agreement: Proposed new section 7432(b) would (a) require a physician or dentist who fails voluntarily, or because of misconduct, to complete any of the years of service covered by the agreement (measured from the anniversary date of the agreement) to refund an amount of special pay received under the agreement for that year equal to (1) 100 percent of the amount of special pay received for the first year, in the case of a failure during the first year of service under the agreement; (2) 75 percent of the amount received for the second year, in the case of a failure during the second year; (3) 50 percent of the amount received for the third year, in the case of a failure during the third year; and (4) 25 percent of the amount received for the fourth year, in the case of a failure during the fourth year of service; and (b) authorize the Secretary to waive the refund requirement where the failure is determined to be the result of circumstances beyond the control of the physician or dentist.

SUBMISSION OF CERTAIN SPECIAL PAY AGREEMENTS TO CENTRAL OFFICE FOR APPROVAL

Current law: Current law contains no requirement for VA Central Office approval of special-pay agreements based on the amount by which an individual's special pay is increased or decreased from one year to the next.

House bill: Proposed new section 4132(c) would (a) require a facility director to submit to the Secretary any proposed special pay agreement that would provide a physician or dentist an amount of special pay that would exceed the preceding year's amount of special pay by more than 50 percent or would be more than 25 percent less than the preceding year's amount, (b) provide that any such agreement would take effect is not disapproved by the Secretary within 45 days after its submission, and (c) require the Secretary, in evaluating a special-pay agreement under this provision, to adjust amounts of special pay as necessary to reflect any change in the status of the physician or dentist from full-time to part-time status, from part-time to full-time status, or from one protection of part-time status to another.

Senate bill: No comparable provision.

Compromise agreement: Proposed new section 7432(c) follows the House bill except that it would provide that any such agreement, other than in the case of a physician or dentist employed in an Executive position in VA's Central Office, would take effect if not disapproved by the Secretary within 60 days. In addition, proposed new section 7432(d) would require that any proposed special pay agreement, other than in the case of the Chief Medical Director, that would take effect before October 1, 1994, and would cause a physician or dentist's total pay to exceed the annual rate of basic pay for positions specified in section 5312 of title 5 (Executive Level I) be submitted to the Secretary through the Chief Medical Director for review. A proposed agreement may be either approved or disapproved, but if neither approved nor disapproved within 60 days after the date on which the physician or dentist entered into the proposed agreement, that agreement shall take effect at the end of that 60-day period. Neither the Secretary nor the Chief Medical Director may modify a proposed agreement or dictate changes to a proposed agreement. However, if a proposed special pay agreement is disapproved, the Committees anticipate that it would be returned to the medical center director along with recommendations as to the level the Secretary, or the Secretary's designee, considers appropriate in order to facilitate the approval of an agreement. The compromise agreement specified that a proposed agreement may be disapproved under new section 4242(d) only if it is determined that the proposed amount of special pay is not necessary to recruit or retain the individual.

RESTRICTIONS ON RECEIPT OF MULTIPLE CATEGORIES OF SPECIAL PAY

Current law: Section 4118(c)(5) of title 38 prohibits a physician or dentist who receives special pay for an executive position from also receiving special pay for full-time status, length of service, or scarce specialty categories, except that (a) a physician or dentist serving as a Service Chief (or in a comparable position as determined by the CMD) on a full-time basis may receive special pay for the position as well as for full-time status and, if eligible, for being in a scarce specialty; and (b) a physician or dentist serving as a Chief of Staff on a full-time basis may receive both special pay for that position as well as for full-time status.

House bill: Proposed new section 4137(a) would permit physicians and dentists to receive all categories of special pay for which they are eligible, except that physicians and dentists serving in executive positions in Central Office would be prohibited from receiving scarce-specialty special pay.

Senate bill: Proposed new section 4127(a) is identical to the House provision, except that it would (a) allow a physician or dentist serving in Central Office to receive scarce-specialty special pay if the CMD determines that the specialty skills of that physician or dentist are necessary for the physician or dentist to carry out effectively the responsibilities of the executive position in which the physician or dentist serves, and (b) allow a Chief of Staff to receive scarce specialty special pay only if (1) the CMD determines that such pay is necessary for the recruitment and retention of highly qualified Chiefs of Staffs, and (2) the CMD personally approves payment of such pay on a case-by-case basis.

Compromise agreement: Proposed new section 7437(a) follows the House bill.

RATES OF SPECIAL PAY FOR FULL-TIME PHYSICIANS

Primary Special Pay

Current law: Section 4118(b)(2) of title 38 requires the Secretary to provide primary special pay to any eligible full-time physician at a rate of $7,000 per year.

House bill: No provision providing for primary special pay.

Senate bill: No provision providing for primary special pay.

Compromise agreement: No provision providing for primary special pay.

Full-time Status

Current law: Section 4118(c)(1)(A)(i) of title 38 provides for special pay for physicians for full-time status at an annual rate no greater than $6,000.

House bill: Proposed new section 4133(b)(1) would provide special pay for physicians for full-time status at an annual rate of $9,000.

Senate bill: Proposed new section 4123(1) is substantively identical to the House provision.

Compromise agreement: Proposed new section 7433(b)(1) contains this provision.

Length of Service

Current law: Section 4118(c)(1)(A)(ii) of title 38 provides special pay for tenure of service of full-time physicians at an annual rate no greater than (a) $1,000 for two years but less than five years of service, (b) $2,000 for five years but less than eight years of service, and (c) $3,000 for eight or more years of service.

House bill: Proposed new section 4133(b)(2) would provide special pay for tenure of service of full-time physicians at an annual rate within a range of (a) $3,000 to $6,000 for two years but less than four years of service, (b) $6,000 to $12,000 for four years but less than eight years of service, (c) $12,000 to $18,000 for eight years but less than fifteen years of service, and (d) $15,000 to $25,000 for fifteen or more years of service.

Senate bill: Proposed new section 4123(2) would (a) provide special pay for length of service of full-time physicians at a uniform national annual rate, specified by the CMD, within a range of (1) $4,000 to $6,000 for two years but less than four years of service, (2) $6,000 to $12,000 for four years but less than eight years of service, and (3) $12,000 to $25,000 for eight or more years of service; and (b) authorize the CMD, for length of service in excess of eight years, to set uniform national rates for such ranges of years as the CMD considers appropriate.

Compromise agreement: Proposed new section 7433(b)(2) would (a) provide special pay for length of service of full-time physicians at a uniform national rate, specified by the CMD, of (1) $4,000 to $6,000 for two years but less than four years of service, (2) $6,000 to $12,000 for four years but less than eight years of service, (3) $12,000 to $18,000 for eight years but less than twelve years of service, and (4) $12,000 to $25,000 for twelve or more years of service; and (b) authorize the CMD, for length of service of twelve or more years, to set uniform national rates for such ranges of years as the CMD considers appropriate.

Scarce Specialty

Current law: Section 4118(c)(1)(A)(iii) of title 38 provides for special pay for service by full-time physicians in a medical specialty as to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, at an annual rate of not less than $4,000 and not more than $15,500.

House bill: Proposed new section 4133(b)(3) would follow current law, except that it would (a) require the Secretary, or the Secretary's designee, to make the determinations regarding recruitment and retention difficulties and provide for such determinations to be made on a nationwide basis or on the basis of the needs of a specific medical facility, and (b) provide for an annual rate of not more than $40,000.

Senate bill: Proposed new section 4123(3) would follow current law, except that it would (a) authorize the CMD to make determinations on a nation-wide basis, on the basis of the needs of a specific medical facility, or on any other geographic basis, (b) specify a $4,000 minimum, and (c) provide that, for service by a physician who serves only a portion of a year in a position for which special pay is paid under this category, the annual rate would be calculated on the basis of the proportion of time served in that position.

Compromise agreement: Proposed new section 7433(b)(3) would (a) provide for special pay for service by full-time physicians in a medical specialty with respect to which there are extraordinary difficulties in the recruitment or retention of qualified physicians on a nation-wide basis or on the basis of the needs of a specific medical facility, at an annual rate of not more than $40,000 and (b) incorporate the Senate provision for calculation of the annual rate of special pay for a physician who serves only a portion of a year in a designated scarce specialty position on the basis of the proportion of time served in the position.

Field Executive Positions

Current law: Section 4118(c)(1)(B) of title 38 provides special pay for full-time service by physicians at annual rates no higher than (a) $9,900 for service as a Service Chief or in a comparable position as determined by the CMD, (b) $12,600 for service as a Chief of Staff or in an Executive Grade Position, and (c) $13,000 for service in a Director Grade position.

House bill: Proposed new section 4133(b)(4) would raise the maximum annual rate of special pay for such positions to (a) $15,000 for service as a Service Chief or in a comparable position as determined by the CMD, (b) $25,000 for service as a Chief of Staff or in an Executive Grade position, and (c) $25,000 for service in a Director Grade position.

Senate bill: Proposed new section 4123(4)(A) is substantively identical to the House bill, but would include minimum as well as maximum rates as follows: (a) $4,500 to $15,000 for service as a Service Chief or in a comparable position as determined by the CMD, and (b) $14,500 to $25,000 for service as a Chief of Staff or in an Executive or Director Grade position.

Compromise agreement: New section 7433(b)(4)(A) would provide annual rates of special pay for such positions as follows: (a) within a range of $4,500 to $15,000 for serice as a Service Chief or in a comparable position as determined by the CMD, (b) within a range of $14,500 to $25,000 for service as a Chief of Staff or in an Executive Grade position, and (c) a maximum of $25,000 for service in a Director Grade position.

With respect to physicians serving in Director Grade positions, the Committees recommend that VA continue its current practice of providing varying rates of executive medicine special pay for physician facility directors based on the complexity of the facilities they direct.

Central Office Executive Positions

Current law: Section 4118(c)(1)(B) of title 38 provides physicians' special pay for full-time service by physicians at annual rates no higher than (a) $13,000 for service as a Deputy Service Director, (b) $13,500 for service as a Service Director, (c) $14,400 for service as a

Deputy Assistant CMD, and (d) $15,300 for service as an Associate Deputy CMD or Assistant CMD.

House bill: Proposed new section 4133(b)(4)(B) would provide special pay for full-time service by physicians at annual rates of (a) $25,000 for service as a Service Director, (b) $30,000 for service as a Deputy Assistant CMD or Assistant CMD, (c) $35,000 for service as an Associate Deputy CMD, (d) $40,000 for service as a Deputy CMD, and (e) $45,000 for service as CMD.

Senate bill: Proposed new section 4123(4)(B) is substantively identical to the House provisions except that it would (a) provide special pay at annual rates of $22,500 for service as a Deputy Service Director and $27,500 for service as a Deputy Assistant CMD, and (b) would provide that, for service by a physician who serves only a portion of a year in an executive position and also serves a portion of that same year in another position or grade for which special pay is provided, the annual rate of special pay would be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

Compromise agreement: Proposed new section 7433(b)(4)(B) follows the Senate bill, except that it would provide $20,000 for service as a Deputy Service Director.

Board Certification

Current law: Section 4118(c)(1)(C) of title 38 provides for special pay for full-time physicians for board certification at an annual rate of (a) $2,000 for specialty or first board certification, and (b) an additional $500 for subspecialty or secondary board certification.

House bill: Proposed new section 4133(b)(5) would follow current law.

Senate bill: Proposed new section 4123(5) would follow current law.

Compromise agreement: Proposed new section 7433(b)(5) follows current law.

Geographic Location

Current law: Section 4118(c)(1) of title 38 provides special pay for full/time physicians, in an amount to be determined by the CMD pursuant to regulations, to no less than $2,000 nor more than $5,000 for service (a) in a specific geographic location with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in a specific category of physicians, or (b) in the VA Central Office.

House bill: Proposed new section 4133(b)(6) would follow current law except that (a) the Secretary, or the Secretary's designee, would be required to make the determination relating to recruitment and retention difficulties, (b) the annual rate of geographic special pay could not exceed $17,000, and (c) the provision includes no reference to Central Office.

Senate bill: Proposed new section 4123(6) is identical to the House provision except that (a) the CMD would be required to make the determination relating to recruitment and retention difficulties, and (b) there would be a range of geographic special pay of $2,000 to $15,000.

Compromise agreement: Proposed new section 7433(b)(6) follows the House bill.

The Committees anticipate that, as to the determination that there are extraordinary difficulties in the recruitment or retention of qualified physicians at a specific medical facility, the Secretary, or the Secretary's designees, would consider the input of the director of that facility.

Exceptional Qualifications

Current law: There is no provision for paying special pay to full-time physicians based on exceptional qualifications.

House bill: No provision.

Senate bill: Proposed new section 4123(7) of title 38 would (a) provide for special pay for full-time physicians with exceptional qualifications within a specialty at an annual rate of not more than $15,000, and (b) provide that special pay may be paid under this category only if personally approved by the CMD on a case-by-case basis and only to the extent that the amount paid under this category, when added to the total of other special pay categories, does not exceed the total amount that may be paid to a physician with the same length of service, specialty, and position as the physician concerned.

Compromise agreement: Proposed new section 7433(b)(7) contains the Senate provision.

Rates of Special Pay for the Chief Medical Director and Deputy Chief Medical Director

Current law: Section 4118(b)(1) of title 38 requires the Secretary to exercise the authority contained in section 4118 to provide the maximum amount of special pay authorized by that section to the CMD and the Deputy CMD.

House bill: Proposed new section 4133(c) would follow current law.

Senate bill: No provision.

Compromise agreement: New section 7432(d)(2) would (a) provide that the CMD shall receive, in addition to basic pay, special pay for that position at the rate specified in proposed new section 7433(b)(4)(B), and (b) provide that, for the CMD to receive special pay in the other categories for which the CMD is eligible, the Secretary must authorize such additional special pay. As noted above, the Deputy CMD's pay would be subject to the review and approval requirement of new sections 7432(c) and (d), as described above under the heading "SUBMISSION OF CERTAIN SPECIAL PAY AGREEMENTS TO CENTRAL OFFICE FOR APPROVAL".

SPECIAL PAY FOR PART-TIME PHYSICIANS: HALF-TIME OR GREATER

Current law: Section 4118 of title 38 provides for the payment of special pay to an eligible physician employed less than full-time but at least half-time, calculated on the basis of the proportion which the part-time employment bears to full-time employment, in an amount proportional to the following annual rates: (a) for primary special pay, $7,000; (b) for incentive special pay, a total of up to $15,500 consisting of (1) for length of service (A) $750 for more than two but less than five years of service, (B) $1,500 for five years but less than eight years of service, or (C) $2,250 for eight years or more of service; (2) for service in a medical specialty with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount of not less than $3,000 but no more than $12,375, as determined by the CMD pursuant to regulations; (3) for service in an executive position (A) $7,220 for service as a Service Chief or in a comparable position as determined by the CMD, or (B) $9,190 for service as a Chief of Staff or in an Executive Grade position; (4) for board certification (A) $1,500 for specialty or first board certification, or (B) $1,875 for subspecialty or second board certification; and (5) for service in either (A) a specific geographic location with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, or (B) the VA Central Office, an amount not less than $1,500 but not more than $4,000, as determined by the CMD pursuant to regulations.

House bill: Proposed new section 4134 would provide special pay for physicians employed less than full-time but at least half-time in an amount directly proportional to the amount the physician would receive if employed on a full-time basis, with the exception of full-time status special pay, subject to a ⅝ths cap on the proportion of full-time employment used to calculate special pay and except that the amount used for calculating board certification special pay would be fixed at $1,500 for specialty or first board certification and an additional $375 for subspecialty or secondary board certification.

Senate bill: Proposed new section 4124 would provide special pay for physicians employed less than full-time but at least half-time, based upon the factors and at the rates specified for full-time physicians, except for full-time status, in direct proportion to the amount that the physician would receive if employed on a full-time basis.

Compromise agreement: Proposed new section 7434 follows the Senate provision, except that it would set a cap of ¾ on the proportion of full-time employment that would be used to calculate special pay.

SPECIAL PAY FOR PART-TIME PHYSICIANS: LESS THAN HALF-TIME

Current law: Section 4118(a)(2) of title 38 prohibits the payment of special pay to any physician who is employed on a less than half-time basis.

House bill: Proposed new section 4131(e) would follow current law.

Senate bill: Proposed new section 4124 would provide special pay for physicians employed on a less than half-time basis, based upon the factors and at the rates specified for full-time physicians, except for full-time status, in direct proportion to the amount the physician would receive if employed on a full-time basis, subject to proposed new section 4127(e), which would require the CMD to determine that payment of special pay to a physician employed on a less than half-time basis is the most-effective way to provide needed medical or dental services at a VA facility.

Compromise agreement: Proposed new sections 7431(e) and 7431(f) follow the Senate provision, except that payment of special pay to a physician employed on less than a one-quarter time basis would be prohibited.

RATES OF SPECIAL PAY FOR FULL-TIME DENTISTS

Primary Special Pay

Current law: Section 4118(b)(2) of title 38 requires the Secretary to provide primary special pay to any eligible full-time dentist at a rate of $2,500 per year.

House bill: No provision providing for primary special Pay.

Senate bill: No provision providing for primary special Pay.

Compromise agreement: No provision providing for primary special Pay.

Full-time Status

Current law: Section 4118(c)(2)(A)(i) of title 38 provides for special pay for dentists for full-time status at an annual rate no greater than $1,000.

House bill: Proposed new section 4135(b)(1) would provide special pay for dentists for full-time status at an annual rate of $3,500.

Senate bill: Proposed new section 4125(a)(1) is identical to the House provision.

Compromise agreement: Proposed new section 7435(b)(1) contains this provision.

Length of Service

Current law: Section 4118(c)(2)(A)(ii) of title 38 provides special pay for tenure of service of full-time dentists in amounts not more than (a) $500 for two years but less than seven years of service, and (b) $1,000 for seven years or more of service.

House bill: Proposed new section 4135(b)(2) would provide special pay for tenure of service of full-time dentists in the amount of (a) $800 for two years but less than seven years of service, or (b) $1,600 for seven years or more of service.

Senate bill: New section 4125(2) would (a) provide special pay for length of service of full-time dentists at a uniform annual national rate, as specified by the CMD, within a range of (1) $1,300 to $2,000 for two years but less than four years of service, (2) $2,000 to $4,000 for four years but less than eight years of service, and (3) $4,000 to $8,300 for eight years or more of service; and (b) authorize the CMD, for length of service in excess of eight years, to set uniform national rates for rush ranges of years as the CMD considers appropriate.

Compromise agreement: Proposed new section 7435(b)(2) would (a) provide special pay for length of service of full-time dentists at a uniform annual national rate, specified by the CMD, of (1) $1,000 to $2,000 for two years but less than four years of service, (2) $2,000 to $3,000 for four years but less than eight years of service, (3) $3,000 to $3,500 for eight years but less than twelve years of service, and (4) $3,000 to $4,000 for twelve years or more of service; and (b) authorize the CMD, for length of service of twelve or more years, to set uniform national rates for such ranges of years as the CMD considers appropriate.

Scarce Specialty

Current law: Section 4118(c)(2)(A)(iii) of title 38 provides special pay for service by full-time dentists in a dental specialty as to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment and retention of qualified dentists, at an annual rate determined by the CMD, pursuant to regulations, of not less than $2,000 and not more than $7,500.

House bill: Proposed new section 4135(b)(3) would follow current law except that it would (a) require the Secretary, or the Secretary's designee, to make the determinations regarding recruitment and retention difficulties and provide for such determinations to be made on a nationwide or individual facility basis; and (b) provide for an annual rate of not more than $20,000.

Senate bill: Proposed new section 4125(3) is identical to the House provision, except that it would (a) require the CMD to make the determinations regarding recruitment and retention difficulties, (b) authorize the CMD to make determinations on any "other geographic basis," (c) require that such special pay be paid at an annual rate not less than $2,000 but not more than $30,000, and (d) provide that, for service by a dentist who serves only a portion of a year in a position for which special pay is paid under this category, the annual rate would be calculated on the basis of the proportion of time served in that position.

Compromise agreement: Proposed new section 7435(b)(3) would (a) provide special pay for service by full-time dentists in a dental specialty with respect to which there are extraordinary difficulties in the recruitment and retention of qualified dentists on a nationwide basis or on the basis of the needs of a specific medical facility, at an annual rate of not more than $20,000, and (b) incorporate the Senate provision for calculation of the annual rate of special pay for a dentist who serves only a portion of a year in a designated scarce specialty position on the basis of the proportion of time served in the position.

Field Executive Positions

Current law: Section 4118(c)(2)(B) of title 38 provides special pay for full-time service by dentists at annual rates no higher than (a) $2,750 for service as a Service Chief or in a comparable position as determined by the CMD, (b) $3,500 for service as a Chief of Staff or in an Executive Grade position, and (c) $3,625 for service in a Director Grade position.

House bill: Proposed new section 4135(b)(4) would raise the maximum annual rates of special pay for dentists serving in such positions on a full-time basis to annual rates no higher than (a) $5,000 for service as a Service Chief or in a comparable position as determined by the Secretary and (b) $9,000 for service as a Chief of Staff or in an Executive or Director Grade position.

Senate bill: Proposed new section 4125(4)(A) would raise the maximum annual rate of special pay for dentists serving in such positions on a full-time basis to annual rates within a range of (a) $3,000 to $5,000 for service as a Service Chief or in a comparable position as determined by the CMD, and (b) $3,500 to $8,000 for service as a Chief of Staff or in an Executive or Director Grade position.

Compromise agreement: Proposed new section 7435(b)(4)(A) would raise the maximum annual rate of special pay for dentists serving in such positions on a full-time basis to annual rates (a) within a range of $1,000 to $5,000 for service as a Service Chief or in a comparable position as determined by the CMD, (b) within a range of $1,000 to $8,000 for service as a Chief of Staff or in an Executive Grade position, and (c) a maximum of $8,000 for service in a Director Grade position.

Central Office Executive Positions

Current law: Section 4118(c)(2)(B) of title 38 provides special pay for full-time service by dentists at annual rates no higher than (a) $3,625 for service as a Deputy Service Director, (b) $3,750 for service as a Service Director, (c) $4,000 for service as a Deputy Assistant CMD, and (d) $4,250 for service as an Assistant CMD.

House bill: Proposed new section 4135(b)(4) would provide special pay for full-time service by dentists at annual rates no higher than (a) $9,000 for service as a Service Director, (b) $10,000 for service as a Deputy Assistant CMD, and (c) $10,000 for service as an Assistant CMD.

Senate bill: Proposed new section 4125(4)(B) would (a) provide special pay for full-time service by dentists at annual rates of (1) $8,000 for service as a Deputy Service Director, (2) $9,000 for service as a Service Director, (3) $10,000 for service as a Deputy Assistant CMD, and (4) $10,000 for service as an Assistant CMD; and (b) provide that, for service by a dentist who serves only a portion of the year in an executive position specified in this provision and also serves a portion of that same year in another position or grade for which special pay is provided, the annual rate of special pay would be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

Compromise agreement: Proposed new section 7435(b)(4) (a) would provide (1) ranges of $1,000 to $8,000 for service as a Deputy Service Director and $1,000 to $9,000 for service as a Service Director and, (2) an annual rate of $10,000 for service as a Deputy Assistant CMD or an Assistant CMD; and (b) contains the Senate provision for calculation of the annual rate of special pay for a dentist who serves only a portion of a year in a Central Office executive position.

Board Certification

Current law: Section 4118 of title 38 does not provide special pay for full-time dentists for board certification.

House bill: Proposed new section 4135(b)(5) would provide special pay for full-time dentists for board certification at an annual rate of (a) $2,000 for specialty or first board certification, and (b) an additional $500 for subspecialty or secondary board certification.

Senate bill: Proposed new section 4125(5) is substantively identical to the House provision.

Compromise agreement: Proposed new section 7435(b)(5) contains this provision.

Geographic Location

Current law: Section 4118(c)(2)(C) of title 38 provides special pay for full-time dentists in an amount to be determined by the CMD pursuant to regulations, of not less than $1,750 nor more than $2,500 for service (a) in a specific geographic location with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in a specific category of dentists, or (b) in the VA Central Office.

House bill: Proposed new section 4135(b)(6) would follow current law, except that (a) the Secretary, or the Secretary's designee, would require to make the determination relating to recruitment and retention difficulties, (b) the annual rate of geographic special pay could not exceed $5,000, and (c) the provision includes no reference to Central Office.

Senate bill: Proposed new section 4125(6) is identical to the House provision, except that (a) the CMD would be required to make the determination relating to recruitment and retention difficulties, and (b) there would be a range of geographic special pay of $1,750 to $5,000.

Compromise agreement: Proposed new section 7435(b)(6) follows the House bill.

The Committees anticipate that, as to the determination that there are extraordinary difficulties in the recruitment or retention of qualified physicians at a specific medical facility, the Secretary, or the Secretary's designees, would consider the input of the director of that facility.

Exceptional Qualifications

Current law: There is no provision for paying special pay to full-time dentists based on exceptional qualifications.

House bill: No provision.

Senate bill: Proposed new section 4125(7)(a) would provide for special pay for full-time dentists for exceptional qualifications within a specialty at an annual rate of not more than $5,000, and (b) would provide that special pay may be paid under this category only if personally approved by the CMD on a case-by-case basis and only to the extent that the amount paid under this category, when added to the total of other special pay categories, does not exceed the total amount that may be paid to a dentist with the same length of service, specialty, and position as the dentist concerned.

Compromise agreement: Proposed new section 7435(b)(7) contains the Senate provision.

SPECIAL PAY FOR PART-TIME DENTISTS: HALF-TIME OR GREATER

Current law: Section 4118 of title 38 provides for the payment of special pay to an eligible dentist employed less than full-time but at least half-time, calculated on the basis of the proportion which the part-time employment bears to full-time employment, in an amount proportional to the following annual rates: (a) for primary special pay, $2,500; (b) for incentive special pay, a total of up to $7,500, consisting of (1) for length of service, (A) $500 for more than two but less than seven years of service or (B) $1,000 for seven or more years of service; (2) for service in a dental specialty with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount not less than $1,500 but no more than $5,625, as determined by the CMD in accordance with regulations; (3) for service in an executive position (A) $2,750 for service as a Service Chief or in a comparable position as determined by the CMD, or (B) $3,500 for service as a Chief of Staff or in an Executive Grade position; and (4) for service in either (A) a specific geographic location with respect to which the CMD has determined, pursuant to regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, or (B) the VA Central Office, an amount not less than $1,310 but not more than $1,875, as determined by the CMD in accordance with regulations.

House bill: Proposed new section 4136 would provide special pay for dentists employed less than full-time but at least half-time in an amount directly proportional to the amount the dentist would receive if employed on a full-time basis, with the exception of full-time status special pay, subject to a ⅝ths cap on the proportion of full-time employment that may be used to calculate special pay, except that the amount used for calculating board certification special pay would be fixed at $1,500 for specialty or first board certification and an additional $375 for subspecialty or secondary board certification.

Senate bill: Proposed new section 4126 would provide special pay for part-time dentists employed on a half-time or greater basis, based upon the factors and at the rates specified for full-time dentists, except for full-time status, in direct proportion to the amount the dentist would receive if employed on a full-time basis.

Compromise agreement: Proposed new section 7436 follows the Senate provision, except that it would set a cap of ¾ on the proportion of full-time employment that would be used to calculate special pay.

SPECIAL PAY FOR PART-TIME DENTISTS: LESS THAN HALF-TIME

Current law: Section 4118(a)(2) of title 38 prohibits the payment of special pay to any dentist employed on a less than half-time basis.

House bill: Proposed new section 4131(e) would follow current law.

Senate bill: Proposed new section 4126 would provide special pay for dentists employed on a less than half-time basis, based upon the factors and at the rates specified for full-time dentists, except for full-time status, in direct proportion to the amount the denist would receive if employed on a full-time basis, subject to proposed new section 4127(e), which would require the CMD to determine that payment of special pay to a dentist employed on a less than half-time basis is the most cost-effective way to provide needed dental services at a VA facility.

Compromise agreement: Proposed new sections 743(e) and 7431(f) follows the Senate provision, except that the payment of special pay to a dentist employed on less than a one-quarter time basis would be prohibited.

REGULATIONS FOR CERTAIN DETERMINATIONS

Current law: Section 4118 requires that the Secretary issue regulations to carry out the special pay authorities, but contains no specific provisions specifying what determinations affecting special pay must be made under regulations.

House bill: Proposed new section 4137(b) would require that the following determinations be made under regulations prescribed by the Secretary: (a) a determination that there are extraordinary difficulties (on a nationwide or individual facility basis) in the recruitment or retention of qualified physicians in a medical specialty or in the recruitment or retention of qualified dentists in a dental specialty, (b) a determination of the amount of special pay to be paid to a physician or dentist for a factor of special pay for which the applicable rate is specified as a range of amounts, and (c) a determination of whether there are extraordinary difficulties in a specific geographic location in the recruitment or retention of qualified physicians in a specific category of physicians or in the recruitment or retention of qualified dentists in a specific category of dentists.

Senate bill: Proposed new section 4127(b) is identical to the House provision, except that (a) it would require that regulations be prescribed by the Secretary after receiving the recommendations of the CMD, (b) determinations that there are extraordinary difficulties in recruitment or retention of qualified physicians or dentists in certain specialties could also be made on any "other geographic basis," and (c) the CMD would be required to establish uniform national rates of special pay to be paid to a physician or dentist for a factor of special pay for which the bill specifies a range of rates.

Compromise agreement: Proposed new section 7437(b) follows the House bill, except that the Secretary would prescribe special pay regulations only after receiving the recommendations of the CMD.

The Committees notes that, under section 553 of title 5, regulations having to do with matters relating to agency management or personnel are not subject to the rulemaking requirements of the Administrative Procedures Act.

PROCEDURES FOR AUTHORIZATION OF SCARCE SPECIALTY PAY ON AN INDIVIDUAL FACILITY BASIS

Current law: Section 4118 of title 38 does not provide for the payment of special pay for service in a scarce specialty on an individual facility basis.

House bill: Proposed new section 4137(c) would provide that, for the purpose of paying special pay, a determination by the Secretary that there are extraordinary difficulties in the recruitment or retention of qualified physicians in a medical specialty or in the recruitment of qualified dentists in a dental specialty, on the basis of the needs of a specific medical facility, may only be made upon the request of the director of that facility.

Senate bill: Proposed new section 4127(c) is identical to the House provision, except that (a) if a facility director determines that the facility is unable to recruit or retain physicians or dentists in a specific category through the use of scarce specialty and geographic special pay authorities, the facility director would be required to notify the CMD and recommend the payment of special pay or an increase in the payment of special pay, as appropriate for that category of physicians or dentists; (b) the special pay (or the increase in special pay) recommended by the director would become effective with respect to that facility 45 days after the date on which the CMD receives the notification, unless, before the expiration of that period, the CMD disapproves the director's recommendation; and (c) the CMD could delegate or redelegate the authority to approve or disapprove the facility director's recommendation to an officer or employee of VHS&RA who holds a position in the direct line of authority between the CMD and the facility director higher than the one held by the director making the recommendation, as determined by the CMD.

Compromise agreement: Proposed new section 7437(c) follows the House bill.

LIMITATION ON AUTHORIZATION OF SCARCE SPECIALTY SPECIAL PAY ON AN INDIVIDUAL FACILITY BASIS

Current law: As noted above, section 4118 of title 38 does not provide for the payment of special pay for service in a scarce specialty on an individual facility basis; thus, there is no basis in current law for any limitation on such authority.

House bill: Proposed new section 4137(d) would prohibit the Secretary from providing special pay for a scarce specialty on the basis of the needs of a specific medical facility unless the Secretary also determines that special pay on the basis geographic location is insufficient to meet the needs of that facility for qualified physicians or dentists.

Senate bill: Proposed new section 4127(d) is identical to the House provision, except that it also would (a) specify that the CMD would make the determination of geographic-pay insufficiency upon the request of the facility director, (b) require that the determination relate expressly to the needs of the facility for qualified physicians or dentists in the specific category of physicians or dentists concerned, and (c) require that, if special pay is paid to a physician or dentist on any geographic or individual-facility basis, all physicians or dentists with the same specialty serving at the facility concerned be paid the same rate of such pay.

Compromise agreement: Proposed new section 7437(d) follows the House bill.

PROTECTION AGAINST REDUCTION IN SPECIAL PAY DUE TO ELIMINATION OF PRIMARY SPECIAL PAY CATEGORY

House bill: No provision.

Senate bill: Proposed new section 4127(f) of title 38 would require that a physician or dentist who was employed by VHS&RA, on an either full-time or part-time basis, on the day before the effective date of the new subchapter, and was receiving primary special pay and incentive special pay only for full-time-status, and tenure of service, be paid special pay under the new subchapter at a rate not less than the rate of special pay the physician or dentist received the day before the effective date of this bill.

Compromise agreement: Proposed new section 7437(e) follows the Senate bill. In addition, proposed new section 7431(g) would provide for retention pay, as described above under "DESIGNATION OF CATEGORIES WITH NO RECRUITMENT OR RETENTION PROBLEMS", for a physician or dentist who had been receiving special pay under a section 4118 agreement in a category for which the Secretary subsequently determines there is no significant recruitment and retention problem.

LIMITS ON THE MAXIMUM AMOUNT OF SPECIAL PAY

Current law: Section 4118(a)(1) of title 38 limits the total amount of special pay that may be paid to a physician or dentist to an amount no more than (a) $22,500 per year for a full-time physician, and (b) $10,000 per year for a full-time dentist, except that special pay received for service in a specific geographic location in which VA experiences severe recruitment and retention difficulties, which, under section 4118(d), is excluded from the maximum limit on total special pay.

House bill: Would place no limit on the maximum amount of special pay that a physician or dentist could receive.

Senate bill: Proposed new section 4127(h) of title 38 would set a cap on the total compensation (special pay plus basic pay) that a physician or dentist could receive at an amount no greater than the amount specified in section 102 of title 3, United States Code.

Compromise agreement: Proposed new section 7437(h) follows the Senate bill. In addition, as described above under "SUBMISSION OF CERTAIN SPECIAL PAY AGREEMENTS TO CENTRAL OFFICE FOR APPROVAL", proposed new section 7432(d) would require that any agreement (other than an agreement relating to the CMD's pay) that would take effect before October 1, 1994, and would cause a physician or dentist's total pay to exceed the annual rate of basic pay for positions specified in section 5312 of title 5, be submitted for approval to the Secretary through the CMD.

BASIC PAY CALCULATIONS

Current law: Section 4118(f)(1) of title 38 provides that, except as provided in paragraph (2) of section 4118(f) (discussed below), any additional compensation provided as special pay under section 4118 not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 84 of title 5, or other benefits related to basic pay.

House bill: Proposed new section 4138(e) would provide that, except as provided in subsections (b) and (d) of section 4138 (discussed below), any special pay would not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 84 of title 5, or other benefits related to basic pay.

Senate bill: No provision.

Compromise agreement: Proposed new section 7438(b) follows the House bill.

CALCULATION OF RETIREMENT BENEFITS

Current law: Section 4118(f)(2) of title 38 provides that special pay paid to any full-time employee after September 30, 1980, be included in average pay, as defined in section 8331(4) or 8401(3) of title 5, only (a) for the purposes of computing disability or death benefits paid under section 8337, 8341(d) or (e), 8442(b), 8443, or 8451 of title 5; or (b) if the employee has completed not less than fifteen years of full-time service, for the purpose of computing an annuity, except that, regardless of the length of such employee's service, no special pay could be included in average pay in computing an annuity that commenced before October 1, 1985, and only one-half of any special pay in computing an annuity that commenced on or after October 1, 1985, but before October 1, 1990.

House bill: Proposed new section 4138(b) would follow current law with respect to disability or death benefits and, with respect to an annuity computation under chapter 83 or 84, provide for all special pay to be considered as basic pay for chapter 83 or 84 purposes with no phase-in.

Senate bill: Proposed new section 4128(b) would follow current law with respect to disability or death benefits and, with respect to annuity computations under chapter 83 or 84, would provide for special pay provided to a physician or dentist under the new authority to be considered basic pay (b) in the case of a physician or dentist who has no VA service prior to the effective date of this measure but has at least fifteen years of service, and (b) in the case of a physician or dentist who has pre-effective date service and at least fifteen years of service, only in (1) an amount equal to the amount of special pay the physician or dentist was receiving immediately prior to the effective date, plus (2) an amount equal to 20 percent of the increased amount of special pay under the new law for each two years served after the effective date.

Compromise agreement: Proposed new section 7438(b) follows the Senate bill, except that the phase-in of the increase for those with pre-effective date service would be at the rate of 25 percent of the increased amount of special pay for each two years served after the effective date.

LIFE INSURANCE CALCULATIONS

Current law: Section 4118(f)(3) of title 38 requires that any special pay be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.

House bill: Proposed new section 4138(c) would provide that special pay provided to a physician or dentist under the new authority or under an agreement entered into under section 4118 of title 38 and be considered as annual pay for the purposes of the provisions of chapter 87 of title 5, relating to life insurance for Federal employees.

Senate bill: No provision.

Compromise agreement: Proposed new section 7438(c) follows the House provision.

QUADRENNIAL REPORT ON SPECIAL PAY

Current law: Section 4118(g)(2) of title 38 requires the Secretary to (a) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including between physicians and dentists employed by VA and physicians and dentists employed by other Federal departments and agencies and between all Federal sector and non-Federal sector physicians and dentists; (b) obtain measures of income from the employment or practice of physicians and dentists in the non-VA sector, including Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the amounts of special pay for VA physicians and dentists; (c) submit a report to the President, on such date as the President may designate but not later than December 31, 1988, and once very four years thereafter, recommending appropriate amounts of special pay; (d) include in such recommendations, when the Secretary considers it appropriate and necessary to do so, modifications of the special pay levels set forth in section 4118 of title 38 (1) whenever VA is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the incomes of non-VA physicians and dentists performing comparable types of duties significantly exceed the levels of total pay of VA physicians and dentists, or (2) whenever other extraordinary circumstances are such that special pay levels are needed to recruit or retain a sufficient number of well-qualified physicians and dentists.

House bill: Proposed new section 4139 of title 38 follows current law, except that it would require the Secretary to submit the report on such date as the President may designate but not later than December 31, 1992, and once every four years thereafter.

Senate bill: Proposed new section 4129 is substantively identical to the House provision.

Compromise agreement: Proposed new section 7439 follows the House provision, except that it would require the Secretary to submit the report not later than December 31, 1994, and once every four years thereafter.

INCLUSION OF RECOMMENDATIONS IN THE PRESIDENT'S BUDGET SUBMISSION

Current law: Section 4118(g)(3) of title 38 requires the President to include recommendations with respect to the exact rates of special pay for physicians and dentists under section 4118 in the Budget next transmitted to the Congress under section 1105 of title 31 after the submission of each report by the Secretary pursuant to section 4118(g)(2) (known as the "Quadrennial Report", described below).

House bill: Proposed new section 4139(c) follows current law.

Senate bill: Proposed new section 4129(c) follows current law, with an additional requirement that the President specify the added costs of the recommended rates of special pay.

Compromise agreement: Proposed new section 7439(c) follows the Senate bill.

ANNUAL REPORT ON SPECIAL PAY

Current law: Section 4118(g)(3) of title 38 requires the Secretary to submit to the House and Senate Committees on Veterans' Affairs, not later than April 30 of each year, a report on the implementation of section 4118, which must include (a) a review of the Secretary's and CMD's actions, findings, recommendations, and other activities to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report, and (b) a plan in connection with the implementation of section 4118 for the remainder of the fiscal year during which the report is submitted and for the succeeding fiscal year.

House bill: Proposed new section 4140 of title 38 would follow current law, but also would require the Secretary to include in the annual report (a) a description of the amounts of special pay paid during the preceding fiscal year by category of pay; (b) a list of (1) the geographic areas, and scarce specialties for which special pay was paid during the preceding fiscal year, (2) the areas and specialities for which special pay is being paid during the current fiscal year, and (3) the areas and specialties for which special pay is expected to be paid during the next fiscal year, and (4) a summary of any differences among those three lists; (c) a list of (1) the number of physicians and dentists who left employment with the Department during the preceding year, (2) the number who changed from full-time status to part-time status, and (3) the reasons therefor; and (d) the number of unfilled physician and dentist positions in VHS&RA and the reasons that each such position is unfilled.

Senate bill: Proposed new section 4130 is similar to the new section proposed in the House bill except that, the provision would be modified to require the Secretary to include (1) the number of physicians and dentists who change from part-time to full-time status, and (2) a summary of the reasons why physicians and dentists left employment with VHS&RA or changed their employment status; and (b) the following items would be added to the report: (1) the numbers of positions, by specialty, created and abolished during the preceding fiscal year and a summary of the reasons for such actions; (2) with respect to the number of unfilled physician and dentist positions (A) the number of unfilled positions in each specialty in VHS&RA, (B) the average and maximum lengths of time that those positions have been unfilled, (C) a summary of the reasons why the positions remained unfilled and, (D) in the case of any specialty not designated as a scarce specialty for purposes of special pay, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated; and (3) an assessment of the need for periodically adjusting the rates of special pay of physicians and dentists to reflect cost-of-living increases as a means of recruiting and retaining high-quality medical personnel.

Compromise agreement: Proposed new section 7440 contains this provision. However, it does not contain an assessment of the need for periodically adjusting rates of special pay of physicians and dentists. In addition, new section 7432(d)(3) would require the Secretary to include in the annual report (1) the number of agreements entered into during the period covered by the report which caused a physician's or dentist's total annual salary to exceed the amount specified in section 5312 of title 5 (Executive Level I); (2) the number of proposed agreements exceeding the amount specified in section 5312 which were disapproved by the Secretary; and (3) a detailed explanation of the Secretary's reasons for disapproving any agreements.

REIMBURSEMENT OF CONTINUING EDUCATION EXPENSES

Current law: Section 4113 of title 38 authorizes the Secretary to pay the expenses, except membership fees, of physicians and dentists to attend meetings of associations for the promotion of medical and related science.

House bill: Section 103 would require the Secretary to reimburse any full-time board-certified physician or dentist for up to $1,000 per year for expenses incurred for continuing professional education after September 30, 1990.

Senate bill: Section 264 would (a) require the CMD to reimburse any full-time board-certified physician or dentist—and authorize the CMD to reimburse other physicians and dentists—for up to $1,000 per year for continuing education expenses, and (b) authorize the CMD to reimburse continuing education expenses in excess of $1,000.

Compromise agreement: Proposed new section 7411 follows the House bill, except that the provision would apply only with respect to expenses incurred after September 30, 1991.

ELECTION OF CREDITING SPECIAL PAY FOR RETIREMENT ANNUITY AND INSURANCE

Current law: Under section 103(b)(2) of Public Law 96-330, a physician or dentist who was employed by VHS&RA on October 1, 1980, in a full-time status was permitted to make an irrevocable election, no later than April 1, 1981, not to have special pay counted as basic pay for the purposes of computing an annuity under chapter 83 or 84 of title 5.

House bill: No comparable provision.

Senate bill: Section 266 would permit a physician or dentist who elected not to have special pay under section 4118 included as basic pay for the purposes of either chapter 83 or 84 of title 5 irrevocably to elect to have special pay received under the new special pay authority considered basic pay for such purposes and included in average pay for the purposes of sections 8331(4) and 8401(3) of title 5 in the same manner and to the same extent as provided in the new special pay authority. The physician or dentist would be required to make such an election in writing at the time the physician or dentist enters into an agreement under the new provisions.

Compromise agreement: No provision.

The Committees note that the goal of the Senate provision would be met by the repeal of section 4118 and by the enactment of section 104 of the compromise agreement, which would authorize all physicians and dentists to enter into new agreements under new chapter 74. All special pay received under these new agreements would be counted as basic pay for the purpose of computing an annuity.

RECRUITMENT, RELOCATION, AND RETENTION BONUSES

Current Law: Section 5524a of title 5 permits the head of a Federal agency to provide advance payment of basic pay, covering not more than two pay periods, to any individual who is newly appointed to a position in the agency, at the initial rate of basic pay payable to the employee upon commencement of service in that position. Section 5706b of title 5 permits a Federal agency to pay an individual for expenses for travel to and from pre-employment interviews. Section 5753 of title 5 (a) permits the Director of the Office of Personnel Management (OPM), subject to regulations which OPM will prescribe, to authorize the head of an agency to pay a bonus to an employee who is newly appointed under the General Schedule, or an employee under any Federal pay authority who must relocate to accept a General Schedule position, if the Office determines that the agency would be likely to encounter difficulty in filling the position, in the absence of such a bonus; (b) requires the OPM to determine the amount of such a bonus up to a limit of 25 percent of the annual rate of basic pay for the position, exclusive of any locality comparability payment that may be applicable to the position; (c) requires that payment of such a bonus be contingent upon the employee entering into an agreement with the agency to complete a period of employment with the agency, pursuant to regulations prescribed by OPM, which the employee must repay on a pro rated basis, if the employee is separated from the agency or voluntarily fails to complete the agreed-upon period of service; and (d) requires that such a bonus be paid as a lump sum and not considered as part of the employee's basic pay. Section 5754 of title 5 (a) permits OPM, in accordance with regulations which OPM must prescribe, to authorize the head of an agency to pay an allowance to an employee under the General Schedule if the unusually high or unique qualifications of the employee make it essential for the agency to retain the employee and the agency determines that the employee would be likely to leave in the absence of a retention allowance; (b) provides that a retention allowance may not exceed 25 percent of the employee's annual rate of basic pay (exclusive of any locality comparability payment under section 5304 of title 5); and (c) requires that such an allowance be paid in at the same time and in the same manner as the employee's basic pay, but may not be considered part of the employee's basic pay.

House bill: Section 104 of H.R. 598 in the 102d Congress, as passed by the House of Representatives on January 30, 1991, would add new section 4120A to title 38 under which the Secretary would be authorized to permit the CMD to pay allowances or expenses to physicians, nurses, and other title 38 health-care employees, in the same manner, and subject to the same limitations as are provided in the authorities under sections 5524a, 5706b, 5753, and 5754 of title 5.

Senate bill: No provision.

Compromise agreement: Proposed new section 7410 follows the House bill.

EFFECTIVE DATES AND TRANSITION

House bill: Section 104 would (a) provide that the new special pay authority take effect on the later of (1) October 1, 1990, or (2) the date of enactment; (b) provide that the continuing education expenses provision apply to expenses incurred after September 30, 1990; (c) require that any agreement entered into under section 4118 of title 38 prior to the effective date remain in effect and be treated for all purposes in accordance with such section as in effect on the day before the effective day of the new special pay authority, except that an agreement that covers a period in excess of one year and that would expire more than one year after such effective date may be terminated in order to allow a physician or dentist to enter into a new agreement; (d) require that any new agreement take effect only on the anniversary date of the terminated agreement; and (e) prohibit a special pay agreement from providing special pay with respect to a period before the date on which the agreement is entered into.

Senate bill: Section 265 would (a) provide that the new special pay authority would take effect with respect to pay periods beginning more than 180 days after the date of enactment; (b) require the Secretary to terminate a special pay agreement entered into under section 4118, if (1) the agreement covers a period in excess of one year, (2) the agreement expires more than one year after the effective date of the new special pay authority, (3) the physician or dentist concerned requests termination of the agreement, and (4) the agreement is terminated for the purpose of permitting the physician or dentist concerned to enter into a new special pay agreement; (c) require that any new agreement take effect only after completion of the first year of service under the terminated agreement; and (d) provide that the continuing education expenses provision apply to expenses incurred after September 30, 1990.

Compromise agreement: Section 104 would provide that the new special pay authority would take effect with respect to the first pay period beginning after the earlier of (a) July 1, 1991, or (b) the end of the 90-day period beginning on the date of enactment. A physician or dentist who entered into a special pay agreement under section 4118 of title 38 which would not expire until after the beginning of that pay period would be permitted to negotiate a new agreement that would begin with that pay period. A physician or dentist who entered into a section 4118 agreement that expires before the first pay period as to which the measures take effect would be permitted (1) to extend the 4118 agreement until the beginning of that pay period, and (2) to negotiate a new agreement that would begin with that pay period. A physician or dentist hired by VHS&RA after the date of enactment but before the effective date would be permitted to negotiate both (1) a 4118 agreement that would expire as of the beginning of that pay period, and (2) a new agreement that would begin with that pay period. Proposed new section 7411 would apply to continuing education expenses incurred after September 30, 1991.

Mr. KOHL. Mr. President, I would like to engage the distinguished chairman of the Committee on Veterans' Affairs, Mr. CRANSTON, in a colloquy regarding proposed new sections 7439 and 7440 of title 38 as proposed to be added by S. 675. These provisions call for a review of pay for physicians and dentists and require the Secretary of Veterans Affairs to submit an annual report to the House and Senate Veterans' Affairs Committees on the use of the special pay authorities.

Mr. CRANSTON. Mr. President, I would be happy to respond to the concerns of the Senator from Wisconsin.

Mr. KOHL. Mr. President, late last year I was joined by a number of my colleagues, including Senators KASTEN, HEFLIN, D'AMATO, SHELBY, RIEGLE, and LEVIN, in writing a letter to Secretary Derwinski on behalf of the Department of Veterans Affairs dentists in the specialty of endodontics. We wrote because there seemed to be some compelling reasons why these specialists should be granted specialty pay. At this point, I would ask unanimous consent that the text of that letter and the Secretary's reponse be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, December 14, 1990.

Hon. EDWARD J. DERWINSKI,
Secretary, Department of Veterans Affairs, Washington, DC.

DEAR SECRETARY DERWINSKI: We are writing to request that you make a determination to grant special pay to the dental specialty of endodontics within the Department of Veterans Affairs. In light of the following considerations, this decision would appear to be most appropriate.

1. Recruitment and retention of endodontists is a problem. The Klemm Report recommended specialty pay for all dental specialties. A 1984 Dentistry Advisory Task Force made the same recommendation. In June of 1989, there were 129 applications for employment as a dentist on file with the DVA. There were ten from prosthodontists, four from oral surgeons, and one from a periodontist—all categories which receive specialty pay. There were none from endodontists. Yet an informal survey has indicated a need for more of these specialists.

2. Endodontics has been singled out for denial of specialty pay with no apparent justification, along with one other dental specialty. To my knowledge, no studies were done to justify that recruitment and retention of endodontists was any easier than it was for the other specialties receiving this pay.

3. DVA endodontists earn less than their DVA colleagues in other dental specialties, yet in the private sector pay for endodontists is the second highest of any dental specialty, and greatly exceeds the pay of at least one of the scarce specialties.

4. Other federal agencies, including all branches of the military and the USPHS, grant specialty pay to all dental specialties. Only DVA endodontists are not compensated equally with other dental specialties.

5. Endodontists are important to the DVA. Their surgical expertise in dealing with cases of acute pain and infection is vital to training the DVA's general dentists of the future. These skills are an important service to provide for our nation's veterans.

This lack of specialty pay is creating problems for the DVA. It has created an unfair penalty on the small number of DVA endodontists. Because of the numbers of individuals involved, granting this specialty pay would not cause a significant increase in the DVA budget. Without such action, the number of endodontists in the DVA will in all likelihood continue to decrease.

We appreciate your consideration of this request. We look forward to your response, to your assessment of the recruitment and retention of endodontists in the DVA, and to your views on the role this specialty plays for DVA dental services.

Warm regards,

Sincerely,

Herb Kohl, Howell Heflin, Richard Shelby, Carl Levin, Bob Kasten, Alfonse D'Amato, Don Riegle.

SECRETARY OF VETERANS AFFAIRS,
Washington, February 7, 1991.

Hon. HERBERT KOHL,
U.S. Senate, Washington, DC.

DEAR SENATOR KOHL: This letter is in further reply to your request to designate endodontics as a scarce dental specialty for special pay.

Endodontics is not designated as a scarce specialty for the payment of incentive special pay because the Department of Veterans Affairs (VA) is not currently experiencing significant recruitment or retention difficulties for this specialty. Under present law, the Chief Medical Director may authorize the scarce specialty component of incentive special pay for a dental specialty when he determines that there are extraordinary difficulties in the recruitment or retention of qualified dentists in that specialty. In accordance with this law, VA regulations establish the procedures for identifying and compensating scarce specialties. The enclosed fact sheet, prepared by the Office of Personnel and Labor Relations, provides further information on this matter.

VA officials are continually monitoring the staffing situation for all dental specialties, and will not hesitate to authorize special pay for endodontists if the situation warrants.

Similar letters have been sent to the cosigners of your request. Please be assured that we appreciate the contributions that VA endodontists make to the quality care we seek to provide to our Nation's veterans.

Sincerely yours,

EDWARD J. DERWINSKI.

DEPARTMENT OF VETERANS AFFAIRS

FACTSHEET

ISSUE

Designation of endodontics as a scarce dental specialty for the purpose of authorizing the scarce specialty component of incentive special pay.

DISCUSSION

The Chief Medical Director (CMD) has authority under 38 U.S.C. 4118(c)(2)(A)(iii) and VA Policy Manual MP-5, Part II, Chapter 3, Section B, paragraph 4b to authorize the scarce dental specialty component of incentive special pay when he determines that there are extraordinary difficulties in the recruitment or retention of qualified individuals in a particular specialty.

In making such determinations, the CMD considers a variety of factors, including turnover rate, replacement rate (i.e., a comparison between the previous and current staffing levels), number of qualified applicants refusing job offers, recruitment lag (i.e., the length of time to fill a vacant position), prevailing non-Federal salaries, and number of contracts used to provide the required services. Salary and staffing data from other sources (e.g., professional employee associations) may also be considered by the CMD in making these determinations.

An evaluation of the above factors as they apply to endodontists has not determined that VA has extraordinary problems recruiting and retaining these specialists. Further, the most recent annual report to Congress on the permanent authority for physician and dentist comparability pay under Section 104 of Public Law 96-330, dated April 1990, did not identify endodontics as a specialty for which VA had significant staffing problems.

Oral surgery, prosthodontics, and periodontics are the dental specialties currently approved to receive special buy in VA, based on the CMD's determination of severe recruitment or retention problems. Endodontics, like oral pathology and other dental specialties found in VA, is not authorized to receive specialty pay.

The majority of VA medical centers do not employ endodontists because there is insufficient workload to justify the creation of such positions. At these facilities, care which might otherwise be provided by endodontists is provided by general dentists and, in unusual situations, by fee basis or consulting endodontists. This practice has been found to effectively meet the health care needs of veteran patients.

Mr. KOHL. As the factsheet attached to the Secretary's letter points out, title 38 of the United States Code authorizes specialty pay when there are extraordinary difficulties in recruiting and retaining personnel. Currently, VA says it is not having difficulty in recruitment or retention in this field, and thus has not granted specialty pay to endodontists.

Mr. President, this is where I believe the reporting provisions in the bill now before us are of vital importance. While VA now says it has no problems in providing endodontic services for our veterans, I believe there is a need for further data to unequivocally establish that claim. I would like to ask the distinguished chairman of the Veterans' Affairs Committee if he believes there has been enough research into the problems of recruitment, retention, and pay scale for VA dentists.

Mr. CRANSTON. Mr. President, I share the Senator's concern that perhaps there has not been enough research into the recruitment and retention of VA dentists. As the Senator is aware, the most comprehensive data we have on pay issues in VA is contained in what is widely referred to as the Klemm report, a study completed by a private research firm which provided the basis for the recommendations issued in the quadrennial report to the President on the adequacy of special pay for physicians and dentists.

It is unfortunate that that report, while containing a wealth of information on physicians, does not provide the same degree of information on dentists. The lack of sufficient information on dentist recruitment and retention is one reason why the committee included in our bill the two reporting provisions to which the Senator referred. First, the Secretary of Veterans Affairs will be required to submit to the President a quadrennial report comparing the pay of VA physicians and dentists with those in other Federal agencies and in the private sector, and making recommendations for any needed modifications of the special pay levels where recruitment and retention is difficult. It is the policy of Congress that the pay levels in these sectors be reasonably comparable, and this report should help to ensure that. In fact, the Klemm report provided much of the data justifying Congress' actions in this special pay bill.

Mr. KOHL. I wish to commend my colleague for including this reporting requirement in the bill. Some of the information I have seen suggests that VA endodontists may be compensated at levels below their colleagues in other Federal agencies and the private sector receive. A comprehensive study of this situation would be very useful to the Secretary of the Department of Veterans Affairs and to the Congress.

Mr. CRANSTON. The second requirement in the compromise agreement is for an annual report to the House and Senate Veterans' Affairs Committees on the uses of the specialty pay authority. Among other requirements, and of interest to the Senator from Wisconsin, is a requirement that the report include the number of positions created and abolished in each specialty, the number of unfilled positions in each specialty, and summaries of the reasons for each vacancy or abolished position. If vacancies occur in specialties which do not receive specialty pay, an explanation would be required.

Mr. KOHL. I want to commend my colleague for this requirement as well. Such information would provide concrete evidence to Congress of when critical shortages are occurring. I will certainly be watching closely to see what happens with the endodontist positions currently in the VA system. I am concerned, Mr. President. While there has not been a comprehensive study addressing recruitment and retention of the individual dental specialties, three dental specialties have received specialty pay for 10 years while endodontics has not. An informal study conducted by one of my constituents has indicated that many VA service chiefs believe that patient care would be enhanced if there were greater access to endodontists. Without specialty pay, I am afraid that we may lose some of the endodontists we now have, and that veteran care may suffer. These reporting requirements will keep us up to date on those figures, and whether vacancies can be filled.

Now I am not an expert on the dental needs of veterans. And it may be that the VA can provide adequate care, as the factsheet from the Department indicated, by using consultant or freebasis endodontists in many situations where there is a need for an endodontist. But the informal survey I mentioned also indicated that there was a difficulty in recruiting consultant and fee-basis endodontists, even when funds were available. I would like to ask the distinguished chairman if it was his considered opinion that the Department should include such information in its quadrennial report, if indeed there is such a problem in the recruitment of consultant and fee-basis endodontists in areas where no VA endodontist is available. I believe such information would be appropriate in helping define whether the Department is unable to recruit or retain a sufficient work force.

Mr. CRANSTON. Although the quadrennial and annual reports on special pay focus on salaries for staff physicians and dentists, I think it would be useful to learn whether VA has significant difficulty in hiring consultant and fee-basis physicians and dentists. I would expect that VA would include such information in its reports. VA must be able to obtain the services of medical and dental specialists, from either salaried or contract personnel, if it is to provide our Nation's veterans with high-quality care.

Mr. KOHL. Mr. President, I thank the distinguished chairman for his work on this important piece of legislation, and I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 65) was agreed to.

H.R. 598, THE PHYSICIAN-DENTIST SPECIAL PAY AND LABOR RELATIONS ACT OF 1991

Mr. SPECTER. Mr. President, as the ranking minority member of the Senate Veterans' Affairs Committee, I would like to express my support for H.R. 598, the Physician-Dentist Special Pay and Labor Relations Act of 1991. This legislation makes great strides in providing adequate compensation for Department of Veterans Affairs' physicians and dentists and in improving employee rights for VA personnel. In order to continue to provide quality health care, it is of the utmost importance that we make the needs and concerns of VA employees a top priority.

H.R. 598 is legislation designed to assist in the recruitment and retention of VA physicians and dentists. It will allow certain VA physicians and dentists to be eligible for special pay according to regulations prescribed by the Secretary with the recommendation of the chief medical director. Eligibility for special pay is based on several factors which include: full-time working status, length of service, scarce medical specialty, board certification, geographic location, and exceptional qualifications within a specialty. The legislation includes provisions regulating pay increases which exceed Executive Level I, breach of contract, and pay for part-time employment. It will also provide continuing education funds—up to $1,000 a year—for each full-time, board certified physician and dentist. Further, the bill will bring much needed relief to the overburdened VA health care system. It will provide the pay incentive needed to help keep VA competitive with the private sector while encouraging physicians and dentists outside the VA to consider a career with the Department of Veterans Affairs.

I urge my colleagues in the Senate to support this long overdue legislation. While it is unfortunate that VA cannot offer its physicians and dentists salaries commensurate with those that doctors receive in the private sector, this legislation will aid in closing the gap that exists between VA and private sector wages. As the Department of Veterans Affairs assures more equitable salaries for physicians and dentists, it is also taking steps to alleviate unnecessary redtape for its employees. I am an original cosponsor of this legislation and I am proud to give it my full support.

TO INCREASE PAY FOR VA PHYSICIANS AND DENTISTS

Mr. MURKOWSKI. Mr. President, as the former ranking Republican of the Veterans' Affairs Committee, I rise today to speak about legislation which is designed to improve VA's ability to recruit and retain physicians and dentists. This legislation is derived from legislation approved by the Senate Veterans' Affairs Committee last year, legislation passed by the House during this session and the last session of Congress as well as a proposal submitted by the administration.

I am pleased that many of the views expressed by Secretary Derwinski have been addressed in this bill. I understand that while VA is not supportive of many of the provisions in the bill, VA will not object to its enactment.

Special pay for VA physicians and dentists has not been increased since 1980. As a result, pay for VA physicians and dentists is often inadequate to recruit and retain these qualified personnel, especially in certain geographic regions, and in certain clinical specialties. This bill should go a long way to improving this situation.

This legislation requires the Secretary of Veterans Affairs to provide special pay for physicians and dentists based on the following factors: full-time status, length of VA service, clincal specialty, geographic locations, board certification, and executive position. In some cases, VA currently pays special pay based on these factors, but under this bill the dollar amounts are very significantly increased. This bill is estimated to cost some $63 million in the first year of implementation, and exceeds—by $21 million—the cost of VA's own physician and dentist pay bill. It is somewhat more generous than I believe is necessary to recruit and retain physicians and dentists.

Mr. President, although I do not intend to vote against this bill, I wish to note for the record one of my concerns about the pending legislation.

This bill requires that no physician or dentist can be paid in an amount which exceeds the Executive Level I rate which is about $135,000 annually, unless the Secretary approves this level. I am pleased with this provision but I object to the fact that it will expire in September 1994. I see no justification for sunsetting this provision. The Secretary should have the permanent responsibility for approving such very high pay levels.

Finally, I want to acknowledge the hard work of Ms. Nora Egan and Ms. Meg O'Shea of the Department of Veterans Affairs. I thank them both for their assistance to me during the development of this legislation.

I also wish to thank Ms. Jo Sherman who just recently left the staff of Senator ALAN SIMPSON for her outstanding work on veterans issues. Jo has joined the VA's Office of Congressional Affairs. I wish her all the best. I know that the staff and Members of the Senate Veterans' Affairs Committee will greatly miss her experience and dedication.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment.

If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. LEAHY. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 17, H.R. 598, that all after the enacting clause be stricken and the text of S. 675, as amended, be inserted in lieu thereof; the bill be read a third time and passed; and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 598), as amended, was passed.

Mr. LEAHY. I ask unanimous consent Calendar 44, S. 675 be indefinitely postponed.

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

Mr. LEAHY. Mr. President, I thank my colleagues for allowing this interruption.

Mr. BOND. There is no objection on the Republican side.

Mr. LEAHY. I note for colleagues, this was something that had been cleared on both sides. I especially thank the distinguished Senator from Missouri who had been on his feet seeking recognition and with his usual courtesy allowed us to put this housekeeping chore through.

I yield the floor so the Senator from Missouri can take the floor.

The PRESIDING OFFICER (Mr. GORE). The Senator from Missouri is recognized.

Mr. BOND. I thank my good friend from Vermont and my dear colleague with whom I am pleased to serve on the Agriculture Committee last year for his kind words.

FUTURES TRADING PRACTICES ACT

The Senate continued with the consideration of the bill.

Mr. BOND. Mr. President, as a member last year of the Agriculture Committee who fought last Congress for tough reforms to clean up the futures markets in the wake of scandals exposed by FBI sting operations in 1989;

And, as a principle author, who along with Senators LEAHY, LUGAR, DODD, and Heinz developed the Intermarket Coordination Act last October;

And, as an original cosponsor of this legislation last January;

I had fully expected to stand in this Chamber to urge my colleagues to support the Futures Trading Practices Act of 1991 (S. 207). Instead, there are provisions in it which I must oppose.

Somehow a bill that entered the committee process looking like Dr. Jekyll, was reported out of committee looking more like Mr. Hyde. Critical measures designed to foster competition and financial innovation in the United States have been replaced by provisions that will drive our financial markets offshore. Important directives intended to bring futures and securities regulation into harmony have been replaced by artificial barriers that divide financial markets and market regulator, alike.

As one of the few Members of this body privileged to have served on both the Agriculture and Banking Committes, I have had the opportunity to appreciate the importance of both the futures and securities markets. However, I also understand the strong links that tie the markets for stocks, stock options, and stock index futures together. As a result, it came as no surprise to me that the single conclusion—upon which all of the studies of our financial markets following the unfortunate stock market crash of October 1987 agreed—was that what appeared to be separate markets, in fact, behaved as a single market.

My colleagues will recall that last June, the administration submitted to Congress the Capital Markets Competition, Stability and Fairness Act designed to foster regulatory harmony among the stock, stock option, and stock index futures markets. The approach recommended by Treasury Secretary Brady was to consolidate the regulation of all stock and stock derivatives—including the authority to set margins—in the SEC.

Following the introduction of that legislation, I attended extensive hearings on both the Agriculture and Banking Committees on the intermarket issues confronting our Nation. Here is what I heard:

Alan Greenspan, the chairman of the Federal Reserve System, testified that he was shaken when the futures markets raised margins on stock index futures in the midst of a stock market crash in October 1989. While Chairman Greenspan had previously opposed Federal oversight of margins on futures, he stated that "The behavior of margin-setting in the last couple of years has shaken my confidence in that view." While the futures exchanges had done a good job of protecting their own markets, these margins had the potential to harm other related markets and the Nation's clearance, settlement and payments systems. In short, inappropriate margins can create systemic risk with disastrous consequences for our entire financial system.

SEC Chairman Breeden testified that his agency—acting under the Federal securities laws—had approved the trading of a new innovative financial product designed to permit small individual investors to purchase the equivalent of a basket of stocks. This new product—called an index participation—paid dividends and required the posting of 50-percent margins—just like other stocks. But the futures exchanges and the CFTC went to court to block the trading of this product in securities markets. A court in Chicago found that the product had characteristics of both stocks and futures—but concluded that under the Commodity Exchange Act, the CFTC had exclusive jurisdiction. The result was that index participations were banned from two SEC-regulated exchanges. They did not go to the futures designated contract markets. They, in fact, went overseas.

In addition to blocking the trading of index participations, Alan Greenspan warned that the current system of giving the CFTC exclusive jurisdiction over any financial product with an element of a futures contract could stifle innovation and competition because a broad range of financial products currently trading under other regulatory systems could be swept within the exclusive jurisdiction of the CFTC and be forced to trade only on a futures exchange.

Treasury Secretary Brady and Undersecretary Glauber testified that there remained a host of issues that cut across financial markets that remained unresolved in the wake of the stock market crash of 1987. Clearance and settlement systems were not linked; circuit breakers were not coordinated; intermarket frontrunning and other forms of fraudulent activity were not detected; and the United States could not speak with one voice in international negotiations on financial market issues.

While these hearings convinced me that there were a number of problems, I was not certain that the approach of a single regulator advocated by the administration was the only—or even the best—solution. As a result, I joined Senators LEAHY and LUGAR, the chairman and ranking member of the Agriculture Committee, and Senators DODD and Heinz, the chairman and ranking member of the Securities Subcommittee to explore alternative ways to address these issues.

After 3 long months of searching for common ground, the five of us thought we hit pay dirt. We developed the provisions of the intermarket coordination act. This legislation would: Enhance the safety of financial markets by consolidating margin setting authority over stocks, stock options, and stock index futures in the Federal Reserve Board; increase the competitiveness of our markets by permitting new innovative financial instruments with attributes of both securities and futures to trade in both markets; and promote stability by directing the SEC and CFTC to coordinate and harmonize regulations with respect to issues that cut across securities and futures markets.

Chairman LEAHY explained the process best last October when he stated:

> It took months for us to iron out our differences and consult with affected groups. Any draft compromise that was acceptable to the securities side was unacceptable to the futures side; and vice versa. What the SEC supported, the CFTC opposed. What the CFTC supported, the SEC opposed. Draft after draft took its place on the trash heap, each rejected by one party or the other refusing to give in.

Chairman LEAHY was equally eloquent in describing the outcome, when he concluded that the Intermarket Coordination Act was:

> A fair and reasonable compromise on a group of difficult hard-fought issues. It is a product which I am happy to recommend to my colleagues and which I will press for next year.

When the intermarket coordination provisions became title III of the Futures Trading Practices Act, I was hopeful that the Senate would take a small step forward to resolve critical issues confronting our financial markets. Instead, we have taken a giant leap back. What had taken five Senators with sharp pencils 3 months to write has been erased virtually overnight.

The Intermarket Coordination Act as introduced would have given the Federal Reserve Board the same margin authority over stock index futures that it currenlty has over stocks and stock options. It would have placed responsibiltiy for developing margin rules squarely on the shoulders of the only agency which can impartially protect against systemic risk across related markets.

The Fed could delegate day-to-day margin setting to the futures exchanges consistent with its margin rules.

Because the CFTC adamantly opposed Federal oversight margins as unnecessary, the Fed was restricted in allocating its margin authority to that agency for up to 30 months. The Intermarket Coordination Act as reported, however, leaves responsibility for the margin rules with the futures exchanges.

The Fed can request the exchanges to set different margin levels; if the request is not followed, can direct the exchanges to make the change. In addition, the Fed can transfer its modest new authority immediately to the CFTC.

While the Fed's confidence in current margin setting practices has been shaken—the absence of any statutory directive to the Fed requiring the development of appropriate margin rules—has shaken my confidence that this provision will result in any change at all. Although I trust the Fed to do the right thing, I would have felt more confident if the legislation spelled out the right thing to do.

Let me give a bit of specific background on the margin section because, as my distinguished colleagues from Michigan and from Utah have stated in their remarks on this bill, the margin setting powers are extremely important. They, along with the other provisions of titles I and II of this bill are extremely important, and we must pass them. What we are discussing and will be discussing, at least from my standpoint, is what comes afterwards. But it is important that we make a clear record on the margin issue.

Last year, Senator GORTON indicated he was going to offer an amendment to S. 1729, the Commodities Futures Trading Commission Reauthorization Act, which would do three things: Transfer jurisdiction over stock index futures from the CFTC to the SEC; grant the SEC margin setting authority over stock index futures; and amend the exclusivity clause. The results of the proposed Gorton amendment, which was strongly supported by Treasury Secretary Brady, was that holds were placed on S. 1729 by those opposed to any changes in the CFTC's authority.

Farm groups were mobilized and strong lobbying efforts in opposition to the Gorton-Treasury plan began. This went on for months until it became apparent the Gorton amendment did not have sufficient votes to be adopted. At this point, the holds were lifted. The Treasury and its allies then put holds on the bill in order to regroup and to turn the tide back their way. This, of course, further delayed the reauthorization and led us to where we are today.

My view throughout this entire process has been the Treasury proposal was on to something, but it went too far; in particular, the provision to transfer regulatory powers over stock index futures from the CFTC to the SEC. Thus, I suggested as a compromise: Do not touch jurisdiction over stock index futures, but instead deal with one of the Treasury's main points and give margin setting authority to our highest financial authority, the Federal Reserve Board.

I felt this would address the volatility questions, the liquidity questions, and the systemic risk problems raised by the Treasury without placing an unworkable dual regulatory scheme on the futures exchanges.

This suggestion led several of us to see if a middle ground could be found. Thus, Senators LEAHY, LUGAR, DODD, HEINZ, and I sat down to work it out. It is this process that continues to play out today.

I walked through this long story, Mr. President, in order to impress upon those who I hope may still be listening that responsible Senators, representing widely differing interests, have attempted to address some very serious issues. Unfortunately, parochial concerns and nearly paranoid views about jurisdiction, competition, and ultimately control, have made any progress seem difficult.

If nothing else is in title III that can be recommended, I must, however, express my satisfaction that margin language has survived. I hope and trust it will survive conference with the House.

I do not say this lightly, but I believe without some ultimate overseer, the lack of supervision and/or influence over the actions of the futures exchanges and clearinghouses means we are begging for trouble when the next market break occurs.

Treasury Secretary Brady has said this is crucial if we are to avoid a potential breakdown of the system. If world or national conditions cause another October 1987 or October 1989 downturn in the market, without Federal oversight, major institutions could fail.

One of the primary functions of margins is to protect the financial integrity of markets by reducing risks, both to the market participants and their creditors. Thus, margins should be set at levels sufficient to protect all players—brokers, clearinghouses, and other lenders—from possible credit losses that arise from changes in market prices.

Under current law, futures exchanges have the authority to set initial and maintenance margins for their market participants. They also control the so-called variation margin, which is the process of cashing out between clearinghouses and brokerage firms.

As such, margins are very important to the overall stability of the market; in particular, if one or more key players should fail. This, of course, was a major concern of the 1987 crash; that failure of one or more brokerage houses could have brought down the entire financial structure. Adequate margins are the first insurance against such occurrences. Adequate liquidity is the ultimate insurance.

Mr. President, the primary difficulty most people have with this issue is margins on stock exchanges appear very different in their levels, how they are regulated, and in their collection than margin on futures exchanges. However, everyone should understand the purposes are much the same whether we are discussing the margin on IBM stock or margin on stock index futures, pork bellies, potash or wheat, and that is to ensure those who borrow or make contracts for future performance are actually able to perform.

In addition, everyone must also understand that there is a very strong connection between margins on stocks and margins on stock index futures. That is because it is crystal clear that markets in stocks, stock options, and stock index futures behave as a single market. They are inextricably linked by common participants, intermarket trading strategies and economic forces, and their payment systems are closely interwoven.

This was brought home with a vengeance during the October 1987 crash when the danger of a default in the futures clearinghouse posed an extraordinary threat to our entire financial system. Clearly, a major disruption in one part of this linked market can do swift and sudden damage at the other end. Any liquidity problems or defaults can affect every other participant, whether they are direct or indirect players.

This is the systemic risk which the Federal Reserve and the Treasury feel is a grave risk. And this risk is why I believe we must give the Federal Reserve Board the broadest possible authority to ensure adequate liquidity and stability in these linked markets.

The Fed is clearly the only agency with the ability to look across New York or Chicago to determine where the risks and vulnerabilities are and to take appropriate action. Anything else is simply inadequate.

The status quo has only avoided failure by luck and good fortune, for a market regulatory system that encourages self-interest rather than marketwide interest is an accident waiting to happen.

Unfortunately, there are those who do not share this assessment. They believe that everything is rosey, the system is working, and not to worry. Sounds too much to me like Congress when the S&L warnings came during the mid 1980's. There are numerous letters we have received opposing even the margin setting authority.

I do not want us to follow a course of inaction, and that is why I feel it is necessary to push the margin provisions.

Mr. President, opponents have argued either that margins are not important, therefore, they do not need regulation, or that the only reason we want to change them is to provide a competitive edge for similar products sold on stock exchanges.

It is these sorts of arguments that make me even more convinced that the Fed is the appropriate regulator.

The proposal we drafted last year, and while somewhat watered down as part of title III now, gives Chairman Greenspan and the Fed authority, similar to what he has over securities exchanges.

In order to ensure futures exchanges are setting margins at prudential levels, and more important, that the Fed had powers to step in during an emergency and force action.

To those in the House who might be tempted to argue we do not need this oversight, I commend a little study of the matter. Questions they should ask themselves are:

No. 1, how are market participants when a clearinghouse can refuse payment to a brokerage during a crisis and no one has authority to do anything about it?

No. 2, how are market participants protected when the actions of one exchange acting on its information can dramatically raise margin levels in order to cover its own particular interest, irrespective of the interest throughout the broader market?

I must confess that the more I dug into this in order to answer these questions, the more nervous and concerned I became. In fact, it is safe to say that my interest in acting on this effort is even stronger now than when it began. That is why I am so pleased that at least this provision is included in the bill.

I hope my colleagues understand that giving margin authority for stock index futures to the Fed has nothing to do with jurisdiction or competition. Instead, it has everything to do with financial integrity, protection of investors, and stability.

That is why is it so important that simple, straightforward, obviously necessary reform be passed and signed into law, and why it is critical that the House not decide to try to dump this legislation out in conference.

We must not let those with financial interests in the status quo, who care more about their own interests than the Nation's, keep us from taking this necessary action.

While the margins provisions of S. 207 as reported are not as strong as I would have liked, they do provide some hope and they do provide a significant improvement. Unfortunately, the provisions that address financial product innovation and competition provide little hope at all for improving a bad situation.

Under the Intermarket Coordination Act as introduced, hybrid financial products, with attributes of both futures and securities—we are not talking about plain vanilla futures or plain vanilla securities, the things that are trading now and everybody recognizes they are futures and everybody recognizes, on the other hand, they are securities. We are talking about the hybrids, the ones that are part of one and part of the other, and there are many new financial instruments being developed in that area. The purpose of the act as introduced was to make it a jump ball. Both markets, the futures or the securities, or either, could trade these products.

It is our view that the best markets with the best products would score the points; the traders and investors—not the regulators and not the courts and not the $300-an-hour lawyers—would decide which products won and lost.

However, in the bill as reported out of the Agriculture Committee, what was once a jump ball has become a slam-dunk for the futures exchanges. The CFTC controls the ball, writes the rules, and keeps the score.

Under section 3 as reported, the CFTC retains exclusive jurisdiction over all financial instruments with elements of futures contracts or commodity options unless the agency determines that less than 50 percent of the value is derived from the futures or options characteristics. A rule that splits financial products down the middle based on value sounds fair, but the result can be that the futures market could always wind up with the bigger half.

Under the bill, the CFTC will decide which parts of new instruments have futures or options components. The CFTC will decide what model to use to determine the value. The CFTC will decide how the market for a product that has never traded will behave, since trading activity determines the value of an instrument.

All of these uncertainties caused Federal Reserve Chairman Alan Greenspan, in a letter to Chairman RIEGLE dated March 27, which I believe has already been made a part of the RECORD, to express his view that:

> The 50-percent value test embodied in this bill is arbitrary, as will be any procedure for determining the value of the commodity

component of a financial instrument, and could yield anomalous results for similarly structured instruments.

Mr. President, why are we splitting the baby when joint custody is in the best interests of fledgling, new, innovative products? King Solomon may have been wise, but when it comes to financial markets and products, investors should be the judge of which products are the best.

One specific example that does not go to the jurisdiction of the CFTC or the SEC is another very important issue arising out of this legislation and the existing law, and that is the market for swaps, which has already been referred to. The so-called swaps market will not change agencies. It will change countries from the United States to any other market that does not treat these innovative products as possibly futures contracts to be exempted, or to have the exemption revoked at the discretion of the CFTC.

Simplified greatly, swap agreements are customized financial products developed by our securities and banking industries to assist companies in raising capital, managing assets and liabilities, and reducing risks associated with foreign currency, interest rates, and business-related commodities.

If that sounds a little broad to you, let me suggest that two large institutions could come together and trade. Say, one has a bond denominated in yen, and they want to have return denominated in deutsche marks. They will find another institution with deutsche marks that wants yen, and they will swap the obligations.

Swaps help American companies raise capital at lower cost. Swaps help Government-sponsored enterprises, such as the Federal Home Loan Banks, to provide fixed-rate funding for home mortgages, which lowers the cost of home finance to home buyers. And swaps help exporters to manage exposures to foreign currency fluctuations, facilitating exports and reducing our balance of trade deficit.

The same creativity that gave rise to the swaps markets and is such a positive force in helping U.S. financial firms maintain an edge in fiercely competitive markets, when applied in the context of a broadly drafted statute with an exclusivity clause that forces all innovative products such as swaps to trade only on futures exchanges or to go before the Commission for a hearing and a process to get an exemption which can be revoked can, and I submit will, be fatal to our Nation's financial markets.

Consequently, the Intermarket Coordination Act, when introduced, had a clear, mandatory exemption from the Commodity Exchange Act to open the door for the development of the swaps market in the United States. Unfortunately, section 302 as reported slams the door shut, and drives these important markets abroad.

Rather than acknowledge that swaps agreements are not futures contracts and do not belong under the Commodity Exchange Act, the bill as reported sets up a series of obstacles that must be overcome to get out of the act. Not only are the tests difficult to meet, but they impose restrictions that prevent practices which were designed to make the swap market safer. Chairman Greenspan has concluded that the bill as reported "could push swaps markets themselves offshore."

While the swaps markets at least have the option of moving offshore, on the other hand, for many investors and companies that rely on safe and efficient securities in futures markets in the United States, there is no place to run. That is why the Intermarket Coordination Act as introduced mandated our financial market regulators to address many of the intermarket issues that have not been resolved since the stock market crash of 1987.

S. 207 as originally introduced would have required the SEC and the CFTC, in consultation with the Treasury and the Fed, to adopt coordinated circuit breakers to help prevent another market crash; facilitate linkages between the clearance and settlement systems in the securities and futures markets to reduce the risk of a collapse of the Nation's financial infrastructure; coordinate efforts to detect and deter fraudulent trading activities across securities and futures markets; foster a cross-margining system to protect against financial gridlock when margin calls threaten to strip liquidity from our markets; and ensure that in promoting regulatory harmony with securities and futures markets abroad, the United States speaks with one voice.

Simply stated, the Intermarket Coordination Act as introduced would put the SEC, CFTC, Treasury Department, and Fed, the so-called working group on financial markets, back to work to harmonize regulation of interrelated markets.

All of the provisions requiring intermarket regulatory coordination have been stripped from title III of the Futures Trading Practices Act. The only provision that would have forced our financial regulators to work together to help prevent a repeat of the stock market crash of 1987 has disappeared from this bill. That is a tragic mistake.

There are those who say that the Intermarket Coordination Act, that has already been adopted, mandates the same thing. It does not. It is limited in its approach and deals only with the SEC.

The provisions in section 305 of this bill accomplish all of the purposes and direct the CFTC, as well as the SEC, to cooperate.

Mr. President, in the last Congress, the distinguished chairman and ranking member of the Agriculture Committee reported on scandals that rocked our Nation's futures markets throughout 1989 in the wake of extensive Justice Department sting operations in Chicago. Senator LEAHY concluded that regulation of the futures market has suffered a nervous breakdown. Senator LUGAR informed us that the credibility of the Commodity Futures Trading Commission and its effectiveness to deal strongly with the futures industry has been called into question by the General Accounting Office and others knowledgeable about futures issues.

After extensive hearings and examination of trading abuses, market manipulation, conflict of interest, inadequate surveillance, and regulatory oversight in the futures markets, I strongly supported legislation to help the CFTC clean up the futures market. Under the Futures Trading Practices Act, the CFTC is required to devote and should devote its time and attention to implementing badly needed reforms to make the Nation's futures markets safer and fairer.

I cannot understand why, when Congress is giving the CFTC so much to do to help it recover from a regulatory nervous breakdown in the futures markets, it is also proposing to expand its regulatory authority over all financial products with any element of futurity. Do my colleagues really want the CFTC to regulate insurance company products that are currently subject to supervision by 50 State insurance commissions? Do my colleagues really want the CFTC to regulate bank accounts, certificates of deposit, and other bank products supervised by four Federal agencies and 50 State bank agencies? Do my colleagues really want the CFTC, for the first time since the New Deal, to decide what products should trade in securities markets?

In 1974, when Congress created the Commodity Futures Trading Commission to give one agency exclusive jurisdiction over futures contracts and require that all futures contracts trade solely on futures markets, Congress could not have intended that all securities products, all banking products, all insurance products with any element of futurity could be swept within the jurisdiction of the CFTC.

In the letter from Commissioner Schapiro, which has already been introduced by the distinguished Senator from Utah, Commissioner Schapiro, who served on the CFTC and served as general counsel of the Futures Trading Commission, has pointed out that the purpose of the exclusivity clause was to ensure that futures contracts, first, not be subjected to all of the possible conflicting jurisdictions of the 50 State blue sky laws and that unregulated products in futures not be traded alongside regulated products of the same kind in the same market.

A statute adopted in 1974 to centralize the regulation of futures contracts for the protection of our agricultural producers has become a threat to all of our other financial markets. Bank certificates of deposit were never meant to trade in futures pits. Individually negotiated swap agreements were never meant to trade in futures pits. Corporate bonds with floating interest rates were never meant to trade in futures pits. Yet the legislation before us can require just that.

I want to help strengthen the regulation of our Nation's futures markets as much, if not more, than any Member of this body. I know they are important. I believe we must strengthen their hand in regulating. But I do not want to drive all other financial markets offshore in the balance. When introduced, the Futures Trading Practices Act contained provisions designed to promote product innovation and competition among all financial markets. These provisions are now law. Unless they are restored, the United States will lose vital financial markets to other countries with a regulatory system which will welcome them with open arms.

Mr. President, competition in innovation has been the engine that drives our Nation's economy. When it comes to financial products, the United States remains the envy of the world. Congress has the opportunity today, enacting these amendments, to ensure that one of the most healthy and vibrant segments of our economy remains here at home. It would be a tragedy to watch our financial markets die from self-inflicted wounds. Congress will not be forgiven if we let a regulatory turf battle lead to an unconditional surrender in the global war for financial markets.

I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise not just to support the measure that has been brought forward at a critical moment by the Senator from Missouri and the Senator from Colorado, but to thank them for what they have done and to congratulate them for the clarity with which they have presented a difficult case.

The Senator from Missouri, the able, and if I may say in this context the learned Senator from Missouri, is on the floor. I want to thank him and to speak with the "concentration of mind" that Dr. Johnson once said was associated with the prospect of hanging, about the reference that the Senator made to the market crash of 1987. It happened I was in New York City that morning in 1987, and through the day as we watched an event that had only one other equivalent in the 20th century, the stock market crash of 1929. The earlier event defined a decade in American history. The question is would the 1987 event do the same? The earlier event defined a decade which ended with the Second World War. And the first event was not unrelated to the second. We did not understand what happened in 1929 and did not know what to do about it.

When the Securities and Exchange Commission was established in 1934, the market crash was an event not understood any better than economists could describe or prescribe what might be the best way to respond to the depression that followed. The economics profession could not do it. Today it could with confidence. Economists today can state with confidence that the Federal Reserve Board should not do what it did in 1930, 1931, and 1932 with the money supply. Similarly, the Securities and Exchange Commission today has a much greater confidence about how to deal with a market crash than it did in its formative period, or indeed, it did in 1987. We learn from the past.

Sir, I hope we have learned enough to pay heed to the counsel of those bodies that are assigned these regulatory responsibilities in our system. This is a very special American arrangement, the Federal Reserve Board, a central bank whose chairman is appointed by the President for a term that passes beyond the President's own term, who shares the power locally with regional banks, which in turn are members of a system from which they are selected.

It is a complex arrangement, but one which proves flexible and workable. The Securities and Exchange Commission and the Federal Reserve Board both grew out of crisis—the panic of 1907, in the case of the Federal Reserve Board, and the crash of 1929, in the case of the Securities and Exchange Commission. This does not mean that we are beyond the risk of such events. But that we try to act responsibly to prevent their recurrence.

I started by saying that I happened to be in New York that Monday in 1987 and watched nearly a trillion dollars disappear from our national wealth. The market lost nearly one-third of its entire value over 4 days. Nearly one-quarter on Monday alone, when the markets looked to be in a free fall. Events of the most extraordinary nature seemed to be upon us.

Some of us learned in time what had been the two precipitating events of the market crash. First, an unexpectedly high merchandise trade deficit which pushed interest rates to new high levels. And second, right here in the Congress, in the other body on the Ways and Means Committee, a pending measure that would have effectively eliminated the tax benefits associated with leveraged buyouts and impose a tax on "greenmail" profits. The Ways and Means Committee approved the measure Thursday night, October 15. Word reached Wall Street, and on Friday by the end of the day the market was in a virtual free fall. On Monday, the free fall occurred in earnest, having made its way around the world in the meantime.

I learned of the crash of 1987—though it began around 10 a.m.—at breakfast beforehand. I had a breakfast meeting with some Wall Street associates, and they knew what was coming, because it had already started it happen in London, having made its way around the world the previous Friday afternoon. Tokyo, around to London, and back to New York. That is the nature of finance in the world today. It is international, global, and it moves with the Sun. That may be its only real regularity, but it does that.

I recall with great passion, speaking on television the next day, Tuesday, when this all became a little clearer, saying to anyone watching not to worry, at least not to worry about the tax measure that had been adopted in the Ways and Means Committee. It would not become law.

There is much to learn from that day, and I hope we will.

Now, sir, we will soon have before us an amendment to be offered by Senators BOND and WIRTH which has the specific endorsement of the chairman of the Federal Reserve Board, the specific endorsement of the chairman of the Securities and Exchange Commission, the acknowledgment of the Under Secretary of the Treasury, with special responsibility in this area, that this alternative is a sounder policy than S. 207. We also have the warning that to not accept the alternative proposed by Senators WIRTH and BOND, is to take a very risky course. Risky with the Nation's economy and with other people's money, if I may put it thus.

We find ourselves in an almost uncomprehending situation. How does it come about that a measure of this consequence is reported from the Agriculture Committee without any evident consensus within the executive branch, and far less within the legislative branch?

In an effort to see whether there was such a consensus, yesterday the chairman of the Committee on Banking, Housing and Urban Affairs, Chairman RIEGLE of Michigan held a hearing at which that most able and deservedly respected chairman of the Federal Reserve, Dr. Alan Greenspan; the Under Secretary of the Treasury, Honorable Robert Glauber; Chairman of the Securities and Exchange Commission, the Honorable Richard Breeden; and the chairman of the Commodity Futures Trading Commission, the Honorable Wendy Gramm, Dr. Gramm, as she is known to so many of us, testified. The chairman put to this panel the question, given the alternative we have in title III of the measure on the floor and the alternative as proposed by Senators BOND and WIRTH, which was the soundest way to regulate our financial markets. That is, which would promote more innovation in the markets, new products, serving new needs that had not existed before, like the "swaps" described earlier by Senator BOND, which did not exist until markets were sufficiently international to need them. Chairman RIEGLE also asked which would foster more competition, and which would result in greater legal certainty, avoiding greater litigation. With great respect to the law profession, we ought not to create demand for its services, if I may put it that way.

The Chairman of the Federal Reserve said unequivocally—"Do what Senators WIRTH and BOND propose."

Secretary Glauber said, "What Senators WIRTH and BOND propose is the better policy." The Wirth-Bond alternative is better public policy.

And Chairman Breeden, having obviously the most direct interest in this matter, said the same. We needed to hear his view. His position was created in the 1930's for exactly this kind of question.

The factors cited by Chairman RIEGLE—innovation, competition, legal certainty—are the basis for choosing here, and we should heed the expert advice we have gotten, which is very clear.

But I would like to speak, if I may, to the matter of certainty which was touched upon by the Senator from Missouri, and ought to concern every Member of this body, which is that we are trading in an international system, and if we enact legislation which clogs up our own decision process, makes uncertain the validity of legitimate trading here or there, opens to litigation matters which previously would not have been in any way exposed, buyers and sellers have a very simple recourse. They go to London. They go to Tokyo. Those exchanges will handle these matters very quickly and efficiently in the traditional established places for the exchange of financial instruments.

I recall that the 1987 crash had as its immediate precipitance two events. One took place in the Longworth Office Building, and the other arose from bad news about our trade deficit. And bang, nearly a trillion dollars disappeared from the net value of our Nation's stocks and bonds. That is the international nature of markets today.

I do not see how a responsible body can say, well, we will act contrary to the advice of Dr. Alan Greenspan, the Chairman of the Federal Reserve, we will dismiss the judgments of the Under Secretary of the Treasury, and we will discount as somehow institutionally self-interested the views of the Chairman of the Securities and Exchange Commission.

To do that is to trifle with the well-being of the American financial markets. That is not the kind of behavior which the 20th century encourages. To the contrary. It encourages predictability, orderly procedures, and confidence in the fact that outcomes will be accepted and not be subject of litigation or uncertainty.

I simply would say to you, Mr. President, that we have heard from the executive branch and from the regulatory bodies independent within the executive branch. I can say to you I have heard from the community in New York where traditionally the exchange of financial instruments has been centered, Wall Street, so-called, and I would mention particularly the American Stock Exchange. I feel very confident in the proposal by the Senators from Colorado and from Missouri, and I very much hope it prevails. To do otherwise seems to me to put in jeopardy the preeminence of our Nation in the financial markets.

Mr. President, I have spoken at greater length than I intended. I see other Senators on the floor. I respectfully yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Illinois.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. I ask unanimous consent I be recognized as in morning business for a period of 3 minutes to introduce a bill.

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

The Senator from Alaska is recognized.

Mr. STEVENS. I thank the Chair.

(The remarks of Mr. STEVENS pertaining to the introduction of S. 834 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. STEVENS. 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. WIRTH. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WIRTH. Mr. President, I rise today to express my concerns about the Futures Trading Practices Act of 1991, the legislation before us today, S. 207, as reported by the Committee on Agriculture and recently revised by the Commodity Futures Trading Commission.

Titles I and II include some important provisions to reauthorize the Commodity Futures Trading Commission and to enhance the regulation of trading practices in our Nation's commodity futures markets. But, as we have discussed in the Banking Committee and elsewhere, I have deep concerns and reservations about title III of S. 207. The provisions of title III in my opinion fail to address the fundamental problems plaguing our financial market regulatory structure. Since the October 1987 market break—more than 3 years now—these problems have been studied, exposed, and debated. Yet the legislation before us would deny American investors meaningful solutions. Specifically, title III does not unify the equity and equity derivative markets in stocks, stock options, and stock index futures. Title III would stifle innovative financial products and competition and as a result does little to enhance the competitive position of our markets, which should be one of our primary concerns. And title III does little to restore investor confidence—I think perhaps our top priority—in terms of looking at financial instruments and dealing with a very broad and, unfortunately, increasingly skeptical body of consumers.

We should not be competing among ourselves with regulatory bodies devoting time and energy to jurisdictional battles. And, unfortunately, too much of that is going on here. Instead of competing with ourselves, what we ought to be doing is competing with Japan, Germany, France, and the United Kingdom.

(Mr. ADAMS assumed the chair.)

Mr. WIRTH. If there is a problem in our market structure, and I believe there is, we should address that problem and not just reauthorize the agencies responsible for regulating the markets without making fundamental changes.

All of this has a very complicated but important background, which I would like to briefly sketch.

In 1974, Congress created the Commodity Futures Trading Commission, designed to regulate futures trading in commodities, like pork bellies and soybeans. The Securities and Exchange Commission was to continue to regulate equities. At that time, this seemed to be a very sensible, functional approach to regulating the markets.

During the 1980's, however, hybrid financial instruments have blurred the essential distinction underlying this functional regulatory system. The old functional regulatory system between commodities and equities no longer was as clear as it should have been.

For example, an important instrument, the stock index futures, began to trade in 1982. These contracts gave holders the right to buy or sell a group of stocks whose value mimics changes in certain stock indices, such as the Dow Jones industrial average. Because this kind of an instrument constitutes a future, the stock index futures have been regulated by the CFTC. But stock index futures have a much closer relationship to stocks and stock options than to futures and agricultural commodities.

At this point, Mr. President, people's eyes begin to glaze over. On the one hand, you have the jurisdiction of a stock index future under the CFTC, but a stock index future is, in fact, based upon a stock, presumably falling within the jurisdiction of the SEC.

The jurisdictional clarity which at once exists begins to cloud. Between 1940 and 1986, the Dow industrials declined by more than 6 percent only three times. We are now getting into the issue of why these instruments are important, and why what happens in the Chicago market has a major impact on the overall market structure and has a major impact on what we call market volatility.

During this 45-year period of time, a 6-percent decline had occurred only three times. But in just the last 4 years, these markets have experienced four such devastating 1-day downturns. Something in going on, Mr. President. We had a relatively stable set of financial markets for 46 years. In the last 4 years, we have had some violent ups and downs, very unlike any in history and one of the things that I think we have to look at is: Is this important? Is this dangerous? Should we be alarmed by it? I think the answer to all three of those questions is, "Yes."

Numerous economists and financial experts have analyzed these changing financial structures in order to better understand the recent dramatic volatility of the stock market: Four major ups and downs in the last 4 years. And there is astounding unanimity among those who have studied this issue.

The Brady Commission, chaired by our current Secretary of the Treasury, the General Accounting Office, the New York Stock Exchange Blue Ribbon Smith Commission, the Office of Technology Assessment, Federal Reserve Board Chairman Alan Greenspan, and others, have all concluded that uncoordinated and insufficient regulation of financial instrument trading contributed significantly to the market volatility of the 1980's.

In other words, we had these two major markets that were uncoordinated, essentially in overlapping instruments, and what was going on is because there was not, in Mr. Brady's terms, a rationalization of those markets, that they were not working together. We, therefore, could have great damage done to them by one whipping up and coming back down, and it will spread across them all.

That is one of the fundamental issues underlying the relatively arcane but extremely important debate that is going on on the floor of the Senate today, and which will end up in a vote on the amendment which Senator BOND and I will be offering.

The Brady Commission report—that was the report chartered by President Reagan, chaired by former Senator Brady, now Treasury Secretary Brady—the Brady Commission report noted that the problems of the October 1987 stock market downturn could, to a large extent, be traced to the failure of the markets to act as one. That is the rationalization issue.

When faced with massive selling demand, the regulatory and institutional structures of the market places were unable to respond effectively to intermarket pressures. Let us remember that that was what the Commission found after the enormous drop that almost resulted in a major financial disaster in October 1987. Secretary Brady was asked to chair the Brady Commission and try to get to the bottom of it.

In sum, said the Brady Commission, the Nation's financial markets evolved in such a way that coordinated, meaningful regulation is necessary to promote market stability. New products closely linked our markets, and where we have in effect one market, we should regulate it as if we have one market. Not to do so is asking for trouble.

To continue this bifurcated, unrationalized, uncoordinated approach is to ask for further ups and downs and, Mr. President, in my opinion, to ask for the potential of the near disaster that we had in October 1987.

The market crises of the recent past are bound to occur again unless we address the problem of fragmented market regulation. There are three fundamental problems in this business of fragmentation. There are three basic problems, Mr. President, that exist because of the fact that we have these two disparate and relatively uncoordinated markets.

First, regulatory jurisdiction over stocks, stock options, and stock index futures is split, even though the economic functions of these various instruments are inexorably linked. We regulate what are essentially stock equity functions differently. We split them. That leads to one of the problems leading to volatility.

Second, the exclusive jurisdiction of the Commodities Futures Trading Commission—let us remember, it is a commission set up to trade pork bellies, futures on commodities, and so on—the exclusive jurisdiction of the CFTC over any instrument which has some element of futurity is stifling innovation and competition in new financial instruments.

Third, the lack of a coordinated regulatory authority over margins for stock index futures, coupled with the inability to devise a unified margin structure for all equity instruments, poses great risks of continued market volatility. In other words, if you go in and you want to borrow to buy a stock, you have a much tighter set of requirements on you than you do to go in and buy an instrument regulated by the CFTC.

Let me take each of these problems one at a time. First, the uncoordinated regulation. The markets for stock, stock options, and stock index futures are closely joined by common, underlying products and trading strategies that cross traditional market boundaries.

The 1988 report of the Presidential Task Force on Market Mechanism—that is, the Brady Commission—concluded that since the introduction of stock index futures trading in 1982, the markets for stock, equity options, and stock index futures have become "one market linked by financial instruments, trading strategies, market participants, and clearing and credit mechanisms."

Secretary Brady concluded, and he is chairing that Commission, "This is essentially one market."

The Brady Commission also went on to say these are "fundamentally driven by the same market forces.

Today, financial disruptions in one market can be transmitted quickly to other markets. Federal Reserve Chairman Alan Greenspan testified that:

> Losses can lead to the failure of key market participants, jeopardize contract performance, and threaten the integrity not only of the market in question, but other markets as well.

Likewise, Chairman Breeden of the Securities and Exchange Commission recently testified before the Agriculture Committee that:

> Our equities securities markets are vulnerable to destabilizing trading in the futures market that is then channeled into the securities market through program trading and other market linkages.

Mr. President, if this cross-market volatility is to be controlled, the bifurcated regulatory structure in which the SEC regulates stock and stock options, while the CFTC controls stock index futures, simply has to be addressed. The differences between these markets believed to be inherent when Congress created the fragmented structure in 1974 have almost completely disappeared. I explained that earlier. We thought commodities and equities were different, and they are now merging together. We have to rationalize the regulatory structure to recognize the realities of these market places.

Fragmentation weakens the ability of regulators to detect and pursue intermarket fraud. One of the important things we have to do to maintain consumer confidence so the consumers believe the market is not being rigged, that they are getting a square deal, is to make sure we unearth fraud. In order to unearth fraud, you have to be able to detect it, pursue it, and prosecute it.

Regulators who oversee only part of the market action simply cannot be expected to detect abnormal intermarket behavior. The financial players treat actions and stocks, stock options, and stock index futures as a unified market. So should the financial cops.

Fragmentation also means that potential investors seeking to participate in the complete equity market must understand and comply with the rules of two governing bodies enduring duplicative administrative costs and burdens. These costs undermine the ability of our markets to compete internationally. So we have the possibility of not being able to pursue fraud. We have volatility in the marketplace, and the taxpayers are paying for it.

Perhaps we should learn from the regulatory structures of our competitors. In Japan, trading of stocks and trading of futures are both regulated by the Ministry of Finance and Securities Bureau. In France, the same regulatory body has authority over both trading in stocks and in stock index futures, even though those instruments are traded on different exchanges.

As long as two agencies with different histories and different philosophies and different agendas struggle over the regulation of financial instruments, which in reality are a unified market, investors are going to find other countries' markets more attractive, and our competitive position will continue to suffer.

Since 1987, the U.S. futures market share of worldwide stock index futures has declined—reflecting just what we would expect—from approximately 94 percent to 40 percent. During the same period, stock index futures in Japan and other countries have expanded dramatically. So we are losing a competitive edge.

The second problem is the CFTC exclusivity, which I believe stifles product innovation and competition. The so-called exclusivity clause of the Commodity Exchange Act continues to impede the development of financial products and competition in our financial markets. The exclusivity clause blocks any entity other than a futures exchange from trading an instrument that possesses any element of futurity even if the instrument is predominantly a security. In short, it creates a monopoly for futures exchanges with nearly insurmountable barriers to competition. Many innovative financial instruments have been developed which contain some element of futurity but which also serve as investments in equities or other securities. Because of this anomalous exclusivity clause, the product developer must turn to the CFTC if the product has any element of futurity whatsoever.

So if you have an equity instrument that is predominantly a security, you still have to go to the Commodity Futures Trading Commission, a commission designed to trade pork bellies and agricultural commodities.

In at least 14 cases in the past 5 years, the CFTC has found it necessary to issue interpretive letters advising parties whether instruments are futures contracts or securities. In five cases, questions about the applicability of the exclusivity clause to financial products have been the subject of costly, time-consuming courtroom battles.

The history of one particular financial instrument serves to demonstrate the manner in which the exclusivity clause has worked to prevent useful innovation. The index participation, or IP, is a market basket product representing a broad range of securities. This innovative instrument was proposed for trading on several securities exchanges to provide an additional source of liquidity to the stock market, thereby enhancing the market's strength and stability. Now, this is an index participation based on a broad range of securities. It is an index instrument based upon securities.

The original version of the IP was unanimously found to be a security by the SEC, which approved their trading under the securities law. Instead of applauding this product innovation, the futures markets challenged the authority of the SEC to regulate a security, claiming the exclusivity clause precluded the trading of IP's on securities exchanges. The court, reading the law, that anomalous law which we ought to be trading, sided with the futures market but noted that: "Doubtless such a decision gives the futures markets the opportunity to block competition from an innovative financial product."

Let me read again what the Court said in ruling on this anomalous situation. It noted that, "Doubtless such a decision gives the futures markets the opportunity to block competition from an innovative financial product."

That is fundamental to our deliberations here as well, Mr. President—this whole business of blocking competition and innovation and making the United States even less competitive in a world marketplace in which our share of the market has declined rapidly. The Court, although bound by the exclusivity provision, understood what the legislation would do to competition, and we must understand that here as well.

The commodity exchanges were not trading IP's when they filed suit, nor are they trading them today. It was not that the commodity exchanges were saying that these instruments based on securities were something they wanted to do. They are not trading them at all. Indeed, no futures exchange has announced any intention or interest in making IP products available to the investing public. Here is something that would be good for the investing public, but because of this anomalous situation in the law on the Commodity Futures Trading Commission, those exchanges can block them. The consumer does not have access to them. What a situation for us to be in when we are trying to get a flow of capital moving, when we are, presumably, in this country trying to become increasingly competitive on world markets. No wonder U.S. consumers are going offshore to recognize their desire.

The exchanges only sought to prevent their competitors from offering these products. What we have the opportunity to do, Mr. President, is to break these egregiously anticompetitive practices. The investing public clearly is interested in these products, and it is not as if we are making this up. Before the court stopped trading of IP's on securities exchanges, more than 70 million were sold in just 4 months. That is, a new offering coming on, and immediately 70 million were sold.

The actions of the CFTC and the futures markets have played directly into the hands of our foreign competitors. Today, similar kinds of products are actively traded in Toronto and in Germany, and plans are under way for trading in London. Where are we in the United States? Zero, because one marketplace is saying, "We don't want the competition." Presumably, Mr. President, we ought to be encouraging and not discouraging, not stifling competition.

Many firms no longer will devote energy to developing financial products which might not be allowed to go on because of this anomalous legal situation. Why would anyone endure months or years of costly litigation only to have foreign competitors come in and steal their ideas? It just makes much more sense for innovative firms to take their nontraditional products overseas. If this monopoly practice of the futures exchanges continues, we are going to see more and more of these products going overseas.

The third problem is insufficient and uncoordinated margin regulation. This fundamental problem in our markets today is lack of a unified regulatory oversight of margin requirements on equities and equity derivatives, a clear and resounding finding of Secretary Brady's commission after the market crash of October 1987, the need to rationalize these requirements.

History should teach us, Mr. President, that leveraging can be dangerous. Stock speculation with borrowed funds largely contributed to the market crash of 1929. Today, an investor must put down at least 50 percent to buy stocks. Stock futures, on the other hand, can be purchased by highly leveraged investing.

In other words, if you are buying a security, if you are buying a stock, you have to put up 50 percent of the value at least. That is generally the norm. That is the norm today. That is designed to stop excessive speculation. But, if you are buying a future, if you are going in that direction, stock future, you can put down a very small percentage and leverage enormously. You have little stake in what is going on. But that market can swing wildly through excessive leverage, and we ought to be getting rid of that, Mr. President, if we are concerned about the stability of our financial markets and want to get away from that sharp up and down that has characterized the last 4 years.

At times, the margin on stock index futures has been as low as 2 percent. That means you can put up the money for two and you can get 100. That enormous kind of leverage is going to lead to this sort of volatility and is very dangerous, indeed. Even recognizing the differences between the purpose of margins in the stock and futures markets, low margins result in extreme leverage and an inadequate liquidity cushion in the financial system. It is no coincidence, Mr. President, that margins were low immediately before the market breaks in October 1987 and October 1989.

Futures exchanges have been known to lower margins in times of market stability only to raise them when volatility occurs. In times of market crises, increased demands for cash serve only to drain needed liquidity from the market.

In September 1990, the Office of Technology Assessment, our office in the Congress, report concluded that a unified Federal oversight of margins on stocks and stock derivatives was needed for two important reasons:

First, the OTA found that the links between markets now allow participants with great leverage in the futures market to make great demands on the liquidity of the securities markets.

Second, participants in futures markets also are participants in securities and options markets. The collapse of their financial integrity would threaten far more than the other clearinghouse members and could imperil basic U.S. financial mechanisms.

The OTA went on to say margins on both stocks and stock index futures limit the credit risks of individual participants primarily not to protect those participants but to ensure that in times of stressed markets cascading failures could not in the aggregate cause the breakdown of the market as a whole. And many believe that it was that cascading failure that brought us very close to financial catastrophe in October 1987. There was too much leverage built in; too much speculation when the bottom dropped out; people did not have their own capital at risk.

That kind of leverage and speculation spiraled and in the word of OTA, "cascaded"—a good word.

The OTA is not alone in its concern of uncoordinated markets. Chairman Greenspan has also stated repeatedly over the past 2 years that higher leveraging or lower margining in futures markets poses significant risks to overall market liquidity during market stress periods. The Brady Commission and the SEC have also called for consolidation of margin-setting authority to reduce credit and cash-flow problems in our markets.

Let me turn now, having looked at the background of this problem, to the legislation in front of us. S. 207, the legislation reported out and on the floor today, in my opinion fails to unify the regulatory control in one agency over stock, stock options, and stock index futures. The Brady report and other independent analyses cite the current fragmented regulatory jurisdiction as a major problem reducing investor confidence in our market.

S. 207 does little to address this concern. The provision on CFTC exclusivity are insufficient as well. When it comes to the issue of exclusivity, S. 207 is barely an improvement on current law. The legislation provides that index participations approved by or proposed by the Securities and Exchange Commission before December 31, 1990, are permitted to trade on stock exchanges.

In other words, the legislation simply grandfathers its first batch of instruments but would prohibit any further innovation in this area. Remember the IP's example. Millions of people wanted to buy these instruments, could not do so, and went offshore to do so. That is going to continue under S. 207 as written and on the floor. It has to be amended. We are going to continue to lose this competitive advantage in the United States.

What possibly could be the reason for all of this? Let me look at these. The four securities exchanges will be able to trade IP's, to go back to that example, as only those exchanges had submitted proposals before the 1990 cutoff.

There is this bizarre grandfather clause. Apparently all other securities exchanges will be precluded forever from trading in IP's. These exchanges will not be able to do it at all in the future, the Boston Stock Exchange, the Pacific Stock Exchange, the Midwestern Stock Exchange, the New York Stock Exchange, and the Cincinnati Stock Exchange, as well as that rapidly growing over-the-counter operation of NASDAQ.

What could possibly be the reason for this arbitrary cutoff? If the characteristics inherent to index participations qualify those instruments for trading on securities exchanges, why should we limit trading authority to preexisting products?

As for future innovations in hybrid securities, it appears that developers of future hybrid securities may trade those products on securities markets only if they prove that their product meets one of two tests.

The CFTC would be entitled, but not required, to grant an exemption from the exclusivity clause for products which satisfy five factors. The product must involve only institutional participants, must be designed only for hedging or risk management, must not adversely affect CFTC's ability to perform its regulatory duties, must not adversely affect a futures exchange, and must be consistent with the public interest.

These criteria are excessively narrow and I would say vague. Could the CFTC block a new useful product just because it might offer some competition to the futures exchanges? The CFTC has demonstrated previously its inclination for classifying any hybrid products as a futures contract in order to maintain jurisdiction over that product. We should anticipate that the CFTC will be no different in the future. Under a second test products would fall inside or outside CFTC regulation based on whether the commodity-based portion of the return of the instrument is more or less than 50 percent.

Although this provision provides the pretense of fairness, it is in fact capricious and autocratic. The CFTC would decide when an instrument's value is tied to a commodity and even how value is to be defined. The establishment of the 50-percent test means that the CFTC, not the SEC, will possess sole authority for deciding what is and is not a security.

The SEC enjoys no such jurisdiction. If the CFTC determines that an instrument lies within its jurisdiction, the SEC would be powerless to seek any jurisdiction over that product.

These new twists in CFTC exclusive jurisdiction will do little or nothing to promote product innovation and competition. Issuers would have to prove numerous detailed factors to the CFTC, could have their exemption revoked at any time, and could still be sued by futures exchanges seeking to prevent competition. American business and consumers would once again be sacrificed as innovative financial product developments go offshore to avoid regulatory uncertainty.

I believe Chairman RIEGLE noted the letter from Chairman Greenspan earlier. It is important to state it again. Federal Reserve Chairman Greenspan recently said in a letter to the Banking Committee chairman:

> The approach taken by S. 207 will continue to preserve impediments to innovations in hybrids and risk-management products and may well forestall developments in swap markets that could reduce systemic risk.

The 50 percent value test embodied in the bill is arbitrary, as will be any procedure for determining the value of the commodity component of a financial instrument and could yield anomalous results for similarly structured instruments. The exemptive authority given to the CFTC under the bill is narrow and in some cases would prohibit the commission from making appropriate exemptions.

That, Mr. President, is a quote from Alan Greenspan, the Chairman of the Federal Reserve.

There are other problems in S. 207 as well. Another relates to margin regulation for stock index futures. The problem of margin regulation has been addressed partially by S. 207. I referred to that problem before. That is the problem of excessive leverage.

The legislation would empower the Federal Reserve Board to direct a futures exchange to adjust its margins on stock index futures contracts to levels which the Board finds appropriate to preserve the financial integrity of the exchanges or its clearing system or to prevent system risk. So far so good. S. 207 for the first time would grant a Federal authority the power to regulate margins on stock index futures on something other than an emergency basis. This is a step in the right direction. But there are concerns surrounding this provision as well.

First, the Federal Reserve is empowered initially to request a contract market to set margins for stock index futures.

Only if the market fails to do so, may the Board direct the market to act. This delay could effectively reduce the ability of the Federal Reserve to control margins in a sufficiently timely manner, to avoid market volatility. In other words, there is a loophole within this that could lead us right back into the excessive leverage we have had before.

Second, and perhaps more troubling, the Federal Reserve is authorized under the legislation to delegate any or all of its margin-setting authority over stock index futures to the CFTC. The Federal Reserve also has jurisdiction over margins on stock options but has delegated that authority to the SEC. If the Fed delegates margin-setting authority over stock index futures to the CFTC, we are going to get right back into other business of uncoordinated margin rules.

Because of these concerns that I have with title III as it presently reads, and as the CFTC proposes to revise the legislation, Senator BOND and I have worked to develop an alternative to that portion of the legislation, that part which is most of title III. The alternative addresses many of the reservations we have with S. 207, which I have described earlier.

The Bond-Wirth amendment restores to S. 207 important provisions, which were a part of the legislation when it was initially introduced, that mandate regulatory coordination of intermarket issues.

Let me go back, Mr. President. This came right out of the Brady Commission in October 1987, during the enormous market crash, near disaster. Mr. Brady is appointed head of the Commission. The Commission works, the Commission recommends; No. 1 recommendation, regulatory coordination. Mr. Brady becomes Secretary of the Treasury, and recommends that again. It is very important that we do that. That is in the Bond-Wirth amendment.

These provisions would require the SEC and the CFTC, in consultation with the Treasury Department and the Federal Reserve, to adopt coordinated circuit breakers to help prevent another market break. Why do we not do that? It should be done.

Second, it would require that we facilitate linkages between the clearance and settlement systems in ther securities and futures markets to reduce the risk of a collapse of the Nation's financial infrastructure.

Third, require that we coordinate efforts to detect and deter frauduent trading activities across securities and futures markets. Again, going to that issue, Mr. President, of investor confidence, it is absolutely imperative that investors do not think these markets are rigged, and one of the ways you do that is not only to have policemen, but policemen who have the tools to follow where fraud exists.

Fourth, to promote a cross-margining system to protect against financial gridlock when margin calls threaten to strip liquidity from the markets.

Fifth, promoting regulatory harmony with securities and futures markets abroad, and that the United States speaks with a single voice.

As it is now, you go to Toronto, London, or Tokyo, or Paris and look at this bifurcated United States system, and the SEC is squabbling with the CFTC over there. Senator BOND and I say we are going to have a single voice in the United States. These important intermarket directives would put the so-called working group on financial markets, established after the stock market crash of 1987, back to work to harmonize the regulation of interrelated markets—the premier recommendation coming out of now Secretary Brady.

Second, the Bond-Wirth alternative would provide the CFTC with authority to exempt new financial products from some or all of the provisions of the Commodity Exchange Act in order to promote financial innovation. S. 207, as described below, restricts the CFTC's flexibility by prohibiting exemptions except under certain narrow conditions. That is leading to U.S. investors having to go overseas, which is the opposite of what we want to accomplish.

Our alternative would permit the CFTC and SEC to decide which new innovative financial products with attributes of both securities and futures can trade in securities and futures markets. We would do so by retaining the CFTC's 50 percent test in S. 207, but also authorizing SEC to determine if a hybrid product is predominantly a security. This approach would encourage financial market innovation and promote competition by permitting a hybrid product to trade in both securities and futures markets.

Our alternative also addresses concerns about the regulatory treatment of two specific types of innovative financial products, swap agreements and index participation. In the area of swap agreements, these, as you know, Mr. President, are customized products designed to lower the financing costs and promote the export of U.S. firms. Unfortunately, they are being driven out of the United States because of uncertainty over their possible regulation as futures. S. 207 attempts, but fails, to lift this uncertainty by providing an exemption from futures regulation under certain circumstances. However, the uncertainty remains, because the exemption can be changed or revoked by the CFTC at any time in the future.

Our alternative, the Bond-Wirth alternative, includes an exclusion for swaps and makes clear that swap agreements are not governed by the Commodity Exchange Act.

The second area relates to index participation. S. 207 attempts to address the court decision that took index participation out of our markets by permitting IP's that had been approved or pending approval by the SEC prior to December 31, 1990, to trade on securities exchanges. This would, as I pointed out earlier, permit only eight index participations to trade on securities exchanges. Our alternative would permit all index participations approved by the SEC to trade in securities markets. Let us get them into the marketplace.

The Bond-Wirth alternative retains S. 207's provisions authorizing the Federal Reserve Board to set margin levels on stock index futures. It restores the regulatory coordination mandates originally included in S. 207 to help ensure that margins as well as other matters will be coordinated. Coordinated margins will better protect against the risks to the financial system from inappropriate margins and stock index futures. Such coordination is not assured by S. 207.

Finally, Mr. President, under broad interpretations of the Commodity Exchange Act, any financial product with an element of futurity, that is, any attribute of a futures contract or commodity option can be swept under the exclusive jurisdiction of the CFTC, even if those products are subject to intense regulation under other Federal or State laws.

It is possible that a broad reading of the act could bring some types of bank accounts, mortgages, and other loans, and insurance products such as annuities, under the jurisdiction of the CFTC. Any product whose costs or return varies as interest rates change could be construed as having an element of futurity. Do we want the CFTC to be exercising regulatory authority over some types of bank accounts? No. Over mortgages? No. Other kinds of bank loans? No. Insurance products, annuities? No. We want to make sure the CFTC which has blocked all this innovation—and it was originally designed, let us remember, for agricultural commodities, such as pork bellies and the like—does not have jurisdiction over these areas.

The alternative prevents potential duplicative and inconsistent regulation of bank or insurance products and loan transaction by making it very clear that they are not governed by the Commodity Exchange Act.

It is terribly important, Mr. President. We do not want bank accounts, insurance products, and so on, regulated by the CFTC.

S. 207 provides an exemption from the Commodity Exchange Act for certain bank products. However, the exemption can be changed or revoked by the CFTC at any time in the future. S. 207 does not address insurance products and loan transactions at all.

CONCLUSION

Much as I would like to do it, our amendment does not unify the market of stocks, stock options, and stock index futures under a single regulator. I think that ought to be done, but we are short of that in the ideal world. That is the kind of thing that ought to happen but it cannot without support from the administration to take that step, which I believe was really clear in what Secretary Brady was originally recommending. We do, however, make substantial improvements over current law and over the CFTC's proposed provisions.

A great deal of effort has been expended to solve the problems which created the market volatility of the past 5 years and to prevent even greater financial calamity in the future. But in our efforts to do something, let us do it right. Title III of S. 207 simply does not do the job. We need intermarket coordination between our securities and futures markets, not the same regulator—I wish it were not the same regulator but rather at least a coordinative mechanism. We need legitimate and wholesale modification in the exclusivity rule of the CFTC as it applies to hybrid financial products so we can be competitive in a world market. And we need uniform regulation or margin controls.

We are at this for reasons that go far beyond what people might say is just a jurisdictional squabble or far beyond the protection of the New York market or Chicago market which is of no concern to this Senator from Colorado. We are at it because we want to make sure that our financial markets are sound and secure and consumers have faith in them, and that the basic purpose of this regulation is to have consumer confidence. That is the first and foremost thing that we have to do. Our legislation does much, much better in approaching that goal.

Second, we want to assure the consumer so that he will know that we can pursue fraud. If fraud occurs, people should not believe the market is fixed but know that the cops can go after it. The Bond-Wirth amendment does that.

Third, we want to dampen volatility. We had a long history of stability in our financial markets. That has been effectively shattered in the last 4 years. We have had massive volatility up and down, and to calm that down, by having very careful and thoughtful margin requirements.

And fourth, we want to assure that our financial markets are internationally competitive and that American consumers do not have to go overseas to buy their instruments.

The issues here are not a jurisdictional squabble; the issues here are soundness, investor confidence, innovation, and competition. Those are the issues. Not whether something is trading next to New York Harbor or on Lake Michigan. That is not the issue.

Those fundamental issues to our markets are ones that I hope all of our colleagues will understand in this very arcane and difficult issue. Bringing this back to basics, what is this all about. It is about investor confidence, about soundness of our markets; it is about our ability to compete.

I appreciate having so much time, Mr. President, to explain this extremely complicated and important issue.

The Bond-Wirth amendment makes a number of improvements to title III. I encourage my colleagues to support the amendment so we can resolve this issue.

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. LUGAR. 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. LUGAR. Mr. President, others may wish to speak on S. 207 and in due course Senators may wish to offer amendments. Indeed, during the past few hours we have heard excellent discussion from members of the Agriculture Committee and Banking Committee in particular, and I would expect that within a few hours an amendment will be offered. But prior to that time, I would like to review arguments I have heard and respond to some of them and offer Senators some further general basis on which they might cast votes on these very complex issues.

The underlying bill, S. 207, has as its crucial components titles I and II, titles which make important reform in the authority for the CFTC to monitor trading activity on the Nation's futures exchanges. I make that point, and it was well made by the distinguished ranking member of the Banking Committee, Senator GARN, that there was very little at issue with titles I and II. They are the results of a couple of years of hearings, at least one attempt at legislation last year, and another refinement this year. They are important reforms.

As I mentioned in the debate yesterday, the exchanges have adopted many reforms patterned on this debate and we are grateful for that. Investors are more confident because of that. The controversy before us today comes in title III. Title III is the area of a jurisdictional battle between two basic agencies, CFTC and SEC, and, as it turned out, two Senate committees, the Agriculture Committee and the Banking Committee.

For a long time, many of us involved in CFTC have argued that even though there are jurisdictional battles here, consideration of it ought to proceed and we are grateful that is now occurring.

S. 207, as reported by the Agriculture Committee, is a compromise of very many interests. The primary compromise was the Treasury Department, between the agency that offered basic thoughts about reform following the stock market crash after 1987, and the CFTC.

From testimony we have heard today and the arguments of Senators, the SEC obviously is not in agreement with Treasury or CFTC in this respect. And in fact, able regulators of all these agencies have offered some independent opinions that could give Senators some latitude for their votes.

The administration, President Bush, in its statement of administration policy, said, "Although the amended title III language on exclusivity issues, while containing modest improvements and clarification over the current situation, falls short of the broader competition in financial instruments the administration initially proposed, the administration generally supports title III as amended, in the spirit of the compromise reflected in the amendment."

I have read that in full, Mr. President, because, in fairness to the argument, as Senators will note, this language is not an overwhelming endorsement for title III.

The administration, having reviewed all of this, the argument of Treasury, CFTC, SEC, said it is not all the administration, and in particular the Secretary of the Treasury, Mr. Brady, might have hoped for, but nevertheless, given the long history of this measure, the administration comes down in favor of title III as it is in S. 207. And that is important to note.

I would suggest the votes we have today will not show ringing endorsement by many Senators; it's a very close issue. The administration has the same problem.

Now, Under Secretary of Treasury Robert Glauber yesterday testified before the Senate Banking Committee, and I quote: "While new title III does not go as far as our original proposal, particularly in the area of hybrid instruments, it is timely, it is constructive, and it deserves to be enacted."

Mr. Glauber was before the Banking Committee yesterday, not in the distant past but in the current debate, even as it raged on the floor here, and Secretary Glauber still comes down in favor of title III.

I would say, Mr. President, candidly, S. 207 is not everything that was expected by any party. The administration feels it is a modest achievement in jurisdiction area. Mr. Glauber believes it is a modest achievement. But both finally come down in support of title III as it appears in the Agriculture S. 207 bill. And I would suggest they do this because it was created from something that was hammered out by a lot of parties.

One reason the legislation did not progress last year was because the futures industry, people on the exchanges, a lot of people in business in this country, felt so adamantly that the bill did not recognize the jurisdiction of CFTC, and many Senators were asked to place holds on the legislation and many responded. We could not move forward or backward.

It is a source of satisfaction that we are at this point. We have an opportunity finally to get votes on these amendments and to progress toward reauthorization.

The Bond-Wirth amendment, which I understand will be offered later today or in due course in this debate, which has been discussed by its authors on the floor this afternoon, was drafted without the benefit of input from any segment of the futures industry or any regulator with regard to the futures industry. Although in full fairness I note that I understand an attempt was made as late as last evening by the authors of the amendment with the CFTC to try to gather support or see if changes might be suggested. But the Bond-Wirth amendment is a product essentially of the SEC and the Banking Committee.

This does not condemn that amendment. But if one is trying to weigh the merits of how we came to this juncture, the sorts of refinements that come from give and take in very controversial areas, there is something to be said for the S. 207 approach given the number of parties already involved.

The amendment of the distinguished Senator from Missouri and the distinguished Senator from Colorado, the Bond-Wirth amendment, is in my judgment the final product, as a very bitter war for turf between the two agencies comes to conclusion.

Some have argued it is really not a turf war, but, Mr. President, obviously the two agencies are not reconciled. I have been involved in the CFTC matter throughout my Senate career, and over the 14-year period of time I have seen occasions when CFTC and SEC were reconciled.

The so-called Johnson-Shad accord occurred at the beginning of the first Reagan administration. The two regulators, in this case Phil Johnson of the CFTC, and John Shad of the SEC, saw that a growing agenda of disputes was occurring between their two agencies, not unlike the situation we have today. It was not easy for them and for their staffs and for their constituencies in those exchanges to come to an accord, but they did so, over many weeks and months of discussion.

Ultimately, the so-called Johnson-Shad accord was put into legislative language and has served for nearly 10 years as a model to demonstrate a way in which these two great agencies, with dynamically growing industries behind them, could be reconciled. For a variety of reasons, Mrs. Gramm and Mr. Breeden have not been able to emulate their predecessors in this respect. To the contrary, they have both had very strong ideas as to how those products that have come up and those innovations that have occurred should be dealt with.

Ideally, we might have had a Gramm-Breeden accord. We do not have such a thing. We have the Treasury, finally, nominally in favor of the CFTC position in which it participated; the administration nominally in favor of that; and, likewise and still to this day, the SEC and the Banking Committee falling in support with the Wirth-Bond amendment.

So that, I suppose, will lead Members to say, "If this is the nature of the dispute, on what basis can we finally come down to one side or the other, and how do we characterize the arguments?"

I suggest that one basic way of characterizing this debate, and probably we will reiterate this argument from time to time, is that if there are investment products that are developed and there is dispute over who should be charged with regulating those products, a possible Bond-Wirth approach is what is called the jump ball approach.

The jump ball approach is, when you have one of these complex instruments with elements of a future and elements of a security, you choose your regulator. You take a look at the product you have, take a look at SEC, take a look at CFTC, and choose which one you want to regulate your product.

As a rule, in a commonsense way, that approach is suspect. The whole business of regulation is not meant to provide choices to Americans as to which regulators they would choose. Rather, the public policy behind regulation usually is to provide regulators to make certain people do not take liberties with the situation.

All I am suggesting is, in this particular case, as I understand what may be the Bond-Wirth amendment, the argument is being made that those who are innovative and have new products by and large will be discouraged in terms of providing these new products if they do not have the ability to choose their regulator.

Furthermore, if they are not able to choose a regulator they like in this country, they might choose one in another country. The argument is being made we are losing, offshore, some of these complex products because those who are fostering them are uncertain about their regulatory hurdles here and, therefore, have chosen to head overseas.

Let me mention, Mr. President, the Bond-Wirth amendment, at least in my judgment, as has been proposed, can be interpreted as an effort to deregulate the futures market. In the quest for promoting market innovation and competition, the proposal could also be said to sacrifice sound regulation and customer protection by letting the futures products leave the jurisdiction of the CFTC. Further products that are currently within the regulatory sphere of CFTC could find themselves under the SEC, or even worse, from a public policy perspective, without any regulator.

Even in the best case, where the product retains regulatory oversight, does the Senate want to take the position that futures products containing futures risk characteristics should be packaged as security-type products and sold to traditional securities customers? I doubt it. I do not think, really, as a matter of public policy, we want to come to that point.

It could be deduced the underlying reason for the Bond-Wirth action is that the Agriculture Committee bill does not give up enough of the committee and CFTC jurisdiction to satisfy proponents of the amendment. It is attractive to securities interests to be able to trade new futures-type products on their exchanges because the universe of customers who might purchase stock products is much larger than the universe of customers who might purchase products designated and regulated as futures contracts.

But it may be troubling to think that an unwary investor would purchase a product labeled as a stock when the product, in fact, has the risk attributes of a future. If we have the ability to choose our regulator, we have the ability to create that impression. We have that ability as the innovator, not as the regulator.

The Bond-Wirth amendment changes the CFTC-Treasury proposal in several respects. Some of these changes fail to foster sound public policy, in my judgment. Let's take a look at one area to begin with, the so-called exemptive authority. It is a feature of both S. 207, the Agriculture Committee bill, and the Bond-Wirth amendment that may be offered, that the CFTC should have the ability to exempt from CFTC regulation those products that do not require such regulatory oversight.

But the Bond-Wirth proposal does so in a manner that gives the CFTC very little ability to determine whether or not the product should have some regulatory oversight. I make that point because the Bond-Wirth amendment, perhaps inadvertently, may cast a particular new innovation out into regulatory limbo where there is no oversight by either of the Commissions.

One of the careful features of S. 207 was to make certain that somehow all of these hybrids, or innovative products, were regulated by one of the two: SEC or CFTC. My contention is that the language, as I read it, on the potential Bond-Wirth amendment, under some cases, could leave a product out in limbo without any regulation.

The Bond-Wirth proposal requires the CFTC to exempt from the requirement that products be traded on a regulated futures exchange, if the CFTC finds such an instrument to be consistent with the public interest. By requiring the CFTC to take exemptive action, the amendment removes any possibility of a regulatory safeguard to backstop and restrict products that are proper for futures-type regulation.

In S. 207 on the other hand, exemptive authority is discretionary rather than mandatory. It gives the CFTC the ability to exempt products, but it would not require them to do so.

The Bond-Wirth amendment, in my judgment, could place at risk retail customers who are unsophisticated in the risks inherent in complex financial transactions, whereas S. 207 restricts the application of these exemptive provisions to institutions, which are large, well-financed, and have supposedly sophisticated investors.

Mr. President, in addition to the problems of exemptive authority, there are problems that we need to discuss with the so-called hybrid instruments that have consumed such a large portion of the debate to date.

The original rationale offered by the SEC for changing the agriculture bill, S. 207, was that the committee-reported version supposedly was drafted to steal jurisdiction from the SEC and give it to the CFTC. S. 207, as amended with the CFTC-Treasury refinement, eliminates that objection. The Bond-Wirth amendment if offered in the current form goes the other way and takes jurisdiction and products, above and beyond that which were voluntarily given up under the 50-percent test, currently vested with the CFTC and permits those products to trade outside of the reach of the CFTC.

Critics of S. 207 have contended it may stifle innovation and drive offshore new financial products. That argument is used to justify the changes in the Bond-Wirth proposal. However, the facts do not support that position. Since 1986, only two instruments have not been permitted by the CFTC to trade outside of their jurisdiction. One of those was index participation [IP's] which the CFTC believes, and a court supported, are futures contracts. I say that, Mr. President, because we are talking about a span of almost 5 years; a period of time where products were not and could not have been driven offshore by the so-called intransigence of the CFTC. As a matter of fact, only two instruments have been denied the proper jurisdiction, at least that sought by the originators, by CFTC.

The Bond-Wirth proposal, in fact, may overturn 50 years of precedent. Over the years, the courts have carefully defined the scope of the securities statutes and the commodity futures laws. The Bond-Wirth proposal would scuttle all of this by permitting instruments to select their regulator or, worse, select no regulator. That, I think, Mr. President, is a point that those who are proposing this amendment really have to address and have not done so.

Under the Bond-Wirth amendment before me, if the SEC can find that a product derives at least 50 percent of its value from the elements of one or more securities, the product is suddenly outside of the sphere of CFTC regulation. This arguably would shift products like Treasury bond futures, stock index futures, and perhaps currency futures to a position of being regulated by someone other than the CFTC.

The question is: Who will regulate those products now outside the jurisdiction of the CFTC? That is another important consideration. Under the securities laws of 1933 and 1934, the SEC has jurisdiction over securities, and the courts over the years have established a working definition of what exactly constitutes a security. But the plan before me would allow futures products containing elements of a security to leave CFTC control.

In the first case, what are the elements of a security? And, following that, does the SEC have the authority to regulate something that may be a futures product that contains elements of a security? At a minimum, I foresee a great deal of litigation to define "elements of a security." We hope that the objective of title III was to minimize that litigation.

With regard to the so-called jump ball approach to the Bond-Wirth amendment, I would counter that the best approach is to establish a bright line test and let industry work inside of those parameters. S. 207 establishes such a bright line test. Although both contending sides in this argument say that the proposal of the other will encourage litigation, a bright line test will result in the certainty the industry is seeking.

The jump ball approach has too many negative aspects to warrant serious consideration, in my judgment. The jump ball approach permits issuers of a product to look for the best deal they can get, which may not be the best deal for the public. A good deal for the issuer might be the cheapest form of regulation, easiest method of registration, the least obtrusive form of regulation. It might deceive the public. If the SEC says that a particular hybrid product, which may have all the risk of futures contract, is a security, investors would be purchasing something that is called a security but may have very different risk profiles than a true security. Although not likely, it could encourage regulators to weaken regulatory structures to attract new products to their jurisdiction.

Last, if the promise is that both of the regulators can equally competently regulate the same type of transaction, ultimately it would lead to the demise of one of the regulatory bodies; in this case, probably the smaller and the lesser funded of the two, the CFTC.

Some may try to characterize the Bond-Wirth amendment as an attempt to resurrect the compromise put together by five Senators last year. I was one of those Senators, and I can testify the Bond-Wirth amendment goes far beyond the scope of that compromise, a compromise which purposely left the current jurisdictional situation regarding plain vanilla futures untouched and attempted to address the hybrids question only. Unfortunately, that compromise was found to be unacceptable by both the futures and securities industries. The Bond-Wirth amendment goes well beyond hybrid instruments and permits plain vanilla futures to trade in the securities markets.

Because the language in S. 207 is designed to address only the hybrid instrument situation and does not tamper with existing products, it is the preferable approach.

Mr. President, with regard to arguments concerning swaps transactions, the justification for change from the CFTC-Treasury compromise is even less clear than the jurisdictional fight on hybrid instruments. The interest groups who are concerned with the swaps provision believe that CFTC-Treasury fix is an acceptable compromise. So they have likewise joined that general aggregation of the Treasury, the CFTC, the administration, the Agriculture Committee, having come at least to some basic compromise through the weeks of argument about it.

The Bond-Wirth proposal would totally exclude all swaps transactions from CFTC oversight. The amendment would not permit any CFTC review or action. I agree with the assertion that if other regulators review swaps, which have been likened by the Office of the Controller of the Currency as similar to other financial futures, regulation a second time by the CFTC is not necessary. The CFTC has shown no indication of injecting a new regulatory burden on swaps products. Quite to the contrary, and a source of concern for the futures industry, the CFTC has been very permissive in leaving swaps transactions outside of CFTC jurisdiction.

However, the concern of CFTC that the Bond-Wirth amendment fails to address is that there may be situations where another regulator really does not exist. For example, the subsidiaries of investment banks that run swaps markets are not regulated by the SEC or anyone else. The CFTC is merely trying to ensure that someone is looking at those transactions and the risks posed by them. It is like the safety valve we have suggested on margins. In that case the safety valve was created by putting the Federal Reserve as the overseer of margin levels on stock index futures. If a problem surfaces, someone, in this case the CFTC, should ultimately be accountable.

The language in S. 207, the language acceptable to the interested parties, takes a more restrained tack. Given the fact that CFTC and bank regulators agree that certain deposits and swaps perform the same economic functions as commodities futures and options, S. 207 permits the CFTC to exempt deposits and swaps from CFTC jurisdiction if it is in the public interest. After the experience in the savings and loan industry following deregulation and what happened in the junk bond market, does it not make sense to have most oversight, albeit minimal, by the agency that is knowledgeable about futures-type transactions?

The swaps market has proliferated under the CFTC's July 1989 safe harbor policy statement. Why is there now concern the CFTC, when given the legal authority to exempt from regulation swaps products, would change tack and restrict the growth of this important industry?

Mr. President, I conclude with one final predicament that the Bond-Wirth amendment will pose when it is offered.

The provisions of Bond-Wirth would exclude from the CFTC's jurisdiction "any instrument that is issued by an insurance company that is exempted under the 1933 securities act."

A common thread of all of the amendments offered to modify S. 207, the agriculture bill, is to ensure that the CFTC will not have the ability to regulate transactions conducted by certain parties; in this case, insurance companies.

I have to wonder why, Mr. President, and I hope Senators will likewise have a question, should CFTC be prohibited from regulation of futures because of their origin in insurance companies?

In the first place, I do not think the CFTC deserves the reputation as a regulator that is interested in broadening its jurisdictional base.

Public policy suggests that situations might arise where a regulatory presence is warranted or even desired. Consider a situation created by a product issued by an insurance company—the focus of this amendment—where futures market expertise and regulatory oversight would be warranted. Do the authors of the Bond-Wirth intend that no regulatory oversight should exist? Literally interpreted, if an insurance company chose to issue treasury bond futures contracts or any other futures contract, it could do so without fear of any regulatory oversight.

Ignoring competitive aspects of such a law upon futures exchanges that might trade the same products and the fact that these exchanges have to comply with a great deal of regulation for the benefit of the investing public, is it prudent to demand that the CFTC not review any product that might otherwise come under its jurisdiction merely because of the issuer of the product, in this case, for example, insurance companies?

I make that point, Mr. President, not simply to be excessively technical. We are talking here about a broad principle, and that is, with these complex investment instruments, is there consumer protection? Is there somebody out there who finally regulates?

For all these reasons, Mr. President, I draw the attention of Senators back to the careful work done now over the course of 2½ years on S. 207. One reason that it does not have the defects that I have suggested with competing legislation is that careful screening, debate, compromise, check and balance within all the rest of the groups have led to a situation in which we believe all the instruments involved are finally covered by someone, and we have suggested a so-called bright line test to decide which agency, CFTC or SEC, will regulate. We also have established a very clear set of criteria for the courts to decide in the event there is ultimately a dispute, to create certainty for the investing public.

For these reasons, Mr. President, I commend once again S. 207, hopefully without the Bond-Wirth amendment or other amendments that would open gaps with regard to regulation; lead to an element in which those who initiate complex instruments could pick and choose the regulator; and, finally, hopefully, to bring criteria that provide clear certainty for the courts to resolve debates stemming from litigation if that is necessary.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The the Chair recognizes the Senator from Vermont [Mr. LEAHY].

Mr. LEAHY. Mr. President, I hope that Senators have listened to the statement by the distinguished senior Senator from Indiana, who has laid out very clearly not only the history of what has gone into S. 207 with respect to item 3, he has given the history of attempting to reach agreements and compromises, an effort with which he was intimately involved. He has clearly laid out the frustrations we faced where just about every compromise you might reach would be acceptable to one side but not to the other, and back and forth.

We continued to try to get something that makes the most sense without giving undue weight to the other side. I think we have done that.

The reason I mention this, Mr. President—and I will not, of course, encourage a move to the regular order at this point because there are not members of the Banking Committee on the floor or Senators who have talked about an alternative amendment, and as manager of the bill I want to be protective of all Senators' rights—there has been a lot of debate yesterday, a lot of debate today about an amendment to title III, a possible amendment to title III. As of right now, and I make this as a parliamentary inquiry, Mr. President, is there any amendment pending to title III?

The PRESIDING OFFICER. The Chair advises the Senator that the only pending amendment is the committee substitute as modified.

Mr. LEAHY. Further parliamentary inquiry. The committee substitute, it is my understanding, has been modified as we have a right to do on the committee substitute, is that correct?

The PRESIDING OFFICER. The Senator from Vermont is correct.

Mr. LEAHY. Let me make a further parliamentary inquiry. I am not suggesting this will happen, but I make this further parliamentary inquiry. If we were to go to the regular order now, the regular order would be—assuming no Senator seeks the floor, assuming there is no further debate, and assuming there is not a quorum call—to go to the completion of this bill—first, the acceptance of the committee amendment and completion of the bill, is that correct?

The PRESIDING OFFICER. The Senator is correct. The regular order would be a vote on the pending amendment which is the committee substitute.

Mr. LEAHY. And then, following the vote on the pending amendment, if there was nobody seeking to be recognized or to engage in debate and if there was not a quorum call, what then would be the order?

The PRESIDING OFFICER. The Chair advises the Senator that the order then would be third reading of the bill and vote on final passage.

Mr. LEAHY. I thank the Chair. Obviously, I ask the question knowing the answer. I say this because a number of Senators have expressed to me concerns that they have: Either meetings this evening, dinners to attend, other commitments, and are wondering when we might be completed of this action.

I think it is safe to say—other than the fact, of course, we will protect the floor and hope that those who may offer another amendment might come back—the Senator from Indiana and I are ready to complete this bill, to have a vote on the committee substitute and to go to third reading and would be happy to do that in the next 29 seconds or so to give plenty of time.

I say this not sensationally, Mr. President, but we constantly have Senators come up and say how late are we going to go? How much will we go here? When are we going to get done? If Senators want to, we can vote on this bill right now.

So I say that because there is nobody that I know of on the Senate Agriculture Committee who is seeking an amendment or seeking a vote on anything other than the committee substitute as modified which can be done with a voice vote, or a third reading.

Having said that, Mr. President, I am about to suggest the absence of a quorum. I would like my colleagues to know that I will not suggest another absence of a quorum later on. This Senator is ready to complete it. I will not ask, as I said, to go to third reading until those who propose talking about another amendment have a chance to come to the floor.

Having managed bills off and on for 17 years here I think Senators know I have the well-deserved reputation of protecting the rights of Senators whether they agree or disagree with it, and I am not going to violate those rights.

I am hoping as I talk here that I may focus the attention of Senators who may want to offer amendments, but let us get it done. We can finish this thing in the next hour or two, or we can spend half the night here tonight, which I would hope we would not do. I know that distinguished leadership would like to keep us on track, and I would.

With that, Mr. President, now that there are people on the floor who have opposing views to mine on title III, I will yield the floor. I have done my duty I believe in putting everybody on notice that we are ready to go to third reading if there is no further debate and no further amendments. I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, as always we appreciate the kind elucidation of our distinguished colleague from Vermont. As I am sure he realizes there have been discussions going on back and forth between staff with respect to one particular amendment that we thought we were going to be able to resolve.

Since my colleagues from Colorado, Senator WIRTH, and I returned from the Budget Committee in which we have had votes trying to get out the budget resolution, it appears that some difficulties have arisen with that amendment and the ability to get an amendment adopted by unanimous consent on both sides. We are continuing to explore that amendment and hope to be able to bring up that amendment or one like it very quickly.

It does not appear as I indicated that we will be able to get that amendment adopted without a vote. But in the interest of saving Members time and expediting the proceedings we have been conducting the discussions and negotiations. This is a very complicated matter in which every hour as we speak, as the weatherman says on early morning television, further revised improved conditions are being drafted to take account of the concerns that have been expressed by Members.

So I thank the Chair. I thank my distinguished colleague from Vermont.

Mr. LEAHY. Mr. President, if the Senator will yield for a question, I believe in continual refinements. We all do, but I can refine it so far. I am a proverbial small-town lawyer from Vermont and may not understand just how refining things can get.

So I ask the question of the distinguished Senator from Missouri. Does he have an idea when he might have an amendment, if he is going to, on a particular matter? I know of the one on which he wishes to speak. And also when he might have an amendment on title III? And also when we might vote on either or both of those? I ask this. I am going to be here no matter. But for those who are trying to juggle their times throughout this evening and so on, so they might know, too.

Mr. BOND. Mr. President, my colleague from Colorado, Senator WIRTH, and I have been discussing this, the possibility that I wanted to raise with the managers of the bill, that while we do have some minor amendments that may require votes there is a major amendment which has been discussed that essentially revises everything in title III beyond section 301.

If the managers and the leaders feel it is appropriate, perhaps we could lay the amendment down, establish some kind of time agreement on it, and have a vote at a time certain tomorrow. Knowing the schedule of our colleagues, it sometimes is of great assistance to know that at a time certain a vote will be held.

There is an amendment on which several of us have spoken at length already and could continue to do so for an even greater length of time. But I see the possibility that we could lay it down and have a vote at a time certain on tomorrow.

I ask my colleagues if that is agreeable.

Mr. LEAHY. Mr. President, if the Senator will withhold for just a second, obviously we all want to finish. I might note that the Senator from Missouri has always been cooperative in trying to set times, as have I might say all Senators who have been involved in this on both sides of the issue. I also have a great deal of respect for the two leaders, the Democrat and Republican leaders, who have to work in setting some kind of a schedule around here. I always get nervous when they try to plan schedules if it is my bill that is on the floor, or one that I am asked to manage.

The further thing is that the Senator from Indiana and I as the Republican and Democratic managers of this bill are being constantly asked by our colleagues on either side of the aisle what the schedule might be. That is an entirely different question than the substance.

Might I suggest this: Before we have any discussion rearranging the schedule we should consult with the distinguished majority leader which can be done either off the floor or during the quorum call. In fact, the distinguished majority leader is here now. Because as I said earlier, I do not have the authority to commit to anything like that. I wonder if we might suggest the absence of a quorum. I yield.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, before my good friend, the distinguished manager of the bill and the chairman of the Agriculture Committee suggests the absence of a quorum so that this matter will be discussed, I would like to express my opposition to a request that has been made by my friend from Missouri to put over the vote on this bill until tomorrow.

Mr. President, we have been on this issue for 3½ years.

The administration has entered into an accommodation of honor with every interested party in America concerning this legislation. It came out of the Agriculture Committee unanimously, with every Democrat and every Republican on the Agriculture Committee voting in favor of this bill.

I am a member of the Banking Committee. I attended the Banking Committee hearing yesterday. There is absolutely no merit whatsoever, not 1 percent of merit, in the contention that the Banking Committee has been deprived of any jurisdiction. The Shad/Johnson accord of 1982 settled this thing. The accommodation of honor contained in S. 207 has to do with jurisdiction over hybrids, and if there are more than half futures contracts, they go to the CFTC. If they are more than half stocks, they go to the New York Stock Exchange, and that is a gain. I underscore, Mr. President, with all the power and persuasion at my command, it is a gain for the Banking Committee.

Every person in that committee and every person in the Agriculture Committee who knows about this subject matter understands this issue perfectly well. For the rest of the Senators, they are now fully informed. I suggest that it is absolutely contrary to the interests of the Senate, the country, and the markets concerned to put this issue off until tomorrow; there is no reason for it. There is no justification for it. And should that request be made, unless persuaded otherwise by the leader, since I recognize I work on his team, I am going to be opposed to the idea. It is time to vote. We have been putting off a vote for 3½ years, and the request, in my view, is an unreasonable one. There are stronger words probably to follow if anybody will ever pay attention.

Mr. LEAHY. Mr. President, if the Senator will yield.

Mr. DIXON. I yield the floor.

Mr. LEAHY. Did I miss something the Senator was saying? Am I going to have to now not be able to sleep all night waiting for the CONGRESSIONAL RECORD to come out to find that out?

The PRESIDING OFFICER. The Chair advises the Senator from Vermont that he would be well to consult the video tape of the proceeding.

Mr. LEAHY. Mr. President, I hate to disappoint the 12 people in the country who might be watching this, but 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. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

Mr. GORTON. Mr. President, as a member of the Agriculture Committee during the last Congresses I worked with the chairman and other members to develop the Futures Trading Practices Act of 1989, a bill to reform the futures markets. The bill was drafted to enhance the effectiveness of the Commodity Futures Trading Commission and to curb abuses in the trading and execution of orders in the futures markets. The bill was a thoughtful piece of legislation and was likely to have raised the integrity of the futures markets and to have removed the cloud under which the futures markets have operated.

I supported the bill in the Agriculture Committee. Nevertheless, I believed that it failed to address a fundamental inconsistency in the regulation of the financial markets, a problem which contributed significantly to the precipitous collapses that rocked our markets and investor confidence during the late 1980's. A contributing factor to those instabilities was fragmented regulation of the securities and futures markets.

Prior to floor consideration of the committee's bill, I offered an amendment to transfer jurisdiction of stock index futures from the Commodity Futures Trading Commission to the Securities and Exchange Commission. My amendment would have ended divided regulation of the financial markets and would have consolidated regulation of markets which are inherently linked.

No action was taken during the 101st Congress on either the Futures Trading Practices Act or on my amendment. In fact, objections even to considering my amendment may have prevented the futures reforms package from passing during the 101st Congress, but I believed then, and believe now, that the problems associated with bifurcated regulation were too important to not be addressed.

Since I offered my amendment, this question has received a great deal of attention. In the Senate, five hearings involving no less than Alan Greenspan, Chairman of the Federal Reserve, Richard Breeden, Chairman of the SEC, Wendy Gramm, Chairwoman of the CFTC, and representatives of the Treasury, have occurred on fragmented regulation.

The Treasury Department even proposed its own bill, which along with Senator WIRTH I was prepared to offer last year. Countless hours were spent discussing this issue, by both Members and staff. In fact, during the final 3 months of 1990, a compromise among five members of the Banking and Agriculture Committees was developed, only to fall apart later. All this debate spurred by a simple one paragraph amendment.

Mr. President, today we are debating S. 207, a revised version of the Futures Trading Practices Act of 1989. S. 207 includes technical changes in securities and futures laws designed to resolve the problems associated with divided regulation. I commend my colleagues for their efforts, but despite all of their hard work this bill still fails adequately to address the principal problem. It does nothing to unify, or even to coord.. :te, regulation of stocks, options, ana stock index futures. The bill will allow Members to claim that the problem has been addressed, but these minor changes will not solve the problem. Mark my words, we will be back debating these questions again in the near future, only then we will be debating legislation to defuse a bomb that will have already exploded.

Mr. President, trading in stocks, options, and stock index futures constitute one interrelated market. This was the conclusion of the Brady Commission which studied the 1987 stock market crash. Trading in either the securities markets or the derivative markets has a direct and material effect on the other. Yet, despite the obvious bridge that exists economically, no such link is present for the regulation of these markets.

What are the consequences of this division?

Divided jurisdiction has adversely affected investor confidence, slowed capital formation, stifled competition and innovation, and prevented the United States from speaking with a unified voice internationally. Perhaps the most apparent affect, though, has been increased volatility.

Since the advent of stock index futures in 1982, and as the futures markets have grown, massive sell-offs or more than 6 percent in the market have occurred four times in the last 4 years. Yet, in the 42 years immediately preceding the trading of stock index futures, the Dow Jones industrial average suffered a daily decline of more than 6 percent on only three occasions. And on each such occasion, the market was responding to a major news event. By contrast, none of the four crises since 1982 was in response to a major news event.

Mr. President, each of these dismal days rocked America's financial markets and seriously eroded investor confidence in those markets. This loss of confidence, in turn, adversely affects the operation of markets and the provision of capital necessary for a growing economy. New equity capital and public equity markets are essential to financing the innovative business ventures which are the primary engine of the Nation's economic growth.

Regulatory fragmentation also has created a serious impediment to innovation. Currently, a financial instrument with any degree of futurity must be traded on a futures exchange. But many hybrid products are not amenable to trading on a futures exchange. The result has been protracted litigation over what consititutes a future. Time which should be spent by exchanges developing new products has been spent in court. Rather than trade on a market for which they are not suited, many hybrids, such as index participations, have shifted to markets overseas.

Stock index futures are an example of stifled innovation. My amendment focused on stock index futures, not because it is the lone futures instrument capable of playing a role in the securities market, but because it is the only futures instrument that is inextricably tied to the securities market that has survived.

Mr. President, with the globalization of financial markets, other countries have provided us all the competition our markets need. We can no longer afford jurisdictional conflicts that stifle innovation at home and drive important U.S. business overseas.

Finally, divided regulatory agencies prevent the United States from speaking with a unified voice during international negotiations on financial markets. Other countries with major securities markets have a single body regulating those markets. The Japanese, for example, have regulation of stocks, options, and futures under one agency. Thus, they present clearer priorities and negotiating objectives than can the United States.

The CFTC and the SEC are different agencies with distinct agendas and objectives. With separate agencies having differing goals regulating linked markets, the rules governing those markets are inevitably inconsistent. Divided regulatory responses to market crisis is problematic at best. Coordinated regulation, on the other hand, would mean a more consistent approach to regulation of abusive intermarket trading practices and would ensure a coordinated reaction to market swings.

Mr President, the ability to raise capital efficiently is central to a strong economy. The bill we are debating addresses how we regulate some important financial devices and instruments, such as margins, hybrids, swaps. But this bill makes changes only around the edges. It fails to go to the heart of the matter by not focusing on regulatory fragmentation. It does not fill the vacuum which exists from divided regulation. Even with the modest changes propsoed in S. 207 we are leaving our markets and capital generating system open to disaster. Mr. President, more must be done. The markets are naturally linked; our oversight should be, too.

Mr. President, the distinguished Senators from Colorado and Missouri are still working on amendments or a set of amendments which would move significantly in the right direction. None go as far as my amendment did a year ago. We have not even considered whether or not we should have a single regulatory agency.

While, however, we are debating an issue on which debate should have started at least 18 months ago, we should at least see to it that we do the best job possible.

I look forward to supporting the initiatives of the distinguished Senators from Colorado and Missouri as they are presented to us in detail later on today and tomorrow.

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. SEYMOUR. 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. SEYMOUR. Mr. President, I would like to commend the chairman of the Agriculture Committee, Senator LEAHY and also the ranking Republican, Senator LUGAR, for their efforts to bring S. 207 before the Senate. I again want to reiterate my support for the Futures Trading Practices Act of 1991, which was reported unanimously by the Senate Agriculture Committee.

Mr. President, this bill reauthorizes the Commodity Futures Trading Commission for 5 years, institutes strict regulatory reforms to curb trading abuses, and provides for the resolution of long-standing jurisdictional disputes between the CFTC and the Securities and Exchange Commission. This bill ensures that American futures and securities markets remain productive, innovative, and internationally competitive.

It is my hope that the Senate will support S. 207, as reported by the Senate Agriculture Committee. I urge my colleagues to adopt this bill.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, parliamentary inquiry. What is the business before the Senate?

The PRESIDING OFFICER. The pending question is the committee amendment to the bill S. 207, as modified.

Mr. DODD. I thank the Chair.

Mr. President, I rise this afternoon in opposition to title III of S. 207, the Futures Trading Practices Act of 1991, as currently drafted. Title III has been separately titled the Intermarket Coordination Act of 1991.

Mr. President, it might be useful to take a minute or two to explain to my colleagues my thoughts about the situation in which we find ourselves in considering this legislation.

Frankly, Mr. President, this is a matter that never should be before this body in divisive faction. I deeply regret we find ourselves in a situation where we are asking our colleagues to draw some conclusions on one of the most complicated matters that can come before this body. A good part of last fall was spent in an effort to try and resolve these issues through extensive negotiations and conversations between the Banking Committee and the Agriculture Committee.

In fact, we arrived at such a compromise between myself, our former colleague, Senator Heinz, Senator BOND, Senator LUGAR, the distinguished Senator from Indiana, and the ranking member on the Agriculture Committee, and Senator LEAHY. Mr. President, regrettably that arrangement did not last very long despite the good efforts of many.

We tried to come up with a compromise that would satisfy the interests of all those involved in this matter. Regrettably, that did not work. Despite some efforts over the last several weeks to try to come to some conclusion or compromise on this matter, that also failed. I say that with a deep sense of regret because my feeling is that this matter is going to be decided other than on the merits of this particular case because, frankly, I think it is probably too much to expect that it will be as thoroughly debated as it should be before Members cast their votes.

Mr. President, I should say at the very beginning I am an original cosponsor of S. 207, and I strongly supported the measure as it was introduced. While I continue to support the important reform measures in this bill, reforms that I believe are essential for the protection of the futures market and the broader financial markets, I must object to certain provisions of title III as amended in the committee. I also object to certain provisions of what I understand will be offered as a manager's amendment to title III.

Let me emphasize that my objections cannot be resolved by simply dropping title III, as appealing as that might be. That title, Mr. President, is intended to address critical issues affecting the integrity of our financial markets, the capital formation process, financial innovation, and competition. In the absence of legislation, these issues will remain unresolved and American businesses and financial institutions will be the losers.

Before I discuss these issues in detail, I do commend Senators LEAHY and LUGAR as well as the Agriculture Committee as a whole for developing titles I and II of the legislation, the Futures Trading Practices Act, which was initially reported by this committee as S. 1729 in November 1989. It was a tough and courageous response to the indictments in Chicago and serious problems in the existing system of oversight of the futures markets.

Many have called this legislation the most sweeping futures reform package in decades, and, Mr. President, I would agree. The chairman and ranking member deserve a tremendous amount of credit for having moved that legislation along.

The bill expands the statutory authority and the resources of the CFTC and imposes industry services fees. It requires exchanges to deploy tamperproof computerized audit trails. It curbs dual trading. It also increases penalties against traders who engage in unlawful activity, and allows victimized customers to sue for punitive civil damages from floor traders and brokerage firms. In addition, Mr. President, the legislation tightens rules against exchange conflicts of interest.

These and other provisions of the legislation have been critically needed to strengthen and improve America's futures markets, which for many years have served the broad interests of America's farmers, industrial corporations, and other users of financial services. Our futures markets have been the most innovative, dynamic futures markets in the world, and there is strong public interest in ensuring their continued vitality and integrity. Titles I and II of this legislation do just that. The authors of those titles deserve the commendation and strong support of this body as we move through the legislative process.

Mr. President, I mentioned at the outset the so-called Leahy-Lugar-Dodd-Bond-Heinz compromise of last fall. Title III of the legislation as originally introduced was a measure that was drafted as an amendment to S. 1729 of last year. I joined Chairman LEAHY as a cosponsor, together with our colleagues Senator LUGAR, Senator BOND, and Senator HEINZ. The amendment was a compromise between the administration's proposal to shift jurisdiction over stock index futures from the CFTC to the SEC and the alternative, which was to do nothing about the risks to the financial system posed by leverage in the futures markets, and the threat to competition and innovation in the futures and securities industries created by an anticompetitive clause in existing laws, and the problems in coordinating regulation over the markets for stocks, options, and futures.

This compromise measure represented, we believed, a very serious effort by the leadership of the Committee on Agriculture, and the Banking Committee's Subcommittee on Securities to resolve the bitter and protracted battle over regulation of stock index futures and related issues.

When we developed it last year, we believed it offered our best chance to break the logjam that had prevented Senate consideration of S. 1729. The measure contained provisions to protect investors and to protect the U.S. financial markets from potential liquidity crises and other systemic risks generated by rapid and extreme price movements in the stock index and stock futures markets.

It accomplished these goals, Mr. President, by assigning authority for the regulation of margins for stock index futures to the Federal Reserve, which now has margin authority for stocks and options and is the agency charged with protecting the liquidity and stability of the financial system as a whole. It seemed to us at that time a good compromise, one with which all sides could live.

Mr. President, it also was designed to foster competition and financial innovation so that the U.S. financial markets can remain the world leader in financial services. It accomplished this by modifying the exclusivity clause of the Commodity Exchange Act to permit certain new and innovative hybrid securities products to trade in either the securities or the futures markets. This, it seems to me, is axiomatic if you are trying to provide a better product for the people who use these products, then we all I think accept the notion that competition will help. And so we tried through this process to make it possible for these hybrids to be traded in one or the other markets to encourage innovation and competition.

Mr. President, this compromise also was designed to provide certainty for the $3 trillion swaps market, which had come under a cloud as a result of the CFTC's statment that attempted to delineate the types of transactions over which the CFTC would assert or decline to assert jurisdiction.

In addition, title III, as introduced, sought to promote coordination between the CFTC and the SEC with respect to critical issues affecting the stability and integrity of the interconnected markets for stocks, options, and futures. Efforts of these two agencies would be directed at the detection and prevention of intermarket front-running, coordination of circuit breakers, coordination of clearance and settlement systems, and other such matters.

Mr. President, the Senate last year was prevented from considering S. 1729 as well as the compromise measure by those who, quite frankly, did not want to permit a vote on this compromise. It was a stong compromise. It was one that brought together the leadership of the two major committees to resolve those differences, we think, in a very thoughtful, intelligent fashion. Quite frankly, despite the crowded calendar of last fall, were prepared to come and offer that as a compromise here.

Frankly, those who saw the compromise as in some way eroding some of the business that they presently had were opposed to that compromise coming forward. That is why we are here today. This matter could have been dealt with and resolved last fall. Unfortunately, it was not.

Chairman LEAHY agreed to include it in the CFTC reauthorization bill this year. I agreed to join him as cosponsor of the legislation, along with Senators LUGAR, BOND, Heinz, and others. I hoped through our collective support it would be moved through the Senate early this year. So I did not feel that badly about it being rejected last year—I should not say "rejected." In fact, it was never voted on. I did not feel badly because we could come back this year, work it out, reintroduce it, submit it and, hopefully, given the support it had, move it quite easily.

It was clear since we intended to develop a true compromise, and it was, neither the futures industry nor the securities industry would be entirely satisfied. They were not. They should not be. Our job is not to protect the securities industry, or the futures industry, exclusively. And the fact that both of these markets were somewhat upset over what we had drafted was probably the best piece of evidence I could offer—that we had done something that in fact met the test of a true compromise.

It was also understandable that some members of the Committee on Agriculture would favor the futures industry position over that of the securities industry. Likewise, there were members of the Banking Committee who favored the securities industry over the futures industry. There were members out there in the community that, of course, were anxious to see a proposal that would be offered that would satisfy only their interests. However, I hoped that the compromise, while not acceptable to everyone, would present a middle ground that would permit the Agriculture and Banking Committees to address some, if not all, of their respective concerns.

Mr. President, instead, however, on March 5, just prior to the committee's markup, the CFTC, representatives of the futures exchanges, and Treasury struck a midnight deal on a substitute for title III which was presented at the markup the very next morning. There was no public debate on the proposal at the markup, no long hours such as we had spent last fall, and final language was not available. Nonetheless, it passed without opposition in the committee.

Soon afterwards, I began hearing from other financial regulators and from major banks, securities firms, and stock and options exchanges that the language as passed not only was terrible public policy, but it had the potential to kill a multi-trillion dollar swaps business and drive a host of financial products offshore.

At the end of my statement, Mr. President, I will place in the RECORD some of the letters that I have received as well as excerpts from those letters which strongly criticize this section of the bill as reported by the committee.

Mr. President, I believe it is fair to say that even the Agriculture Committee leadership, as well as the CFTC and the Treasury, agreed that the language was confusing and overly expansive. At that point, in early March, the CFTC and Treasury was sent off to fix the language, even though it had been passed on a voice vote. Most people recognized there were major gaps.

There were no hearings on the specific language, no debate, and it was done at the last minute, and moved through the committee quickly. Even the parties to the agreement admitted this had been done too quickly and that there were major problems that needed to be resolved.

At the same time, some Senators were urging the Senate leadership to bring the bill to the floor without delay. Senator RIEGLE, as chairman of the Senate Banking Committee, appropriately objected and asked that, at the least, consideration of the bill be put off until there was an opportunity to review the language and ask financial regulators under the Banking Committee's jurisdiction for their views.

Language arrived from the CFTC and the Treasury only last Wednesday. That language clearly did not go far enough to alleviate the concerns that had been raised by Senators BOND and WIRTH, who have been developing an amendment to fully address those issues.

A hearing was held in the Banking Committee yesterday, a rushed hearing, I might add. I was with Chairman RIEGLE when he called the Chairman of the Federal Reserve Board, and he had to literally try to paste together a hearing very quickly to find at least 1 day when we could bring together the Chairman of the Federal Reserve, the Chairman of the CFTC, a representative of the Treasury, and the Chairman of the Securities and Exchange Commission to say, what are we doing here? Had he not done that, this language would have gone through, I suspect, without any word coming in a formal hearing setting about what the implications of these provisions would be on a matter as profound and as potentially debilitaing to competition and to driving business offshore as this is.

This is a matter that is difficult to understand. You need expert advice. This is not a matter to be decided on whim. Yet had Chairman RIEGLE not fought for that, we would have been standing and voting on this matter without the benefit of the views of the Chairman of the Federal Reserve, the Treasury, the CFTC, and the SEC.

I think what was said at that committee hearing yesterday is very instructive. I hope that our colleagues and the principal members of their staff will take a look at what was said at that hearing yesterday. If you read what was said by people who have no ax to grind, no dog in this fight, and are at arm's length, you will draw the only conclusion which can be drawn about what needs to be done as we consider title III in this legislation. That language, Mr. President, clearly, as it was developed in the Agriculture Committee and in the amendment by Senator LEAHY did not go far enough to alleviate the concerns that have been raised.

Yesterday, of course, we had the hearing at which the Federal Reserve, Treasury, CFTC, and SEC commented on the language in S. 207 as reported, the revised language to be offered by Senator LEAHY, and the proposed Bond-Wirth amendment.

Mr. President, I agree that the reforms of titles II and I of S. 207 are vital. I said that earlier. I believe that we should consider them on the floor of the Senate as soon as possible. There has been a lot of work done on those two titles. I am completely satisfied an excellent job has been done. But the reforms sought by title III as originally introduced and as further developed by the Bond-Wirth amendment also are important. I do not believe it is appropriate to drop those provisions from the bill. Instead, we should try to modify them to address the concerns that have been raised.

Mr. President, I would like to take some time at this point to discuss the policy issues relating to those reforms in some detail. The first relates to margins for stock index futures. The differing treatment of margins for stocks and stock index futures has been a concern of many experts, particularly since the stock market break of October 1987.

Mr. President, since 1934 the Federal Reserve has had the authority to establish margins for stocks. However, margins for stock index futures are established by the individual futures exchanges.

As Secretary Brady has testified, and I quote him:

> Because the futures and stock markets are in reality linked as one market, futures margins have a direct and material impact on trading in the stock market. Low futures margins indirectly permit high leveraging in stocks. This leverage creates the potential for extreme volatility, starting in the futures market and washing back to the stock market. The resulting financial exposure cannot be confined to a single market, and can spread quickly to affect the entire financial system.

Last year in hearings before the Banking Committee, as well as the Committee on Agriculture, the Department of the Treasury, the SEC, and the Federal Reserve all testified, each one of them testified, that low margins on futures can drain liquidity from the payment system in times of crisis when it is most needed.

The Federal Reserve expressed concerns about the tendency of futures exchanges "to lower margins on stock index futures to such a degree in periods of price stability that they feel compelled to raise them during periods of extraordinary price volatility."

Chairman Greenspan, who in the past believed the Government should not be involved in margin setting, testified to the following: "I regret to say that the behavior of margin setting in the last couple of years has shaken my confidence in the view" that the Government should not be involved in margin setting.

He pointed out that the futures exchanges raised margins following the 190-point market drop on October 13 of 1989, during a very unstable period. Chairman Greenspan told the subcommittee: "I was shaken by that event."

The Federal Reserve, therefore, supported Federal oversight of margins on stock index futures, as well as stocks, to ensure that margin levels are adequate under a range of market conditions.

However, Mr. President, the same events that caused alarm to the Treasury, the Federal Reserve, and the SEC, were viewed differently by the CFTC, which has argued that there is no need for Federal oversight in this area. That is their argument.

In hearings before the Banking Committee, CFTC Chairman Gramm said, "The proof that the futures margining system works well is unequivocal. No clearing member firm defaulted in either October 1987 or October of 1989."

After sitting through hearings on this subject, I became persuaded that this issue needed to be addressed by Congress in some fashion. We came too close to a financial systems breakdown, as we all know, in October 1987 and October 1989 to find comfort in the fact that a financial catastrophe was, thankfully, avoided. Given the linkage between the stock options and stock index futures markets, one regulator should have overall responsibility in this area.

Let me underscore that this is not an issue of turf. It is not a turf battle, as far as we are concerned. It is a problem that, if unresolved, could threaten the stability of our Nation's financial payments system. For that reason, Mr. President, the compromise proposal developed by Senators LEAHY, LUGAR, BOND, Heinz, and myself, gave authority to regulate stock index futures margins not to the SEC, not to the CFTC, but to the Federal Reserve, which currently has margin authority for stocks and options.

Although the bill proposed by the administration last summer would have given this authority to the SEC, we believed that, given the level of distrust between the futures and securities industries on this issue, a more modest and thoughtful approach, a more neutral regulator, particularly one with the experience and credibility of the Federal Reserve, would be appropriate.

The bill as reported by the Agriculture Committee contains a more succinct grant of authority to the Federal Reserve than was included in the original compromise contained is S. 207 as introduced. I want to review it further, particularly as to the question of enforcement authority for margin violations. But it appears to carry out our intent in drafting the original compromise.

However, it also would permit the Federal Reserve to delegate its margin authority to the CFTC, while the original compromise did not permit delegation for a period of 30 months. In view of the CFTC's reluctance in the past to support Federal regulation of futures margins, we need to make it clear that we want to see this authority used appropriately, and aggressively, if necessary, to protect the financial markets from liquidity crises that may be brought on by overleveraging.

Mr. President, I want to emphasize that this provision is an essential part of our post market crash reforms. The House bill does not contain a similar measure, and I believe we must insist the Senate provision prevail in conference, even though it does not do everything I would like to see it do.

Mr. President, a second major concern has been the anticompetitive effect of the "exclusivity clause" of the Commodity Exchange Act. This clause has been interpreted by the courts to mean that if a financial instrument is a security but has elements of a futures contract, then the instrument may be traded by only on a registered futures exchange, even if the element of "futurity" is only a minor characteristic of the instrument.

As Federal Reserve Chairman Greenspan explained in testimony before the Security Subcommittee:

> Under the Commodity Exchange Act, any commodity contract with an element of futurity cannot be entered into except on a CFTC-regulated exchange. Moreover, this act defines the term "commodity" broadly to include not only physical commodities, like corn, and wheat, but intangible contractual interests, including financial instruments. This restriction, when interpreted broadly, serves to discourage the development of new financial products that might be offered outside of the futures exchanges and tends to stifle the innovation process.

That was testimony from Alan Greenspan.

In fact, the Seventh Circuit Court of Appeals in a case decided last year, the Chicago Mercantile Exchange versus the SEC, noted that the exclusivity clause, "gives the futures markets the opportunity to block competition from an innovative financial product." That is from that Seventh Circuit Court of Appeals decision.

Surely, Mr. President, this anticompetitive result was not intended by the Congress when it adopted the Commodity Exchange Act in 1974. The exclusivity clause of the CEA was designed to prevent the trading of unregulated futures products, not to prevent the trading of securities products under the regulatory scheme of the Federal securities laws, or banking products under the Federal banking regulators.

If this provision is not corrected, futures exchanges could have a virtual monopoly on the development of new products, preventing innovative and useful instruments from trading on securities and options exchanges.

I refer my colleagues not to my statement but to the statement of the Federal Reserve and the Seventh Circuit Court of Appeals.

Mr. President, it became clear to a number of us in this Chamber that neither the respective agencies nor the President's working group of financial markets have been able to settle this issue by agreement, regrettably. I think that is tragic, and I think the fault, quite frankly, lies at the executive branch level. They just could not get their act together. You had agencies competing with one another, and it looked absurd.

If Congress does not act, however, new products will continue to be subject to litigation, and the U.S. capital markets will see innovative products and market share leave our national boundaries. Frankly, that is happening.

You are not going to find people willing to go up for lengthy court battles if someone decides they belong in the securities field or the futures field. If you are facing litigation, Mr. President—and you do not have to be a brain surgeon to figure this out—you are going to go offshore and trade in that product. You are not going to wait, 2 or 3 or 5 years until a court decides which market you should have been in. That is axiomatic. If we do not clear this up, that is going to happen.

It becomes clear to a number of us that neither of the respective agencies, nor the President's working group, were able to settle this matter. Congress must act.

Accordingly, title III, as introduced, addressed this issue by modifying the exclusivity clause of the CEA to permit certain new hybrid securities products to trade under either the securities or futures regulatory systems.

I add, Mr. President, the futures exchanges have been breeding grounds for financial innovation for more than a decade. In supporting the original provision, it was my belief that the futures exchanges would be made stronger by competition, and they should welcome it, not erect roadblocks around it.

However, title 3, as reported by the committee and in the new language, which I understand will be offered by Chairman LEAHY, does not accomplish this goal of stimulating innovation and increasing competition. As Federal Reserve Chairman Greenspan has noted in a letter to Chairman RIEGLE, I quote:

> The approach taken by S. 207 will continue to preserve impediments to innovation.

Although the language purports to draw a bright line with its 50-percent value test, Chairman Greenspan has written:

> The 50-percent value test embodied in the bill is arbitrary, and could yield anomalous results for similarly structured instruments.

Mr. President, I guarantee that the 50-percent value test, while it looks good on paper, when you are trying to assess value on some of these products at the time of issuance and trying to determine if something is 51 percent a futures or 51 percent a security, you are going to just invite litigation, and that ought to be as clear as the nose on anyone's face.

This is just an invitation to litigation. I presume that every securities lawyer and futures lawyer in America is applauding this particular approach. This is going to be a bonanza of work for them, because I do not believe you are going to have anything but litigation in a tremendous number of areas as a result of that provision.

The original compromise proposal included in title 3 also sought to remove impediments to the markets for swaps—and this is also an extremely important area—an institutional market used by major corporations, banks, and securities firms to manage risk. This purpose was turned on its head in the bill as reported, Mr. President.

Indeed, Chairman Greenspan and virtually all of the major banks and securities firms that wrote to me and to others, have voiced serious concerns about the impact of the bill's language on this important market.

Mr. President, I understand that new language again will be offered by Senator LEAHY, the chairman of the committee, that will make some improvements in this area. But Chairman Greenspan testified just yesterday that it does not go far enough, in his view. In this area, Chairman Greenspan believes it should go beyond even the language of the original compromise. He notes particularly that the new language, and I quote him:

> * * * continues to rely on discretionary, and potentially restrictive, exemptive procedures for dealing with swaps and bank deposits rather than the more certain exclusionary approach.

I should note, Alan Greenspan is not one of these people who is inclined to make bold statements. One criticism of the Chairman of the Federal Reserve is that he does not take a forceful enough position on a number of questions. I disagree with that characterization. I think he has a very difficult and sensitive job to perform.

I would invite people to read the statement by the Chairman of the Federal Reserve yesterday before the Banking Committee. His statements were as unequivocal, clear, and unambiguous as any I have ever heard uttered by the Chairman of the Federal Reserve. This was a man who was not taking a cautious approach when talking about this legislation. He was sending up as clear a red flag and signal about what we are apt to do as I have ever heard uttered by the Chairman of the Federal Reserve.

So I invite, in fact I urge strongly, Members to review the testimony of the Chairman of the Federal Reserve yesterday. In fact, I suppose it may be the most important testimony. I suppose if you read the statements by Chairman Breeden, you would anticipate that the Chairman of the Securities and Exchange Commission would have a certain point of view. I suppose the same could be said of the Chairman of the CFTC.

Even the Treasury, I might add, sort of apologized for its statement. It argued that what was in the bill on new products was not the best, but you had to sacrifice that because we needed something else. But the most credible witness, I would suggest, is, with all due respect to other witnesses, the Chairman of the Federal Reserve. There is no specific turf he is trying to guard. In fact, he does not want jurisdiction in some of these areas.

If you are anxious to get an objective view, then listen, if you will, to the statements of the Chairman of the Federal Reserve about this matter, and I think you will come to the same conclusion I have and others have, that we need to do better than what we are doing here in title 3.

Title 3 in S. 207, as introduced, addressed other concerns relating to the split jurisdiction over stocks and stock index futures. In testimony before the Banking Committee, Treasury Secretary Brady warned, and I quote him:

With our current system, it is simply too easy for intermarket abuses to slip through the cracks because of the dispersion of regulatory responsibility.

SEC Chairman Breeden said, and I will quote him:

Both agencies, the SEC and the CFTC, only see one-half of what is in fact a coordinated trade that begins in one market and ends in the other.

These officials, Mr. President, therefore urged consolidated jurisdiction over stocks and stock index futures in order to police the market for fraud and manipulation. Both Treasury and the SEC also have said, that, "circuit breakers" for the stocks and futures markets are not coordinated, and that major problems remain in the clearance and settlement area that would have been better addressed by a single regulator over stocks and stock index futures.

Many of us in Congress had hoped that the President's Working Group on Financial Markets could resolve these key issues as a group without the need for new legislation.

However, it is clear, Mr. President, that while many issues have been resolved in a collegial manner by members of the group, a number of major issues apparently cannot be resolved in that manner, and that is why we are here.

Following the release of the Brady report on the October 1987 market crash, and the other reports on that event, the vast majority of studies, as well as the market regulators and private market participants, agreed with the fundamental premise of the Brady task force that stocks, options, and stock index futures really constitute one single market. In my view, that conclusion was simple and unrefutable.

In addition it was and remains clear that regulatory oversight over that one market remains fragmented among regulators with different statutory missions.

The original compromise proposal did not solve this problem entirely. But it did set forth directives to the SEC and the CFTC to coordinate on key intermarket issues and to report to Congress on their efforts. That part of title 3 was removed from the bill altogether. We were told that the reason it was dropped was that it was duplicative of directives contained in S. 648, the Market Reform Act, passed by Congress last year.

In fact, the directives of the original compromise were much broader than those in S. 648. I know that Senator WIRTH will discuss these differences in some detail when he offers his amendment which would restore the intermarket coordination language of the original compromise.

Mr. President, I understand the frustration of those who have worked so hard on futures market reform, and who would like to see the bill voted up or down today. I respect that. However, in view of the importance of the issues raised by title 3, I believe that Senators RIEGLE, BOND, WIRTH, and others have raised legitimate concerns about this legislation, concerns that were underscored in the testimony of the Federal Reserve Chairman before the Banking Committee 24 hours ago.

Senators BOND and WIRTH have developed language which would address these issues in a different manner, and I will have some more to say on the Wirth-Bond amendment at a later time.

At this point, however, I would like to have printed in the RECORD a number of letters that I received on S. 207 as reported by the committee. While I understand that changes reflected in the managers' amendment address some of the major concerns in the swaps area, I believe the letters will help our colleagues understand the importance of the market for hybrid securities, as well as swaps.

These letters will give Members a better understanding of what is at stake in this debate. We are not simply talking about arcane financial products, but products that are used by American corporations to raise capital and to manage risk. These are, as well, products on the cutting edge of financial innovation, which have made our banks and securities firms the most innovative in the world.

Mr. President, my colleagues may not want to read all of the letters, but let me recommend to those who have limited time the first letter I will include, which is a letter from Commissioner Mary Schapiro, of the SEC. Ms. Schapiro is someone the futures industry grew to know and respect, because not only is she a Commissioner of SEC, but she served as a staff member of the CFTC, and later as general counsel to the Futures Industry Association.

She was appointed Commissioner of the SEC, not only because she had the requisite intelligence and good judgment to serve in that capacity, but because it was believed she could bring to the SEC a unique perspective on the futures industry, as well.

Her letter explained that one clause, the exclusivity clause, under the current Commodity Exchange Act, has been interpreted overbroadly, well beyond its original intent, and it is the source of enormous problems for our capital markets.

Remember now, Ms. Schapiro has a background as a staff member of the CFTC, served as general counsel of their association, and now serves as a Commissioner of the SEC. This is a person who has been in and worked in both areas extensively, and she says, and I quote again:

The exclusivity clause, under the Commodity Exchange Act, has been interpreted overbroadly, well beyond its original intent, and it is a source of enormous problems for the capital markets.

She states simply, and I go on further:

Whatever its merits for the regulation of futures contracts, I believe that the exclusivity clause of the Commodity Exchange Act is doing damage to the capital-raising ability of U.S. corporation.

And she goes on:

Quite simply, the exclusively clause deprives U.S. corporation of needed flexibility in designing their capital instruments and hurts U.S. investors, particularly retail investors, by denying them the opportunity to invest in the financial instruments of their choice.

Mr. President, this is not a person with an ax to grind. It is person who understands broadly what is at stake in this debate. I urge my colleagues to read her correspondence on this matter. The words are clear and unequivocal, and the warnings that she gives us need to be heeded. Commissioner Schapiro's letter very clearly laid out the original intent of the exclusivity clause and the problems that have been created by overly expansive interpretation of that clause. She, along with many others, have urged that hearings be held on the proposals in the title in S. 207.

In closing, I commend her letter to my colleagues for a closer reading, along with others, Mr. President, that I will ask to have them printed in the RECORD, at the conclusion of my remarks.

Mr. President, I know that this is not a matter that is on the front pages of our newspapers. It will not be reported, I guarantee you, tonight on the nightly news. There will be no segments on 60 Minutes, or some of the morning TV programs about it. When you start talking about IP's and swaps and margin requirements and stock index futures and the exclusivity rule, we are talking about a langauge that very few prople in public policy positions, particularly in Congress, understand. But I tell you, Mr. President, those who raise capital in this country, those who take the risks every day in this country, those who depend upon sound markets, stable markets, know what we are talking about here, and they are worried. They are worried that we have not taken the time to do the job right, and they say we are putting our capital markets in jeopardy, and they say that we are going to drive products off our shores at a time when we need to be doing everything to be more competitive in financial services.

So let us put aside the turf battles here. Let us try to forget, if we will, what the Chairman of the SEC might like or the Chairman of the CFTC. Let us do what is important to the people who rely on these markets, listen to what they are saying, listen to what the Chairman of the Federal Reserve Board is saying when he is warning us in clear, clear terms about the steps we are about to take.

So I hope, Mr. President, that those who have the time will review the correspondence and review the testimony of yesterday. If they do, I am confident that they will support the Bond-Wirth amendment as modified so that we might go back at least to approach what we tried last fall, when we could have dealt with this matter.

Mr. President, I ask unanimous consent that the letters to which I previously referred be printed in the RECORD.

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

EXCERPTS FROM THE S. 207 COMMENT LETTERS

Chairman Alan Greenspan, Chairman of the Federal Reserve:

"Clearly, these provisions of the CEA are in need of repair * * * However, as I indicated previously, the approach taken by S. 207 will continue to preserve impediments to innovation in hybrids and risk-management products and may well forestall developments in swap markets that could reduce systemic risk."

"The 50 percent value test embodied in the bill is arbitrary * * * and could yield anomalous results for similarly structured instruments."

"In the case of the swap markets, I am concerned not only about the potential adverse effects of S. 207 on competition and innovation but also about its potential to impede the development of netting arrangements designed to reduce counter-party credit risks and, therefore, systemic risks in the financial markets."

"The enactment of these provisions could push multilateral netting arrangements for swap obligations and the swap markets themselves offshore."

"In addition to extending the coverage of the act to swap transactions, Title III also suggests that the CFTC will have jurisdiction over some depository instruments and lending transactions. We do not believe that it is appropriate for banking activities of federally regulated institutions to be subject to the jurisdiction of the CFTC."

"Further, the bill could be read to preclude banking regulators from overseeing banking transactions that are exempted by the CFTC, a situation that would be inadvisable."

Mary L. Schapiro, Commissioner, Securities and Exchange Commission, Former Staff Member of the CFTC, Former General Counsel of the Futures Industry Association:

"The Banking Committee and the CFTC have rightly recognized that the exclusivity provision now impedes the development of useful, innovative financial products. Unfortunately, the proposed solution does not address the problem and, indeed, makes matters worse."

On the proposed 50% value test for hybrid instruments:

"In reality, however, a 50 percent value test is not a useful or objective measure because various arbiters can measure the value of different parts of the instrument in a variety of ways based on different sets of assumptions."

"The chances that the innovators in our marketplaces will risk the introduction of new hybrid instruments are very small. That would be a very tragic and costly result."

"Swaps and banking products have never before been subject to the regulation of the CFTC or dependent for their continued existence on an exemption from the CFTC * * * I do not believe that (the CFTC's) expertise extends to the swaps and banking industries, nor do I believe there is any logic in doing so."

"The limitations of S. 207 on Index Particpations (IPs) lack any grounding at all in logic * * *. All non-grandfathered IPs proposed by any other securities exchanges based upon any other indices would be prohibited. The logic of this escapes me. If it is good for the public to be able to trade an IP on the AMEX, why not also the Pacific Stock Exchange?"

"These are not results driven by solid reasoned public policy but rather political compromise grounded in protectionism. The public is clearly the loser as it is deprived of the ability to trade IPs."

"These provisions, however well mentioned, do not achieve those purposes and indeed will handicap our markets far into the future."

Richard C. Breeden, Chairman, Securities and Exchange Commission:

"The impact of this legislation would diminish the vitality and competitiveness of U.S. securities markets internationally. It would also weaken their ability to facilitate the raising of capital for U.S. businesses at the lowest possible cost * * *. New products would be barred from heretofore open and competitive markets unless market participants engaged in lengthy and expansive regulatory proceedings to prove to the CFTC that these products should be allowed to exist."

"Under the language of sections 302, 303 and 304 of S. 207 as marked up, for the first time in history, trading in securities on the nation's securities exchanges would depend, by statute, on the affirmative action of an agency other than the SEC * * *. As a result, the jurisdiction of the SEC would be permanently reduced, to the detriment of the SEC's ability to apply a coherent system of securities laws to future developments in the nation's capital markets."

"Title III of S. 207 now represents no compromise at all * * *. In the view of the SEC, it is bad public policy to severely restrict the flexibility of banks and securities firms to design new instruments to serve the financial needs of businesses across the United States as would occur under the provision of S. 207. I personally believe that the needs of our markets should not be sacrificed to domestic protectionism for any group."

Federal Deposit Insurance Corporation, L. William Seidman, Chairman:

"* * * we have reservations regarding portions of S. 207 as reported. Sections 302 and 303 contain provisions which affect institutions insured by the FDIC. These provisions generally would allow the Commodity Futures Trading Commission (CFTC) to regulate under the Commodity Exchange Act certain financial hybrid products, including certain swap agreements, deposit accounts, and hybrid instruments."

"We are concerned that S. 207 as reported would impose an additional layer of federal regulation and supervision on depository institutions. We are also concerned that this additional layer of regulation could increase the cost of developing new banking products and services and stifle innovation in the industry."

"As a consequence of our concerns, we support (Bond/Wirth) proposed amendments to S. 207. Under your proposal, there is a simple exemption for deposits issued by federally insured depository institutions and certain foreign banks regulated under federal law. This statutory exemption will provide certainty, eliminate any confusion, and reduce an unnecessary layer of federal regulation. The FDIC is pleased to endorse (Bond/Wirth) amendments."

Comptroller of the Currency, Robert B. Serino, Acting Chief Counsel:

"Our concerns with the Exemption Provisions of the bill center on the belief that Bank Contracts are not subject to the jurisdiction of the CFTC. Primarily, we are concerned that the exemption authority may imply that the CFTC has regulatory authority over Bank Contracts. We believe this would create confusion as to the regulatory scheme applicable to Bank Contracts, resulting from the creation of the presumption that the CFTC could regulate such instruments, although it would not expressly have this power."

"Any action which would inject the CFTC into the regulation of Bank Contracts would be nonproductive since banks are currently subject to substantial regulation . . . financial markets might be uncertain as to the regulatory scheme to which these instruments would be subject * * * This result could substantially inhibit incentives for the development of creative bank products."

"Moreover, involvement of the CFTC in the regulation of Bank Contracts might inhibit their development, along with the potential benefits they bring to financial institutions and the public * * * it will be important to ensure that regulatory authority is allocated in a manner that does not result in unwarranted overlapping regulation, which could cause needless disruption of healthy markets and stifle innovation."

Daniel L. Goelzer, Edward F. Greene, Harvey L. Pitt, Three Former General Counsels of the SEC:

"Title III should not be enacted in its present form * * * these provisions (regarding hybrid and new products) represent an ill-advised continuation of the very same ad-hoc approach utilized in the past that has made the resolution of the regulatory fragmentation so intractable in the first instance."

"Because current law does not comprehend these hybrid instruments, and the many forms of instruments that surely will evolve in our financial markets over the coming years, the important task of setting policy initiatives for our financial markets has been relegated to the judiciary, the branch of government most ill-equipped to fashion a regulatory framework for the future * * * the current state of law, therefore discourage innovative new financial products, given the high cost of litigation and the uncertainty of the outcome of such squabbles."

"* * * Title III would impose on issuers, financial markets and market participants an arbitrary fifty percent value test * * *. Title III applies this same arbitrary treatment to index participations * * *."

"* * * the fact that any new product is required to go through an approval process before it could come to the market means that the Euromarket, and other international markets will continue to develop products for issuers, many of which will not be offered or sold in the United States * * *."

"* * * the CFTC will decide what new instruments may be sold in the securities markets, and the CFTC may be under pressure for competitive reasons to limit the number of products which may be sold and traded other than on an commodities exchange * * * thus we will see in the United States only those instruments where the value of the option and future component is less than 50% as determined by the CFTC. The rest of the world—but the United States—will see whatever instruments investors find attractive."

"* * * we urge the Congress to reject Title III to S. 207 as presently drafted, and to amend the CEA to remove the rigid barriers, unforeseen and unintended, that have arisen to impede the development of new and useful products that further legitimate business purposes and diminish the global competitiveness of the United States."

Goldman, Sachs and Co., Robert E. Rubin, Partner:

"S. 207 will continue to deny U.S. investors access to the risk management and other benefits that flow from purchases of such securities. Issuers also will continue to be denied full access to the U.S. capital markets."

Security Pacific National Bank, Joshua D. Cohn, First Vice President and Counsel:

"S. 207 would create regulatory ambiguity for U.S. businesses that depend for their success on constant innovation in globally competitive markets."

"S. 207, as reported, would cast a significant shadow on the legality of the existing swap market. Concerns that business would move offshore as a result of these proposals are certainly well founded. Additionally the range of products available to domestic users would be diminished."

"It is our hope that S. 207 generally will be subject * * * to such revision as may be required to avoid both unnecessary overlaps of regulatory authority and the chilling ambiguity and confusion that may result if products beyond the scope of the commodity markets are viewed through a regulatory looking glass designed for the commodity markets."

Shearson Lehman Brothers, Howard L. Clark, Jr., Chairman and CEO:

"(C)ertain provision of Title III are likely to produce a number of undesirable consequences for the United States financial markets, in particular the swaps and hybrid securities markets * * * the effect of such provisions will be to diminish the competitiveness of important segments of our domestic financial markets, deter financial product development and innovation, restrict capital formation opportunities and eliminate opportunities to reduce risk exposure to interest rate, currency, equity price and commodity price risk, with providing significant countervailing benefits."

"The tangible and unique qualities of the domestic swap market, and the related benefits we see the market continuing to create—in product innovation, risk management and capital formation—would in our view be seriously jeopardized under the current version of S. 207 * * * Title III would * * * substantially reduce future swap activity involving United States counterparties and cast significant doubt on the legal status of existing swap transactions involving such parties. A substantial volume of swap activity will quickly migrate to foreign markets in which our domestic firms have excelled, without any discernible regulatory remedy or prospect of immediate retrieval."

CS First Boston, John M. Hennessy, President and CEO:

"We believe the language of S. 207 as reported to be ambiguous and subjective, which could cause substantial uncertainty in the market."

"The current structure of S. 207 would impact negatively on competitiveness of U.S. firms in the world-wide swap market by creating subjective standards which are ill defined and misunderstood, thereby driving more swap transactions into overseas markets."

American Bankers Association, Edward Yingling, Executive Director:

"In our view, no need exists for the CFTC to regulate certain types of swap agreements, deposit accounts and hybrid instruments since they are either subject to regulation by federal and state banking authorities or do not have sufficient indicia of futurity to require CFTC regulation."

"Given this potential for expensive and duplicative regulation by the CFTC of these deposit instruments, banking institutions will be reluctant to develop new and innovative products to suit the financial needs of their customers."

Merrill Lynch & Co. Inc., Bruce E. Thompson, Vice President:

"Merrill Lynch has serious concerns that S. 207 in its present form will have adverse consequences on the U.S. markets for hybrid securities and swap transactions which could inhibit the orderly development of these markets without commensurate gain in investor protection or systemic stability."

"The purposes of any amendment to the CEA relating to swaps should be to provide certainty to market participants regarding the legal status of swap transactions in the U.S., as well as to protect and enhance the innovative techniques employed in the swap market to hedge risk and provide financing, and to mitigate counterparty risk resulting from a large and growing market."

"The legal uncertainties and restrictions on innovation resulting from these provisions (in S. 207) are likely to have a chilling effect on the continued development of the market in the United States. Failure to address these uncertainties could result in the limitation on the availability of swap products in the United States, without a similar restriction in offshore markets, reducing the competitiveness of U.S. markets and the financial stability of users of these instruments in the United States."

Securities Industry Association, Gedale B. Horowitz, Chairman:

"Any legislation affecting swaps and/or hybrid products should enhance the capital raising process by reducing uncertainty, encouraging further innovation and preserving the efficiency and international competitiveness of these products and markets. Unfortunately, we believe that the provisions conerning swap and hybrids of S. 207 as reported will in fact undermine these very objectives that we believe are so critically important."

"The new section of the bill (that deals with swaps) lacks clarity and objectivity required to enable U.S. participants to conduct swaps business in the United States and to compete in the international marketplace. * * * It will also hurt the competitiveness of U.S. firms by making them unattractive counterparties for the many participants, particularly non-U.S. banks and securities firms, who will be reluctant to provide any such certification as to their subjective intent."

"The overall effect of S. 207 as reported is that it creates confusion and uncertainty. Swaps participants will be inclined to do business outside the U.S. * * *."

"The hybrid and exclusivity portions of S. 207 as reported raise serious questions about the ability of American capital Markets to compete in the future."

"The current language seems designed to move in precisely the opposite direction restricting innovation and competition in a series of existing and future products."

Freddie Mac, Maud Mater, Senior Vice President and Secretary:

"* * * the bill could potentially harm the continued development of swap markets."

"Interest rate and currency swaps are tools that we contemplate employing in order to manage interest rate risk. In addition, Freddie Mac recently has begun to tap global capital markets as a means of broadening the market for mortgage-related securities and lowering mortgage cost for American homebuyers. The proposed legislation increases uncertainty as to whether these types of transactions are permitted."

"The bill also appears to inhibit the development of margining and clearing systems that reduce counterparty credit risks associated with such transactions."

"The treatment of so-called "hybrid securities" also concerns us * * * the ability to be innovative in creating new securities could be affected, resulting in a disruption in the flow of affordable funds to the American homebuying public. The uncertainty relating to hybrid securities products could delay or prevent the creation of innovative security designs which otherwise would benefit both investors and homebuyers."

New York Stock Exchange, William Donaldson, Chairman:

"With regard to those provisions of Title III dealing with the exclusive jurisdiction of certain trading instruments, we believe that the proposed legislation falls short of the Treasury Department's original proposals."

J.P. Morgan, Michael E. Patterson, Executive President and General Counsel:

"The hybrid instruments provisions of Title III are an attempt to address a problem that has recently severely impeded the development of new financial products in the U.S. * * * We believe Title III does not go far enough."

"Contracts that compete with each other (even though their terms may be different) trade quite successfully on different exchanges and, inm some cases, on different types of exchanges or in the over counter market: currency options trade on the Philadelphia Exchange, which is regulated by the SEC and in the over the counter market, while options on currency futures trade on the Chicago Mercantile Exchange; the S&P 500 futures and options thereon trade on the Chicago Mercantile Exchange, while options on the S&P index trade on the Chicago Board Options Exchange. In each case, regardless of the exchange and applicable regulatory authority * * * trades and investors * * * have the freedom to choose which contract and which market place best suits their needs."

"Considering the hybrid nature of these instruments, J.P. Morgan believes that the market for such instruments is best served by maximum regulatory flexibility and that the market, namely, the traders and investors, should be allowed to determine the most appropriate forum for the trading of hybrid instruments. Logically, this means that hybrid instruments should be allowed to trade on securities exchanges, futures exchanges and the over the counter market."

Bankers Trust Company, James J. Baechle, Executive Vice President:

"The growth in the use of derivative products over the past decade has been one of the most positive developments for U.S. and world financial markets. If Title III passes in its current form, which requires all innovations to be presented to the CFTC * * * such innovation of necessity, will be curtailed."

"The exemption for other hybrid commodity instruments in general is based on an arbitrary (and in some cases unworkable) 50% of value test which creates uncertainty and inconsistency because the exemption depends on transitory market forces. Moreover, this exemption does not begin to address the status of the most innovative structures which combine elements of several different options and forwards in a single instrument . . ."

"Bankers Trust Company would favor ideally the approach to derivative products embodied in the 1990 Capital Markets bill which would have excluded such products from CFTC jurisdiction altogether."

Fannie Mae, Gary Perlin, Senior Vice President:

"There is considerable confusion on how these 50 percent tests would be conducted in practice, heightening chances for the unintended restraint of product innovation. While specific guidance could reduce this confusion, any tests mandated in the final version of legislation, or in accompanying formal interpretations should be simple enough to be practicable for market participants, and be consistent with market pricing conventions.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 5, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Senate Subcommittee on Securities, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: I am writing as a member of the Securities and Exchange Commission and former staff member of the Commodity Futures Trading Commission ("CFTC") and General Counsel of the Futures Industry Association, to express my concerns with Title III of S. 207. I do so separately because I would like it to be clear that my concerns arise not out of any issue of jurisdiction or prior debates which have been characterized as turf wars; rather, given my experience with both futures and securities markets, I believe it is important that I express my views on the implications of S. 207 for the securities markets specifically, and the capital markets in general.

At the outset, let me state that whatever its merits for the regulation of futures contracts, I believe that the exclusivity clause of the Commodity Exchange Act is doing damage to the capital-raising ability of US corporations. Quite simply, the exclusivity clause deprives US corporations of needed flexibility in designing their capital instruments, and hurts US investors, particularly retail investors, by denying them the opportunity to invest in the financial instruments of their choice.

The effects of the exclusivity clause are even more troubling because these effects were neither contemplated nor intended when the exclusivity clause was first drafted. For these reasons, I believe that many of the efforts to limit the impact of the exclusivity clause of the Commodity Exchange Act are to be commended. The exclusivity clause, contained in the Commodity Futures Trading Commission Act of 1974, that created the CFTC and introduced the modern scheme of regulation, was an important provision with two primary purposes. The first was to ensure that commodity futures contracts such as silver, copper, sugar and cocoa *traded on exchanges* would be regulated to the same extent as other, already regulated, exchange traded futures such as wheat or soybeans. Prior to the 1974 amendments, a rather curious situation had developed in which a growing number of *nonregulated* futures contracts traded alongside of regulated futures contracts. Congress sought to remedy this anomalous situation by bringing exchange-traded futures under the CFTC umbrella.

The second principal reason for enactment of the exclusivity provision was to protect exchange-traded futures from interference by state regulators and the potentially adverse and costly impact of compliance with 51 different regulatory schemes. Congress recognized and repeatedly reaffirmed the value of a nationally uniform body of standards governing futures trading coupled with state antifraud enforcement.

Giving effect to these two purposes has been extremely important to the successful development of the futures markets. Preemption of state law, with the very wise carve-out for state antifraud provisions, has likely saved the futures exchanges, and financial intermediaries, enormous sums of money. In addition, the credibility, safety and soundness of transactions on futures exchanges have been promoted and enhanced by the inclusion of all types of exchange-traded futures contracts under the umbrella of federal regulation. I believe that the phenomenal growth of the U.S. futures markets since enactment of the 1974 law is testament to the salutary effect of comprehensive regulation. Indeed an increase of nearly 800% in transaction volume would not have been possible if institutional users did not have confidence in these markets—confidence that I believed is born of a belief that the markets are comprehensively regulated.

As the SEC savings clause demonstrates, however, I do not believe that the exclusivity provision was intended or should be used to prevent securities products from trading on regulated securities exchanges or to prevent institutions from utilizing swaps and other legitimate instruments specifically tailored to their needs. This Committee and the CFTC have rightly recognized that the exclusivity provision now impedes the development of useful, innovative financial products. Unfortunately, the proposed solution does not address the problem and, indeed, makes matters worse.

The basic problem with the exclusivity clause in today's markets is well recognized: it requires that *all* instruments (even securities) with elements of futurity be treated as futures contracts and therefore required to be traded on designated contract markets or futures exchanges. As Chairman Greenspan has pointed out, the potential for the strict application of this principle has led to confusion in financial markets and the involvement of the courts, which in turn has discouraged efforts to develop new and innovative instruments.

The 50% value test proposed by S. 207 seeks to utilize a simple, seemingly objective calculation to determine when an instrument is a security or a future. In reality, however, a 50% *value* test is not a useful or objective measure because various arbiters can measure the value of different parts of the instrument in a variety of ways based on different sets of assumptions. More importantly, certain products, such as equity hybrid instruments, simply cannot be broken into intellectually distinct pieces that can then be valued separately. As a result, the percentage test effectively guarantees that no new equity hybrid product will be able to trade. Further, I do not believe that such a test reduces the risk that there will be litigation over each new hybrid product. Hence, the chilling effect of the exclusivity clause will remain intact.

But, there is a further structural problem: if a securities exchange trades a product that the SEC has approved as a security and that exchange is sued on the grounds that the product has more than 50% of its value derived from a commodity, a court will not accord the SEC any deference for its determination because the SEC will be interpreting a commodities and not a securities statute. Rather, the CFTC likely will be asked for its view, and the CFTC will be accorded deference. In effect, the CFTC replaces the SEC as the agency with authority to determine what is a security. Thus, the chances that the innovators in our marketplaces will risk the introduction of new hybrid equity instruments are very small. That would be a very tragic and costly result.

Rather than employing an imprecise and perhaps unworkable exemptive test, I believe the best approach would be one that permits hybrid financial instruments to trade on either type of exchange. So long as the markets are regulated, and the public is protected, it is hard for me to discern any legitimate reason not to allow the exchanges and the regulated over-the-counter market to fully develop new products that meet the needs of investors. Let the SEC approve hybrid products for securities exchanges and let the CFTC approve hybrid products for futures exchanges, and I believe we will see that the ingenuity and variety of new instruments will enhance and enrich our capital markets.

S. 207 also has the potential to dramatically impact the swaps market. The same fundamental problem created by the exemptive authority for hybrids flows through the exemptive authority that S. 207 grants the CFTC in dealing with the swaps markets and even some banking products, such as demand deposits. Swaps and banking products have never before been subject to the regulation of the CFTC or dependent for their continued existence on an exemption from the CFTC. There is no doubt in my mind that the CFTC has tremendous institutional experience regulating the futures markets and in exercising reasoned and sound judgement over the areas under their existing authority. But, I do not believe that expertise extends to the swaps or banking industries, nor do I believe there is any logic in doing so.

Finally, the limitations of S. 207 on Index Participations ("IPs") lack any grounding at all in logic. The bill would deem all index participations to be futures and then would exempt from CFTC regulation only the eight IPs that were approved or pending before December 31, 1991. There are three fundamental problems with this: First, three of the "grandfathered" IPs are based on the S&P 500 index. S&P has an exclusive licensing agreement for S&P 500 futures with the Chicago Mercantile Exchange. Thus, if an IP is defined as a future, an IP on the S&P cannot trade. Second, all non-grandfathered IPs proposed by any other securities exchanges or based upon any other indices would be prohibited. The logic of this escapes me. If it is good for the public to be able to trade an IP at the AMEX, why not also at the Pacific Stock Exchange? If it is in the public interest to allow trading of an IP based on a grandfathered index, such as the NYSE Composite, why isn't it equally in the public interest to allow trading of an IP on other indexes, such as the Value Line Average or the Nikkei? Third, it is unclear whether the legislation would permit any modifications to the grandfathered IPs. These are not results driven by solid, reasoned public policy but rather by political compromise grounded in protectionism. The public is clearly the loser as it is deprived of the ability to trade IPs. I believe a better result would be to exempt all index participations from CFTC regulation.

This Committee, the SEC and the CFTC shares a deep and abiding interest in maintaining the efficiency, soundness and competitiveness of the US markets for futures and securities. These provisions, however well intentioned, do not achieve those purposes and indeed will handicap our markets far into the future. It is vitally important that the full significance and potential impact of this bill be understood before it becomes law. Hearings should be held to analyze these issues and enable the Congress to explore fully the ramifications of this bill. Once done, I am certain that we will see that some basic changes need to be made to Title III in order to best serve the public interest. In any event, the SEC stands ready, as always, to work with you to develop alternative solutions to the problems created by the exclusivity clause.

Sincerely,

MARY L. SCHAPIRO,
Commissioner.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, April 15, 1991.

Hon. TIMOTHY E. WIRTH,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR: Thank you for your letter of April 12, 1991, requesting my views on two proposed alternatives to the exclusivity provisions of S. 207 as reported by the Committee on Agriculture, Nutrition, and Forestry. One alternative was transmitted by Chairman Gramm of the Commodity Futures Trading Commission to the Chairman of the Senate Agriculture Committee by letter dated April 9, 1991 ("CFTC Alternative") and the other alternative accompanied your letter to me of April 12, 1991 ("Bond-Wirth Alternative").

Under the current approach to the implementation of the Commodity Exchange Act ("CEA"), instruments with elements of futurity may be considered to be futures contracts and therefore required to be traded on futures exchanges. This approach has led to confusion in financial markets and involvement of the courts, of which the situation involving index participations is a good example. The developers of new financial instruments—including risk-shifting products—are responding to perceived economic needs, but uncertainty about the treatment of new financial instruments under the CEA tends to discourage such efforts and to give an edge to financial centers abroad.

As I have previously indicated, S. 207, as passed by the Agriculture Committee, would continue to preserve impediments to innovation in hybrid's and risk management products and would forestall developments in swap markets that could reduce systemic risk. The exemptive authority given to the Commodity Futures Trading Commission ("CFTC") under this bill is narrow and in some cases would prohibit the CFTC from making appropriate exemptions. The hearing requirement could lead to a cumbersome exemptive process which itself would pose an obstacle to innovation. Further, the use of regulatory exemptions, once granted, itself creates uncertainty, as they may be revoked at a future date.

In my view, the approach taken by the CFTC Alternative generally addresses the difficulties created by the exclusivity provisions of the CEA more effectively than the provisions of the Agriculture Committee version. Nevertheless, it continues to rely on discretionary, and potentially restrictive exemptive procedures for dealing with swaps and bank deposits rather than the exclusionary approach of the Bond-Wirth Alternative. Further, it does not address lending transactions at all.

The Bond-Wirth Alternative, on the other hand, excludes certain swap transactions as well as certain deposit and lending transactions from the coverage of the CEA altogether, thus avoiding problems that may arise from a cumbersome exemptive process and the potential for revocation of any exemptions that may be granted for these transactions. It also would provide the CFTC with broader discretionary authority to exempt any instrument if the CFTC determines the exemption is consistent with the public interest. The approach taken by the Bond-Wirth Alternative goes further than the CFTC Alternative to alleviate the difficulties for the financial markets created by the provisions of the CEA, and therefore is in our judgment preferable, particularly in the areas of swaps, bank deposits and lending instruments. The exclusion approach also would remove possible conflicts in regulatory jurisdiction that might arise from continued CFTC jurisdiction over swaps. At the same time, the limitations on the exclusions ensure that these transactions are subject to Federal oversight or are limited to sophisticated investors.

I hope you find these comments to be helpful.

Sincerely,

ALAN GREENSPAN.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
Washington, DC, March 27, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your recent letter requesting my views on Title III of S. 207, the Futures Trading Practices Act, as reported out of the Senate Agriculture Committee. In that letter you ask several specific questions about the regulation of hybrid instruments, including swaps, prescribed by the bill. I would like to focus on those matters on which I believe I can be of most assistance to you and give special attention to the treatment of swaps and deposits.

As I have noted in testimony and previous correspondence on these issues, various problems arise from a basic principle underlying the current approach to the implementation of the Commodity Exchange Act (CEA), under which instruments with elements of futurity may be considered to be futures contracts and therefore required to be traded on futures exchanges. This approach has led to confusion in financial markets and involvement of the courts, of which the situation involving index participations is a good example. The developers of new financial instruments—including risk-shifting products—are responding to perceived economic needs, but the uncertainty about the treatment of new financial instruments in the United States under the CEA tends to discourage such efforts and to give an edge to financial centers abroad.

Clearly, these provisions of the CEA are in need of repair, and I commend the Senate for seeking to make needed changes. However, as I indicated previously, the approach taken by S. 207 will continue to preserve impediments to innovation in hybrids and risk-management products and may well forestall developments in swap markets that could reduce systemic risk. The 50 percent value test embodied in the bill is arbitrary, as well as any procedure for determining the value of the commodity component of a financial instrument, and could yield anomalous results for similarly structured instruments. The exemptive authority given to the Commodities Futures Trading Commission (CFTC) under this bill is narrow and in some cases would prohibit the Commission from making appropriate exemptions. The hearing requirement could lead to a cumbersome exemptive process which itself would pose an obstacle to innovation. Further, the use of regulatory exemptions, once granted, itself creates uncertainty, as they may be revoked at a future date.

Instead of this approach, which seeks to exempt certain hybrids from the CEA, it would be preferable, as I have noted previously, to allow such instruments to trade on markets selected by the parties. Thus, equity-related derivative products could trade on either securities or futures exchanges and banks and other financial institutions could offer commodity derivative products where appropriate prudential and investor protection safeguards are in place. In this way, owing to different customer bases, similar products could evolve in ways that best meet the needs of those customers.

In the case of the swap markets, I am concerned not only about the potential adverse effects of S. 207 on competition and innovation but also about its potential to impede the development of netting arrangements designed to reduce counterparty credit risks and, therefore, systemic risks in the financial markets. Last November, the Governors of the central banks of the Group of Ten countries released a report that concluded that netting arrangements, if properly designed, have the potential to reduce the size of credit and liquidity exposures incurred by participants in interbank and other wholesale financial markets, including the swap markets, and thereby contribute to the containment of systemic risk. However, the provision of S. 207 that limits the exemptive authority of the CFTC to swap agreements that are "not designed to and would not result in a trading market in the swap agreement" could prevent the development within the United States of multilateral netting arrangements for swap obligations. Other conditions of this swap exemption authority may also result in a failure to exempt certain existing swap transactions. The enactment of these provisions could push multilateral netting arrangements for swap obligations and the swap markets themselves offshore.

Proponents of the prohibition of multilateral netting of swap obligations have argued that such a system would, in effect, be a futures exchange and, therefore, should be subject to CFTC regulation. There are important differences, however, between a traditional futures exchange and the multilateral netting systems that have been developed in other financial markets. Participation in these netting systems generally is limited to commercial banks and other regulated financial institutions that traditionally have taken an approach to risk management that is fundamentally different from the approach used by futures exchanges. In designing multilateral netting systems, generally these institutions have adopted decentralized systems that preserve incentives for bilateral risk management (by allocating losses from a default in the first instance to the original counterparties of the defaulting participant) rather than adopting the centralized systems used in the futures industry that mutualize losses without regard to the original counterparties. For such decentralized systems, the regulatory framework developed by the CFTC for futures exchanges seems inappropriate. The case for CFTC regulation is further reduced if those other systems are subject to regulation by another federal agency.

In addition to extending the coverage of the act to swap transactions, Title III also suggests that the CFTC will have jurisdiction over some depository instruments and lending transactions. We do not believe that it is appropriate for banking activities of federally regulated institutions to be subject to the jurisdiction of the CFTC. Banks are subject to a comprehensive system of federal regulation designed to ensure the safety of the institutions and to protect their customers; there is no need to impose another layer of regulation on their activities, especially where that regulation is designed to meet concerns that are not relevant to banking activities. Further, the bill could be read to preclude banking regulators from overseeing banking transactions that are exempted by the CFTC, a situation that would be inadvisable.

I hope you find these comments to be helpful.

Sincerely,

ALAN GREENSPAN.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, DC, April 12, 1991.

Hon. CHRISTOPHER S. BOND,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR BOND: The Federal Deposit Insurance Corporation is pleased to comment on your proposed amendments to Title III of S. 207 as reported by the Committee on Agriculture, Nutrition, and Forestry.

As you know, we have reservations regarding portions of S. 207 as reported. Sections 302 and 303 contain provisions which affect financial institutions insured by the FDIC. These provisions generally would allow the Commodity Futures Trading Commission (CFTC) to regulate under the Commodity Exchange Act certain financial products, including certain swap agreements, deposit accounts, and hybrid instruments. In addition, section 302 would allow the CFTC to exempt such instruments from regulation if it determined that an exemption would be in the public interest.

Banks regulated by the FDIC and the other federal banking regulators currently operate under a comprehensive system of federal and state regulation designed to protect depositors and ensure the safety and soundness of insured institutions. We are concerned that S. 207 as reported would impose an additional unnecessary layer of federal regulation and supervision on depository institutions. We also are concerned that this additional layer of regulation could increase the cost of developing new banking products and services and stifle innovation in the industry.

As a consequence of our concerns, we support your proposed amendments to S. 207. Under your proposal, there is a simple exemption for deposits issued by federally insured depository institutions and certain foreign banks regulated under federal law. This statutory exemption will provide certainty, eliminate any confusion, and reduce an unnecessary layer of federal regulation. The FDIC is pleased to endorse your amendments.

With best wishes.

Sincerely,

L. WILLIAM SEIDMAN,
Chairman.

COMPTROLLER OF THE CURRENCY, ADMINISTRATOR OF NATIONAL BANKS,
Washington, DC, March 21, 1991.

Hon. PATRICK LEAHY,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of February 22, 1991 requesting comments on S. 207, the "Futures Trading Practices Act of 1991" (Bill). Your letter directs our attention to those provisions of the Bill that might affect financial institutions under the regulatory jurisdiction of the Office of the Comptroller of the Currency. Since receiving your letter, S. 207 underwent a mark-up by the full Committee, and our comments below are based upon the marked-up version.

Specifically, section 302 of the Bill would amend section 4 of the Commodity Exchange Act, 7 U.S.C. §1 *et seq.*, (CEA), to add subsections (c) and (d) to provide the CFTC with discretionary authority to exempt from the CEA certain agreements (Exemption Provisions). Included would be the authority to exempt individually negotiated interbank contracts, swap agreements and deposits offered by banks, either individually or by classes of these instruments (collectively referred to herein as Bank Contracts), after notice and opportunity for hearing. The CFTC would be requried to find that the grant of an exemption would not be "contrary to the public interest." In addition, the CFTC would be authorized to impose conditions on the grant of any exemption.

Our concerns with the Exemption Provisions of the Bill center on the belief that Bank Contracts are not subject to the jurisdiction of the CFTC. Primarily, we are concerned that the exemption authority may imply that the CFTC has regulatory authority over Bank Contracts. We believe this would create confusion as to the regulatory scheme applicable to Bank Contracts, resulting from the creation of the presumption that the CFTC could regulate such instruments, although it would not expressly have this power. In addition, we are concerned that any action which would inject the CFTC into the regulation of Bank Contracts would be nonproductive since banks are currently subject to substantial regulation.

We expressed our position that the CFTC has no power over Bank Contracts when the CFTC issued a proposed regulation concerning hybrid and related instruments (52 Federal Register 47022 (December 11, 1987)) (Proposed Rule). Under the Proposed Rule, the CFTC maintained it had jurisdiction to regulate Bank Contracts on the theory of the "economic equivalence" of these instruments to futures or options. We objected to the proposed rulemaking, and expressed policy concerns over possible disruption of the financial markets and the furnishing of banking products that are well-regulated by banking regulators. The CFTC and its staff addressed the concerns we and other bank regulators raised regarding the proposed rule and the regulatory problems encountered regarding new financial products that combine elements of futures or options contracts with debt or depository obligations. Considerable progress has been made in clarifying regulatory responsibilities since the publication of the Proposed Rule.

It is the OCC's view that, under existing law, swaps and deposits made within the purview of permissible banking activities are not contracts of sale for future delivery. A contract that does not cover potential future delivery of a commodity is neither a futures nor a forward contract under the CEA, and, therefore, is * * * side the regulatory scope of the CFTC.

By granting the CFTC exemption authority, the bill might establish a presumption that a bank's individually negotiated Bank Contracts are contracts for sale for future delivery, subject to regulation by the CFTC. Confusion regarding the regulatory status of financial instruments could follow since a presumption that the CFTC possessed regulatory authority, created by implication, would not necessarily mean that the CFTC would have jurisdiction over Bank Contracts. Thus, financial markets might be uncertain as to the regulatory scheme to which these instruments would be subject. If this were the case, banks desiring to offer products of this sort would encounter substantial additional legal costs in connection with the development of these products. This result could substantially inhibit incentives for the development of creative bank products.

We note that the Exemption Provisions could have the effect of excluding Bank Contracts from the CEA, if the CFTC so chose. However, it is not certain that any exemptions granted by the CFTC would be unconditional. A conditional exemption could have the effect of subjecting Bank Contracts to the same additional layers of regulation to which they would be subject if they were not exempt from the CEA.

Your letter mentions the concern expressed by some that should the CFTC exempt swaps and the other specified products from the CEA, such action might result in trading in an environment lacking appropriate safeguards, thus posing a threat to financial institutions and the public. As indicated above, we believe that with respect to Bank Contracts, appropriate regulatory authority already exists under banking laws. Moreover, involvement of the CFTC in the regulation of Bank Contracts might inhibit their development, along with the potential benefits they bring to financial institutions and the public.

We recognize the legitimate concerns of the CFTC to examine closely the regulation of products with characteristics of options and futures. Similarly, the CFTC has recognized the legitimacy of the OCC's supervisory responsibility for, and authority over, national banks. Because Bank Contracts are currently subject to extensive supervision, there is no need to subject banks to additional layers of regulation, administered by non-bank regulators. As banks develop new products, other than Bank Contracts, with characteristics that mirror those offered by other financial market participants, however, it will be appropriate to consider how to regulate those products. There must be opportunities for consultation and cooperation. Finally, it will be important to ensure that regulatory authority is allocated in a manner that does not result in unwarranted overlapping regulation, which could cause needless disruption of healthy markets and stifle innovation.

We very much appreciate the opportunity to provide you with our comments. Please let me know if I can provide any additional information.

Sincerely yours,

ROBERT B. SERINO,
Acting Chief Counsel.

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, March 12, 1991.
Hon. Richard G. Darman,
Director, Office of Management and Budget, Washington, DC.

DEAR MR. DARMAN: Thank you for your memorandum, dated March 8, 1991, requesting the views of the Securities and Exchange Commission ("SEC") on S. 207, a proposed amendment to the Futures Trading Practices Act of 1991. S. 207 addresses both the issue of margins on stock index futures and the scope of the so-called "exclusivity clause" of the Commodity Exchange Act ("CEA"). We note that the margin language of S. 207 is considerably weaker than either the Administration's proposed legislation of last year or the margin proposals contained in the Intermarket Coordination Act of 1991 introduced by Senator Leahy (the "Compromise Bill"). Nevertheless, while we believe that the stronger language of the Compromise Bill would be preferable, we defer comment on the margin proposals.

For the reasons described below we believe that the proposed provisions concerning exclusivity[1] would be extremely bad public policy, and must either be significantly improved or removed entirely from the legislation. Unless modified, the proposed treatment of the "exclusivity" clause would in our view be considerably worse than continuation of the status quo. Indeed, by codifying the most expansive definition of exclusivity, subject only to the ephemeral possibility of occasional exceptions or exemptions at the sole discretion of the CFTC, the language of the bill would constitute legislated domestic protectionism. As a result, most new "hybrid" securities products would be prohibited or driven offshore. In addition, the $3 trillion index options market would apparently be transferred to CFTC oversight. Most swaps business would be driven to foreign markets, and what remained in the U.S. would operate under crippling conditions. Even demand deposit accounts at banks would implicitly be regarded as subject to assertion of exclusivity—though the CFTC would have less discretion to abolish deposit products than swaps or securities hybrids.

As we have previously testified, the Securities and Exchange Commission believes that increased competition and innovation within the financial markets are critical to future economic growth and prosperity. Wherever possible, our laws should allow securities and futures instruments to be offered to investors free of arcane and unnecessary restrictions. Low cost capital can be achieved by minimizing regulatory hurdles, litigation and uncertainly as to the lawfulness of innovative forms of securities and futures instruments. Sadly, the so-called "exclusivity clause" of the CEA currently restricts significantly the offering of new products. The Administration has consistently proposed to eliminate this impediment to capital formation. Unfortunately, although S. 207 purports to further these goals, in fact—as currently drafted—the bill will stifle competition and crush innovation.

As currently written, S. 207 codifies into law the position that all financial instruments that the CFTC determines to include any degree of "futurity" must be exclusively traded on futures exchanges unless a product (i) meets an unrealistic mathematical test of the degree to which an instrument's "value" is based on a commodity, or (ii) receives a written exemption from the Commodity Exchange Act from the CFTC. While the bill provides the pretense of fairness through its "50 percent value" test, that test is misleading. Since only the CFTC would decide when an instrument's "value" is tied to a commodity, and since under the CFTC's existing analysis, new equity products with characteristics of both futures and securities always are viewed as 100 percent futures, in fact there will not ever be any equity-related hybrid that the CFTC would concede meets the requirements for the 50 percent exception. In effect, for the first time in history, the SEC would be denied the right to define what is a security, and this function will be solely conferred on the CFTC.

Under S. 207, the CFTC would be entitled, but not required, to allow the trading or sale of "any agreement, contract or transaction . . . either unconditionally or upon stated terms or conditions or for stated periods . . ." Exemption "may" be granted where the CFTC decides "that the exemption would be consistent with the public interest." Although the legislation appears to give the CFTC wide exemptive power, essentially all financial products would remain illegal until proven otherwise. In addition, S. 207 would prohibit the CFTC from granting an exemption unless an applicant proves the existence of at least five factors "to the satisfaction of" the CFTC.

The anticompetitive intent of S. 207 is demonstrated by an incredible provision that requires a would-be competitor to demonstrate that there will not be any "material adverse effect * * * on the ability of * * * any contract market to discharge its * * * self-regulatory duties.* * *" This appears specifically designed to allow futures exchanges to veto any exemption for a product that would compete with their own. No standards for the showing of harm to one of the futures exchanges are set forth in the language. Harm to the securities exchanges is never measured or considered, though they are the source of capital for much of American business.

We believe that the language of S. 207 should be revised to permit clearly and unequivocably the development of innovative securities products. In order to encourage competition and innovation, if the SEC determines that more than 50% of the features or characteristics of a product are those of a security (even if that product has some elements of a futures instrument), it should be exempt by statute from the exclusivity clause, so that the product would be eligible for trading in the U.S. securities markets. Similarly, if the CFTC determines that 50% or more of the features or characteristics of a given product are those of a commodity futures contract, that product should be free to trade on a commodity exchange, even though the product has some elements of a security. The SEC has supported such an approach for more than a year.

Discussed below are certain of our major concerns with the proposal.

1. HYBRID COMMODITY INSTRUMENTS

As currently drafted, the hybrid commodity instrument exemption would chill the development and introduction of new hybrid securities products. As drafted, the "50% value standard" depends, among other things, upon (1) what options pricing model is selected, (2) what volatility factor is assumed, and (3) whether there is a ready market by which to compute the value of the options or futures component. Moreover, the 50% value standard is not useful in analyzing innovative new products such as index participations that have characteristics of both securities and commodity options or futures. Under the analysis employed by the CFTC in the past, such products would always fail the 50% test, even though their predominant features are those of a security.

A more relevant test for the statutory language would be whether 50% or more of the "characteristics" of an instrument, not its "value," are those of a commodity or those of a security. for an equity product, mathematical computations of "value" measured only one limited aspect for determining whether or not the instrument is predominantly a security. Accordingly, any "50 percent test" should be based on all "characteristics" of the instrument, not simply one of many characteristics.

More broadly, we believe that any 50/50 test for allowing trading rights should provide that an instrument could be traded in

[1] We first saw the proposed language last Wednesday following the mark-up of the Senate Agriculture Committee. No hearings have been held on this proposed language, which we believe could have a serious and long-lasting negative impact on the nation's securities markets.

the securities markets if "the instrument is determined by the Securities and Exchange Commission to have at least 50 percent of its value or characteristics derived from elements of a security as defined under Section 3(a)(10) of the Securities Exchange Act of 1934 or Section 2(1) of the Securities Act of 1933."

2. EXEMPTIONS FOR INDEX PARTICIPATIONS

The exemption for Index Participations ("IPs") exempts only IPs that were approved for trading prior to April 11, 1989, or pending such approval on or before December 31, 1990. This provision simply creates an exemption for six IPs. All future IPs proposed by any of the nation's securities exchanges or by the National Association of Securities Dealers ("NASD") for NASDAQ trading would be forbidden, as would any successor products to the existing six IPs.

This anti-competitive restriction would lead to ludicrous results. For example, under the terms of this provision, only four securities exchanges would trade IPs, as only those exchanges had proposals to trade IPs included in the SEC's April 11, 1989 order or pending before the SEC by December 31, 1990. All other securities exchanges, including the Boston Stock Exchange, Pacific Stock Exchange, Midwest Stock Exchange, and Cincinnati Stock Exchange, as well as the NASD would be precluded from ever trading IPs. It would be equally ludicrous to allow IPs on the Standard & Poor's 500 Index, because it had been approved by the SEC, but not on other stock indexes that the SEC would also approve, such as the Value Line index or indexes on foreign stock markets, such as on the Japanese or British markets. Nonetheless, this is the utterly unjustifiable result of the express terms of this bill. Moreover, the bill would freeze in place all specifications of IPs, so that no useful refinements could be made in the future. For example, previous IPs provided for quarterly pass-through of dividends to the holders of IPs, but the bill would prevent an exchange from proposing a monthly pass-through of dividends. We see absolutely no reason for such extreme limitations other than pure domestic protectionism.

To ameliorate these concerns, the bill's version of Section 4c(f) of the CEA should provide that any IP approved by the SEC would be exempt from the CEA.[2] This would be entirely consistent with the bill's intent of letting this useful and innovative product, which had volume of over 70 millions IPs before it was abolished from the market by litigation, freely trade on a securities market. In addition, the section should specifically state that IPs are not considered futures.

3. IMPACT ON SEC JURISDICTION

Rather than simply resolving the existing uncertainty over the legal status of new products, the proposal raises serious questions concerning the Commission's current authority under the federal securities laws. Indeed, the bill may be read to give the CFTC jurisdiction over stock index options, other stock index products, and, perhaps, options on individual securities. This would represent a massive transfer of the SEC's existing jurisdiction—that in some cases we have exercised since 1934. Trading in index options alone last year aggregated $2.9 trillion, yet this activity on the Chicago Board Options Exchange, American Stock Exchange, New York Stock Exchange, Philadelphia Stock Exchange and the Pacific Stock Exchange would quite possibly become unlawful under the language of the bill. Aside from its regulatory implications, this would require significant staffing and budgetary increases for the CFTC, an agency that does not offset its costs by fees as does the SEC.

Section 4c(g)(B) would give the CFTC jurisdiction over any transaction "in or involving a commodity" not exempted under the bill. Since a "commodity" includes all goods and services in the world except onions, this would appear to cover any products "involving" stock indexes. Depending on the construction of the term "involving," it could also encompass options on the individual stocks comprising those indexes, or even the underlying securities themselves. Although the securities laws currently contain a provision explicitly giving the Commission jurisdiction over options, the fact that this proposal would be enacted subsequently could raise questions about the continued validity of the earlier provision. Such a result is clearly at odds with any responsible effort to clarify the scope of the CFTC's exclusive jurisdiction, and Section 4c(g)(B) should be deleted from the proposal in its entirety.

Under the Administration's bill, S. 2814, the philosophy was to permit competition and innovation wherever possible. The current language is designed to do exactly the opposite by restricting innovation and competition in virtually every imaginable case. We would strongly support a true 50% test: if the SEC finds a product 50% or more a security, it could be traded on a securities exchange. If the CFTC finds a product 50% a future, it could be traded on a commodity exchange. If both agencies made such a finding, the products could trade on both types of exchanges. Long and expensive regulatory proceedings would not be necessary and competition would be maximized. We believe that this is entirely consistent with the President's express position on S. 2814, as well as his longstanding commitment to minimize, not maximize, regulatory restrictions on competition.

4. IMPACT ON SWAPS

S. 207 also sets out narrow exception and exemptive provisions for swap contracts which would have a devastating effect on that market. While the exclusion may be intended to provide certainty, its limitations dramatically undermine its effectiveness. Specifically, the exclusion requires that any person entering into a swap agreement do so only to hedge or manage a business-related price risk. This requirement ignores the nature of the market and makes the exclusion unavailable to banks and other swap dealers. The exemptive provision is equally ineffective because it gives the CFTC complete discretion to grant no exemptions at all. Moreover, the substantive requirements for any exemption are extremely restrictive, limiting swaps to institutional participations and where the creditworthiness of each party to the swap agreement would be a material term of the negotiation of the swap agreement. Finally, any efforts to improve the efficiency and liquidity of the swap market through developing a trading market would destroy the exemption. The inevitable result of these provisions will be to drive most swaps offshore and to hamper severely the operation of any market remaining in the U.S.

The specific statutory language changes we propose are included in Exhibit A, with additions and deletions [bracketed].

Sincerely,

RICHARD C. BREEDEN,
Chairman.

EXHIBIT A

SEC. 303. HYBRID COMMODITY INSTRUMENTS.

Section 4c of the Act is amended by adding a new subsection (g) to read as follows:

"Sec. 4c(g) "(A) *Notwithstanding any other provision of law,* [n]othing in this Act shall be deemed to govern or in any way be applicable to any transaction which meets the following requirements—

"(1) to the extent that the instrument has elements of a commodity option, *less than 50% of its characteristics are those of a commodity option, or* the instrument derives less than 50 percent of its value at the date of issuance from the value of the commodity option, and

"(2) to the extent that an instrument has elements of a contract of sale of a commodity for future delivery, *less than 50% of its characteristics are those of a contract of sale of a commodity for future delivery, or* at the date of issuance it is expected that less than 50 percent of the change in the value of the instrument or its performance will be due to movement in the price of the commodity or commodities specified in the instrument or in the terms and conditions of the transaction pursuant to which the instrument was issued, *or*

"(3) the instrument is determined by the Securities and Exchange Commission to have at least 50% of its value derived from or 50% of its characteristics attributable to the elements of a security, as defined under Section 3(a)(10) of the Securities Exchange Act of 1934 or Section 2(1) of the Securities Act of 1933, or a group of index of securities; provided that this clause (3) shall not apply to transactions conducted on a designated contract market involving contracts of sale of a commodity for future delivery (or options thereon) or accounts and agreements related to such transactions.

["(B) Any transaction in or involving a commodity regulated under this Act not excluded by paragraph (A) above shall be subject to regulation by the Commission under sections 2(a)(1), 4, 4c or 19 of this Act."]

SEC. 304. INDEX PARTICIPATIONS.

(a) Section 4c(f) of the Commodity Exchange Act (7 USC 6c(f)) is amended to read as follows:

"(f)(1) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

"(2) Nothing in this Act shall be deemed to govern or in any way be applicable to any contract traded on a national securities exchange *or quoted through an automated interdealer quotation system operated by a securities self-regulatory organization* whereby any party to the contract acquires any interest in a stock index participation unit approved for trading by the Securities and Exchange Commission, *and such stock index participation unit shall not be a contract of sale of a commodity for future delivery.* [by order dated April 11, 1989, or pending such approval on or prior to December 31, 1990.]

"(3) The Commission shall utilize its existing authority under this Act to facilitate the registration of any person who is a 'person associated with a broker or dealer' or 'associated person of a broker or dealer,' as those terms are defined in section 3(a)(18) of the Securities Exchange Act of 1934, for the purposes of marketing stock index futures (or options thereon) to the public."

[2] This would be accomplished by ending Section 4c(f)(2) after the word "Commission".

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 4, 1991.
Hon. NICHOLAS F. BRADY,
Secretary of the Treasury,
Washington, DC.

DEAR NICK: In the several weeks since the latest version of Title III of S. 207 (the CFTC Reauthorization Bill) originally surfaced, the SEC, as well as other agencies and firms, has carefully reviewed its provisions. Yesterday, we received a "revised" version of the language that has apparently been suggested by the CFTC to reduce the damage that would be done to the swap market by the original provisions of this legislation.

It is interesting that even the CFTC has acknowledged serious problems in the language of the bill as marked up by the Agriculture Committee. Notwithstanding the current revisions, it is the strong view of the Securities and Exchange Commission that the proposed language would do serious harm to the future competitiveness of U.S. securities exchanges, as well as reducing the ability of securities firms and banks to develop innovative new products to achieve the lowest possible cost of capital for U.S. industries.

Some have characterized the provisions of S. 207 as a slight improvement in current law with respect to exclusivity. In the opinion of the SEC, this legislation would not represent any improvement in current law. Indeed, by appearing to codify the most expansive assertions of exclusivity, the effect of this legislation could be extremely damaging. While some consider this provision to be benign, I want you to know that it is the very strong view of the SEC that this view is inaccurate, and that the provision would cause substantial harm.

I am sure that you have previously read the attached letter from Alan Greenspan to Senator Don Riegle. The SEC strongly supports the comments in Chairman Greenspan's letter, and we fully support his suggested approach to permit competition in America's financial markets.

I understand your previous view that you could support the general concept under consideration by the Agriculture Committee. However, I would hope that the subsequent analysis of both the Federal Reserve and the SEC concerning the actual legislative language produced by the Committee would warrant reconsideration solely directed to the "exclusivity" provision. With markets involving trillions of dollars potentially affected by the resolution of the exclusivity debate, the consequences are too serious to be resolved on the basis of less than complete analysis and deliberation. There is also no reason why haste should be allowed to create even a small risk of seriously adverse consequences for these markets.

I have attached a proposed revision to the Agriculture Committee's legislative language. This language would satisfy our concerns for the future competitiveness of U.S. markets, while maintaining many of the provisions sought by the Agriculture Committee. I would be happy to have the Commission's staff meet with the Treasury to explain any of the provisions of this alternative language so that you could consider it at the same time that you are considering the new proposals of the CFTC. Of course I would also be happy to meet with you individually at any time before you reach any further conclusions on how to resolve this issue.

Sincerely,

RICHARD C. BREEDEN,
Chairman.

SECURITIES INDUSTRY ASSOCIATION,
Washington, DC, April 8, 1991.
Hon. CHRISTOPHER DODD,
Chairman, Subcommittee on Securities,
Washington, DC.

DEAR SENATOR DODD: SIA is pleased to respond to your letter of March 28, 1991, to express our views on Title III of S. 207, The Futures Trading Practices Act, as reported by the Senate Agriculture Committee. As you are aware, SIA has had a longstanding interest and involvement in many of the issues raised by this title. SIA strongly believes that both the general objectives and specific provisions of Title III as reported out by the Agriculture Committee are deeply flawed.

First, you asked about the uses of, and markets for swaps and hybrid securities. Hybrid products and swaps are innovative new financial products that are vital for clients to manage risk and uncertainty in an increasingly risky and uncertain environment. Effective risk management aids the capital-raising process, thus improving long-term investment as well as economic growth for our nation. Moreover, effective risk management in the financial markets helps to promote safety and soundness of the entire financial system, as well as restore confidence in our markets. Any legislation affecting swaps and/or hybrid products should therefore enhance the capital-raising process by reducing uncertainty, encouraging further innovation and preserving the efficiency and international competitiveness of these products and markets. Unfortunately, we strongly believe that the provisions concerning swaps and hybrids (Sections 302 and 303) of S. 207 as reported will in fact undermine these very objectives that we all believe are so critically important. Before describing the specific problems created by these provisions as reported, we offer a brief chronology of SIA's interest and involvement in the evolution of this legislation.

Following the 1987 market break and the report of the Presidential Task Force on Market Mechanisms ("Task Force") chaired by now Secretary of the Treasury Nicholas F. Brady, SIA endorsed the major recommendations of the Task Force, including calls for one principal regulator to coordinate the critical regulatory issues which affect related market segments throughout the financial system, as well as one unified consistent margin-setting authority for functionally related products such as stocks, stock options and stock index futures. The Task Force and SIA also endorsed coordinated circuit breakers for the equity and equity-related markets.

After the 1989 "mini-crash," SIA again supported these and other proposals and made further recommendations to help curb the unsettling bursts of severe intraday volatility affecting the equity markets. The Administration's "Capital Markets Competitiveness, Stability and Fairness Act" (S. 2814), introduced last Congress, addressed virtually all of the recommendations made by SIA and received our strong support. SIA testified in support of the legislation in both the Senate and the House.[1]

The compromise drafted at the end of the 101st Congress, under your leadership, along with Senators Bond, Leahy and Lugar also addressed a number of important recommendations made by SIA, particularly the margin and coordinated circuit breaker proposals. However, it did not contain any language relating to the issue of jurisdiction over stock index futures which was of vital importance to SIA. Nonetheless, in testimony before the Agriculture Committee earlier this year, SIA testified that the proposed compromise in the last Congress was an important first step in rationalizing the regulation of our capital markets. It was acceptable to SIA as far as it went, but we testified that it did not go far enough because it did not address the jurisdiction issue.

SWAPS

The swaps provision of the original S. 207 was by and large satisfactory to SIA. While we had some qualms about the language concerning hybrids, it was generally unobjectionable, since it would have left our capital markets free to innovate and compete.

Title III of S. 207 as reported by the Agriculture Committee radically alters most of the key elements of that compromise. Oversight authority over margins would be granted to the Federal Reserve Board, but it could immediately delegate that authority to the CFTC without the 30-month trial period for Fed margin control envisioned by the original compromise in S. 207 as introduced.

Particularly great damage was done to the original thrust of the bill by the changes made to the swaps provision of the legislation. The new section lacks the clarity and objectivity required to enable U.S. participants to conduct swaps business in the United States and to compete in the international marketplace. It is particularly troubling that this provision, which was originally intended to create a workable exception for swaps free of many of the limiting provisions of the CFTC's 1989 Policy Statement Concerning Swap Transactions, is instead significantly more restrictive than the Policy Statement.

As reported, S. 207's swaps provisions are in two parts. Both parts rely on the definition of swap agreements set forth in the Bankruptcy Code as well as in S. 207 as introduced. The first part (proposed 4(d)(1) of the CEA) provides for exclusion from the CEA for certain qualifying swap agreements. The second part (proposed 4(d)(2)) mandates the CFTC to issue an exemption for certain other swap agreements under specified conditions. Both parts as drafted would undermine the existing swaps market and business by greatly increasing uncertainty and risk. Moreover, the existence of both an exclusion insofar as excluded swaps would not be deemed to be future contracts; whereas conceivably, exempted items might be.

The exclusion may well be intended to provide greater certainty, but the limitations on the exclusion dramatically undermine its effectiveness and, in fact, create vastly more uncertainty. The exclusion as written is so narrow as to define an illusory set of transactions. To be eligible for exclusion, the swap agreement must meet two criteria. The first is that "each party enters into the swap agreement to hedge or manage a business-related price risk." This criterion, which is significantly more restrictive than the Policy Statement's "line of business" test, ignores the nature of the market, making the exclusion unavailable to swap dealers (those banks, securities firms, and others whose business it is to offer swaps and manage the resulting interest rate or commodity price risk). Instead, this criterion would only apply when swaps are entered into between

[1] Testimony of Edward I. O'Brien, President of SIA, before the House Subcommittee on Telecommunications and Finance, May 3, 1990; testimony of John Bachmann, past Chairman of SIA, before the Senate Banking Committee, July 11, 1990; and testimony of Marc Lackritz, Executive Vice President, SIA, before the Senate Agriculture Committee, February 20, 1991.

"end users" who are hedging or managing other business risks. The swaps business doesn't operate this way—swaps intermediaries (brokers and dealers) are integral to the operation of the market because the credit facilitation provided by intermediaries is necessary for the transactions to occur.

The second criterion necessary for the exclusion is that "each party reasonably expects to perform fully its obligations to make or receive payments at the time or times specified in the swap agreement." This provision requires an uncertain subjective evaluation of the intent of the parties entering into the swap. The criterion is intended to preclude termination and netting, two important risk reduction techniques that are encouraged by bank regulatory authorities. It will also hurt the competitiveness of U.S. firms by making them unattractive counterparties for the many participants, particularly non-U.S. banks and securities firms, who will be reluctant to provide any such certification as to their subjective intent.

The second part of the swaps proposal directs the Commission to exempt certain swap agreements. However, unlike S. 207, which included a mandatory provision requiring the CFTC to exempt swaps from all of the provisions of the CEA, the CFTC's proposal requires no exemption at all, but instead gives the CFTC discretion to exempt swap agreements "from any or all of the prohibitions and requirements" of the CEA. In addition, S. 207 as reported contains three substantive requirements for exemption not contained in S. 207 as introduced or the CFTC's Policy Statement.

The first requirement for exemption is that "each party to the swap agreement is an institutional participant" as defined elsewhere in the proposal to include certain financial institutions and corporations with net worth greater than $1 million. This requirement, while perhaps intended to be broad (since it includes registered floor brokers and floor traders), is generally very limited. Corporations and others must have net worth exceeding $1 million. Nowhere else in the world is it necessary to receive proof of a counterparty's net worth, evidence of which may not always be available or understood. Even if guaranteed by substantial companies or supported by other credit enhancements, corporations with less than $1 million of net worth would not be eligible. In addition, quasi-governmental entities like the IMF or the World Bank would not be eligible. Thus, the "discretionary exemption" would exclude many current participants in the market. Further, this $1 million net worth requirement would preclude insolvent companies and those in Chapter 11 bankruptcy or in workout situations from utilizing the swaps market to hedge their risks.

The second criterion for exemption requires that "the creditworthiness of each party to the swap agreement would be a material term of the negotiation of the swap agreement." While the CFTC's explanatory statement indicates that this provision is not intended to prohibit margin or collateral provisions, the criterion would appear on its face to embody a strict (if undefined) limit on such provisions. As a result, its intent is unclear. The criterion is also far too subjective to be workable and it is not clear whether it applies to the parties' master agreement or to each transaction under the master. In addition, the applicability of the section to options, where creditworthiness does not apply to the premium payor or to swaps with option features, such as caps and floors, is particularly unclear. Then too, where each side of a swap is a triple A credit, creditworthiness may not in fact be a negotiated term. The last criterion for exemption requires that "the swap agreement is not designed to and would not result in a trading market in the swap agreement." The term "trading market" is not defined. On its face, it would appear to prohibit completely a swap dealer from engaging in its customary business of making a market in swaps.

The overall effect of S. 207 as reported is that it creates confusion and uncertainty. Swap participants will be inclined to do business outside of the U.S. rather than answer intrusive questions about their business and face the uncertainty of their counterparty's eligibility under the CFTC's criteria. The imposition of congressionally mandated new and extraordinary requirements on swap participants creates new regulatory responsibilities for the CFTC and defeats the intent of the original framers of S. 207, who sought a statutory amendment on swaps to provide clarity and certainty for international and domestic participants.

We note for the record that some have called for an express exclusion for bank deposit account swaps and hybrid products structured as depository instruments. We are troubled by this primarily because of the negative inferences that might be drawn were certain types of products to be automatically excluded from the CEA, while others would have to rely on the exemption process. This could unnecessarily and unintentionally harm non-bank deposit products and the firms that engage in that type of swaps business.

HYBRIDS AND EXCLUSIVITY

The hybrid and exclusivity portions of S. 207 as reported (Sec. 303) raise serious questions about the ability of American capital markets to compete in the future. The United States has traditionally had the broadest, most liquid, and most innovative capital markets in the world. After the imbroglio over the ambit of the CEA developed around the IPs products, a principal purpose of Title III was to resolve questions over hybrids and exclusivity which threatened to drive new product trading and development overseas. The original compromise contained in S. 207 as introduced, while imperfect, did at least resolve some of the legal ambiguities and uncertainty inherent in the status quo.

Here too, the new language in S. 207 as reported is a radical step backwards in a dramatic change from the original compromise. As reported, S. 207 codifies into law the position that all financial instruments that the CFTC determines to include any degree of "futurity" must be traded on futures exchanges unless a product (1) meets a misleading mathematical test that less than 50% of its value derives from the value of the commodity option or future commodities prices or (2) receives a written exemption from the Commodity Exchange Act from the CFTC.

Even that apparently "neutral" 50% of the value test would likely provide no real relief since the test would be determined by the CFTC, and under the existing CFTC analysis, new equity products with characteristics of both futures and securities are always viewed as futures. Thus, it is highly unlikely that there would ever be an equity related hybrid that the CFTC would determine meets the requirement for the 50% exception. Moreover, the descriptive language accompanying the ostensibly clear value test is very murky and would lend little or none of the certainty promised by the numerical standard. Ultimately what is a hybrid remains unclear given the overly broad reach of the defining language.

Were this provision to pass unchanged, a number of deleterious results would ensue. Innovation in American securities markets could be stifled; all hybrids having any element of futurity could be subject to regulation by the CFTC; issuers would bear the heavy burden of proving numerous factors to the CFTC. Exemptions (if granted) could be revoked; the exemptive process itself takes too long as it calls for a hearing with all of its cumbersome procedures and delays. Specifically, hybrid products with embedded futures would have to pass muster in an exemptive process that may well be too narrow to accommodate them. Issuers would still be subject to suits based on competitive considerations, thus chilling competition among securities and futures exchanges. American markets would thus remain at a competitive disadvantage in this area.

The process of raising capital could be inhibited by the costs of potential litigation, or even driven to overseas markets. The confusion and uncertainty that the original compromise was designed to reduce or eliminate would only be exacerbated by the additional court challenges that would inevitably ensue.

The reported legislation has additional unfavorable aspects which make its modification imperative. The SEC's ability to define a security is called into question by the legislation. For example, it could be read to give the CFTC jurisdiction over stock index options, other equity index products and perhaps, options on individual securities. Contrast this with the original Administration bill in the last Congress, S. 2814, which was intended to stimulate competition and innovation wherever possible. The current language seems designed to move in precisely the opposite direction by restricting innovation and competition in a series of existing and future products.

The exclusivity definition codified by S. 207 as reported is strengthened in its application to banking, securities and other financial instruments. That expansive definition of exclusivity is subject only to the occasional exceptions or exemptions granted at the sole discretion of the CFTC. Many new hybrid securities products would, like index participations, be effectively banned or driven offshore. Arguably, jurisdiction over the entire index option market could be transferred to the CFTC. The net result of these rewritten provisions might well be to stifle precisely the increased competition and innovation critical to future economic growth and prosperity. Whenever possible our laws should allow securities and futures instruments to be offered to investors free of unnecessary restrictions. Low cost capital can be achieved only by minimizing regulatory hurdles, litigation and uncertainty as to the lawfulness of innovative forms of securities and futures instruments.

Despite seemingly broad exemptive authority, a financial innovator would have to meet the heavy burdens of proving at least five factors "to the satisfaction of the CFTC." One of the factors could even be read to give the commodities exchange a near veto over the exemption process by requiring that there be no material adverse effect on a future exchange's performance of self regulatory duties.

SIA has worked long and hard on the panoply of issues in this very complex and crucial area. We are deeply troubled that the result of all the effort to date is a measure we regard as destructive of the swaps market and injurious to the United States capital markets as a whole. We stand ready and eager to work with you, your colleagues, and staff to correct the inadequacies in the legislation.

Thank you for your consideration of our views.

Sincerely,

GEDALE B. HOROWITZ,
Chairman.

J.P. MORGAN,
New York, NY, April 9, 1991.

Re The Futures Trading Practices Act of 1991 (S. 207).

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: We at J.P. Morgan have been following the developments and debate concerning Title III of The Futures Trading Practices Act of 1991 (S. 207) with both interest and concern and I welcome the opportunity to respond to your questions regarding those provisions.

Since its inception in 1982, the swap market has grown to $2.5 trillion in notional principal amount. J.P. Morgan is one of the largest swap dealers in the world with a notional swap book in excess of $260 billion. The swap market is characterized by the participation of sophisticated financial institutions and corporations and government entities which generally enter into swaps in connection with market-making activities or in order to manage exposure to interest and exchange rate fluctuations. We believe it is important that S. 207, as finally enacted, not restrict unnecessarily the ability of American institutions to engage in these activities and either place them at a competitive disadvantage to foreign counterparts or drive the market for these products and services off-shore (as was the case recently with the Brent oil forward market following the *Transnor* decision).

The language of S. 207, as reported out of the Senate Agriculture Committee on March 6, 1991, raises concerns in this regard.

The exclusion contained in the language only applies to transactions between two end-users of swaps. Since almost all swaps are entered into on at least one side by a swap dealer, the exclusion is virtually meaningless.

The exemptive language contains two troublesome requirements. It requires that the creditworthiness of each party be a material term of the negotiation of the swap. While the creditworthiness of a counterparty is a material factor in the decision of whether or not to enter into a swap, it is not generally the subject of negotiation. It is also unclear as to whether it would be permissible to enter into a collateral or margining arrangement since arguably this may eliminate (or drastically reduce) credit risk to the counterparty. In order to prudently manage credit risk, J.P. Morgan has used various forms of risk reduction techniques, including bilateral netting, collateral and margin. As the size of the swap market grows, management of counterparty risk will be a critical factor in enabling us to continue in the business. As the market currently exists, these arrangements are on a bilateral basis. However, the ability to enter into multilateral netting arrangements, most likely in the form of a clearinghouse, would be an extremely useful tool. Title III as currently drafted would either restrict or absolutely prohibit all or some of these mechanisms.

The final requirement for the exemption is that the swap not be designed to, and not result in, a trading market. The term trading market has no established meaning in the context of the commodities regulation and is not defined in the legislation. On its face it might prohibit a swap dealer from engaging in the business of making a market in swaps as is customary today.

I should also point out that we would have preferred to see S. 207 explicitly exclude swaps from the provisions of the Commodity Exchange Act (the "Act"). Because S. 207 instead gives the CFTC the power to exempt swaps, it creates a negative inference that in the absence of the exemption such transactions are futures or options contracts subject to the Act. As such, market participants would be exposed to the risk that a counterparty could attempt to avoid performance of its obligations with respect to one of these transactions on the basis that it is an illegal off-exchange futures or options contract. To a certain extent, this risk exists even with respect to exempted products, as a counterparty could claim that the CFTC overstepped its authority or abused its discretion in providing the exemption.

The case for an exclusion for bank deposits is even more compelling. These are products offered by banking institutions which are already subject to extensive regulation by a combination of either state banking authorities, the Comptroller of the Currency, the Federal Reserve Board and the FDIC, each of which has, as a primary concern, the safety and soundness of the banks which they regulate and the safeguarding of the deposits of those banks' customers. In light of this comprehensive regulatory scheme, there is little, if anything, that CFTC regulation, even in the form of conditions for exemption from the Act, could add to further protect the deposits of bank customers, whether those deposits of bank customers, whether those deposits be tied to the value of commodity prices, equity indices or traditional interest rates.

The hybrid instruments provisions of Title III are an attempt to address a problem that has recently severely impeded the development of new financial products (including equity derivatives) in the U.S.—the so-called "exclusivity clause" of the Act. We believe Title III does not go far enough. Traders and investors have in the past, through their willingness to trade, determined the most viable and appropriate market for new financial products. Thus, contracts that compete with each other (even though their terms may be different) trade quite successfully on different exchanges and, in some cases, on different types of exchanges or in the over-the-counter market: currency options trade on the Philadelphia Exchange, which is regulated by the SEC and in the over-the-counter market, while options on currency futures trade on the Chicago Mercantile Exchange; the S & P 500 futures and options thereon trade on the Chicago Mercantile Exchange; the S & P 500 futures and options thereon trade on the Chicago Mercantile Exchange, while options on the S & P index trade on the Chicago Board Options Exchange. In each case, regardless of the exchange and applicable regulatory authority, traders and investors are generally protected against fraud, abuse and market manipulation, and they have the freedom to choose which contract and which marketplace best suits their needs. Those contracts that do not meet the needs of market participants (and examples abound), regardless of where they are traded and the regulatory scheme under which they are traded, will not be viable and will not survive.

Considering the hybrid nature of these instruments, J.P. Morgan believes that the market for such instruments is best served by maximum regulatory flexibility and that the market, namely, the traders and investors, should be allowed to determine the most appropriate forum for the trading of hybrid instruments. Logically, this means that hybrid instruments should be allowed to trade on securities exchanges, futures exchanges and the over-the-counter market.

Again, we appreciate the opportunity to express our views on S. 207. If we can be of any further assistance to you or provide you with any more specific information, we would be pleased to do so.

Very truly yours,

MICHAEL PATTERSON.

CHEMICAL BANK,
New York, NY, April 9, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Securities Subcommittee, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Mr. Shipley has asked me to respond to your letter to him dated March 28, 1991 regarding Title III of the Intermarket Coordination Act, as reported out of the Agriculture Committee of the United States Senate. As a Director of the International Swap Dealers Association, Inc. and a Managing Director of Chemical Bank responsible for interest rate, commodity and currency swap activity, I am delighted to have the opportunity to express Chemical Bank's views on Title III.

The swaps market has grown into a substantial market providing liquidity, stability and risk-shifting capability to market participants. Today swap agreements are considered important tools for risk reduction for both banks and their customers. Despite the established nature of the swaps market, since the Commodities Futures Trading Commission suggested the possible applicability of the Commodity Exchange Act to swap activities, the swaps market has been subject to legal uncertainty. This has created the risk of litigation, both by the Commodities Futures Trading Commission in the exercise of its enforcement powers and private litigants.

It is Chemical Bank's view that some form of legislation regarding the swaps market is desirable. However, if Title III is enacted in the form reported out of the Agriculture Committee, it will have a chilling effect on the swaps market. The result of this legislation could be that much of the swaps business now conducted in the United States will be driven offshore, and that many firms in the United States will no longer be able to utilize these risk mitigating instruments. Further, innovation and product development will be stifled.

There are several solutions which are possible. One approach could be the exclusion of swap agreements from the ambit of the Commodity Exchange Act, just as the Treasury Amendment excludes certain transactions of a similar nature. This approach would implicitly or by its formulation provide for regulation through existing channels, such as bank regulators in the case of bank participants in the swaps market. This is apparently the basis for the approach suggested by Chairman Greenspan in his letter to Senator Riegle dated March 27, 1991. This exclusionary approach with respect to the Commodity Exchange Act is in many respects the most appropriate in our view, but we realize that it is possible to obtain a similar result by providing an exemption from the provisions of the Commodity Exchange Act.

Accordingly, a solution which may be acceptable to all interested parties is legislation that permits or requires the Commodities Futures Trading Commission to exempt certain swap agreements or classes of swap agreements from all or part of the Commodity Exchange Act. This is the approach we are now pursuing in negotiations with the Commodities Futures Trading Commission through a coalition of banks and investment banks.

Title III is as originally reported out of the Agriculture Committee is formulated in such a way that it requires the Commodities Futures Trading Commission to undertake detailed determinations with respect to very specific aspects of the business and the practices in the swaps market and establishes a significant burden to the granting of exemptive relief. This undercuts the basic thrust of legislation to mandate relief that is at least analogous to the Treasury Amendment and equal to the safe harbor standards set forth in the Policy Statement issued by the Commodities Futures Trading Commission in July, 1989. Title III also creates circumstances under which parties which are dissatisfied with the granting of any exemption might mount time-consuming, debilitating and expensive challenges. If Title III were to be adopted as originally reported, we believe it would have the effect of perpetuating the legal uncertainty associated with legitimate and beneficial swap activity. The result would be to further hamper the competitiveness of the United States over the counter market, both vis a vis domestic exchanges and international competitors. It is also likely that the cumbersome exemptive process envisaged would stifle financial product development and innovation and risk management activities.

The existing negotiations with the Commodities Future Trading Commission appear at this time to be constructively addressing the major concerns we have within the framework of an exemptive approach, but ultimately we believe it is the responsibility of the Banking Committee, which has jurisdiction over both commercial and investment banks, and the full Senate to determine which solution best serves the public interest. We welcome the opportunity to keep you advised of developments as they occur, and we look forward to resolving the issues expeditiously.

Very truly yours,

JOSEPH P. BAUMAN.

NEW YORK STOCK EXCHANGE, INC.,
New York, NY, April 8, 1991.

Hon. DONALD W. RIEGLE, Jr.,
U.S. Senate,
Washington, DC.

DEAR SENATOR RIEGLE: The New York Stock Exchange has reviewed the drafts of the proposed amendments to Title III of S207 as proposed by the Treasury Department, the Commodities Futures Trading Commission and the Securities and Exchange Commission.

The amendments to Title III regarding the establishment of margin requirements represent a vast improvement over existing law and we support these amendments. We wish to express our appreciation to the Treasury Department for their efforts in developing these new margin provisions.

With regard to those provisions of Title III dealing with the exclusive jurisdiction of certain trading instruments, we believe that the proposed language falls short of the Treasury Department's original proposals. We have consistently supported those original proposals.

We recognize that the Treasury Department and the Commodities Futures Trading Commission have put much effort into reaching the proposed compromise on jurisdiction. However, we feel that the alternative language proposed by the Securities and Exchange Commission, which parallels that originally proposed by the Treasury Department, would allow for a free competition among products of similar characteristics.

For that reason, we support the language proposed by the Securities and Exchange Commission and urge that it be incorporated in the final legislation.

Sincerely,

BILL DONALDSON.

NEW YORK STOCK EXCHANGE, INC.,
New York, NY, April 17, 1991.

Hon. CHRISTOPHER S. BOND,
Hon. TIMOTHY E. WIRTH,
U.S. Senate,
Washington, DC.

DEAR SENATORS: The New York Stock Exchange has reviewed the drafts of the amendments to Title III of S. 207 proposed by the Treasury Department and the Commodity Futures Trading Commission and the alternative proposed by Senators Bond and Wirth.

The amendments to Title III regarding the establishment of margin requirements represent a vast improvement over existing law and we support these amendments. We wish to express our appreciation to the Treasury Department for their efforts in developing these new margin provisions.

With regard to those provisions of Title III dealing with the exclusive jurisidiction of certain trading instruments, we believe that the Treasury-CFTC proposed language falls short of the Treasury Department's original proposals. We have consistently supported those original proposals.

We recognize that the Treasury Department and the Commodity Futures Trading Commission have put much effort into reaching the proposed compromise on jurisdiction. However, we feel that the alternative language proposed by Senators Bond and Wirth, which parallels that originally proposed by the Treasury Department, would allow for a free competition among products of similar characteristics.

For that reason, we support the language proposed by Senators Bond and Wirth and urge that it be incorporated in the final legislation.

Sincerely,

WILLIAM H. DONALDSON.

GOLDMAN, SACHS & CO.,
New York, NY, April 5, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Subcommittee on Securities, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC.

DEAR CHAIRMAN DODD: On behalf of The Goldman Sachs Group, L.P. ("Goldman") and its subsidiaries, including J. Aron & Company ("Aron"), I am pleased to respond to your request for our view regarding Title III of S. 207, the Futures Trading Practices Act, as reported by the Senate Committee on Agriculture, Nutrition, and Forestry.

Goldman and its affiliates offer a full range of investment banking services on a global basis to corporations, governments and other investors. Goldman, Sachs & Co. and related companies are registered broker-dealers and futures commission merchants, and are members of the major futures and securities exchanges domestically and overseas. Goldman affiliates are major market makers and block traders in equity and fixed income securities and use futures and options extensively for their own account as well as for their clients. Aron is a significant dealer in the international markets for precious metals, foreign exchange, coffee, grain, crude oil and petroleum products. In connection with these activities, Aron actively participates in the futures, options, forward and cash markets.

In addition, as both principals and as financial advisors to institutional clients, Goldman entities have played an important role in developing and executing many of the financial products that are covered by Title III. Goldman and certain of its affiliates have acted as issuer or underwriter of billions of dollars of hybrid securities issued in the U.S. or foreign capital markets. These include hybrid securities with rates of return linked to various commodities and indices, securities with detachable warrants on foreign currencies or other commodities and commodity swaps and other commodity transactions in the forward and options markets. These types of financial products serve critical capital formation needs and hedging and achieve important risk management goals.

The global financial, futures and commodities markets have become increasingly interdependent and competitive. In this environment, hybrid securities, swap agreements and off-exchange commodity transactions play a crucial role in the conduct of the financial affairs of the institutions we advise, as well as in the management of our own finances. Accordingly, it is critical that the regulatory scheme for these instruments develops in a way that does not stifle the existing markets and that does not place U.S. firms at a competitive disadvantage with their foreign counterparts. U.S. investors and those seeking access to our capital markets will best be served by a framework that encourages the development of useful new hedging techniques and innovative capital markets products.

There are positive elements contained in Title III of S. 207 as reported by the Senate Committee. Nonetheless, we are concerned that portions of the regulatory structure contemplated by the bill do not provide the optimum degree of necessary flexibility. Our specific comments are set forth below.

1. HYBRID SECURITIES

Section 303 of S. 207 would amend the Commodity Exchange Act (the "CEA" or the "Act") to provide that if the option or futures component of a hybrid security accounts for less than 50 percent of the overall value, or expected change in the value, respectively, of that security, the security will not be subject to CFTC jurisdiction. We are pleased that this provision modifies the current regulatory treatment of hybrid securities insofar as it reduces the number of standards that such an instrument must meet in order to qualify for an exclusion from CFTC jurisdiction. It also increases the maximum permissible commodity components of instruments that are eligible for the exclusion.

However, in our view, S. 207 does not go far enough. Under the CEA, the offer and sale of hybrid securities that do not qualify for the new statutory exclusion will continue to be effectively prohibited. Securities with a commodity component that equals or exceeds 50 percent of the value of the security will continue to be prohibited in this country despite the fact that they can be, and are now being, issued and sold under the securities laws of other countries. Moreover, the CEA will continue to permit the issuance of debt securities with detachable warrants on foreign currencies while effectively prohibiting the issuance of similar securities linked to warrants on, for example, gold or oil. This leads to an arbitrary and unduly restrictive result despite the fact that, to our knowledge, no material regulatory problems have arisen in connection with the offer and sale of such hybrid securities in the numerous jurisdictions in which they are permitted.

Under current interpretation of the CEA, the limits placed on hybird securities have stifled domestic innovation and, with it, our international competitiveness. The changes contemplated by S. 207 will allow only a marginal increase in the market for these instruments. S. 207 will continue to deny U.S. investors access to the risk management and other benefits that flow from purchases of such securities. Issuers also continue to be denied full access to the U.S. capital markets. We, therefore, strongly urge review of the regulatory approach to hybrid securities embodied in S. 207 and development of a more balanced approach that will protect the public interest without sacrificing competition and innovation.

2. OFF-EXCHANGE COMMODITY TRANSACTIONS

Section 302 of S. 207 would authorize the Commodity Futures Trading Commission (the "CFTC") to exempt off-exchange commodity transactions that meet certain criteria from the general requirement of the CEA that futures contracts be traded on exchanges. While the scope of this exemptive authority is somewhat limited, its enactment would represent a material advance over existing law, which does not vest the CFTC with any similar authority. The current lack of exemptive authority for off-exchange futures transactions, coupled with the existing uncertainty regarding the precise line of demarcation between forward contracts and futures contracts, has created certain problems of U.S. participants in a number of important international commodity markets, including the Brent crude oil market. The bill's new exemptive authority can be used to alleviate problems of this type. Indeed, the Senate Agriculture Committee's Report on S. 207 specifically encouages the CFTC to review the situation in the Brent market and other off-exchanges commodity markers to determine whether the grant of exemptive relief would be appropriate. We view this as a very positive development.

3. SWAP AGREEMENTS

Section 302 of the bill excludes certain swap agreements from regulation under the CEA and directs the CFTC to exempt other swap agreements that meet various criteria from regulation under the Act. We have a number of concerns regarding these provisions. First, we question the bill's apparent assumption that most or all swap agreements are subject to CFTC jurisdiction. Second, the currently proposed exemptive authority is not broad enough to encompass significant components of the existing swap markets. Third, the bill may interfere with the development of collateral and netting arrangements that are desirable to reduce counterparty credit risk and, by extension, systemic risks in the financial markets. We understand that representatives of the CFTC, the Federal Reserve, the Treasury Department and the swap industry currently are discussing these and other issues, and we are hopeful that these discussions will produce a proposal that will concerned parties can support.

I hope that the foregoing is responsive to your inquiry. If we can provide you with any additional information concerning these matters, please do not hestitate to contact me.

Very truly yours,

ROBERT E. RUBIN.

MERRILL LYNCH,
Washington, DC, April 8, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Securities Subcommittee, Committee on Banking, Housing, and Urban Affairs, U.S. Senate. Washington, DC.

DEAR SENATOR DODD: Before undertaking to reply to your letter of March 28, 1991, we at Merrill Lynch would like to express to you and to Senator Heinz's other colleagues in the Senate our deep regret and sympathy at his tragic and untimely passing, and our appreciation for his interest in the issues affecting our industry.

Merrill Lynch appreciates the opportunity to comment on Title III of The Futures Trading Practices Act (S. 207) as reported by the Senate Committee on Agriculture, Forestry and Nutrition. Merrill Lynch has serious concerns that S. 207 in its present form will have adverse consequences on the U.S. markets for hybrid securities and swap transactions which could inhibit the orderly development of these markets without a commensurate gain in investor protection or systemic stability. Representatives of Merrill Lynch met with Commodity Futures Trading Commission (CFTC) Chairman Gramm to express our reservations regarding the swap provisions; we have also been part of an industry group working with the CFTC to arrive at acceptable statutory language regarding swap transactions.

THE SWAP MARKET

The global market for interest rate, currency, commodity and other index-linked swap transactions is today a massive one. Industry statistics suggest that in excess of $3 trillion of interest rate and currency swaps alone are currently outstanding. These instruments are used by U.S. government agencies and government sponsored entities, supranational entities, foreign sovereigns, municipalities, corporations and financial institutions to manage interest rate, currency, commodity and other price or rate risk, and as an integral element of financing and funding transactions. Indeed, it is estimated that in 1990 as much as 15 percent of underwritten corporate debt financings in the United States were linked to, and made possible by, related swap transactions. Accordingly, swap transactions are a vital risk management and hedging tool and a fundamental component of domestic and international capital markets.

Two important, and interrelated, characteristics of the swap market are particularly relevant in the discussion of the impact of S. 207 as it presently stands. The explosive growth of the market over the last several years has been fueled by the flexibility of the products and the ingenuity of market participants in designing such products to meet the needs of customers. Rapid innovation and an ability to respond to changes in the marketplace and in customer needs have been hallmarks of the development of the market. Thus, Merrill Lynch was particularly comfortable with the "individual negotiation" standard contained in the original version of the bill (directing the CFTC to exempt individually negotiated swaps undertaken in connection with a line of business or hedging activities).

The "customized quality of swap market transactions distinguishes the swap market from futures markets. Since the transactions involve counterparty-to-counterparty credit risks, the market is characterized by careful evaluation of counterparty credit and, where necessary, use of collateral or other forms of credit support. Because of the generally high credit quality of participants in the market, and the prudential employment of collateral and credit support, the incidence of default has been low. In fact, from the inception of its swap business in the late 1970's to date, Merrill Lynch has yet to experience a loss as a result of a counterparty default on a swap transaction. Thus, we believe that one of the principal purposes of an amendment to the Commodity Exchange Act (CEA) regarding swaps is not to redress any perceived inadequacy of regulation in the market, but rather to provide certainty regarding the legal status of swap transactions in the United States.

As the swap market has grown, a variety of efforts to reduce any potential credit risks and counterparty exposure, particularly among the dealer community, have been undertaken. Amendments to the U.S. Bankruptcy Code, and similar provisions in FIRREA, were adopted last year, clarifying the rights of parties upon the bankruptcy or insolvency of a counterparty to a swap transaction. Bilateral risk mitigation techniques are actively being employed or developed, and multilateral techniques are under consideration. The flexibility and innovation which distinguish the swap market are also evident in these developments.

EXISTING PROVISIONS OF S. 207 WITH REGARD TO SWAPS

The purposes of any amendment to the CEA relating to swaps should be to provide certainty to market participants regarding the legal status of swap transactions in the United States, as well as to protect and enhance the innovative techniques employed in the swap market to hedge risk and provide financing, and to mitigate counterparty risk resulting from a large and growing market.

These purposes are best achieved by exclusion of swap transactions meeting explicit and objective standards from the provisions of the CEA. S. 207 as it currently stands does not provide such an exclusion.

On the contrary, the exemptive authority granted to the CFTC in S. 207 would, we believe: enable the CFTC to exempt qualifying swap transactions from some, but not all, of the prohibitions and requirements of the CEA; authorize the establishment of financial or other requirements for the enumerated "institutional participants" in exempted swap transactions; leave unclear what role the creditworthiness of a party must play in qualifying swap transactions; and create vague limitations on the development of "trading markets" in swap agreements.

The legal uncertainties and restrictions on innovation resulting from these provisions are likely to have a chilling effect on the continued development of the market in the United States. Legal uncertainties under current law have already driven some swap business offshore. Failure to address these uncertainties could result in the limitation on the availability of swap products in the United States, without a similar restriction in offshore markets, reducing the competitiveness of U.S. markets and the financial stability of users of these instruments in the United States.

RECENT DEVELOPMENTS WITH REGARD TO SWAPS

We continue to believe that an exclusion from the provisions of the CEA for swap transactions meeting objective standards which foster market-driven innovation in risk mitigation is the preferred method of meeting the goals outlined above. We have joined with representatives of a large number of U.S. participants in the swap market to discuss with the CFTC and other regulators ways of addressing our concerns regarding the uncertainties and strictures in S. 207 as reported. Substantial progress has been made in developing language which would address many of these concerns and we appreciate the responsiveness of the CFTC and its staff to the concerns raised in these discussions.

HYBRID INSTRUMENTS

Merrill Lynch has been integrally involved in the developing market for hybrid instruments, including products indexed to physical commodities, indices and currencies. The ability of issuers and underwriters to develop new types of financial instruments, however, has been affected by the restrictions imposed under the CEA, as interpreted and applied by the CFTC. As a result, issuers have been prevented from exploring alternative means of financing their business operations in an increasingly competitive market environment, and investors have been prevented from taking advantage of valid investment opportunities. Accordingly, we believe that the CEA should be amended to provide greater certainty and flexibility to issuers and underwriters seeking to introduce new types of financial instruments.

To date, the CFTC has promulgated certain rules and interpretations concerning hybrid instruments which have facilitated their development by providing some degree of guidance to issuers and underwriters of these products. We recognize that certain of these products, if they in fact constitute futures contracts and commodity options rather than simply containing elements of such instruments, could implicate the customer protection and market integrity objectives of the CEA, and therefore, we understand the regulatory concern that such products not be marketed to members of the general public without the necessary safeguards against potential abuses.

Nevertheless, we believe that simpler and more objective tests can and should be adopted to provide a greater degree of certainty to issuers and underwriters. The development of innovative hybrid products historically has been a function of the evolving needs of market participants. Such innovation should not be discouraged on the basis of unnecessary legal uncertainties, particularly if our capital markets are to remain competitive with others worldwide. Consequently, in seeking the appropriate balance between the need to encourage flexibility and innovation in the capital markets and the purposes of the CEA and the CFTC's statutory mandate, consideration should be given to existing statutory frameworks which may also be applicable to the issuance of these products, such as the disclosure and investor protection provisions of the federal securities laws and the banking regulatory framework.

In our view, the hybrid instrument provisions of S. 207 represent substantial progress toward reconciling these competing interests and implementing a workable and effective approach to the regulation of these products. The creation of a "bright line" test, which seeks to determine whether an instrument is predominantly a futures contract or commodity option, should provide greater certainty to the marketplace than the existing CFTC precedents, which condition the availability of relief on complex formulas and computations. In addition, the adoption of a statutory exclusion for products which are not predominantly futures or commodity options would allow issuers and underwriters to avoid the substantial expense and delay associated with obtaining relief from the CFTC on a case-by-case basis.

Our one remaining concern rests with those products that do not meet the statutory "bright line" test and thus, under S. 207, would be prohibited, since they would be outside the scope of the exclusion. In certain instances, we can envision that products might be developed that would serve valid portfolio or risk management purposes, and we would suggest, at a minimum, that the CFTC be given the authority to grant exemptions from the CEA, either unconditionally or on specified terms and conditions.

We also believe that, where such instruments have significant characteristics of a security, their failure to be excluded from the CEA should not necessarily result in the complete prohibition of the product. We note that the SEC and others have suggested that, in certain instances, such instruments might properly be regulated and traded as securities. Certainly, where Congress or the SEC is comfortable that the federal securities laws are adequate, both in terms of disclosure and customer protection, then it may be appropriate to permit such a product to be regulated as a security and traded in the securities markets. At a minimum, serious consideration should be given to the proposals of this kind that have been articulated to date.

Again, we appreciate the opportunity to discuss our views on this topic so important to the operations of the U.S. capital markets.

Sincerely,

BRUCE E. THOMPSON, Jr.

SHEARSON LEHMAN BROTHERS,
New York, NY, April 5, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Subcommittee on Securities, Senate Russell Office Building, Washington, DC.

DEAR SENATOR DODD: This is in response to your letter of March 28, 1991, in which you asked for Shearson Lehman Brothers' views on Title III, the Intermarket Coordination Act, of S. 207, The Futures Trading Practices Act. We appreciate the opportunity to provide our thoughts on this important legislation.

Shearson Lehman Brothers shares the concerns raised by various federal regulators and others that certain provisions of Title III are likely to produce a number of significant undesirable consequences for the United States financial markets, in particular the swaps and hybrid securities markets. We believe the effect of such provisions will be to diminish the competitiveness of important segments of our domestic financial markets, deter financial product development and innovation, restrict capital formation opportunities and eliminate opportunities to reduce exposure to interest rate, currency, equity price and commodity price risk, without providing significant countervailing benefits.

The most immediate and dramatic effects of the legislation will be felt in the domestic swaps markets. Swaps are exchanges of payment streams which are used by market participants to manage interest rate, currency or commodity price risks. Because they are economically customized, swaps offer users unrivaled flexibility in managing their balance sheets and interest rate and currency exposure. Their utility is evidenced by the healthy expansion of the market since its inception in the early 1980's, a development in which United States firms, including banks, securities firms and insurance companies, have been at the forefront. Market participants include major corporations, financial institutions, U.S. government-sponsored agencies and foreign governments. Recent figures indicate that U.S. firms comprise just under 40% of the worldwide market for swaps.

The swaps market is a particularly unlikely forum for the types of abuses that have in recent years unsettled the financial markets and which usually create a need for remedial legislation. The market excludes the general public, being limited to financial intermediaries and sophisticated corporate, governmental and quasi-governmental participants. Market practice compels participants to evaluate counterparty creditworthiness carefully to assure that appropriate credit protections are met. In any market there is always risk; however, the likelihood of the swaps market experiencing significant credit difficulties is small.

Unlike futures contracts, which offer some abstract analytical parallels but are distinguished by a number of features—not the least of which is their fungibility—swaps are privately and individually negotiated and are not subject to futures exchange style offset and margining. Consequently, market participants have both the need and the opportunity to manage credit exposure contractually on a counterparty-by-counterparty basis.

Payment on swaps are tied to the value of debt, equity or other financial or commodity products. Because such values are based on standard interest rate, currency, equity, or commodity prices, which are almost always publicly available and readily verifiable, and because pricing of swaps at their inception is subject to negotiation between sophisticated parties, swaps are particularly unsuitable vehicles for fraud.

The tangible and unique qualities of the domestic swap market, and the related benefits we see the market continuing to create—in product innovation, risk management and capital formation—would in our view be seriously jeopardized under the current version of S. 207. If the bill as reported by the Agriculture Committee is adopted, the provisions of Title III would, we believe, substantially reduce future swap activity involving United States counterparties and cast significant doubt on the legal status of existing swap transactions involving such parties. A substantial volume of swap activity will quickly migrate to foreign markets, lessening U.S. competitiveness in an area of the financial markets in which our domestic firms have excelled, without any discernible regulatory remedy or prospect of immediate retrieval.

Minimizing the chronic jurisdictional uncertainities and legal conflicts that have beset the futures, securities and banking markets, which is a primary purpose of S. 207, would in our view exact an inordinate and harmful toll if such resolution were to come at the expense of the present viability and future vitality of the swaps market. We believe strongly that any resolution of this issue should at a minimum (i) make clear that the current swaps market is a discrete marketing falling outside the ambit of the Commodities Exchange Act and (ii) allow some reasonable flexibility for the future growth of the market, including the possibility of multilateral mitigation of credit risk falling short of the type performed by an exchange. To this end, we have been discussing with federal regulators appropriate changes to S. 207 as reported by the Agriculture Committee.

Hybrid instruments—regulated securities and bank-issued obligations having a greater or lesser proportion of their principal or coupon payments tied to the values of debt, equity or commodity products—offer considerable promise as customized and flexible risk management and capital formation vehicles. The growth and vitality of this market should be sanctioned statutorily by the establishment of broad and non-arbitrary jurisdictional boundaries that allow issuers and investors to use the most appropriate market, be it a securities, bank instrument, or commodities market, for their needs. The legislation should provide certainty in order to resolve ambiguities that exist under the current regulatory structure and to enable products to come to market in an efficient and expeditious manner. As in the case of swaps, legislation should not lessen U.S. competitiveness in an area where our own firms have excelled.

In closing, let me reiterate our appreciation for the opportunity to share our views on S. 207, and commend you for your recognition of the significance of the issues the bill raises. We look forward to assisting you in any way we can on these matters, and trust that you will not hesitate to contact me if we can be of further assistance.

Very truly yours,

HOWARD L. CLARK, Jr.

CS FIRST BOSTON,
New York, NY, April 5, 1991.

Hon. CHRISTOPER J. DODD,
Chairman, Securities Subcommittee, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SIR: We appreciate the opportunity to express our views in response to your letter, dated March 28, 1991, regarding Title III of The Futures Trading Practices Act (S. 207). You requested a description of the market for swaps and certain other derivative products, a discussion of our concerns about the impact of Title III on competition, innovation, risk management and the capital markets, and our related suggestions for modifications to Title III.

In providing an overview of the swaps and derivative markets, including hybrids, we will briefly describe: (1) the products themselves; (2) the major participants; (3) the applications and uses of these instruments; (4) the mechanics of executing transactions; and (5) the secondary market for these instruments.

"Swaps" has become an almost generic term for a wide variety of derivative instruments whose values depend on underlying movements in interest rates, exchange rates, equity prices and commodity prices. In its narrowest sense, "swaps" refers to interest rate swaps and currency swaps. However, in its broader connotations, "swaps" would include a wide array of derivative instruments including: equity swaps, commodity swaps, options on interest rate and currency swaps ("swaptions"), and caps, floors, and collars on interest rates, exchange rates, equity prices, and commodity prices. Moreover, each of the products named above can be further sub-divided into separate types of transactions. For instance, the classification "interest rate swaps" would include such transactions as amortizing swaps, reverse amortizing swaps, extendable swaps, cancelable swaps, forward swaps, zero coupon swaps, etc. "Hybrids" generally refers to customized swaps that take the form of a derivative security.

Obviously, a description of each of these instruments is far beyond the scope of this letter. However, it is possible to make a few general statements about these instruments. The products that fall under the broader meaning of swaps can typically be characterized as entailing a contractual agreement between two parties that extends for a certain period of time, in which payments will be made by both parties according to a formula that depends on an underlying notional principal amount and the value of an underlying variable (such as an interest rate). Although conventions have developed over the years with regard to definitions and broad contractual forms, an important characteristic of a "swap" is that it represents an agreement, negotiated transaction-by-transaction, between two counterparties that is tailored to each party's required specifications. Each party in a swap accepts the credit risk of its counterparty in the swap and the terms and extent of such credit risk are frequently an important point in the swap negotiation. Notional principal amounts are generally in excess of $5 million and can run as high as $500 million to $1.0 billion.

The swap market participants can be separated into professional swap dealers, swap brokers, and end-users. The professional swap dealers are generally affiliated with major investment banks, commercial banks and, more recently, insurance companies. Swap brokers act as an agent in arranging swap transactions between swap dealers or between swap professionals and end-users. Swap brokers are not parties to the swap transaction and do not risk capital. They charge a negotiable fee for arranging transactions. End-users consist of a fairly heterogenous group which would include: (1) financial institutions such as banks, thrifts, insurance companies, and finance companies; (2) business corporations; (3) sovereigns, governmental agencies, and supranationals; and (4) major investors such as pension funds, bank trust departments, hedge funds, and asset managers that exercise fiduciary responsibility.

Each category of end-user named above actively uses the swap market. Financial institutions have historically been the most active users of the swap market, although the use of swaps (and other derivative instruments) by corporations has increased sharply in the last five years. We believe that virtually all of the institutional clients at one time or another have used swaps or other derivatives to reduce borrowing costs or manage the financial risks of their underlying business. Sovereigns, governmental agencies, and supranationals use the swap market extensively to transform borrowings from fixed rate into floating rate (or vice-versa) or from one currency into another. Finally, there is a significant and growing use of swaps on the asset side of the balance sheet as major investors seek to transform fixed rate investments into floating rate (or vice-versa), as market viewpoints and arbitrage opportunities develop.

Swaps and related derivative instruments are not executed with individual investors, which is understandable given the large notional amount of the transactions, the credit criteria demanded of swap counterparties, and the financial sophistication required.

Swaps have generally been used to:

(1) Lower financing costs or increase investment returns by arbitraging fixed rate and floating rate securities markets in the same currency (using interest rate swaps) or in different currencies (using currency swaps).

(2) Hedge exposures to interest rates, exchange rates, equity prices and commodity prices.

(3) Create synthetic investment or financing structures that satisfy the investor's or borrower's objectives better than "plain vanilla" securities would.

Interest rate and currency swaps were initially created to arbitrage financing costs in different markets. While interest rate and currency swaps still are actively used to arbitrage markets, a large portion of swap transactions are now executed to hedge exposures against adverse interest rate and foreign exchange movements. Banks routinely use swaps to manage the gap between the duration of their assets and liabilities. For example, financial institutions that borrow on a floating basis and lend on a fixed basis can manage this mismatch with swaps by swapping the floating liabilities into fixed rate liabilities to lock-in a positive spread between its lending rate and its borrowing rate and to remove interest rate risk. Corporations are also active users of the swap market in their liability management programs. Interest rate caps and swaps in U.S. dollars and foreign currencies are commonly used by corporations to hedge the financing cost of their commercial paper and bank loans against rising interest rates.

Swaps, hybrids and other derivatives are also being used to custom-design investment and borrowing transactions that satisfy the user's underlying objective better than standard securities would. For example, issuers have used swaps to "front load" or "back load" effective interest payments on bond issues so they match projected cash flow patterns. Rather than having to search for a small group of investors who may happen to want this particular cash flow pattern, the issuer is able to sell a conventional bond into the market and re-engineer the desired cash flows privately using swaps. Alternatively, there are numerous examples of investor-driven deals in which the investor requests an unusual structure for a security that reflects its market outlook or liability exposure. The issuer sells the "hybrid", i.e., a custom-tailored security, to the investor and then uses derivatives to transform the security back into a more traditional format. In such a transaction the investor benefits by being able to design a security that satisfies its particular objectives and the issuer obtains an attractive financing because it was able to sell a security that exactly fit the investor's demand parameters. Swaps and other derivatives make these transformations possible.

Swaps are generally executed between a swap dealer and an end-user or between two swap dealers. Swap dealers generally have a marketing team that works with end-users to design swap structures appropriate for the end-users' objectives. When an end-user wants to enter into a swap for the first time, a master swap agreement is negotiated, which is a relatively extensive contract presenting the terms, conditions, and the responsibilities of each party. Although a standard form of swap document has been prepared by the International Swap Dealers Association, extensive negotiation between the parties on the contract is common. Subsequent transactions are typically documented by shorter confirmations which refer to and rely on the general terms and conditions previously negotiated in the master agreement. These confirmations put forth the specific economic terms of the transaction and exceptions, if any, to the master swap document that apply to the particular transaction.

When a party wants to execute a "plain vanilla" swap, it is not uncommon for the party to contact several swap professionals with whom master swap agreements have been previously negotiated and ask them to compete for the swap. The swap professional offering the most attractive terms is awarded the swap. Swaps that are more highly engineered are not generally put into competition, but are separately negotiated with the swap dealer that has developed the swap structure.

When a party wants to unwind an existing swap, one of the following three methods is employed:

(1) The swap is legally terminated with the opposite counterparty by mutual agreement. A payment by one of the counterparties to the other is made which reflects the market value of the swap at the time the swap is terminated. The payment depends on such things as interest rate levels, the remaining period of the swap, and other conditions in the swap market.

(2) The party wishing to unwind the swap assigns its rights and responsibilities to another party which is acceptable to the remaining swap counterparty. A payment is made between the party exiting the swap and the party being assigned the swap which reflects the market value of the swap at the time of the assignment.

(3) The party wishing to unwind a swap enters into an offsetting "mirror-image" swap with another counterparty. For instance, a swap counterparty paying fixed and receiving floating in a three-year swap can economically offset the transaction by entering a new three-year swap with another counterparty in which it receives fixed and pays floating. An adjustment payment may also be made on the new swap to reflect the terms of the new swap which are required to offset the original swap. In this technique, the party is legally responsible for both swaps but the cash flows of the two swaps offset one another.

In conclusion, swaps and hybrids, in their generic and specific forms, are invaluable tools to manage risk, reduce financing costs and increase investment yields for our U.S. institutional client base; without free access to such tools, U.S. financial managers would be at a substantial disadvantage to their foreign counterparts in competing for low cost capital in the 1990's.

Turning to the remaining questions in your March 28th letter regarding the current and foreseeable impact on competition and innovation of S. 207 as reported, our concerns fall mainly in two areas, swaps and hybrid instruments.

In regard to swaps, it is clear it was the intent of the Senate Agriculture Committee to clarify treatment of swaps under the Commodity Exchange Act; unfortunately, in its reported form, this statutory design has the potential to disrupt an extraordinarily successful institutional crossborder market. We believe the language of S. 207 as reported to be ambiguous and subjective, which could cause substantial uncertainty in the market. Extraordinary care must be taken when imposing regulatory requirements on an existing market; even clear, unambiguous rules which are more restrictive than offshore rules can be as damaging to the U.S. market as uncertainty.

Taken to its extreme, it is possible to suggest the current structure of S. 207 would impact negatively on competitiveness of U.S. firms in the world-wide swap market by creating subjective standards which are ill-defined and misunderstood, thereby driving more swap transactions into overseas markets. We concur with the views of Federal Reserve Board Chairman Greenspan that the potential for desirable reduction of systemic risk may be impaired by possible interpretation of S. 207 to prevent development of private netting arrangements designed to reduce counterparty credit risks.

However, we do not believe these possible dysfunctional results to have been the intent of either the Senate Agriculture Committee or the Commodity Futures Trading Commission. Our concerns about ambiguity and subjectivity can be adequately addressed by redrafting certain provisions of S. 207, and a correctly drafted, objective test for statutory and regulatory exemptions will provide greater certainty to the market and market participants than has been previously available. In this regard, it may be constructive for the legislative history accompanying S. 207 to address more specifically and in greater detail how the implementing regulations should be crafted to avoid disruption of a large and efficient global market. Finally, we believe a solution allowing the continued development of netting systems to reduce systemic risk can be achieved.

We are aware of and support the efforts of the major swap dealers, both banks and broker dealers, to resolve some of the issues discussed above. We believe that if accepted as part of S. 207, the recommendations of this coalition (including clarification of the definition of institutional participants and clarification of use of netting arrangements to reduce systemic risk) will resolve major concerns with the language of S. 207 as reported.

The hybrid instruments provision of S. 207 presents issues which are potentially less capable of resolution without more analysis and discussion. Others, including Chairman Greenspan and Securities and Exchange Commission Chairman Breeden, have expressed concerns (which we share) that the statutory language of S. 207 on hybrid instruments will have a negative impact on product innovation and competition and could further drive such product development into overseas markets. It should be noted that most product innovation in recent years has been in overseas markets and, ironically, engineered by U.S. firms operating in those markets. More regulatory uncertainty will only aggravate this trend.

Considerable attention has been paid to the 50 percent test embodied in the hybrid provision. From a pragmatic business perspective, we are concerned that the 50 percent value test, which is the linchpin of the provision, is vague and could create anomalous results. For example, over the life of an instrument, its "value" can change, even without any movement in the cash market; a simple change in the yield curve could result in the "value" of the commodity portion of the instrument dropping below or increasing above 50 percent. This means that the same hybrid instrument could, at time of issuance, have more or less than 50 percent of its value linked to commodities depending on market movements, so that the same instrument would be treated differently depending upon when it was issued. It is unclear to us how the regulatory scheme would impact on such an instrument when this occurred, particularly given the exclusive jurisdiction of the CFTC over products with the commodity value of more than 50 percent. Much depends on how "value" is to be computed, and S. 207 does not provide sufficient guidance.

We understand it was the intent of the Senate Agriculture Committee to create a functional regulatory approach to jurisdictional decisions involving hybrid instruments. We do not disagree with this approach fundamentally. However, as with swaps, our concerns are basic, i.e., to avoid ambiguity and uncertainty but also to avoid creation of clear rules which will unduly restrict innovation in a new and developing market.

We believe the hybrid instruments provisions is in need of further discussion and revision. A solution may be possible with further debate, perhaps by expanding the exemptive authority of the CFTC in order to achieve a more pragmatic result.

I hope the views of CS First Boston are helpful to you in your deliberations on this important legislation.

Very truly yours,

JOHN M. HENNESSY,
CS First Boston, Inc.

SECURITY PACIFIC NATIONAL BANK,
New York, NY, April 3, 1991.

Hon. CHRISTOPHER J. DODD,
Hon. JOHN HEINZ,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATORS: Thank you for requesting Security Pacific's comments on The Futures Trading Practices Act (S. 207) and, in particular, The Intermarket Coordination Act. I have been asked to respond to your inquiry. We have been following the development of S. 207 with some concern. We are aware of, and share to a considerable extent, Chairman Greenspan's reservations.

Most importantly to Security Pacific, S. 207 promises to formalize another tier of regulatory oversight upon businesses already fully supervised and, in the case of holding company-owned national banks, by multiple regulators. S. 207 would create regulatory ambiguity for U.S. businesses that depend for their success on constant innovation in globally competitive markets.

Security Pacific National Bank's swap group, as a case in point, has been a recognized world leader in interest rate and currency swaps and related products. In the present climate of diminished credit availability, our swap group has thought to apply developing mechanisms (such as marking-to-market and collateralizing) to limit credit risk in ways acceptable to Security Pacific and its counterparties. Since the CFTC issued its 1989 policy statement creating a "safe harbor" for swaps from regulation under the Commodity Exchange Act, however, risk elimination mechanisms have been viewed as potentially dangerous, apparently because risk elimination is effected in exchange-trading of futures contracts. We see a counterintuitive element in this safe harbor scheme that encourages market participants to preserve risk to mitigate their regulatory exposure.

S. 207, as recently reported by the Senate Committee on Agriculture, Forestry and Nutrition contains similar anomalies with respect to swaps. The exclusion from CEA jurisdiction proposed in new Section 4(d)(1) of the Act extends only to swaps between end users, leaving the bulk of swaps involving market makers (who provide credit intermediation and liquidity to the market) with only the potential for exemptive relief following CFTC notice and hearing. The standards within which the CFTC would be able to exercise its exemptive discretion are ambiguous and entirely novel, and therefore unilluminated by precedent. Subparagraph (C) appears designed to preserve credit risk in swaps, while subparagraph (D), fairly construed, would deny the swap market the benefit of risk netting and potential clearinghouse mechanisms that both international and national bank regulatory organizations now view favorably.

S. 207, as reported, would cast a significant shadow on the legality of the existing swap market. Concerns that business would move offshore as a result of these proposals are certainly well founded. Additionally, the range of products available to domestic users would be diminished.

We are aware that various firms and trade organizations have been negotiating possible revisions to Section 302 of S. 207 with the CFTC. Our understanding is that the CFTC has been receptive. It is our hope that S. 207 generally will be subject, with the cooperation of the CFTC, to such revision as may be required to avoid both unnecessary overlaps of regulatory authority and the chilling ambiguity and confusion that may result if products beyond the scope of the commodity markets are viewed through a regulatory looking glass designed for the commodity markets alone.

If I may be of further assistance, please do not hesitate to call at (212) 836-5997.

Sincerely,

JOSHUA D. COHN,
First Vice President and Counsel.

MORGAN STANLEY,
New York, NY, April 4, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Securities Subcommittee, Committee on Banking, Housing and Urban Affairs, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of March 28th regarding Title III of The Futures Trading Practices Act (S. 207). We appreciate your efforts in addressing our industry's concerns with the legislation, and we are eager to assist you and your staff in analyzing its impact.

Several officers at Morgan Stanley have been working with our government relations representatives to communicate our concerns with Title III to the relevant agencies, including the Commodity Futures Trading Commission, the Securities and Exchange Commission and the Treasury. I have enclosed a memorandum we have prepared that presents our views on the market for swaps, hybrids and other similar financial instruments and the impact of Title III on product innovation.

I hope our comments are helpful and will look forward to hearing from you and your staff if we can provide any further assistance.

Thank you again.

Best regards,

RICHARD B. FISHER.

MEMORANDUM—RE: TITLE III, S. 207 THE FUTURES TRADING PRACTICES ACT, APRIL 4, 1991

Swaps, hybrid securities and similar financial instruments have emerged to meet the real economic needs of market participants. The development of these products is characterized by a high degree of innovation to meet market requirements, and their viability is often highly sensitive to market conditions. A product that makes economic sense one day may no longer make sense just a few days or even hours later. Swaps are generally used by market participants to manage exposure to price risk on interest rates, commodities and other financial indices and to allocate the price risk in an economically efficient manner. Hybrid securities and similar financial instruments provide capital formation opportunities for issuers, attractive investments for investors and opportunities for financial intermediaries to match buyers and sellers of the options and futures embedded in these products. These instruments were not contemplated when the Commodity Exchange Act (the "CEA") was adopted. As a result, under the language of the CEA, it is often not clear whether these new instruments fall under the jurisdiction of the Commodity Futures Trading Commission (the "CFTC"). In some cases, this uncertainty has stifled innovation, forced transactions offshore, increased the cost of capital to U.S. issuers and made the U.S. financial markets less competitive.

We would welcome changes that eliminate this uncertainty. Title III attempts to address these problems with a new specific exclusion for swaps, a new functional test for whether a hybrid instrument should be treated as a future and a new procedure for securing exemptive relief from the CFTC. While we recognize and are pleased that the thrust of these changes is to clarify that the CEA does not apply to instruments which bear only some incidental resemblance to futures, we do not believe that Title III as proposed will eliminate the majority of the uncertainty.

As you know the International Swap Dealers Association has been active in suggesting improvements to the language in Title III for the swap exclusion. Concerns have been raised that the proposed language may unintentionally raise new questions about the exclusion of swaps. Furthermore, Alan Greenspan, Chairman of the Federal Reserve Board, believes that the development of proposed netting arrangements for swaps may inadvertently be impeded by Title III.

In the area of hybrid securities, Title III's new 50% "commodity value" test while simple in formulation leaves much to the rulemaking discretion of the CFTC. Whether a 50% test will provide clear guidance and will exclude instruments that only have incidental elements of "futurity" will depend on the rules promulgated by the CFTC to implement the test. Experience has shown that rules to quantify the "commodity value" of an instrument would be impractical; rule making of this kind would be very difficult to develop and would need ongoing refinement to deal with innovative new products which test the boundaries of, and the assumptions used to develop, the rules.

Finally, the new exemptive procedures, although theoretically helpful, may not be of much practical use. As proposed, the exemptive procedures are limited to privately placed offerings and would not be available for publicly registered offerings. Excluding public offerings from the exemptive procedures severely limits their usefulness. Furthermore, the hearing requirements will lead to a time-consuming process that is inconsistent with the speedy time tables necessary to develop and offer instruments whose appeal may quickly disappear with the passage of time and a change in market conditions. Finally, the public hearing process may interfere with development of new products since proprietary technology may have to be shared prematurely with competitors in the hearing process.

While we believe that Title III attempts to address the difficulties with the current regime, more can be done to increase regulatory certainty and to provide a speedier mechanism to resolve jurisdictional issues. These changes will be necessary to insure the competitivenes of the U.S. financial markets, to promote innovation and to expand capital formation activity. We hope our comments have been helpful and would be pleased to provide your Committee and your staff with more information.

MORGAN STANLEY & CO., INC.

SOLOMON BROTHERS, INC.,
New York, NY, April 9, 1991.

Hon. CHRISTOPHER J. DODD,
Chairman, Securities Subcommittee, U.S. Senate, Washington, DC.

DEAR CHRIS: Thank you for your inquiry regarding Title III of S. 207.

You refer to concerns expressed by Messrs. Breeden and Greenspan regarding this proposed legislation. We share many of their concerns. We do believe that the version of Title III approved by the Agriculture Committee would have a crippling effect on the market for interest rate swaps in this country and on the development of new financial market products needed to reduce interest rate and currency risk in an uncertain world. A critical component of the intermediary function performed by both commercial and investment banks would be driven offshore, but more importantly issuers and institutional investors, including fiduciaries, would be forced to employ market alternatives (if available at all) that have inferior risk management capabilities.

Accordingly, we have, through the Securities Industry Association, worked to find common ground with the CFTC to offer significant revisions to Title III. If the modifications that appear to have resulted from that process were effected, Title III could become a useful measure to the extent that it clarifies the legal status of swaps and other hedging instruments.

Please feel free to contact Michael Andrews in our Washington office if we can be of further assistance in this matter.

Very truly yours,

JOHN H. GUTFREUND.

FREDDIE MAC,
Washington, DC, April 8, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is to provide you with the views of the Federal Home Loan Mortgage Corporation ("Freddie Mac") on S.207, a proposed amendment to the Futures Trading Practices Act of 1991 which addresses the so-called "exclusivity clause" of the Commodity Exchange Act (the "CEA"). Although the bill does not affect Freddie Mac's current business in a pervasive manner, certain aspects of the legislation could inhibit future activities, and, as a result, the fulfillment of the corporation's housing mission.

Our first concern is that the bill could potentially harm the continued development of swap markets. Although Freddie Mac's participation in swap transactions historically has been minor, we can foresee an increasing need to utilize this type of transaction. Interest rate and currency swaps are tools that we contemplate employing in order to manage interest rate risk. In addition, Freddie Mac recently has begun to tap global capital markets as a means of broadening the market for mortgage-related securites and lowering mortgage costs for American homebuyers. If, for example, Freddie Mac were to issue mortage-related securities denominated in a foreign currency, we would want to enter into a currency swap transaction to eliminate foreign exchange rate risks.

The proposed legislation increases uncertainty as to whether these types of transactions are permitted. The bill also appears to inhibit the development of margining and clearing systems that reduce the counterparty credit risks associated with such transactions. Freddie Mac encourages any effort to revise the bill's language to eliminate these potentially adverse developments. We would encourage a broad "exclusion" for swaps from the Commodity Exchange Act as opposed to the somewhat narrow exemptive power given to the CFTC under S.207.

The treatment of so-called "hybrid securities" also concerns us. Although it does not appear that any securities previously issued by Freddie Mac would be affected, the ability to be innovative in creating new securities could be affected, resulting in a disruption in the flow of affordable funds to the American homebuying public. The uncertainty relating to hybrid securities products could delay or prevent the creation of innovative security designs which otherwise would benefit both investors and homebuyers.

I hope this information has been helpful to you. Please do not hesitate to contact us if you require any further assistance.

Very truly yours,

MAUD MATER,
Senior Vice President, General Counsel and Secretary.

AMERICAN BANKERS ASSOCIATION,
Washington, DC, March 22, 1991.

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: The American Bankers Association ("ABA") wishes to express its strong concerns with the Futures Trading Practices Act (S. 207), as reported by the Senate Agriculture Committee. In particular, the ABA is extremely concerned about the detrimental impact that Section 302 covering exemptive authority and Section 303 governing hybrid commodity instruments may have on the development of new financial products. In large part, these Sections seek to extend the jurisdiction under the Commodity Exchange Act ("CEA") of the Commodity Futures Training Commission ("CFTC") over certain financial products. In our view, no need exists for the CFTC to regulate certain types of swap agreements, deposit accounts and hybrid instruments since they are either subject to regulation by federal and state banking authorities or do not have sufficient indicia of futurity to require CFTC regulation. The ABA is concerned that the manner in which these provisions have been drafted will have potentially wide ranging and undesirable effects on a vast array of existing and new financial products that may be offered outside of future exchanges. For example, as the bill is currently drafted, any financial product, including a deposit account, that does not satisfy all the enumerated prerequisites for exemption would be subject to CFTC jurisdiction. Given this potential for expensive and duplicative regulation by the CFTC of these deposit instruments, banking institutions will be reluctant to develop new and innovative products to suit the financial needs of their customers.

From a policy point of view, extending the jurisdiction of the CEA to require futures exchange trading for swap agreements, deposit accounts and hybrid instruments is both unnecessary and burdensome. Swap agreements are not offered to the public and financial institutions and securities firms, participants in the swap market, are currently subject to federal oversight and protection. Deposit accounts, while offered to the public, are also subject to comprehensive regulation by federal and state banking regulators. Hybrid instruments, to the extent they are structured as depository instruments, are similarly subject to comprehensive federal and state banking regulation.

Consequently, it is the ABA's position that these instruments, to the extent they are subject to federal or state banking regulator oversight or are not offered to the general public, should be expressly excluded from CFTC jurisdiction. The ABA is confident that any such exclusion could be drafted to ensure that the public interest is adequately protected.

The ABA would note that it would not support in any manner the total elimination of these provisions from the bill. Rather the ABA believes that the CEA should be clarified to exclude bank products currently subject to federal and state regulation from duplicative and potentially inconsistent regulation by the CFTC.

For example, an exclusion could be drafted for deposit accounts by removing current paragraph (d)(2) to Section 302 and, instead, inserting the following language in Section 2 of the CEA:

"This Act shall not apply to any demand deposit, time deposit, or transaction account (as defined in subsections (b)(1), or (c)(1), and (e) respectively, of Section 204.2 of Title 12, Code of Federal Regulations) subject to regulation by an appropriate federal banking agency."

This exclusion would ensure that new product development would not be stifled because duplicative and burdensome regulatory requirements would not be superimposed on existing bank regulation governing deposit accounts. Moreover, concerns that these instruments could escape any federal oversight would be avoided as the exclusion would be predicated on the deposit account being subject to federal or state banking regulation.

We appreciate the opportunity to express our concerns regarding Title III of S. 207. The ABA staff will be pleased to work with you and your staff to address these important issues for the banking industry.

Sincerely,

EDWARD L. YINGLING.

AMERICAN BANKERS ASSOCIATION,
Washington, DC, April 17, 1991.

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: The American Bankers Association ("ABA") wishes to express its strong support for the proposed amendment to be offered by Senators Bond and Wirth ("Bond/Wirth Amendment") to the Futures Trading Practice Act (S. 207). The ABA is the national banking trade association representing banks of all sizes and types, and in all locations. The asset of our membership represent approximately 95% of the industry total.

The ABA is extremely concerned about S. 207, particularly the provision applying to deposit instruments and loans. Specifically, the ABA is concerned about the detrimental impact those provisions would have on both the current legal status of these banking products, as well as future development of new financial products. For example, as presently drafted, S. 207 would provide that any deposit account that does not satisfy all the enumerated prerequisites for exemption would be subject to CFTC jurisdiction. As these accounts are already subject to comprehensive regulation by federal and state banking regulators, the ABA sees no need from a public policy point of view to subject them to a further layer of regulation. Moreover, given this potential for expensive and duplicate regulation by the CFTC of these deposit instruments and loans, the ABA believes that banking institutions would be reluctant to develop new and innovative products to suit the financial needs of their customers.

The Bond/Wirth Amendment would alleviate many of our concerns in this area. By providing that deposit instruments and loans offered by insured depository institutions are not subject to CFTC jurisdiction, the Amendment would clarify the legal status of these products. In addition, the Amendment would ensure that banking institutions will be able to continue to offer these bank products to their customers, as well as to keep pace with market demands by developing and offering new and innovative products that suit their customers' needs. Moreover, federal oversight over these products will be assured as they will continue to be subject to federal and state banking regulation.

The ABA appreciates the opportunity to express its full support for the Bond/Wirth Amendment. The ABA staff will be pleased to work with you and your staff to address these important issues for the banking industry.

Sincerely,

EDWARD L. YINGLING.

Mr. SIMON. Mr. President, I shall be very brief. I agree with some of the things that my colleague from Connecticut said. There is no question that the means that we have in this country for raising capital is extremely important to our country, which is one-fifth of the world economy, and important to the world. Just today, I think, in the Washington Post, maybe the New York Times, is a story about Poland's experiment in the stock market. They are going to open it up, I believe, in a few months. They have followed our means of raising capital, and they are trying to learn from us.

Second, I agree with the Senator from Connecticut in saying we should not worry about whose jurisdiction, whose toes we are stepping on. We have to do what is best for this country. But there is also on old saying, "If it ain't broke, do not fix it." And the system that we have is working basically pretty well.

Now, there has been some concern about margins. A year ago when we were talking about this not on the floor, but basically off the floor—I see Senator GRAMM, from Texas, here. We were talking about margins. And there has been a compromise here where we give jurisdiction ultimately to the Federal Reserve on that important question of margins. So, if the theory was correct—and I do not happen to believe it was correct—but those who say the futures market has been responsible for excessive velocity in the markets so that we can regulate it a little better, that has been taken care of.

The second major problem is the hybrid problem. Here my friend from Connecticut talks about if something is 51 percent one way or 51 percent another, there are going to be huge problems. They are rarely in these hybrids any 51 percent things. They are 80 percent, 20 percent. They are overwhelmingly one or the other. And the compromise that has been worked out here I think is a very practical compromise.

What the amendment offered by my friends from Missouri and Colorado would do would tilt things very dramatically in the direction of the SEC. And if we just ask ourselves which of the bodies has more problems within its jurisdiction already, the SEC or the CFTC, it is fairly clear almost every day's newspaper has some kind of an SEC problem. For us to shift more jurisdiction in that direction, I do not think makes sense.

Then, finally, Mr. President, I think one of the rules that we ought to follow in this whole area is the rule of prudence. Let us be careful. The Agriculture Committee, much to the credit of Senator LEAHY and Senator LUGAR, has come up with a carefully crafted answer that moves, but does not move too dramatically, moves more than the House. The House has simply reauthorized CFTC as it is right now. Candidly, we could leave that reauthorization as it is right now and I think have no jeopardy to the capital markets in this country.

But this compromise has been fashioned, and the futures industry has accepted this compromise. Frankly, I am a little surprised that they have accepted as much of a compromise as they have. But let us exercise prudence. Let us not accept in Bond-Wirth amendment that could cause real jeopardy to the future of something that is extremely important to the economy of this country and the economy of the world.

Mr. President, I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator from Texas.

Mr. GRAMM. Mr. President, I rise in support of the Agriculture Committee bill and in opposition to the Bond-Wirth amendment.

Mr. President, I guess everybody that has spoken today has said that this is a complicated, technical issue. In a sense it is a complicated, technical issue. But in another sense, we have voted on few issues in the 7 years that I have been in the Senate that have been any more clear-cut than this issue.

It is always instructive, when you are looking at a jurisdictional dispute, to go back and look at the source of the dispute. I do not want to go all the way back, but let me go back 3 years to talk about the source of the current controversy, because I think it is very instructive as to what we are talking about.

I remind my colleagues that 3 years ago there was an effort made by the Ag Committee to reauthorize the CFTC and to strengthen its enforcement powers. The Ag Committee had held a series of hearings. They had looked at problems that had emerged as the futures market had expanded and they sought to give more power to the CFTC to try to strengthen the market and to try to protect the public interest.

If we all think a little bit, we will remember what happened. What happened was that the SEC sought at that time to take jurisdiction over stock index futures from the CFTC and transfer them to the SEC. Three years later we are still involved in this debate.

Let me remind my colleagues a little bit about the source of that dispute. In 1978 an effort was made to trade stock index futures. A petition was made that they be allowed to be traded and the SEC, which is being portrayed to us today as this "fountain of all innovation and competition," looked at stock index futures and said, "They have limited utility. They have no demonstrated economic purpose." So the SEC said do not let these instruments be traded.

I remind my colleagues, that was in 1978. This whole story reminds me of an analogy, where a baby is born and the baby is ugly. So the mama of this baby puts this baby up for adoption. That, in essence, is what the SEC did in 1978.

They said we do not want this baby. This baby is ugly and we do not want to have anything to do with it.

So they put it up for adoption and along came the CFTC, which adopted this baby and took it off to the country. It grew up with its country cousins, pork bellies and grain futures, and it prospered and became one of the most important financial markets in the world.

Now, 3 years go by and the SEC comes back and says: "I love this baby. I want this baby back. This is my baby. I love it. I want it back." It cried great tears, demanded to have the right—maybe to kill the baby for all I know—but they wanted it back.

We were not swayed by those tears. We were not swayed and that effort was defeated. But our efforts to strengthen the regulatory powers of the CFTC were prevented from becoming a reality because of this jurisdictional dispute. Now we are back in round 2. Round 2 is called the Bond-Wirth amendment and before I get into it, let me remind my colleagues where we are in this debate because I think it is very important. I am sure a lot of legislative assistants are sitting in their offices—I hope you are listening to me; if you are, pay attention—trying to decide how to advise your Senator to vote. Let me remind you where we are.

First of all, the House dealt with this issue. They rejected all these changes. They adopted a clean reauthorization bill that simply strengthens CFTC's enforcement powers but does not get into this jurisdictional dispute at all. They do not have any intention of getting into it.

That is one half of this puzzle that is coming to the conference committee. When the Ag Committee, after 3 years of frustration, decided to work something out, the Treasury had opposed the CFTC's position and they sat down and worked out a compromise. This compromise, as one would expect, is an effort to come together and to work out an agreement.

They came together and worked out an agreement and it represented compromise on both sides—not unheard of, I would say, in the democratic process. This compromise was a compromise whereby the CFTC gave up its power to set margins. It gave it to the Federal Reserve Board. The fact that these margins have nothing to do with credit, and it makes absolutely no sense economically or logically, did not change the fact that it was part of the fabric of this compromise. The proponents of change wanted the Fed to have this ability to set margin requirements, even though the margin on a future is earnest money, whereas margin on a stock is downpayment on a loan.

But the CFTC made the compromise. The Treasury entered into an agreement and the agreement deals with hybrid products. Let me remind my colleagues that basically, while there is dispute about what the current law says—it was written before any of us on the floor were here; had we been here, of course, it would have been clearer—but that law basically says that anything that has any futurity in it belongs to the CFTC.

We can debate about that, but that is basically what the law says. What did the CFTC say in a spirit of compromise? The CFTC said: Look, rather than spending millions of dollars on lawyers, spend $10 on a calculator and basically, in a hybrid product that is part a future and part a security, if it is more like a security than a future, give it to the SEC and the securities market. If it is more like a future than a security, give it to the futures market and let it be regulated by the CFTC. And set up a simple process to try to calculate it. That was the essence of the compromise.

Now we are caught up in this battle of egos. Now the SEC, rather then claiming victory, which would have been wise, claims that this compromise is a great defeat. Those of us in politics understand you get defeats every day. But in any case we are now involved in this ongoing jurisdicational dispute whereby the whole 70-year financial regulatory process of the country is proposed to be turned on its head.

And that brings me to the Federal Reserve Bank. I have the highest regard for the Chairman of the Federal Reserve Board. He has been quoted many times today on the floor but let me try to place what he said in context.

First of all, he said that the committee bill before us is an improvement on current law. As compared to current law, he is in favor of the committee bill. If the vote is on adopting the committee bill or not adopting it, Chairman Greenspan is in favor of the committee bill. Nobody will disagree with that.

Chairman Greenspan, however, says there is a preferable alternative and that alternative is to allow financial instruments to choose which market they will trade on. Let me remind my colleagues that for 70 years we have had what is called functional regulation. Functional regulation is where we look at what something is, and then it is regulated by an entity that is specialized in regulating that type of financial asset.

Chairman Greenspan did not disagree with the thesis that this is counter to the current banking bill which is pending before the Congress, which is a movement away from letting different financial institutions choose their regulators. We had great experience with that, I might say, in the current financial crisis in the S&L's and the banks. In fact, for 15 years, virtually everything we have done in the name of regulation reform has been movement toward functional regulation.

The Chairman of the Federal Reserve Board is an economist and he believes that we ought to, in the equities and the futures markets, change 70 years of regulation and let new instruments choose which market they want to be in and who ought to regulate them.

Mr. President, maybe that is a good idea and maybe it is a bad idea. But it is a dramatically different idea than we have contemplated.

While I am going to argue that it is a bad idea, I guess I would say to my colleagues that if we are going to turn 70 years of regulatory process on its head, we ought to be doing that on a bill that is dedicated to that purpose, not a simple reauthorization bill for only one of the two affected agencies. If we are going to radically change the regulatory process whereby we regulate financial instruments in this country, we ought to hold many hearings, not one 90-minute hearing. We ought to have a bill dedicated just to that purpose. We ought to reauthorize the CFTC and then come back and adopt a bill to change dramatically the regulatory structure.

Mr. President, I do not think we are ready to do that. But let me explain why I think it probably is not a good idea.

First of all, futures and equities are not the same thing. That is why we have a Commodity Futures Trading Commission and why we have an SEC. If I sell you a stock, then that is an arm's-length transaction and I do not incur any liability in the process. If I sell you a future, there is an obligation for future delivery, and I take on some risk. The market for futures and the market for securities is fundamentally different, and that is why we regulate them separately.

Mr. President, while Alan Greenspan would like to change that and simply let these new emerging instruments choose their market, that is not really what the Bond-Wirth amendment does. It does not go as far as as Chairman Greenspan wants to go. It simply says that traders in futures can choose the equity market, but it specifically denies equities that are in this transition range on this continuum from moving in the other direction. It would allow stock exchanges to trade futures on individual stocks, but it would not allow these futures to be traded on a futures exchange. It gives the power of designation to the SEC, not to the CFTC, not to a joint determination.

Mr. President, if the logic of the Greenspan proposal is to allow new emerging instruments to choose, then we ought to let them choose and we ought to let them move in both directions. We ought to repeal the old agreements that prevented options from being sold on the futures exchanges. We ought to allow options to be sold anywhere and allow these hybrids to be sold anywhere.

That is not what the Bond-Wirth proposal does. The Bond-Wirth proposal is totally one-sided in that it allows futures to move under the jurisdiction of the SEC and, even further than that, it allows the SEC to have the power to designate.

Mr. President, what stuns me is that all of this is done in the name of competition, in the name of innovation. I ask my colleagues, is there anybody who is willing to say in the last 15 years that the SEC has allowed more innovation than the CFTC? In fact, Mr. President, I do not believe that the SEC would make that claim. I do not think any living person would make that claim. In fact, almost all of the financial innovation in the country has come from the futures exchanges which have been the very hub of innovation, not only in this country, but in the whole world.

In fact, I raised an example yesterday that I would like to raise again today: If stock index futures did not exist today, but came into existence in the future, and if the Bond-Wirth amendment as now written were the law of the land, and if SEC claimed jurisdiction and then refused to let them be traded, then, Mr. President, I am not certain that they could be traded.

Let me talk about foreign competition. What is the major impediment today to America's competitiveness on the world financial market?

Before I answer my own question, let me make it clear that we dominate the world market because we dominate the trading of American securities. But if we were going to take an action today that would increase America's competitiveness and increase our share of the world's financial market, what would we do?

I do not think we would adopt this amendment. I think we would by statute override the Securities and Exchange Commission which, despite requests by the New York Stock Exchange to be allowed to trade foreign securities and to interpolate from foreign accounting procedures to our generally accepted accounting procedures, has denied those requests. We would override the SEC and allow foreign securities to sell with the review of the New York Stock Exchange. That does not happen today because the SEC forbids it.

Mr. President, I have heard several examples of these phantom securities that are precluded from trading because of these jurisdictional disputes. There may be securities that have been precluded, but every time that I have tried to run one down—and I stand to be corrected because there are tens of thousands of them—but every time I try to run one down, it is either about to be traded somewhere else or it is being discussed somewhere else, or it turns out to be some gold index that is traded abroad because they did not want to meet the stringent reporting requirements in the United States.

So I am not claiming that every instrument finds America its home. What I am claiming is that we are the source of 99 percent of the innovation in the financial markets in the world, and at least 90 percent of that 99 percent comes in the futures markets under the jurisdiction of the CFTC.

Mr. President, what the Bond-Wirth amendment does is take half of the Greenspan proposal. It says "let futures trade on the equity market," but it does not say "let options trade on the futures market." It does not say let futures on individual stocks trade on the futures market.

Do my colleagues know why? Because the New York Stock Exchange is opposed to that. Mr. President, all we are saying is that you have freedom of choice in one direction. You have freedom of choice in the Soviet Union. You can join the Communist Party or not—at least in the Soviet Union prior to 5 years ago.

I want to be sure the equities markets of America understand what is going to happen if the Bond amendment is adopted. I hope we will be so wise as to reject the Bond amendment, and I feel increasingly confident we will. But I want to tell my colleagues, if this amendment is adopted, then I intend to come to the floor with other amendments and repeal all of the prohibitions that prevent options from being traded on the futures market and all of the prohibitions that keep hybrids from moving back in the other direction. If we are going to let futures trade on the equities market, why can we not have futures on individual stocks trade on the futures market?

Mr. President, listening to Chairman Greenspan yesterday, that is clearly the kind of regulatory regime he envisions, but that is not the regulatory regime that is going to be presented to us as an alternative either today or tomorrow. It is a one-way choice which raises the regulatory authority of the financial regulator that has been the least innovative and that has, in fact, tried to prevent the trading of stock index futures which have been the premier new instrument of the last 15 years.

Mr. President, in sum, we have a bill before us that is a compromise. It is, quite frankly, not my first choice. My first choice is to do what the House did, which is to leave the jurisdiction the way it is, to leave the commodity futures legislation as it now exists, so if something is a future it is regulated by the futures market; if it is a pure security, it is regulated by the SEC.

The problem is that while the proponents of stock index futures never had the votes to be successful, they had the votes that were sufficient to prevent us from reauthorizing a major regulatory agency and to prevent us from strengthening its ability to do its job. So in trying to accommodate the concerns, we have worked out a compromise. It is a compromise that is supported by the Treasury.

I know we have had a half a dozen people come over here and say, you know, the Treasury really would like to have had something else.

I do not know if that was an option they had. They may or may not have wound up with their second or third choice, but they made a decision and said "We do," and society respected it and most people were happy with it and rejoiced.

Whether this was the first choice of the Treasury Department is irrelevant. What is relevant is they have said "We are for this bill. It represents a compromise that we do support. It is a compromise. We did not get every single thing the way we wanted it, but we got enough that we are satisfied with it. We are signed on to it."

They have gotten the futures industry and those involved that have agreed to try to support this provision in conference. The Bond-Wirth amendment has no agreement. In fact, it is probably that no conferee would support that provision since the Agriculture Committee voted unanimously for the compromise.

So what did the Treasury get? They got part of what they wanted. They got an agreement that what they do get here, they are going to have an excellent change of getting in conference. They said a deal is a deal. We accept it. The Secretary of the Treasury is for it. The administration is for it. The administration has taken a position in favor of it. The Office of Management and Budget signed off on this position.

Now, all of a sudden, we have all of these people who are saying this really was not the President's first choice.

Well, Mr. President, all I know is the Treasury Department supports this provision. The Treasury Department opposes the Bond-Wirth amendment.

Finally, Mr. President, let me just say to those who like this idea of shopping the regulator, it is a new idea. It is not an idea that I have completely thought out. It is not an idea that I fully understand.

I would submit that probably there is not another Member, certainly not more than five, who have really had an opportunity to think through this revolutionary process. If we decide to go in that direction, it is something that ought to be studied for a year. We ought to have dozens of hearings, and we need a bill that goes both directions, not one direction.

So I urge my colleagues to end this 3 years of debate, reauthorize the CFTC, give them the strength they need to enforce the law and protect the public interest, accept this compromise which the Federal Reserve Bank says is an improvement on current law. Then, if we want, we could come back and have hearings—bring in expert witnesses, listen to the stock exchanges, look at trading options in Chicago, look at futures on individual stocks, let the New York Stock Exchange see if they really want that, let the Chicago Mercantile Exchange see if they really want that, give them a chance to be heard—and then make that decision.

My guess is we will not make that decision; it will not turn out to be a good idea; they will not be for it. But in any case, if we are going to decide that, we ought not do it here on this bill today.

So I urge my colleagues to support the committee's compromise—hard won, reasonable, practical. Reject the Bond-Wirth amendment. Now is not the time to turn 70 years of regulation on its head. And then, if this has merit, error alone needs the support of government. The truth will stand by itself. This idea will come up. We will debate it. We have 5 years for debate under the current reauthorization. If it has merit, we will end up doing it. My argument will be if it has merit, let us merge the two agencies.

Mr. President, it has been a long speech, but I think with all that has been said, it was important to try to put into the language of everyday people what the dispute is about. I hope my colleagues will reject this amendment when it is offered and let us get on with the business of protecting the integrity of America's financial markets, the best financial markets in the world, the envy of the world, with regulation that has been based on functional regulation.

I yield the floor.

Mr. CONRAD. Mr. President, I rise to strongly support S. 207, the Futures Trading Practices Act of 1991. I might note that I supported this bill when it passed the Senate Agriculture Committee in 1989.

This piece of legislation has been a long time coming. I can say, as a member of Senate Agriculture Committee, this has been scrubbed and washed and reviewed and analyzed so long that I think everyone ought to be ready to accept the reasonable compromise that is embodied in this bill.

Mr. President, very simply, this legislation is designed to strengthen the regulation of futures trading in the United States. The purpose is to assure that U.S. futures markets are most efficient, the most honest, and the most fair in the world. It makes several important changes in the operations of the Commodities Futures Trading Commission and of the futures exchanges.

First, as a consequence of the 1989 hearings—and I might just say to my colleagues who are listening, those and the 1991 hearings were extensive. We have heard some assert that this bill has not had a thorough review, that there have not been extensive hearings. I do not know where they were, but they were not sitting in that hearing room hour after hour when we heard witness after witness testify as to their views on the legislation before us.

First, as a consequence of those 1989 hearings, the futures industry is already well on the way to developing a computerized system of tracking floor trades which will allow closer regulation and supervision of floor traders.

Mr. President, I came to this body as a former State tax commissioner. I have had hundreds of auditors working for me. I know the necessity of having a good audit trail in order to assure ourselves there is not fraud in the markets.

The question before this body is very simple: Are we going to take action once and for all to assure the American public that they are safe, that they are secure, that they can be reasonably assured that they are protected from fraud and abuse in these markets?

Mr. President, this bill also strengthens the conflict of interest rules. I was instrumental in obtaining that strengthening of the conflict of interest provisions which are in this bill. My provision prohibits members of governing boards from participating in issues before the board in which they have a financial interest.

That sounds like an entirely reasonable thing. One would have expected that was already in the law. Unfortunately, it was not. That is hard to believe. We actually had people making decisions on issues before governing boards in which they had a financial interest.

Third, and particularly important, the CFTC is given additional regulatory powers and resources to more closely monitor the exchanges. One of these additional powers includes the second of my amendments. My provision allows CFTC to suspend from trading those who are caught violating the rules so they can be immediately removed from the fiduciary role of serving customers.

Mr. President, hard as it may be to believe, people who had been indicted for fraud and abuse were actually allowed to continue operating in the marketplace, buying and selling on behalf of clients. It is hard to believe. But that occurred. It could occur again unless we take action.

That is why this legislation is important. The Senate Committee on Agriculture passed this legislation unanimously. Every single member of the Senate Agriculture Committee that sat through weeks of hearings, hours and hours of debate, signed off on this legislation—not one dissenter. Every Republican, every Democrat, is on board with this legislation.

We have worked on a bipartisan basis with a wide variety of groups to develop a fair and effective piece of legislation. Not only have farmers and commodity groups participated in developing this bill, but also the Commodities Futures Trading Commission, the Department of Treasury, the Federal Reserve Board, the futures industry, the securities industry, the swaps industry, the banking industry, and other interested parties as well.

We have listened and we have been willing to make the technical adjustments in the language to assure that the legislation is specific and fair, and within the jurisdiction of the Agriculture Committee.

The futures markets comprise an industry essential for managing risk by sellers and buyers of commodities whether those commodities are wheat, oil, or stocks.

In addition to those hedgers, a small group of professional traders also engage in futures trading. Commodity prices are extremely volatile, moving in response to changes in the weather, international policy, trade policy, technology, interest rates, and currency exchange rates. Trades on futures exchanges are risky because futures trades are essentially bets that the prices of commodities will move in a particular direction.

I can tell you, Mr. President, there is nothing more volatile than commodities prices. However, precisely because of the volatility of commodities prices, futures markets are essential to risk management for a broad spectrum of businesses and individuals, ranging from wheat and cattle producers in North Dakota to managers of retirement fund portfolios with large investments in stocks and bonds. It is critical that this industry be regulated efficiently and fairly. This legislation, in my judgment, does that.

Title III of the Futures Trading Practices Act encompasses compromises on a number of highly controversial issues. First and foremost, the Federal Reserve Board is given authority to determine margins for stock index futures and stock index options traded on futures exchanges. This change was adamantly opposed by many and is a major component of the compromise.

I might say that the CFTC gave up significant ground in this compromise. They previously had jurisdiction in this area and they were willing, as part of a constructive compromise, to give up that margin setting to the Federal Reserve. I think that point should be noted. There are those who suggest the CFTC has been unwilling to compromise. In fact, they have given significant ground in the legislative vehicle before us.

I believe that change is important because it is good policy to coordinate the margins of stocks and stock index futures.

Second, the Commodity Futures Trading Commission is given authority and direction to exempt swaps from regulatory oversight if those swaps meet certain criteria. CFTC is given residual authority to reregulate swaps markets that do not operate in the public interest.

The committee did not believe the Federal Government should allow a major futures-type financial industry to be totally without regulatory oversight of any kind.

We will not allow the circumstances to arise that would see a repeat of the savings and loan debacle on our watch. As long as there are no abuses, the exemption of swaps from day-to-day regulatory oversight will continue.

The committee does not anticipate any of the current participants in the swaps industry are engaging or wish to engage in fraudulent activity. However, we are aware there are people in this world who are not completely honest and, unfortunately, some of them find their way into the futures markets, into the swaps industry, and should have ovesight.

Third, Mr. President, the controversy over trading stock index participations, securitized futures contracts, on stock exchanges is resolved by allowing these instruments to be traded on stock exchanges under a grandfather clause if they were created prior to December 31, 1990.

This seems to be the only way to settle the problem because, while the courts have ruled that stock index participations are futures contracts and should be traded on futures exchanges, a number of the Members of this body continue to demand that stock exchanges be given authority to trade these instruments.

Mr. President, this is a compromise in the best sense. It is a very difficult issue and ultimately we decide it. The fairest way to conclude it was to allow those who have already been trading on there exchanges to continue to do so.

Fourth, title III provides a compromise resolution of the controversy over hybrid instruments which have characteristics of both futures contracts and stocks or bonds.

Fundamentally, hybrids are those instruments that have both an element of futurity to them, but also have an element of security to them. The CFTC is provided with the authority to exempt certain instruments from its jurisdiction even though they are futures type instruments.

In addition, the compromise allows hybrid instruments with futures characteristics whose value is less then 50 percent dependent on the change in commodity prices to trade on stock exchanges.

This is a bright line test. That is what legislating is all about. In very complicated circumstances, we are asked to draw a line, to make a distinction. That is what we have done. Is it a perfect line? No one can honestly stand here and say, absolutely, this is where the line should be drawn.

Mr. President, there is no perfect answer to this question. Unfortunately, the controversy before us demands resolution. If we are going to protect the investing public, we have to make a decision.

The worst thing we could do in my judgment is to draw some fuzzy line, some line that would lead to endless litigation and controversy in the courts. What we have done is to say we are ready to draw that line, to draw it clearly and distinctly so that we do not find ourselves with 10 years of litigation and controversy in the courts.

Mr. President, it should be understood this compromise sharply reduces the authority of the Commodity Futures Trading Commission by eliminating from CFTC jurisdiction many instruments which have futures characteristics.

Just to review where we started this story, in current law CFTC has exclusive jurisdiction over futures instruments.

The CFTC is giving up jurisdiction, just as they did on the question of setting margins. Once again, in a good-faith attempt to compromise, they gave up jurisdiction.

This element essentially guts the 1974 provision that all futures contracts are to be regulated by the CFTC. The purpose of this compromise is to provide a fair and reasonable division between the regulatory authorities of the SEC, Securities and Exchange Commission, and the Commodity Futures Trading Commission, the CFTC.

I personally believe that this compromise is fair and reasonable for both the futures industry and the stock exchanges; but, most importantly, for the investing public.

Mr. President, our bottom line responsibility here is to all parties to the dispute. Clearly, we have concern about the futures industry in those parts of the country that are heavily dependent on agriculture. We also have a concern, in our role as stewards of the public interest about the stock exchanges of this country. But, most importantly, we have an obligation to the investing public.

This legislation advances the interests of the investing public. It continues to provide the investing public, particularly small investors, with a clear distinction between playing the more risky futures markets used by hedgers and professional traders and making less risky investments in publicly traded corporate stocks.

That is a very important point, Mr. President, very important. The futures markets are highly risky, and the investing public ought to understand that there is a distinction between investing in futures instruments and investing in stocks and bonds.

Mr. President, this provision continues to provide the investing public with that very clear distinction. It also provides a reasonable Federal oversight of margins on stock index futures. It provides rational Government policy on swaps, and it achieves a reasonable settlement of the stock index participations issue.

This is an excellent compromise, which protects the public interest while allowing for innovation and competition. The Futures Trading Practices Act, S. 207, should not be controversial. Unfortunately, this reform legislation has been caught in a jurisdictional dispute with the Securities and Exchange Commission. That, in my judgment, is regrettable. The SEC has a long and honored tradition, and has worked with the CFTC in the past to resolve jurisdictional issues arising from the development of hybrids.

Some people would like to deregulate the trade in futures contracts by allowing these highly risky instruments to trade on stock exchanges and to be sold by stockbrokers. Regardless of what they are called, these hybrid futures contracts will be futures contracts whose value depends on changes in commodity prices.

Proponents of this view offer dozens of arguments for deregulating futures contracts. However, the basic underlying reason for advocating the change is that the stock exchanges wish to make money by selling futures contracts retail to small investors.

Mr. President, this would be a very serious mistake for several reasons: First, some argue that futures contracts and stocks should be traded on the same exchanges. This, in my judgment, would harm the investing public. By making a clear separation of futures markets from stock markets, consumers are clearly warned against dabbling in futures contracts, unless they have a sound reason to hedge risk.

Exposing an unsuspecting public to hundreds of new futures type instruments traded on stock exchanges is a prescription for financial disaster for thousands of Americans. How will we explain this sudden change to retired Americans, who thought they were investing in stocks, but lost their life savings on risky futures contracts traded on stock exchanges?

Mr. President, I hope our colleagues will think very carefully of what kind of confused and mixed messages we will send the American public, if we make these radical changes without so much as a hearing focused on the specific elements that are in this new amendment before us.

Second, some argue that limiting futures contract trading to futures exchanges denies retail investors the ability to invest in instruments of their choice. Contrary to this assertion, retail investors may currently purchase futures contracts on futures exchanges. Furthermore, futures contracts are risk management tools. Users of futures who are managing risk are called hedgers. They are hedging risk. Users of futures who are not hedgers are often called speculators.

Do we really want to recruit a whole group of small invetors across America to be speculators? Is that really what we are about here in this Chamber? Is there an unsatisfied group of small speculators who are anxious to put their money at substantial risk? If so, they can already speculate on futures contracts under the careful regulation of the futures exchanges and the CFTC.

Third, some argue that exchanges should be able to trade any kind of instrument they want, whether it is a futures contract or a stock. This is really an argument that the regulation of stocks and futures should be subject to identical rules. It is not a sound argument.

The regulation of futures exchanges differs substantially from the regulation of stock exchanges because of the nature of the instruments. Futures trades are risk management tools. Stocks and bonds are claims on corporate entities. Separation in trading allows for specialization in regulation. Dual regulations would be required to properly regulate futures contracts traded on stock exchanges. One set of regulations would be required for stocks, and another for futures contracts.

Fourth, some argue that a level playing field for the two types of exchanges will be created by allowing creators of new instruments to select the exchange in which they will trade.

Mr. President, that is an open invitation to deregulation, because new instruments will be traded on the exchanges which regulate the least. In the case of futures contracts, the least regulation can be expected from the SEC. That is clear. That will not create a level playing field; it will create another deregulation disaster for the American public.

Fifth, some argue that the United States needs to allow stock exchanges to trade futures contracts, the so-called hybrids, so that we can be competitive in the world. In fact, our futures industry is already highly competitive nationally and internationally. Our futures industry has led the way in creating new risk management instruments for trading internationally.

Sixth, some argue that not allowing futures contracts—again the so-called hybrids—to be traded on stock exchanges damages the ability of U.S. corporations to raise capital. It is important to remember that future contracts are for the purpose of hedging risk, not raising capital.

No one can seriously believe that it will help U.S. industry to get heavily involved in speculative activities by buying and selling futures contracts. To assert that futures-type contracts are needed on stock exchanges to facilitate the raising of capital is to seriously confuse the purpose of capital raising and risk hedging.

Seventh, some argue that the 50-percent test designed to determine whether an instrument is a futures contract or a stock or bond is unfair because it is inherently unworkable and because the CFTC would not apply it equitably.

In fact, the record shows the test is workable, and the CFTC has provided numerous examples of how it will be used for various instruments.

Financial instruments whose value is 50-percent dependent on a play in the commodity prices are risky and should be considered for trading on futures exchanges. The CFTC has not and will not abuse power to regulate futures-type contracts. The CFTC, in fact, is losing jurisdiction under this compromise.

I have no interest in participating in a destructive deregulatory scheme promoted by various parties. Futures contracts are extremely risky by nature. They are also essential to risk management for a large number of industries.

Might I say that other members of the Agriculture Committee have no interest in participating in a destructive deregulatory scheme either. Futures markets work best when carefully and cautiously regulated. I believe that is verified by the 800-percent increase in trading of futures contracts since the implementation of the 1974 Commodity Exchange Act.

Eighth, some argue that the swaps compromise is destructive of the swaps industry. In truth, the number of technical corrections and compromises have been made in the swaps language, the swaps industry has signed off on the new language and is supporting the bill.

Mr. President, in conclusion, I strongly support this carefully crafted compromise. The Department of Treasury also supports the compromise. We have tried to draw a very careful line between the jurisdictions of the SEC and the CFTC. Many will argue that this line should be shifted a little one way or the other. In truth, this legislation has moved the line between SEC and CFTC jurisdiction in favor of the SEC on hybrid instruments.

My colleagues who oppose this compromise are, I believe, well intentioned. They are, however, advocating a position which is anticonsumer, antismall investor, and which, if implemented, would mislead the American public. Deregulated the sales of futures-types contracts will put at risk the savings of thousands of retirees and other small investors unnecessarily.

Let me conclude by saying again that I strongly support the careful compromise embodied in the Futures Trading Practices Act of 1991 and urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from Missouri.

Mr. BOND. Mr. President, a number of things have been said about the proposed amendment that, frankly, have been said very eloquently but are not truthful. They do not reflect the real situation. I think it is important that we take a few moments and point out what the proposed amendment does and what it does not do.

First, let me comment, in reponse, that this destructive deregulatory scheme which we have heard is so vehemently opposed was in fact the basis of the compromise that was worked out last year by five Senators who are very much concerned about the problems with hybrids, the problems in the conflict between the CFTC, and the SEC and the need to establish Federal Reserve authority over stock index futures margins.

The five Senators, I restate one more time, who agreed upon that compromise were the chairman of the Agriculture Committee, the ranking member of the Agriculture Committee, the chairman of the Securities Subcommittee of the Banking Committee, the ranking member of that subcommittee, and me, who happens to have the great pleasure of being the only member who was serving on both committees. To say that it is a destructive deregulatory scheme, I am afraid, is a flight of fancy and hyperbole that we have to call to task.

We are not talking here about allowing futures to trade on stock exchanges or securities to trade on futures exchanges. There is a very clear body of law which says that the things that are clearly futures, 100 percent futures, the "plain vanilla futures," will and must trade on futures exchanges. Similarly, stock equity products are going to continue to trade on stock exchanges. We recognize in the proposed amendment the Johnson-Shad accord which divided jurisdiction between the SEC and CFTC in 1982. Contrary to what some of the opponents to the Bond-Wirth amendment say would be unacceptable, the amendment would allow people to choose whether they want to buy a stock index future or a stock index option. We have competition now between futures exchanges and stock exchanges. If you want to make a hedge or take a position based on where you think the stock index is going to go, you go to the futures exchange or you go to the securities exchange. That is competition that is good. That is what Chairman Greenspan said was good.

My dear friend from Texas said this is simply a battle of egoes. Having watched a litle bit of this battle, I will have to say that some of the regulators do get quite heated, and I guess, in all candor, I ought to confess that some of the Members of this body get quite heated and get themselves deeply involved in the arguments. But let us not say this is a battle of egoes when we already have a clear-cut statement by people who are involved in this regulatory field that the Bond-Wirth amendment, the amendment that I prepared with my colleague from Colorado, is a significant improvement over S. 207 as it applies to title III.

The Federal Reserve Chairman, Alan Greenspan, has said clearly the Wirth-Bond amendment is preferable. So has Bob Glauber, of the Treasury, who said that the Treasury had agreed to accept the language of the hybrid section because they wanted margins, but when pressed by the chairman of the Banking Committee and the ranking member yesterday, he said, yes, Bond-Wirth is better. Yes, clearly as a matter of policy, it is better. The Securities and Exchange Commission has presented its view. Certainly the testimony of Richard Breeden, the Chairman, yesterday was very persuasive. But I hope that my colleagues have had the opportunity also to read the letter from Mary Schapiro, an SEC Commissioner. It was introduced earlier today by Senator GARN. Commissioner Schapiro comes with the unique qualification of having served as counsel of the CFTC and as counsel to the Futures Industry Association. She knows both areas very well, and she said clearly the time has come when we have to do something about the exclusivity clause. I could give you a list of the many organizations. I am going to confine it to organizations and not just individuals, who have written to us saying that the Wirth-Bond amendment is preferable: The New York Stock Exchange, the American Exchange, the Office of the Controller of the Currency, the Federal Deposit Insurance Commission, the American Bankers Association, the Securities Industries Association, the Options Clearing Corporation, the Securities Traders Association, and the International Swap Dealers Association.

Wait a minute. I believe my colleague from North Dakota mentioned the International Swap Dealers Association. We have here a letter of April 15, 1991, from the International Swap Dealers Association, and it lists the members. It says in conclusion the members of ISDA believe it is of the utmost importance that the 102d Congress enact legislation. The CFTC proposal is a significant improvement over S. 207 as it was reported by the Agriculture Committee. The alternative proposal, which is the proposal submitted by my colleague from Colorado and me, would provide market participants with broader and cleaner assurances regarding inapplicability of the CEA to the swap business. Mr. President, I will provide my colleague from North Dakota and submit for the RECORD later on a copy of that letter for their information.

Mr. CONRAD. Will the Senator yield on that point?

Mr. BOND. I am happy to.

Mr. CONRAD. I do not know if the Senator has seen the letter dated April 15.

Mr. BOND. Yes.

Mr. CONRAD. I do not know if the Senator has seen a letter from the International Swap Dealers Association dated April 16. But I have in my hand that letter addressed to the chairman of the Agriculture Committee. At this point, with the Senators forbearance, I would just like to read into the RECORD the very short letter from the International Swap Dealers that says clearly they are supporting S. 207 as amended.

Perhaps I do not need to read the whole letter. I will just put it in the RECORD with the Senators' forbearance so other Members can see for themselves.

They had earlier responded to S. 207 prior to technical amendments. Now when they had a chance to review it with the amendments they are supporting the bill just as I indicated. I can understand the confusion given the fact that there were two bills—the bill as reported from the committee, versus the bill after being amended by the committee amendment.

I ask unanimous consent that the letter be printed in the RECORD.

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

INTERNATIONAL SWAP DEALERS ASSOCIATION, INC.,
New York, NY, April 16, 1991.

Hon. PATRICK LEAHY,
Chairman, Committee on Agriculture, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: This letter responds to your request for clarification of our views regarding the provisions affecting swap agreements contained in the proposed substitute for Title III of S. 207 submitted to Senator Leahy on April 9, 1991. Members of International Swap Dealers Association, Inc., including 136 commercial banks, securities firms, insurance companies and others, act as dealers in swaps.

As we have stated before, we believe it is essential that the 102nd Congress adopt legislation that will provide legal certainty for the $2.5 trillion swap business by confirming that the Commodity Exchange Act does not apply to swap transactions. Unfortunately, S. 207, in the form it was reported by the Agriculture Committee, did not provide the needed certainty and was potentially harmful to the competitive position of U.S. firms in the worldwide swap business. We discussed these problems in detail in our April 9, 1991, letter to Senator Dodd.

In light of the problems with the swap provisions of S. 207 as reported by the Agriculture Committee, we appreciate the willingness of the CFTC to participate in detailed discussion of these provisions, and the substantial efforts that have led to the language contained in the substitute for Title III. It represents a significant improvement over the provisions in S. 207 as reported by the Agriculture Committee. In addition, even though this language does not incorporate all of the changes that we would consider important, we nevertheless believe that it represents a significant improvement over current law and if enacted would be both acceptable and beneficial to the industry and other users of swaps.

Respectfully submitted,

MARK C. BRICKELL,
Chairman.

Mr. BOND. I thank my friend from North Dakota. We will be delighted to see what position they take tomorrow. It will be of great interest and I will submit that for the record when we receive a copy of it.

But let me go back to the matter of the importance of changing the exclusivity clause. The reason it is absolutely essential now that the exclusivity clause be changed is that the exclusivity clause has been used to drive offshore markets from the U.S. market, instruments which have been developed for trading on the securities exchange, instruments which are being offered by federally insured banks as a means of either raising capital or providing market opportunities.

The index participation products was offered for trading on the American Stock Exchange and the Philadelphia Stock Exchange. It was approved by the Securities and Exchange Commission. There was a suit filed by the Chicago futures exchanges and the court said, although apparently not convinced of the policy soundness of the argument, the fact that there was some futurity in it meant that the exclusivity clause banned this instrument from trading anywhere but on a CFTC exchange.

The result is that that product has been driven offshore. That product has gone to Toronto to trade, and we understand it will trade in London. Similarly, the Wells Fargo Bank offered a certificate of deposit whose return was tied to a commodity, and the CFTC, despite the fact that the Wells Fargo was subject to bank regulations, exerted the exclusivity clause to prevent trading in or the sale of that CD. This has been used as a sword to stop competitors from the futures industry from offering innovative products.

As I said earlier, we are not talking about what is known as a plain vanilla future or plain vanilla security. I might refer back to the orphanage example, a very colorful example offered by my colleague from Texas. He said that the Securities and Exchange Commission abandoned that ugly orphan, the stock index futures, and they wanted to go back after it became a great success and decided yes, we love you now, we want you back and we want all of it back.

Well, frankly, under the exclusivity clause, not only does the futures exchange which adopted the stock index futures have the exclusive right of that orphan or that financial product, and it and its godfather, the CFTC, have the ability to say to all of the people in the neighborhood you cannot go back and accept any more orphans from that orphanage unless you get our approval or unless you let us take that child. The child cannot be adopted by an institution or a market in the United States. That child, that new financial product, can only be adopted in Tokyo or London or Luxembourg or Toronto. That is where our markets are going.

My colleague from Texas said, has the SEC allowed more innovation than the CFTC or has the CFTC allowed more innovation than the SEC? Good point. Clearly there is tremendous innovation on the CFTC and the CFTC-regulated exchanges. More power to them. I say that is great. Let them go. That is what the amendment proposed by the Senator from Colorado and myself would do.

What it would change is the ability of the CFTC or its regulated exchanges to say to somebody else, oh, you are proposing a new instrument, a hybrid instrument that is part future and part security. You cannot trade it. That is the situation we have now. And that is why our markets are being driven offshore. The U.S. financial position is being greatly eroded as a result.

There are questions raised about dual regulators. Why we could have dual regulators. Well, the assertion that it is unprecedented to allow a regulated entity to choose its regulator is just plain wrong. For years we maintained a dual system of bank regulation. Banks have a choice of a State or Federal charter and thus can be regulated by the Office of Comptroller of the Currency or the appropriate State regulator. In addition State banks can choose to be members of the Federal Reserve system or not, and thus can choose whether their primary regulatory is a Federal Reserve or FDIC.

Conversely, the savings and loan to which my colleague from Texas referred only had one Federal regulator, the Federal Home Loan Bank Board. But it was inept and ineffective.

My point is not to hold up the bank regulatory agencies as models of effectiveness. They are not always. My point is the problem is not whether regulated entities can choose who regulates them, but rather how prudent and tough the statutes that the regulator enforces is.

To continue with the banking metaphor, no one is suggesting the problems in the banking industry would vanish if we merged the regulatory agencies and did nothing else. We are looking at the whole package of changes in the underlying statutes.

Clearly, the proponents of the bill, S. 207, say that it simply applies the so-called functional regulation, and that the Bond-Wirth alternative lets people pick their regulators. The real problem is that banks, insurance companies, and securities already have a regulator and the CFTC has decided that it wants to regulate their products as well. But we do not need to bog down companies with a host of regulators with duplicative and inconsistent rules.

The CFTC believes that it should regulate all financial products that serve a riskhedging function. But as Chairman Greenspan has pointed out, there are a host of products that are already adequately regulated by bank regulators, securities regulators and insurance regulators that perform a risk shifting function.

The alternative that we will propose does not permit banks, securities firms, or insurance companies to issue or trade futures. Congress gave the SEC no authority to approve futures contracts for trading in security markets anymore than it gave the bank regulators authority to permit banks to issue futures contracts. The alternative we propose does not change that result. The problem is, under current law there is no end to what the CFTC considers to be a futures contract. It is not defined in the law.

If we applied the functional regulation to all financial firms, as I said, we might wind up with a single regulator. There is no functional difference between a checking account provided by a bank and a money market mutual fund offered by a securities firm. There is no difference in many respects between a mutual fund and an annuity contract offered by an insurance company. We might even go further and say that an index participation as it was offered on the securities exchanges was in essence a mutual fund.

The small investor could get into it for $15,000. To get into a futures index on the stock exchange, he would have to have $150,000 to put at risk. Certainly, this is a much more available product for the average family who wants to have a diversified interest in the stock market. As far as regulation and protection, contrary to what my colleague has just said, certainly there is a wide range of regulations and laws in the brokerage business, administered by the SEC and self-regulatory organizations that provide the protections that the small investors need.

With respect to products that are both securities and futures, the alternative that we will propose will let these hybrid products be regulated either by the CFTC or the SEC, based on the market in which they trade. Congress gave the CFTC the function of regulating the futures market. It gave the SEC the function of regulating the securities market. The alternative we intend to propose will provide for real functional regulation by making these agencies perform the functions that Congress gave them.

Finally, as a matter of competition for financial markets, the Bond-Wirth amendment does not change the underlying system of futures regulations or securities regulations. I would point out a couple of interesting comparisons. Let me ask the question. If you were a company with a financial product with elements of both a security and a future, who would decide whether to trade on a futures exchange or a securities exchange? If you are in London, the company can choose it. In Paris, the company can choose it. In Zurich, the company can choose it. In Luxembourg, the company can choose it. In Frankfurt, the company can choose it. In this country, currently, under existing law, it cannot go anyplace but a CFTC-designated market.

Even under S. 207, based on the tests they have provided, the CFTC is the one that devised the test. They would be the ones that prescribe the test. And a judge could make that decision.

Under the proposal we will offer, the company offering that product could make that decision.

Similarly, only in the United States can you be sued by a futures exchange for offering a financial product with elements of a future on a securities exchange. You cannot be sued in London, you cannot be sued in Paris, you cannot be sued in Frankfurt, you cannot be sued in Tokyo, in Amsterdam, or Hong Kong. That is why more and more products are being driven overseas.

The swaps market is, I think, in real danger of being driven overseas, and I believe that the compromise or the alternative that will be proposed will give a much clearer option to the company wishing to provide or sell an instrument, as to how that instrument is structured and where it trades. That is the kind of competitive opportunity that will strengthen our financial markets and not drive them abroad.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. AKAKA). Without objection it is so ordered.

IRAQ

Mr. D'AMATO. Mr. President, I would like to make several observations.

Much has been said recently about the United States action, lack of action, lack of world reaction to what is taking place in Iraq. Let me first say that we should not take exception with the efforts that are being undertaken at this time. Reasonable people may second guess and offer their own conclusions or solutions to a very complex problem. They may say we should have acted sooner, but we are acting and that is what is important, and it is necessary.

I say that I am pleased that the President has undertaken an action that will at least give some temporary refuge to the poor Kurds and to other innocent civilians who have been victimized by this madman, this terrorist, this butcher, Saddam Hussein.

Let me offer this as not a total solution, but at least as a manner by which we can address some of the problems.

Recently we heard that Iraq has petitioned the United Nations to lift the sanctions, to allow it to sell a billion dollars' worth of oil, so that it can buy desperately needed food, medical supplies, and other things for its people. Let me suggest that we do lift the sanctions, but we see to it, because we can control the flow of both oil and revenues, by way of agreement, that those moneys go for the refugees first, for the Kurds, for the Shiites, to pay for this massive effort. And it will be a massive effort, it will be an effort probably bigger than any we have seen in our lifetime in such a short period of time.

So let us use that money and see to it that that money goes to its rightful purpose.

Second, if we are going to say that is the end of this situation because we have nicely washed our hands and we have provided safe haven—and let us hope that we can—that is not going to be an easy job; it is going to be a job that takes time, effort, and money, and I can suggest some of the ways we get some of those moneys and I think it is appropriate that we have to stand up for something.

Let me also suggest that it is hard for me to believe that our European allies in the European Community had the good sense and judgment to finally step up to the plate, not needing us as a prod, to say Saddam Hussein should be tried as a war criminal. I think he should. I think we should tell the Iraqi generals who are still following him that we will not lift the sanctions as it relates to the normal intercourse of business, that they will be treated as the pariahs that they are. Make no mistakes about it, that we will use the world power economically and militarily if necessary to protect innocent civilians. You cannot have it two ways.

So while we commemorated just a week ago and had a great ceremony to the memory of 6 million people who perished because the world stood by indifferently, I do not think that what we are undertaking is sufficient to meet the needs of these people or to really cleanse ourselves of what is an obligation that each and every one of us has, the United States has and the world community.

I hope that we would be in the forefront of this effort.

Mr. President, I yield the floor.

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

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

FUTURES TRADING PRACTICES ACT

The Senate continued with the consideration of the bill.

Mr. FOWLER. Mr. President, I rise to support reauthorization of the CFTC, as unanimously reported from the Senate Agriculture Committee.

I rise in opposition to the amendment proposed by my colleague, the Senator from Missouri, which would fundamentally alter what was agreed to in committee.

This legislation is highly complicated, because it deals with complex subject matter. Unfortunately, it has been severely mischaracterized in some quarters. The controversial parts of the bill have the following consequences:

MARGINS

For the first time, the Federal Government, through the Federal Reserve

Board, has authority over margins on stock index futures.

EXCLUSIVITY

The CFTC's jurisdiction is dramatically reduced by rolling back the exclusivity clause. The bill creates an objective predominant characteristics test. This bright line test allows innovation to proceed by letting the offerer know objectively and up front whether the hybrid instrument will trade under futures regulation or securities regulation.

SWAP DEALERS

Broad exemption authority is required in order to allow the swap market to develop in a competitive and innovative environment. However, the bill ensures there is no regulatory black-hole that would otherwise allow an unregulated futures exchange to develop.

GENERAL EXEMPTIVE AUTHORITY

For the first time in the 70-year history of Federal regulation of futures trading, the Commission would have exemptive authority with sufficient flexibility to address new products quickly. This will allow the development of new products and market systems, but ensure that appropriate regulatory and customer protection safeguards continue.

Proponents of this amendment argue this legislation will restrict competition and inhibit the development of new products. I am not one to stand in the way of progress. Nor am I willing to permit the development of unregulated financial markets that could develop from this "jump ball" approach offered today as an alternative.

This legislation will not restrict competition. It will not prevent the development of new products. Specific provisions have been incorporated into this agreement to insure our financial markets remain competitive world wide.

For instance, this legislation provides an outright exemption to the Commodity Exchange Act for a number of instruments—most hybrid debt instruments, all customized swap agreements, and all otherwise regulated commodity-valued bank deposits.

Furthermore, S. 207 empowers the CFTC to exempt any instrument from the Commodity Exchange Act and the exchange trading requirements "in order to promote fair competition."

If nothing else, the S&L debacle has shown us we cannot affort to allow the development of a regulatory black hole.

Exchange trading is compatible with the development of new, competitive, and innovative financial instruments. These exchanges are some of the most highly competitive in the world. Over their history, they have spawned significant innovation—financial futures, stock index futures, and foreign curency warrants. The spirit of capitalism is alive and well and I am confident that these innovations will continue.

This legislation is extraordinary in its scope. It is a carefully crafted bill that resulted from vigorous debate among market users, both agricultural and financial, futures and securities industries, swap dealers, and four Federal agencies. Nobody gets all they want in this bill. The industry is not entirely happy with it. But it does represent a compromise that does the necessary job of protecting the public interest. I urge my colleagues to join me in opposing this amendment.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, in accordance with prior notice given to Senators, I am about to propound a unanimous-consent agreement for the consideration of amendments to the legislation now pending. This is the product of lengthy discussion among all of the interested participants, each of whom I believe is present or represented on the Senate floor.

Accordingly, Mr. President, I now ask unanimous consent that when Senator BOND offers his amendment relating to bank products today, there be 1 hour for debate equally divided and controlled in the usual form, with a possible relevant Gramm of Texas second-degree amendment to the Bond amendment as the only amendment to the Bond amendment in order; that at the conclusion or yielding back of time, the amendment be laid aside and that Senator BOND be recognized to offer the Bond-Wirth amendment as an alternative to title III of the pending committee substitute, on which there be no limitation on debate during the remainder of this day and on which no amendments to the amendment be in order; that the Senate resume consideration of this bill at 12 noon tomorrow; that there be 30 minutes on a possible Gramm second/degree amendment to the Bond bank products amendment; that upon the conclusion or yielding back of the time on the Gramm second-degree bank products amendment, the Senate proceed to vote on or in relation to the Gramm second-degree amendment, to be followed without any intervening action or debate by a vote on or in relation to the Bond first-degree bank products amendment, as amended, if amended; that following the disposition of the Bond bank products amendment, there be 15 minutes remaining for debate on the Bond-Wirth title III amendment, equally divided and controlled in the usual form, and at the conclusion of that time there be a vote on or in relation to the Bond-Wirth title III amendment.

I further ask unanimous consent that if the Bond-Wirth amendment is defeated, Senator BOND or Senator WIRTH be recognized to offer one further amendment with respect to reporting and regulatory coordination, on which there be 60 minutes equally divided and controlled in the usual form with one possible relevant second-degree amendment to be offered by Senator GRAMM on which there be no limitation on debate and that the Gramm amendment be the only amendment in order to the Bond or Wirth amendment; that following disposition of that amendment, no further amendments or motions to recommit be in order to this bill with the exception of the Agriculture Committee substitute amendment as modified and a Riegle-Leahy amendment if agreed to by the bill's managers; that there be 30 minutes equally divided and controlled in the usual form remaining on the bill including the consideration of the committee substitute and the Riegle amendment if offered, at the conclusion of which or yielding back of which there be a vote on the committee substitute, third reading of the bill and a vote on final passage of the bill, all of which shall occur without any intervening action or debate. But if the Bond-Wirth alternative amendment to title III is agreed to, there be no limitations or restrictions on amendments that may be offered.

Mr. LEAHY. Mr. President, reserving the right to object, I think it sounds like a very simple and straightforward unanimous-consent request; obviously, a very easy to understand item. I would ask only for this clarification, that it also be in order for the managers to move the usual technical unanimous-consent type amendments.

Well, Mr. President, let me state it this way. Nothing would preclude us from bringing up other amendments by unanimous consent, as I understand it.

Mr. MITCHELL. I believe the Senator is correct; that any action may occur with unanimous consent at any time with respect to this bill, notwithstanding the provisions of this agreement.

I inquire of the Chair whether or not my understanding is correct.

The PRESIDING OFFICER. The majority leader's understanding is correct.

Mr. LEAHY. I have no objection to this unanimous-consent request. I think it is an excellent one and I support it.

Mr. GARN. Mr. President, reserving the right to object, and I am not going to object, but I do wish to make an appeal that I made at the end of my rather lengthy remarks earlier today on this issue.

We have gone on now for more than 2 years since I wrote letters to the CFTC and the SEC and told them to solve this. I am a little bit tired of the turf battle that has gone on, but there are some issues that are far more important than turf battles and that is in the area of banking powers and the areas discussed at great length on title III today.

While I agree to bring this to an end, I hope that the parties in disagreement, as I said at the end of my statement, would continue to try and work out an accommodation. I think that would be much preferable to having to go through all of this procedure because certainly we on the Banking Committee do not want to interfere in any way with title I and title II.

We do want S. 207 to pass. We do think the reauthorization is way past due, obviously. But there are some extremely important issues to the competitiveness where every bank regulator except one has testified that title III as now written will cause severe harm. I think the Senate ought to consider that. More importantly, I think those who are in disagreement, I ask, during this evening and in the morning, that we continue in good faith to work out a compromise so that this bill can be passed tomorrow. I do not object.

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

The text of the agreement follows:

Ordered, That at 12 noon on Thursday, April 18, 1991, the Senate resume consideration of S. 207, the Community Futures Trading Commission Authorization, with 30 minutes debate on a possible Gramm relevant 2d degree amendment to amendment No. 68, the Bond amendment on bank products.

Ordered further, That upon the conclusion or yielding back of time on the Gramm 2d degree bank products amendment, the Senate proceed to vote on or in relation to the Gramm 2d degree amendment, to be followed without any intervening action by a vote on or in relation to the Bond 1st degree bank products amendment, No. 68.

Ordered further, That following the disposition of the Bond bank products amendment, there be 15 minutes of debate on the Bond-Wirth title III amendment, No. 69, to be equally divided and controlled in the usual form and at the conclusion of that time, there be a vote on or in relation to the Bond-Wirth title III amendment.

Ordered further, That if the Bond-Wirth amendment is defeated, either the Senator from Missouri [Mr. BOND] or the Senator from Colorado [Mr. WIRTH] be recognized to offer one further amendment with respect to reporting and regulatory coordination, on which there shall be 60 minutes debate, to be equally divided and controlled in the usual form: *Provided,* That the only amendment in order to this amendment be a possible relevant second degree amendment to be offered by the Senator from Texas [Mr. GRAMM], on which there shall be no time limitation.

Ordered further, That upon the disposition of that amendment, no motions to recommit and no further amendments be in order to this bill, with the exception of the Agriculture Committee's substitute amendment, as modified, and a Riegle-Leahy amendment, if agreed to by the bill's manager.

Ordered further, That there be 10 minutes remaining on the bill, equally divided and controlled in the usual form, including the consideration of the committee substitute and the Riegle-Leahy amendment, if offered, and that at the conclusion or yielding back of which, there be a vote on the committee substitute, third reading of the bill, and a vote on final passage of the bill, all of which shall occur without any intervening action or debate.

Ordered further, That if the Bond-Wirth alternative amendment to title III is agreed to, there be no limitation or restriction with respect to amendments that may be offered.

Mr. MITCHELL. Mr. President, I thank my colleagues for their cooperation in permitting us to obtain consent to this agreement. I point out that this does not assure completion of this bill either tomorrow or at any time in the foreseeable future. I hope that is the result, but this agreement does not assure that. But it does enable us to proceed in what I hope will be an orderly and prompt manner as we continue our efforts to act on this important legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the distinguished majority leader for his help, and I thank those Senators on both sides of the aisle and both sides of the question on title III, for their cooperation and work in bringing this about. Senator LUGAR and I have spent a couple of days already on the floor getting this far. We thank those who might have moved us forward a little bit.

I know the Senator from Missouri is waiting to speak. I would appreciate if he would just indulge me for a moment to take care of a couple of housekeeping matters?

Mr. President, I ask unanimous consent that it be in order to send an amendment to the desk. I refer to an amendment to this bill, the so-called pay cap amendment on S. 207.

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

AMENDMENT NO. 66

(Purpose: To authorize the Commodity Futures Trading Commission to request additional positions in the Senior Executive Service)

Mr. LEAHY. 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 Vermont [Mr. LEAHY] proposes an amendment numbered 66.

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:

Beginning on page 83, strike line 19 and all that follows through page 85, line 8, and insert the following new section:

SEC. 102. HIRING AUTHORITY OF THE COMMISSION.

Section 12(b) (7 U.S.C. 16(b)) is amended—

(1) by designating the first through third sentences as paragraphs (1) through (3), respectively; and

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

"(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5, United States Code) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on the date of enactment of this sentence.".

Mr. LEAHY. Mr. President, this amendment eliminates section 102 of the bill on hiring and pay authority and replaces it with a substitute.

Section 202 allows the CFTC to fix the compensation of employees without regard to the Federal pay cap. We adopted this provision in the Agriculture Committee to address concerns that the CFTC, like other financial regulators, had difficulty attracting and keeping top professional staff members. It is no secret that, today, talented young lawyers and financial experts can get top dollar from major private sector firms or from Federal bank regulators who are not limited by the pay cap.

Last year, however, Congress adopted a Federal pay reform bill which gave agencies far more flexibility in setting pay scales for employees to meet competitive pressures. We, like our colleagues in the Governmental Affairs Committee, want to give this new law a chance to work. We understand that the Banking Committee pulled a similar pay cap amendment for the SEC for this same reason.

Instead of addressing the pay cap, the new section 102 increases the number of CFTC senior executive service slots by eight. They currently have 22 SES slots. This will provide the CFTC with the means to hold onto proven top staff members in a competitive environment.

If it turns out, however, that the Banking Committee brings legislation to the Senate floor giving pay cap relief to the SEC, then I will be prepared to offer an amendment to that legislation offering similar relief to the CFTC. I do not want to see the CFTC placed at a competitive disadvantage to the SEC in attracting qualified staff members.

I understand that the House bill does not have a similar provision and there might be concerns on it. This will be an item reviewed in conference.

I urge adoption of my amendment.

Mr. President, I understand this has been cleared.

I yield to the Senator from Indiana.

Mr. LUGAR. Mr. President, I confirm the amendment has our support.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Vermont.

The amendment (No. 66) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I ask unanimous consent, notwithstanding the unanimous-consent agreement just earlier entered into, that I be able to send an amendment to the desk.

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

AMENDMENT NO. 67

(Purpose: To require the publication of Commission opinions)

Mr. LEAHY. 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 Vermont [Mr. LEAHY], for himself, Mr. KERREY, and Mr. HARKIN, proposes an amendment numbered 67.

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:

On page 137, between lines 12 and 13, insert the following new section:

SEC. 262. PUBLICATION OF COMMISSION OPINIONS.

Section 2(a)(9) (7 U.S.C. 4a(h)) is amended by adding at the end the following new subparagraph:

"(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.".

On page 137, line 13, strike "262" and insert "263".

On page 144, line 11, strike "263" and insert "264".

On page 145, line 8, strike "264" and insert "265".

On page 147, line 1, strike "265" and insert "266".

On page 148, line 12, strike "266" and insert "267".

On page 151, line 20, strike "267" and insert "268".

On page 153, line 21, strike "268" and insert "269".

On page 154, line 20, strike "269" and insert "270".

On page 155, line 10, strike "270" and insert "271".

On page 156, line 1, strike "271" and insert "272".

On page 156, line 4, strike "272" and insert "273".

On page 157, line 6, strike "273" and insert "274".

On page 157, line 15, strike "274" and insert "275".

Mr. LEAHY. Mr. President, I offer an amendment to require the CFTC, whenever it issues for official publication any opinion, rule, order, or other official release, to include any dissenting, concurring, or separate opinion by any Commissioner on the matter.

Last year, the CFTC issued an important and controversial interpretation on the regulatory treatment of 15-day Brent oil contracts. One CFTC Commissioner—Fowler West—dissented, and prepared a detailed statement of his reasons. But when the CFTC submitted its Brent oil interpretation to the Federal Register for official publication, Commissioner West's dissent was omitted.

This was wrong. Silencing opposing voices on a Federal commission is bad law and bad policy. Congress created the CFTC as a 5-member Commission—not as a single-headed agency—so that the public could benefit from a diversity of viewpoints.

In this case, the results was especially unfair. High-priced lawyers with access to the Commission or to expensive private reporting services had no trouble getting their hands on the West dissent. But members of the public who rely on official outlets like the Federal Register had no access to the document.

Commissioner West's dissent is an important part of the legal history, not only of the Brent oil issue, but on the general issue of CFTC jurisdiction for off-exchange products. It has legal weight similar to that of a dissenting or separate case opinion of a Supreme Court Justice—or of the separate views of a Senator in a committee report on a bill or nomination.

Commissioner West had a right to state his dissent on the Brent oil issue. The public had a right to read his views. My amendment will assure that, in the future, dissenting voices on the CFTC will not be swept under the rug.

Mr. President, I urge adoption of my amendment.

Mr. LUGAR. Mr. President, I support the amendment offered by Senator LEAHY. While this amendment does not have the significance, in monetary terms, as some of the issues debated throughout the course of this bill, it addresses an issue that greatly concerns some Senators.

The purpose of the Leahy amendment is to ensure that the dissenting viewpoints of any Commissioner, be published whenever an opinion, release, rule, order, interpretation or determination is published by the Commission. This amendment merely compels the disclosure of the viewpoints of all of the Commissioners on a given matter, whether they are in the majority or in the minority.

I urge support of this provision.

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

The amendment (No. 67) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I thank the Senator from Missouri for withholding so we could take care of these housekeeping chores. I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, once again I thank the distinguished chairman of the Agriculture Committee and the ranking member for their consideration and help in bringing us to this position, where we can make some progress on this bill, and I hope with discussions tonight and laying down of the two amendments we will be able to have a good discussion and a vote on the morrow, or votes on the morrow, which will clear up some of these areas.

I express appreciation to my many colleagues who have been involved in the negotiations and the rather complex unanimous-consent agreement. I hope that will provide a minimum of dislocation and disruption to this body while we accomplish a very important purpose.

The first amendment I wish to offer tonight is on bank products. When CFTC Chairman Gramm testified on S. 207, she stated that loans and other bank products with elements of futurity have never been considered futures contracts by the CFTC or the courts. I agreed with Chairman Gramm that bank deposits and other bank products are not futures and should not be regulated by the CFTC under the Federal commodity laws. That is why I plan to offer on behalf of the Senator from Colorado [Mr. WIRTH] and myself, an amendment to make this clear.

As amply demonstrated by the debate on S. 207 there is really no clear-cut definition of a futures contract in our Federal commodity laws. Therefore, any instrument with an element of a futures contract could be made subject to the exclusive jurisdiction of the CFTC and forced to trade on a futures exchange.

As a consequence, it is important that we in Congress make clear that bank products with elements of futurity are not subject to the commodity laws. There are some who may say this amendment is unnecessary because the current CFTC does not believe that bank products should be regulated as futures contracts. While I certainly trust Chairman Gramm, a new chairman may feel differently, and there is nothing to stop the CFTC from claiming jurisdiction over bank products.

Many of my colleagues familiar with the regulation of the banking industry know that banks are regulated by the Fed, the OCC, the FDIC, OTS, as well as 50 State commissions which review and approve bank products sold to the public.

Because bank products are heavily regulated by Federal and State laws, Congress exempted the products from the Federal securities laws. The amendment I propose to offer would extend this exemption for bank products to the Federal commodities laws. The amendment would exclude bank deposits and loans offered by insured depository institutions regulated by Federal or State bank regulators. It is a simple amendment that applies to insured depository institutions as defined by the Federal Deposit Insurance Act, an insured credit union as defined by the Federal Credit Union Act, a Federal or State branch agency of a foreign bank as defined in the International Banking Act, and it provides an exclusion, saying that a loan made by a person, required to be registered under the Commodities Exchange Act in connection with transactions regulated under this act, is not covered in that exclusion. So the CFTC could regulate it.

This, I trust, meets some of the concerns that have been expressed on behalf of the futures industry.

Mr. President, for that reason I believe this amendment is a useful and helpful clarifying amendment. If there are other Members wishing to speak on that amendment, I would be happy to yield to them.

We have a call, supposedly coming in very shortly, from the CFTC to see if they have any further revisions on it. I understand the call is supposed to come in momentarily, and I want to find out if they have any further technical changes prior to laying down the amendment. As I understand the unanimous-consent agreement, it does not permit modification of the amendment once it is offered and, therefore, let me take this time to explain another item of confusion that arose this afternoon during the debate on this subject.

Those who were following the debate may recall that I offered to introduce a letter from the International Swap Dealers Association. The letter of April 15, from the International Swap Dealers Association addressed to Senator WIRTH and myself, refers to our proposal as the alternative proposal to the Commodity Futures Trading Commission substitute, the CFTC proposal for title III of S. 207.

In the April 15 letter, a rather lengthy letter, the ISDA went on to explain why they supported the alternative proposal; that is, our proposal. I will read pertinent excerpts from it.

> As explained below, we believe the alternative proposal goes further to provide the needed legal certainty and encourage both innovation and the development of risk reduction techniques. For these reasons we believe the alternative proposal is superior.

In addition, it talks about the desirability of the alternative providing an exclusion, rather than the CFTC proposal, which provides an exemption.

The problem with an exemption is if an exemption can be given, it can be revoked. The swaps dealers realize this trillion dollar market is in danger of being driven overseas if it is subject to the possible whims of a regulatory change of heart.

The letter goes on to discuss many different provisions of the alternative proposal comparing the CFTC proposal and concludes:

> Although the CFTC proposal is a significant improvement over S. 207 as it was reported by the Agriculture Committee, the alternative proposal would provide market participants with broader and clearer assurances regarding the inapplicability of the CEA to the swap business.

After I read just a small portion of that letter, my colleague from North Dakota pointed out there was an April 16 letter from the International Swap Dealers Association. I was not quite clear, because I had not seen the letter, as to what the contents were. I thought perhaps my colleague said the International Swap Dealers were supporting the CFTC proposal over the alternative or the proposal offered by the Senator from Colorado and myself.

I have now had a chance to review that letter. It is a clarification of their earlier position that the CFTC proposal to the title III reported out of the Agriculture Committee represents a significant improvement over the provisions in S. 207 as reported by the Agriculture Committee.

It goes on to state that:

> Even though this language does not incorporate all the changes that we would consider important, we nevertheless believe that it represents a significant improvement over current law.

This is clearly not to say they favor the CFTC provision over the alternative proposal, our proposal. They have stated, and it is apparent from reading these two letters, that for the purposes of the swaps agreements and swaps dealers, the alternative proposal Senator WIRTH and I have crafted is a significant improvement.

Mr. President, I ask unanimous consent that these two letters from the ISDA be printed in the RECORD.

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

INTERNATIONAL SWAP
DEALERS ASSOCIATION, INC,
New York, NY, April 15, 1991.

Hon. CHRISTOPHER S. BOND,
Hon. TIMOTHY E. WIRTH,
Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR SENATOR BOND AND SENATOR WIRTH: This letter responds to your request for views of the International Swap Dealers Association, Inc. ("ISDA") on the provisions affecting swap agreements contained in your proposed alternative (the "Alternative Proposal") to the Commodity Futures Trading Commission's substitute (the "CFTC Proposal") for Title III of S. 207, the Futures Trading Practices Act. Members of ISDA, including 136 commercial banks, securities firms, insurance companies and others whose names are listed in Appendix A, act as dealers in swaps.

As a preliminary matter, I would like to emphasize our belief that it is essential that the 102nd Congress adopt legislation that will provide legal certainty for the $2.5 trillion swap business, by confirming that the Commodity Exchange Act (the "CEA") does not apply to swap transactions. As we pointed out in our April 9, 1991 letter to Senator Dodd, uncertainty over the applicability of the CEA, and particularly its rigid exchange trading requirement, has caused significant swap activity and innovation to move offshore. Unfortunately, S. 207, as it was reported by the Agriculture Committee on March 6, 1991, did not provide the needed legal certainty and could, we believe, cause serious harm to the competitive position of U.S. firms in the worldwide swap business. We addressed these problems in detail in our April 9 letter.

The problems with the swap provisions of S. 207 as reported by the Agriculture Committee have been widely recognized. In light of this, we appreciate the substantial efforts of the CFTC that have led to the current CFTC Proposal. It represents a significant improvement over the provisions in S. 207 as reported by the Agriculture Committee. As explained below, we believe that the Alternative Proposal goes further to provide the needed legal certainty and encourage both innovation and the development of risk reduction techniques. For these reasons we believe that the Alternative Proposal is superior.

EXCLUSION VS. EXEMPTION

In the Alternative Proposal, the swap provision is structured as an exclusion from the CEA. In this respect it differs from the CFTC Proposal which directs the CFTC to exempt swaps. We believe that an exclusion is preferable to an exemption because it is consistent with our belief that swaps lack the essential elements of futures contracts. It also avoids any possible negative implication of an exemption that swaps may be futures contracts. The use of an exclusion rather than an exemption would also eliminate any suggestion that S. 207 places on the CFTC a burden to oversee the swap business.

NO PUBLIC INTEREST TEST

The Alternative Proposal eliminates the requirement contained in the CFTC Proposal that the exemption may be granted only if the CFTC makes a determination that the exemption is "consistent with the public interest". It is particularly troubling that this threshold is higher than the "not contrary to the public interest" standard used for bank deposit instruments in the CFTC Proposal. By providing an exclusion based only on objective criteria the Alternative Proposal adds significant legal certainty. It is also consistent with the fundamental objective that swap transactions should not be subject to regulation under the CEA.

PARTICIPANTS

Both the Alternative Proposal and the CFTC Proposal limit the scope of the exclusion or exemption to institutional participants. The categories of persons covered by the two proposals are identical in all respects except one. Under the CFTC Proposal, governmental entities only qualify if they have the requisite corporate or other power and authority to enter into the transaction. This limitation would in effect transform a lack of authority problem (such as in the Hammersmith and Fulham case in England) into a violation of the CEA. We do not understand why the presence or absence of corporate or other authority should, by itself, raise concerns under the CEA. The Alternative Proposal does not include the same limitation on qualifying governmental entities and is for this reason superior.

CREDITWORTHINESS TEST

Both the Alternative Proposal and the CFTC Proposal require that the creditworthiness of a party be a material consideration when entering into or evaluating the terms of a swap agreement. The Alternative Proposal expressly provides that the "creditworthiness" test is satisfied even where parties enter into arrangements requiring collateral, margin or any other form of bilateral credit enhancement to reduce credit risk or exposure. Although we do not believe that the CFTC Proposal is intended to limit such arrangements, there is no express provision in the CFTC's proposed statutory language and one must look to the explanatory materials for assurance. Given the importance of risk reduction both to participants and regulatory authorities, we believe that the approach of the Alternative Proposal is preferable.

STANDARDIZATION AND TRADING

The Alternative Proposal requires that a swap agreement not be "both standardized and fungible in all material respects with a class of other swap agreements" and, unlike the CFTC Proposal, contains a safe harbor so that a swap agreement will satisfy the standard of this clause if it is subject to individual negotiation between the parties as to material terms. The CFTC Proposal, on the other hand, requires that two separate tests be satisfied:

(i) the swap agreement must not be one of a fungible class of agreements that is standardized as to its material economic terms, and

(ii) the swap agreements must not be entered into and traded on or through a multilateral transaction execution facility.

By requiring a swap agreement to satisfy *both* a "standardization" test and a "trading" test, neither of which has a statutory definition or a generally understood meaning, the CFTC Proposal contains a notably higher level of uncertainty than the Alternative Proposal. Although the CFTC's explanatory materials are helpful in establishing the intent of the provision, such materials are not a substitute for express statutory language. By providing a safe harbor for swaps which are subject to individual negotiation as to material terms, the Alternative Proposal provides straightforward language that gives reasonable assurance that the existing swap business, as well as future innovative swap transactions, will qualify under the test.

MULTILATERAL ARRANGEMENTS

The Alternative Proposal expressly states that a multilateral payment netting facility among parties will not cause a swap agreement to fail either the "standardization" test or the "creditworthiness" test. Although the CFTC Proposal contains a proviso from the standardization and multilateral trade execution facility requirements that is designed to permit a multilateral payment netting arrangement or facility, the "creditworthiness" test must still be satisfied, so that parties are more restricted in their ability to structure these risk reduction arrangements. For this reason, the Alternative Proposal provides broader flexibility for swap participants to develop arrangements to address credit risk, and thereby reduce systemic risks.

The Alternative Proposal expressly permits multilateral arrangements for the processing of collateral or margin, as well as other credit enhancement arrangements. In contrast, the CFTC Proposal does not expressly address such multilateral arrangements. Instead, the explanatory materials state that certain of such arrangements would not be prohibited. The approach of the Alternative Proposal is preferable because it avoids any doubt on this important question.

CONCLUSION

Since July 1989 it has been the stated policy of the CFTC that swaps are not appropriately regulated as futures contracts. Other federal regulatory agencies, including the Board of Governors of the Federal Reserve System, the Department of Treasury, the Federal Deposit Insurance Corporation, the Office of Comptroller of the Currency and the Securities and Exchange Commission, have all supported legislation to make clear that swaps are not subject to the provisions of the CEA. They believe that by adopting such legislation the Congress will enhance the domestic and international competitiveness of U.S. firms, increase financial innovation and allow market participants more flexibility to reduce systemic risk.

The members of ISDA strongly believe that it is of the utmost importance that the 102nd Congress enact such legislation. Although the CFTC Proposal is a significant improvement over S. 207 as it was reported by the Agriculture Committee, the Alternative Proposal would provide market participants with broader and clearer assurances regarding the inapplicability of the CEA to the swap business.

Very truly yours,

MARK C. BRICKELL,
Chairman.

APPENDIX A

PRIMARY MEMBERS, MARCH 20, 1991

AIG Financial Products Corp.
Algemene Bank Nederland N.V.
Allied Irish Banks PLC.
Amsterdam-Rotterdam Bank N.V.
ASLK—CGER Bank.
Australia and New Zealand Banking, Group Limited.
Banca Commerciale Italiana.
Banca CRT-Cassa di Risparmio di Torino.
Banca Del Gottardo.
Banca Nazionale del Lavoro.
Banco di Napoli.
Banco Santander-New York.
Bankers Trust Company.
Bank Mees & Hope NV.
Bank of America NT & SA.
Bank of Boston.
Bank of Ireland.
Bank of Montreal.
The Bank of New York.
The Bank of Nova Scotia.
The Bank of Tokyo, Ltd.
Banque De L'Union Europeenne.
Banque Indosuez.
Banque Nationale de Paris.
Banque Paribas.
Barclays Bank PLC.
Baring Brothers & Co., Limited.
Bayerische Hypotheken und Wechsel Bank AG.
Bayerische Vereinsbank AG.
Bear Stearns Capital Markets Inc.
Berliner Bank Aktiengesellschaft.
BHF Bank.
Bierbaum Martin Group.
Caisse Nationale de Credit Agricole.
Canadian Imperial Bank of Commerce.
Cargill, Inc.
Chase Manhattan Bank.
Chemical Bank.
Christiania Bank.
Citibank, NA.
Confiri Servizi Finanziari SpA.
Commerzbank AG.
Commonwealth Bank of Australia.
Confederation Financial Ltd.
Continental Bank, N.A.
Credit Commerical de France.
Credit Lyonnais.
Credit Suisse Financial Products.
Dai-Ichi Kangyo Bank.
Daiwa Europe Bank plc.
Den Danske Bank.
Deutsche Bank AG.
Deutsche Cenossenshaaftbank—DG Bank.
Dresdner Bank AG.
Elf Trading S.A.
Finacor.
First Interstate Bank Limited.
The First National Bank of Chicago.
The Fuji Bank Limited.
Fuji Capital Markets Corp.
Garvin GuyButler Corporation.
General Re Financial Products Corp.
Girozentrale und Bank der Osterreichischen Sparkassen AG.
Goldman, Sachs & Co.
Greenwich International Ltd.
Hessische Landesbank—Girozentrale.
Hill Samuel Bank Ltd.
Hongkong Bank.
IBJ International.
The Industrial Bank of Japan, Limited.
The Industrial Bank of Japan (Switzerland) Ltd.
Industriekreditbank AG.
Intercapital Brokers Ltd.
Istitudo Bancario San Paolo Di Torino.
Istituto Mobillare Italiano.
J. Henry Schroder Wagg & Co. Ltd.
Kidder, Peabody & Co.
Kleinwort Benson Limited.
Lloyds Bank PLC.
The Long Term Credit Bank of Japan, Limited.
Manufacturers Hanover Trust Company.
Maryland National Bank.
Mellon Bank, NA.
Mercadian Capital.
Merrill Lynch & Co., Inc.
Midland Montagu.
The Mitsubishi Bank, Limited.
The Mitsubishi Trust and Banking Corporation.
The Mitsui Taiyo Kobe Bank, Ltd.
Mitsui Taiyo Kobe Global Capital, Inc.
The Mitsui Trust & Banking Co., Limited.
Morgan Grenfell & Co. Limited.
Morgan Guaranty Trust Company of New York.
Morgan Stanley & Co., Inc.
National Australia Bank Limited.
National Bank of Canada.
NatWest Capital Markets Limited.
Nederlandsche Middenstandsbank NV.
The Nikko Securities Co. International Inc.
The Nippon Credit Bank, Ltd.
Nomura International Limited.
Norddeutsche Landesbank Girozentrale.
The Norinchukin Bank.
Nuova Interfin Capital Market s.r.l.
Phibro Energy, Inc.
Prudential-Bache Capital Markets.
Rabobank Nederland.
Republic National Bank of New York.
N.M. Rothschild & Sons, Limited.
The Royal Bank of Canada.
The Royal Bank of Scotland/Charter House Bank.
The Saitama Bank, Ltd.
Salomon Brothers Inc.
Sanwa Bank.
Sanwa Financial Products.
Saudi International Bank.

Security Pacific Hoare Govett, Inc.
Shearson Lehman Hutton Inc.
Skandinaviska Enskilda Banken Corporation.
Societe Generale.
Sumitomo Bank Capital Markets, Inc.
The Sumitomo Bank, Limited.
The Sumitomo Trust & Banking Co., Ltd.
Svenska Handelsbanken/Svenska International PLC.
Swiss Bank Corp. International Limited.
Swiss Volksbank.
The Tokai Bank, Limited.
The Toronto Dominion Bank.
Tradition-Berisford LP.
Union Bank of Finland Ltd.
Union Bank of Switzerland.
S.G. Warburg & Co. Ltd.
Westdeutsche Landesbank Girozentrale.
Westpac Banking Corporation.
Wood Gundy, Inc.
Yamaichi Securities Co., Limited.
The Yasuda Trust & Banking Co., Ltd.

INTERNATIONAL SWAP DEALERS ASSOCIATION, INC.,
New York, NY, April 16, 1991.

Hon. PATRICK LEAHY,
Chairman, Committee on Agriculture, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: This letter responds to your request for clarification of our views regarding the provisions affecting swap agreements contained in the proposed substitute for Title III of S. 207 submitted to Senator Leahy on April 9, 1991. Members of International Swap Dealers Association, Inc., including 136 commercial banks, securities firms, insurance companies and others, act as dealers in swaps.

As we have stated before, we believe it is essential that the 102nd Congress adopt legislation that will provide legal certainty for the $2.5 trillion swap business by confirming that the Commodity Exchange Act does not apply to swap transactions. Unfortunately, S. 207, in the form it was reported by the Agriculture Committee, did not provide the needed certainty and was potentially harmful to the competitive position of U.S. firms in the worldwide swap business. We discussed these problems in detail in our April 9, 1991, letter to Senator Dodd.

In light of the problems with the swap provisions of S. 207 as reported by the Agriculture Committee, we appreciate the willingness of the CFTC to participate in detailed discussion of these provisions, and the substantial efforts that have led to the language contained in the substitute for Title III. It represents a significant improvement over the provisions in S. 207 as reported by the Agriculture Committee. In addition, even though this language does not incorporate all of the changes that we would consider important, we nevertheless believe that it represents a significant improvement over current law and if enacted would be both acceptable and beneficial to the industry and other users of swaps.

Respectfully submitted.

MARK C. BRICKELL,
Chairman.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislatiive clerk proceeded to call the roll.

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

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

AMENDMENT NO. 68

Mr. BOND. Mr. President, I send to the desk an amendment on behalf of myself, Mr. WIRTH, and Mr. GARN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. WIRTH, and Mr. GARN, proposes an amendment numbered 68.

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:

"SEC. . Nothing in this Act shall be considered to be applicable to any deposit (as defined under the Federal Reserve Act and regulations promulgated thereunder in effect on the date of enactment of this amendment) if the deposit is offered by—

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(2) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); or

"(3) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"SEC. . (a) Nothing in this Act shall be considered to be applicable to—

"(1) any loan, made by—

"(A) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(B) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(C) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)); or

"(D) a foreign bank (as defined in section 1(b)(7) of the International Banking Act (12 U.S.C. 3101(7)), to a person specified in subsection (i)(3); or

"(2) any loan that is a consumer credit transaction subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.).

"(b) The provisions of subsection (a) of this section shall not apply to a loan made by a person required to be registered under this Act in connection with transactions regulated under this Act."

Mr. BOND. Mr. President, very simply, I have already described this measure. Essentially, it codifies the current position of the CFTC that bank products should not be regulated by the CFTC that bank products should not be regulated by the CFTC.

There has been a potential that has been raised, a question has been raised about the extent of the exclusivity clause. We have been advised by bank regulators, particularly the Federal Reserve, that the potential for such regulation has a chilling effect on the ability of banks to develop innovative banking products.

I urge my colleagues to consider this very carefully tonight, and to realize that banks are regulated by the Federal agencies that we mentioned before, by the State regulatory agencies, and this is not an instance in which banks need the additional regulation, or their customers need the protection of CFTC regulation or oversight.

Mr. President, on behalf of myself and the other cosponsors, I urge my colleagues to support the amendment.

I yield the floor, Mr. President.

Mr. LEAHY. Mr. President, this is an amendment that we were prepared to accept. I understand it is going to be voted on tomorrow. It excludes from the CFTC certain bank deposits that are regulated by Federal banking agencies.

I should note that currently S. 207 as drafted requires the CFTC to exempt these instruments. Some bank industry officials and regulators have expressed some concern that the exemptive process might not be direct enough. This amendment will resolve the controversy.

I am not absolutely sure that this amendment is necessary, but in order to move forward and settle one area of controversy on this bill, I will support it tomorrow.

I understand that the proponents want a rollcall vote, which they are entitled to if they seek it. Hopefully, when we see what the schedule looks like tomorrow, such as the many committees meetings, they may want to consider a more expeditious approach, 15-minute rollcall votes take longer than voice votes. But I am not going to prolong the matter here tonight. I intend to vote for it whichever way it goes.

Mr. BOND. Mr. President, I thank my distinguished colleague from Vermont for his kind comments. Mr. President, the only reason we seek a rollcall vote is to provide strength to the position of our conferees when they go to the House so they will be able to convince the House that this is an important amendment if it passes, as I assume it will.

Mr. President, I know of no others on this side who wish to discuss or debate this measure any further. I am prepared to yield the remainder of my time on this amendment so we can proceed to lay down the larger amendment.

Mr. LEAHY. I yield the remainder of the time we have.

The PRESIDING OFFICER. All time is yielded back.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 69

(Purpose: To improve intermarket coordination)

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 assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. WIRTH, Mr. GARN, Mr. RIEGLE, Mr. DODD, and Mr. MOYNIHAN, proposes an amendment numbered 69.

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:

Beginning on page 4 of the Committee modification, strike line 1 and all that follows through page 12, line 9, and insert the following new sections:

SEC. 302. EXEMPTIVE AUTHORITY.

Section 4 (7 U.S.C. 6) is amended—

(1) in subsection (a), by striking "It shall be unlawful" and inserting "Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful"; and

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

"(c)(1) In order to promote responsible economic or financial innovation and vigorous and fair competition, both nationally and internationally, the Commission by rule, regulation, or order, shall (on application of any person) exempt any agreement, contract, or transaction (or classes thereof) otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods, from any of the requirements of subsection (a), or from any other provision of this Act except section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest and the purposes of this section.

"(2) The Commission, after notice and opportunity for hearing, shall have the authority to revoke any exemption previously granted under paragraph (1) if the Commission determines that any of the minimum requirements prescribed in paragraph (1), any or additional conditions imposed by the Commission, is no longer being satisfied.".

SEC. 303. HYBRID COMMODITY INSTRUMENTS, SWAP AGREEMENTS, DEMAND DEPOSITS, TIME DEPOSITS, AND INSURANCE PRODUCTS.

Section 4c (7 U.S.C. 6c) (as amended by section 203(a) of this Act) is further amended by adding at the end the following new subsections:

"(h)(1) Notwithstanding any other provision of law, nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an instrument, other than an index participation (as defined in subsection (f)), if—

"(A)(i) to the extent that the instrument has the elements of a commodity option, its predominant characteristics are not those of a commodity option, or the instrument derives less than 50 percent of its value at the date of issuance from the value of the commodity option; and

"(ii) to the extent that an instrument has the elements of a contract of sale of a commodity for future delivery, its predominant characteristics are not those of a contract of sale of a commodity for future delivery, or at the date of issuance it is expected that less than 50 percent of the change in the value of the instrument or its performance will be due to movement in the price of the commodity or commodities specified in the instrument or in the terms and conditions of the transaction pursuant to which the instrument was issued;

"(B) the instrument is determined by the Securities and Exchange Commission to have as its predominant characteristics those of securities (as defined under section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)) or section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1))) or at least 50 percent of its value derived from the elements of a group of securities; or

"(C) the instrument is a security (as defined under section 3(a)(10) of the Securities Exchange Act of 1934) listed or traded on a national securities exchange or quoted through an automated interdealer quotation system operated by a national securities association registered with the Securities and Exchange Commission.

"(2)(A) To the extent that the designation is consistent with the other provisions of this Act (including section 2(a)(1)(B)), nothing in paragraph (1) shall be considered to prevent the Commission from designating any board of trade as a contract market for any instrument.

"(B) If an instrument may trade other than on a designated contract market pursuant to paragraph (1), and if the Commission designates any board of trade as a contract market for that instrument—

"(i) this Act (including section 2(a)(1)(B)) shall apply only to transactions in that instrument that are conducted on a designated contract market (including transactions between a futures commission merchant and the customer of the futures commission merchant that are incidental to a transaction on a designated contract market); and

"(ii) this Act (including section 2(a)(1)(A)) shall not apply to transactions in that instrument that are conducted pursuant to paragraph (1) other than on a designated contract market.

"(C) To the extent that transactions in any instrument are conducted pursuant to paragraph (1) other than on a designated contract market, the transactions shall not be considered to be transactions involving contracts of sale of a commodity for future delivery.

"(i)(1) Notwithstanding any other provision of law, nothing in this Act shall be considered to govern or in any way be applicable to any swap agreement or class of swap agreements (as defined in section 101 of title 11, United States Code) where—

"(A) each party to the swap agreement is a person included in one of the categories specified in paragraph (3) at the time the party enters into the swap agreement;

"(B) the creditworthiness of any party having an actual or potential future payment obligation under the swap agreement is a material consideration in entering into or evaluating the terms (including credit enhancement terms) of the swap agreement, except that creditworthiness shall not be considered to be immaterial as a result of an agreement for the exchange, payment, or delivery of mark-to-market payments, margin, collateral, or any other form of credit enhancement or replenishment to reduce the credit risk or exposure of any party to the swap agreement; and

"(C) the swap agreement is not both standardized and fungible in all material terms with a class of other swap agreements, except that, for purposes of this subparagraph, a swap agreement shall not be considered to be standardized or fungible in all material terms with a class of other swap agreements if it is subject to individual negotiation between the parties as to material terms.

"(2) A swap agreement shall not fail to satisfy the requirements of the foregoing subparagraphs (B) and (C) of paragraph (1) as a result of a bilateral or multilateral arrangement or facility between or among parties to swap agreements that provides for the netting of payment obligations resulting from the swap agreements or for the netting of obligations to make mark-to-market, margin, or collateral payments or transfers or to provide any other form of credit enhancement or replenishment relating to the swap agreements.

"(3) For purposes of paragraph (1), the term 'person' shall mean the following persons or classes thereof:

"(A) A bank or trust company (acting in an individual or fiduciary capacity).

"(B) A savings and loan institution.

"(C) An insurance company.

"(D) A registered investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(E) A commodity pool subject to regulation under this Act.

"(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K).

"(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisors Act of 1940 (15 U.S.C. 80a-1 et seq.), or a commodity trading advisor registered under this Act.

"(H) Any governmental entity (including the United States, any State, or any foreign government) or political subdivision thereof, any multinational or supranational entity, or any instrumentality, agency or department of any of the foregoing.

"(I) A broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another institutional participant.

"(J) A futures commission merchant, floor broker, or floor trader registered under this Act acting on its own behalf or on behalf of another institutional participant.

"(K) Such other persons that the Commission determines have the financial and other qualifications adequate to fulfill the terms and conditions of the agreement, contract, or transaction.

"(j) Nothing in this Act shall be considered to be applicable to any deposit (as defined under the Federal Reserve Act) if the deposit is offered by—

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(2) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); or

"(3) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"(k) Nothing in this Act shall be considered to govern or in any way be applicable to any instrument that is issued by an insurance company that is exempt under paragraph (2) or (8) of section 3(a) of the Securities Act of 1933 (15 U.S.C. 78c(a)).

"(l) Nothing in this Act shall be considered to govern or in any way to be applicable to—

"(1) any loan made by—

"(A) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(B) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(C) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)); or

"(D) a foreign bank (as defined in section 1(b)(7) of the International Banking Act (12 U.S.C. 3101(7)), to person specified in subsection (1)(3);

"(2) any loan that is a consumer credit transaction subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.); or

"(3) any loan made in connection with transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.".

SEC. 304. INDEX PARTICIPATIONS.

Subsection (f) of section 4c (7 U.S.C. 6c(f)) is amended to read as follows:

"(f)(1) Nothing in this Act shall be considered to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

"(2)(A) Nothing in this Act shall be considered to govern or in any way be applicable to any index participation traded on a national securities exchange or quoted through an automated inter-dealer quotation system operated by a securities self-regulatory organization if the index participation has been approved for trading by the Securities and Exchange Commission.

"(B) The Commission shall have the power, right, and authority to designate any board of trade as a contract market for any index participation, if the Commission determines that the designation is consistent with the requirements of this Act (other than section 2(a)(1)(B)).

"(C) If the Commission designates any board of trade as a contract market for any index participation—

"(i) this Act (other than section 2(a)(1)(B)) shall apply only to transactions in that index participation that are conducted on a designated contract market (including transactions between a futures commission merchant and the customer of the futures commission merchant that are incidental to a transaction on a designated contract market); and

"(ii) this Act (including sections 2(a)(1)(A) and 2(a)(1)(B)) shall not apply to transactions in that index participation, or in any other index participation, that are conducted on a national securities exchange or through the facilities of an automated inter-dealer quotation system operated by a securities self-regulatory organization.

"(D) Notwithstanding any other provision of law, no index participation shall be traded on a national securities exchange or a designated contract market, or quoted through an automated inter-dealer quotation system operated by a securities self-regulatory organization, unless that index participation meets the following minimum requirements:

"(i) Trading in the index participation shall not be readily susceptible to manipulation of the price of the index participation, nor to causing or being used in the manipulation of the price of any underlying security, option on the security or option on a group or index of the securities.

"(ii) The group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to the measure.

"(E) To the extent that such transactions in any index participation are conducted pursuant to subsection (a) on a national securities exchange or through the facilities of an automated inter-dealer quotation system operated by a securities self-regulatory organization, such transactions shall not be considered to be transactions involving contracts of sale of a commodity for future delivery.

"(F) For purposes of this paragraph, the term 'index participation' means an instrument that is an interest of indefinite duration in the current value of a portfolio of securities.".

SEC. 305. DIRECTIVES REGARDING INTERMARKET ISSUES.

(a) IN GENERAL.—Not later than 1 year after the effective date of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission, in consultation with the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System, shall each respectively—

(1) adopt such rules and regulations, issue such orders, and, subject to applicable requirements, approve such rules of the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to strengthen the overall stability of domestic equity and equity derivative markets and maintain fair and orderly markets through the adoption and approval of appropriate coordinated "circuit breaker" mechanisms and similar requirements;

(2) establish (for all domestic equity and equity derivative markets) effective prohibitions on intermarket frontrunning, and require the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to establish effective procedures for sharing price, trading, and enforcement data for the detection of intermarket frontrunning, fraud, and other violations;

(3) adopt (for all domestic equity and equity derivative markets) such rules and regulations, issue such orders, and approve, subject to applicable requirements, such rules of the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions;

(4) adopt such rules and regulations, issue such orders, and, subject to applicable requirements, approve such rules of the self-regulatory organizations and contract markets and clearing organizations subject to their respective regulatory authority as may be necessary or appropriate to authorize the prompt implementation of systems for the cross-margining of intermarket positions and the use of such intermarket positions as security interest for loans and other extensions of credit and the establishment or maintenance of margin on futures and options contracts; and

(5) establish policies with regard to the negotiation and development of international regulatory agreements and standards involving intermarket issues.

(b) OTHER ISSUES.—The Securities and Exchange Commission and the Commodity Futures Trading Commission, in consultation with the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System shall identify and address other intermarket issues as the issues arise.

(c) REPORT.—Not later than 15 months after the effective date of this Act, the Securities Exchange Commission and the Commodity Futures Trading Commission shall report to Congress on the actions the Commissions have taken to carry out this section.

Mr. BOND. Mr. President, I am pleased to send this amendment to the desk in behalf of myself, Mr. WIRTH, Mr. GARN, Mr. RIEGLE, Mr. DODD, and Mr. MOYNIHAN.

These are essentially the provisions that we discussed earlier today. As I said at the time, it goes back rather closely to the compromise that was worked out last year. We have had an opportunity to have further refinements on it.

As a result of the discussions yesterday in the Banking Committee, which were very fruitful and involved the principal regulators, the Chairman of the Federal Reserve, the Chairman of the CFTC, the Chairman of the SEC, and Mr. Glauber representing the Secretary of the Treasury, we did have some ideas expressed.

The reason for the delay in presenting this amendment is we wanted to spell out very clearly our basic purpose, and that was to ensure that where there is a hybrid and only where there is a hybrid product, not when there is what we call a plain vanilla future or a plain vanilla security, that either a CFTC-designated contract market could trade it or it could trade under the SEC jurisdiction. We wanted to make sure this was a two-way street, and that someone with a hybrid product in the gray area between the black and white on securities on the one hand and futures on the other, there would be what we call the jumpoff—allow the competing products that people who are offering them and the people who want to purchase them choose which forum they wish to function in. If they are going to go to a futures exchange, obviously they are going to set up the instrument with mutual executory obligations.

There are maintenance margins, and there are variation margins. When the market moves one way, the person on the disfavored side may have to come up with a variation margin. The parties to the futures contract look to the clearinghouse for credit risk. These are the indicia of a futures contract. On the other hand, if they are trading on a securities exchange, then they would have to be in the form of a security.

I mentioned earlier today index participations which under this amendment could be traded on a securities exchange. This would afford the small investor an opportunity for about one-tenth of the risk of a futures contract to take a position in expectation of a rise in the value of the stock index just as they could through a stock index option.

There are many new products being developed every day to meet the changing and emerging financial needs in the marketplace. And it is our belief that the competitive ability of the American financial markets is best served, the financial needs of those who participate are best served, if they are not subject to the threat of litigation under the exclusivity clause.

I have already pointed out the index participations were driven offshore. Other instruments such as swaps are in danger of being driven offshore as other markets now operate offshore because ours is the only country which gives a sword to the futures regulator to allow them to stop any other exchange of any other entity from dealing in a product that has some element of futurity.

There is one other point that I want to raise about this proposal by Senator WIRTH and myself. That is the impact on agriculture and the impact on farmers. A lot of people have said they have heard from farmers and farm organizations who are concerned about any kind of amendment in this area. As one who has as many farmers in agricultural businesses in my State as about anyone else here, and as one who values very highly his relationship with them, I want to spend just a few minutes discussing how this amendment to title III, much less title III itself, affects farmers.

In my travels around Missouri I spent time asking farmers what they think about what I am doing on this issue. Surprising to me, the first point they make is they do not trust Chicago. They say we ought to keep an eye on them. Then we get into the discussion about whether the CFTC should be given broader authority to regulate new nonagricultural products. They are astounded. Why give them a bigger tent, they tell me, when the CFTC is having trouble keeping the handle on the abuses already existing? They all know about the scandal in soybeans. They question whether it makes more sense to expand the scope of operations and the required attention span of the CFTC.

We have heard recently about the significant trading in the coffee futures market the day before a significant change in the position of Brazilian coffee exporters was announced. One of the Commissioners of the CFTC at that time suggested that there ought to be some ban or some limitation on insider trading.

Mr. President, I point this out just to note for my colleagues that what farmers, at least in my State, and I believe they will find in their States, really want is a tough cop on the beat to watch Chicago, to watch the futures markets, to watch those markets where agricultural commodities are being traded and futures in them are being traded. They do not want a new insurance regulator, a bank regulator, or a security regulator.

Once again, as usual, I think the Missouri farmers have put their finger on the issue. We need title I and title II of S. 207 to give the CFTC some long-needed teeth. I think the job that the Agriculture Committee has done in crafting those provisions is an outstanding one.

I had the pleasure of working on those measures in the last session. I was deeply disappointed that we could not get them to a vote last year because I think that everybody who deals in the futures markets needs and wants and expects good, tough regulation.

Certainly the future of the futures market is best served when people can deal with confidence in the futures market. But as Secretary Brady pointed out, because of the 1987 crash there are other things we need. We need the ability of the Fed to oversee other margins. The CFTC gets new, broader margin authority or has the option of the Federal Reserve to have it delegated to them.

I believe that under the alternative proposed by the Senator from Colorado and myself, there will be much less confusion in the international financial markets and in the United States financial markets with the result that we will have far more innovative, useful products trading in the markets and a much larger volume traded here rather than being driven offshore. I hope my colleagues will, if they have questions, discuss with farmers in their States what they think the CFTC devoting time and energy of chasing down swap products, insurance products, or bank deposits versus CFTC policy of policing the beat the farmers care about, the soybean pit, the grain trade, and those other areas.

For those reasons, Mr. President, I want to make it clear, and I hope my colleagues understand that the proposal of the Senator from Colorado, others and myself, is not designed in any way to take away from the regulation which is so essential to protecting markets in agricultural commodity futures, but is designed to see that our overall financial markets work much better.

I yield the floor.

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. GRAMM. 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. GRAMM. Are we operating under a time agreement?

The PRESIDING OFFICER. We are not operating under a time agreement.

Mr. GRAMM. I would like to propound some questions to the distinguished Senator from Missouri about the amendment, and these questions are simply being asked because I am not sure what the ramifications of the amendment are. As we normally think of bank deposits and bank loans, I do not want anything in this bill to expand the CFTC's power over either one of these.

My concern, however, is the difficulty that might exist in distinguishing between what is traditionally thought of as a loan and what is traditionally thought of as a future.

Let me just pose the following question: Is it the Senator's intention in this amendment to deny the CFTC any existing jurisdiction over bank loans and bank deposits as they relate to futures and to futures markets that would be analogous to what the SEC has under current law with regard to bank loans and bank deposits as they relate to securities and security markets?

Mr. BOND. Mr. President, I say, as my colleague probably knows, I have been advised that there are explicit exemptions from the SEC laws for bank activities and bank sales of securities. I ask my colleague, what is the existing CFTC jurisdictional limitation with respect to banks?

Mr. GRAMM. I think the problem we have here is that I am not sure any of us know what jurisdiction the SEC has over deposits or loans or what jurisdictions the CFTC has over deposits or loans. If the purpose of the Senator's amendment is to assure that this bill does not expand the CFTC's jurisdiction, then I do not think I have any problems with it. But if the purpose of his amendment is to deny the CFTC jurisdiction that it currently has and jurisdiction that is parallel to the SEC's jurisdiction, then I think that I have real problems with it.

Let me try to give an example.

Let us say that a bank makes mortgage loans and that the mortgage loans are then bundled and sold as securities on the secondary market. It would be my assumption that in that market the SEC would preserve its traditional jurisdiction, that once the bundled mortgages are traded on the securities market, the SEC would have jurisdiction related to fraud and the protection of the public interest.

What I am wondering is, if a bank made loans, say, denominated in future wheat deliveries, and they were made in thousand-dollar denominations, and then those loans were sold on the secondary market, under the Senator's amendment, would the CFTC have the same jurisdiction over those secondary markets that the SEC would have with regard to the bundled mortgages? That is what I am trying to understand. There is not any sinister motive here. Are we preserving a parallel between the SEC and the CFTC? I am concerned about stripping away any powers that the CFTC may now have, unless we are doing the same thing to the SEC.

Mr. BOND. Mr. President, as I mentioned a moment ago, there are explicit exemptions in the securities law, 3(a)(2) and 12(i), under the 1934 act, for bank activities. If a bank, however, goes into the securities market, then the bank is subject to the laws and regulations of the securities market. If a bank went into the futures market to sell some kind of future, it is my understanding that they would be subject to the usual regulations on any product traded on a designated contract exchange.

But if my good friend from Texas is saying, if a bank starts selling futures contracts—if that is his question—that bank has all the problems it needs with its Federal and/or State regulators, because that is not what banks do. There are certain things that you get down to when you start making loans. I do not believe any bank examiner is going to allow a federally insured depository institution to try and set up a futures market under the guise of making loans.

That is not the concern that the Federal Reserve raised when it strongly urged that there be a clear-cut statement of policy on loans and demand deposits of banks. Usually everybody knows what bank deposits, bank loans traditionally are. They may develop bells and whistles on them but they have to be basically money lent out or money paid in with the expectation that interest will change hands and not that they will be some kind of futures activity. If there is some kind of futures activity then that clearly falls outside the scope of their authority to act as a bank but the concern is that there might be a suit filed against a normal loan or other activity by the CFTC or a futures contract market.

Mr. GRAMM. Let me try then to understand the Senator's concern, and again all I am trying to do is to be sure that we are not denying an agency the ability to do its job. I have just been handed by the trusty staff of the Ag Committee the copy of the securities laws. In section 78(j) the law makes it very clear that even if a security is not registered, then that does not limit the ability of the Securities and Exchange Commission to regulate in the public interest and to protect investors.

So, as I read this, and I may be wrong, to the degree to which a loan or deposit becomes a security, the SEC still has jurisdiction.

The distinguished Senator from Missouri talks about regulation, but paragraph D of his provision includes foreign banks. Let me just make up a hypothetical example.

Let us say the Bank of Yugoslavia opens a branch bank and they make loans denominated in grain. They make 1,000 loans at $1,000 a loan. The loans are to be paid in grain on a date certain in the future. They go on the secondary market and they sell these loans. It seems to me at that point that they have become futures.

I am wondering if it is the Senator's intention to deny the CFTC the ability at that point to step in and regulate them.

What I am saying is that maybe we could solve this whole thing with very simple language that says the following: To whatever degree existing, law, which is not changed by this provision, preserves jurisdiction for the SEC over bank loans and bank deposits, as they relate to securities, and as they relate to security markets, nothing in this provision would take away corresponding powers of the CFTC over bank deposits and bank loans as they relate to futures and to the futures market.

In other words, if before the adoption of the bill that is before us, the CFTC has fraud powers that relate to loans or deposits being manipulated to be futures, and nothing in the Senator's amendment takes away the powers it already has or the power that would be parallel to the SEC, then I do not know that we have any disagreement.

Mr. BOND. Mr. President, my colleague is talking about a Yugoslavian bank. I point out this amendment only applies to a Federal or State branch or agency of a foreign bank, and as such it is regulated in the United States. So some bank trying to offer grain denominated loans or other contracts, I suspect is totally outside the scope of the banking laws.

The other point I would note is that there is no corresponding power in the SEC to the exclusivity clause in the CFTC. The CFTC has a sword that can be used to strike down trading in financial instruments that goes beyond anything that may be presented on a CFTC exchange. The IP's, for one, is an example where the exclusivity clause was used to take away jurisdiction from another regulated entity, the American and the Philadelphia stock exchanges.

I do not know and I would be happy to be informed by my colleague as to the equivalent power that the SEC may have. It is clear that both agencies may have general antifraud provisions, and there is a whole range of both State common law and mail fraud statutes that would deal with attempt to set up some kind of fraudulent enterprise.

But beyond that I would ask my colleague what specific powers he may be referring to. The main concern of the banking regulators is that the exclusivity clause could be used to regulate or to interfere with a deposit or a loan issued by a bank and that is what we need to clarify. That is the purpose of this amendment.

Mr. GRAMM. If I might respond, I know that the SEC has powers over securities in the security markets with regard to fraud statutes no matter who is in the process of issuing or marketing those securities, be they banks or be they individuals.

My concern here is not whether CFTC is going to have jurisdiction over bank deposits, like checking accounts, or loans, or like commercial credit. My concern is what happens when loans are made. If the loans are traded on a secondary market, you have a bank regulator that is challenged to regulate banks in their banking operation. But what happens if a bank gets into the futures business? Do they escape regulation by the fact that they are a bank? It is my contention that they do not escape regulation of the SEC because they are a bank if they get into the business of dealing in the securities markets.

For example, most banks speculate and engage in transactions related to currency futures. It is an ongoing transaction. To the extent that they engage in currency futures they are regulated by the CFTC and in the regulation of that market.

Now what happens if a bank decides it does not want to be regulated? It makes loans denominated in foreign currencies that become futures and engages in those transactions. Does that exempt them from the CFTC when clearly the loan is simply a vehicle to create a future? That is what I am trying to understand.

Mr. BOND. Mr. President, if there is any possibility that a bank could become a futures trading entity by using loans denominated in some kind of future product, I think that we have a weakness in the basic banking laws because that is not what banks are chartered to do. As I have said before, if a bank were to buy a futures contract, then it would be subject to the futures contract or it sells a futures contract on the market but when it has loans and deposits as a normal banking institution, then I do not see how under the heavily regulated system we have for financial institutions that there is any way in which a bank could become a futures market by denominating loans in grain. That just defies all standards of banking safety and soundness. That is now what banks are permitted to do. If there is a one thing we do it is we regulate our banks rather tightly in the United States.

Mr. GRAMM. Mr. President, all I am saying is, I do not know what is going to happen in the days to come. I think one of the things we know for certain is that we have a great deal of innovation going on.

What I am concerned about here is not that you are simply trying to prevent the CFTC expanding powers over bank loans and bank deposits. I do not have any concern about that at all. What I am concerned about is that, unintentionally, creating a void in the regulatory process. Bank regulators that, after all, have their own problems related to banking, are now going to be responsible for regulating instruments that may be futures posing under the name of deposits or loans, and that powers that the SEC currently has over securities, related to fraud and the protection of the public interest, are going to be denied to the CFTC.

You are talking about credit unions in the amendment—I am not sure that the credit union regulators are prepared to regulate futures or securities. I do not know what kind of expertise they have. I know they do a great job in regulating credit unions.

So what I am saying is if the SEC exercises power under current law related to deposits or loans to protect the public interest against fraud and to protect the integrity of the securities market, do we want to deny to CFTC those same powers through the Senator's amendment to protect the integrity of the futures markets, and the futures industry?

Mr. BOND. Mr. President, the whole purpose of this amendment is to make clear that the very special tool that CFTC has under the CEA, the exclusivity clause, is not, for example, used by some future CFTC to interfere with any kind of bank products. The adjustable rate mortgages, for example, were subject to a proposed rulemaking to say that ARM's were not to be considered as futures. The Commission said that they anticipated that additions and refinements of these categories may be made.

There is an uncertainty as to how far the CFTC or even the futures industry itself can pursue the normal banking products under the exclusivity clause.

I really think we are getting far afield when you try to think about how a credit union might get into the business of operating a futures market. If the credit union regulators have half the ability I am confident they have, they are going to blow the whistle when they see the first sign that a credit union is trying to run a futures market.

The same problem does not exist, there is not a mirror image, on the SEC side. There are general fraud provisions that both entities have. And I am confident that those fraud provisions will continue to be exercised as will the general criminal fraud, mail fraud statutes, and everything else. What we are attempting to do is to give certainty that loans, demand deposits, deposits, CD's will not be struck down by the exclusivity clause.

Mr. GRAMM. Mr. President, I think there are two issues here, and I think now I am beginning to understand what the Senator is trying to do. It is not the Senator's concern that the bill before us has expanded the CFTC's powers. It is the Senator's concern that the Senator wants banks to be able to say what is a bank product and deny the CFTC the ability to say no, that is a future.

Would the Senator be in favor of saying that, to the degree to which the Securities and Exchange Commission has the ability to say, no, that is not a bank deposit or a bank loan, it is a security, and it comes under our jurisdiction under current law, would the Senator be willing to have an amendment to preserve the same power for the CFTC?

Mr. BOND. Mr. President, as I pointed out before, when banks engage in any of these activities, if they go into a market, then they are regulated by that market. But, basically, the activities within the bank are normal banking activities regulated by bank regulators regardless of what they are and if they are selling securities in the guise of normal banking activities or if they are trying to sell futures in the guise of normal banking activities, that, to me, is something that can be and should be dealt with by the banking regulators, just as the CFTC would have the authority on one of its designated contract markets to say, you know, you are holding yourself out as a taker of deposits, and if somebody, if the CFTC contract market offered and claimed to offer a Federal deposit insurance on a checking account with one of the Commission's merchants, then I would think that the CFTC itself would have the power to and have the responsibility to knock that down.

Mr. GRAMM. Mr. President, I would think that that is obvious. What this amendment says is that anything a bank does, the bank regulators have jurisdiction over and the CFTC does not have jurisdiction. If a bank calls something a deposit and they say it is a deposit, and the CFTC says, it is a future since it calls on the delivery of something in the future and has all the characteristics of a future, such as a loan that is denominated in oil to be delivered in the future, that sells on a secondary market or is traded indirectly, then under this amendment, the bank could say, no, it is a deposit. And the agency that is given responsibility for the regulation of futures would have no recourse whatsoever because the bank or the bank regulator would have the final word.

There are two types of problems here. One is a problem where those activities would undermine the solvency of the bank. And I guess you could argue that if the bank regulators were sufficiently knowledgeable and experienced in those areas, that they would be able to regulate that. Why we would want them to do it, however, rather than the agency that is charged with it, that has the expertise, I do not know.

But what about the case where the regulator says, well, you know, this futures business is a good business. You are earning money doing it. Go ahead and do it and we will regulate you in doing it instead of the CFTC.

So you would have banks issuing futures that are called deposits, that are trading on the open market, and you are saying that if they were securities, the SEC could step in and exercise its oversight responsibility. You are saying that the CFTC cannot do that.

Mr. BOND. Mr. President, maybe I ought to urge my colleague to let loose of that bone of the SEC competition. We are not fighting a battle between the SEC and the CFTC. This is a concern expressed by the banking regulators and the Federal Reserve. The CFTC does not let the banking regulators come in and say the products being sold, transactions on a designated contract market, are actually bank deposits and bank loans so they should examine them; the banking regulators do not send people in or try to go in and regulate the futures exchange. The futures exchanges, the contract markets, have their regulators. To suggest somebody might violate the law is to suggest we pass a law to ban everything.

To carry this to the absurd extreme, perhaps we should give the CFTC jurisdiction over the Maryland Game and Fish Commission because somebody might call something a rockfish but it could be that they develop some kind of futures contract and call it a rockfish and the game and fish commission would go out and sell licenses to go after rockfish but they are really futures.

That is the ludicrous extent to which this can go. By calling something a name that is inappropriate, that does not in any way suggest a sham transaction is going to be approved by the regulators or is appropriate under the law.

I just do not think we can stretch that far, to say that a loan or deposit somehow can be taken away from or can become something different just by labeling a loan or deposit. I believe there is a body of law to indicate these are clearly defined in law and are certainly subject to the normal regulatory oversight.

Mr. GRAMM. Mr. President, it is clear to me when we are talking about rockfish and the game and wildlife commission we are trying to score debating points and not address the issue. The bottom line is, however, under the amendment before us, it would be the bank that would determine what something was. By simply calling it a deposit, it would be a deposit no matter what it was in reality.

This creates two problems. One problem is the lack of ability of the bank regulator to engage in effective futures regulation, a capacity they have not been trained to do and have no expertise in.

The second problem, is do we want banks to be able to engage in the futures business under the regulation of bank regulators who may decide that it is something they want them to do in order to improve their profitability?

All I am saying is this. Under existing law, the SEC has jurisdiction if the SEC finds that something is a security and is trading as a security. It does not matter what banks call it. The SEC has the ability to regulate securities and the marketing of securities. The fact a bank says it is a deposit does not change the reality of it.

What this amendment would do, however, for banks, Federal and State branches, for credit unions, for foreign banks, it would say: If that institution says it is a loan, it does not matter what market it trades in, it does not matter what its characteristics are, it is a loan.

Now that I have listened to the distinguished Senator, the conclusion I have reached is that he basically means to say here, if a bank says something is a loan, nobody else beside the bank regulator can look behind that claim.

That is far afield from what most people believe that this amendment is doing. Most people believe this letter that was sent out, which said the existing bill expanded CFTC power banks and bank deposits. But this amendment is not about that.

This amendment is an attempt to deny a Federal agency that is given the responsibility for regulating futures products and the futures industry the ability to do that job if the marketer of an instrument or the creator of it is a bank. I submit that is fundamentally different from how the amendment has been advertised.

If it were the purpose of the Senator to narrow the scope of this bill and say that nothing in this bill will expand the power of the CFTC over deposits and loans, I cannot see any reason we would want to oppose it.

I urge my colleagues not to laugh this idea off. I think there is a genuine problem here, and it is one we ought to understand.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, on the basic Bond-Wirth amendment, if I speak this evening I will speak only for a very few minutes. I know all our colleagues who are unable to be on the floor are probably in their offices following the debate going on about futures, security instruments, IP's, and swaps.

But let me ask my distinguished colleagues—Do they have any particular idea of how much longer the debate might go on?

Mr. GRAMM. Mr. President, I am not going to convince the Senator from Missouri and, if I have lost the attention of the distinguished chairman, then I am wasting his time and mine, and I do not have any further debate.

Mr. LEAHY. Quite the contrary.

Mr. GRAMM. I am through, Mr. President.

Mr. LEAHY. The reason I asked the question, Mr. President, is that I have had inquiries on the matter from Senators through our Cloakroom. I suspect the other Cloakroom has had similar ones.

I will mention I am probably going to speak tonight for just a minute or two with regards to the Bond-Wirth amendment to title III. I spoke at much greater length about it earlier today and yesterday. So that is why I will only be very brief.

I see my good friend from Missouri. I have just heard the response of my good friend from Texas. I might ask if the Senator from Missouri has some idea how much longer we will go on, simply to pass the word on.

Mr. BOND. Mr. President, my distinguished colleague from Vermont and I yielded back all the time on the bank powers amendment and we thought we were finished with that. I was prepared to yield back the time and shut down on the broader Wirth-Bond amendment. I was attempting to answer questions from my colleague from Texas. I had a 7:30 dinner engagement and my desire is to be gone. I have about 30 seconds to cite to my friend from Texas something that has just been called to my attention.

And I am more than happy to see this wonderful discussion come to a close.

Mr. LEAHY. Mr. President, I mentioned earlier today about how cooperative my friend from Missouri is. I meant that very seriously. In the years I have known him, since the Senate benefited from his joining the membership here, I thought it would be nothing but.

So I will yield immediately, of course, to the Senator from Missouri.

Mr. BOND. I thank my colleague. I just will point out that one of the reasons why the Federal Reserve and other bank regulators are anxious to have the exemption is the fact that in the Federal Register for December 11, 1987, the Commission proposed to establish an exemption from compliance with certain CFTC regulations for a class of hybrid institutions that are predominantly debt obligations, bank deposits, or other transactions.

In that proposal, it goes on to say that eligibility for such an exemption would be established through a filing procedure affording the Commission notice of the proposed offering, requiring the issuer or offerer's consent to submit to special calls, and mandating disclosure to participants in the exempted transaction, that the transaction will not be regulated by the CFTC.

I further understand that the current CFTC has no interest or intent in pursuing that. But the fact that the CFTC, on December 11, 1987, proposed a rule which would require a bank to come in and get an exemption from the CFTC before offering a bank deposit has caused the concern, and it was for that purpose that we offered the amendment to make sure that they could not do that.

I believe it was gross overreaching. I want to make sure it does not happen again.

I thank the Chair. I thank my distinguished colleague and I yield the floor.

Mr. LEAHY. Mr. President, I know of no other Senator who wishes to speak on this matter. While the Senator from Missouri is on the floor, I want to speak briefly to his amendment. I want to alert him to that.

I emphasize that the amendment is different from the five-Senator compromise of last year, which I happened to join in. The five-Senator compromise used the so-called jump-ball theory. Certain hybrids, like index participations, which are as much futures as they are securities, could trade either as futures or securities.

The hard part of working out that compromise was separating the traditional, plain vanilla futures—an expression that our late and admired colleague, Senate Heinz, had coined—which remained exclusively under the CFTC, from new hybrid securities. We wanted each side to keep the products it had developed and nurtured. New ones would be up for grabs.

The approach made for good regulation. The CFTC has specialized rules for futures trading to protect customers, prices, and markets. These are equivalent to the SEC's very specialized rules in the securities markets, rules based on years of practice and experience with the markets under its jurisdiction

We drew that line. Traditional futures, those with mutual executory obligations, stayed with the CFTC. Traditional securities stayed with the SEC, and the jump-ball hybrids went either way.

The amendment being presented to us rejects this approach. It allows plain vanilla futures based on securities—exact copycats of those traded today in Chicago and New York—to move over to the Stock Exchange, but there is no road going back. It is a one-way street. Plain vanilla securities cannot move to the CFTC. Thus, the basic fairness and the balance of last year's compromise is gone.

At least 36 existing approved contracts, over half of the futures industry, would switch over. That is not a narrow jump-ball approach.

Mr. President, I ask unanimous consent to print in the RECORD a chart showing the contracts which would switch over under even the most narrow reading of that proposal.

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

COMMODITY FUTURES CONTRACTS TRADED 1986-90 DIRECTLY AFFECTED BY BOND-WIRTH AMENDMENT*

CHICAGO BOARD OF TRADE

GNMA Mrtges, CDR
Cash Settle GNMA
T-Bonds
T-notes (6½-10 yr)
T-Notes (5-year)
T-Notes (2-year)
Japanese Government Bonds
30-Day Interest Rate
Corporate Bond Index
Mortgage Backed
CBOE 250 Index
TOPIX
Institutional Index
Municipal Bond Index
Major Market Index
MMI Maxi
NASDAQ-100

CHICAGO MERCANTILE EXCHANGE

T-Bills (90-day)
Domestic CD (90-day)
Nikkei 225
S&P 500 Index
S&P 100 Index
S&P OTC 250

COFFEE SUGAR AND COCOA

Int'l Market Index
CPI-W

COMMODITY EXCHANGE

Moody's Index

KANSAS CITY BD. OF TRD.

Value Line Index
Mini Value Line

MIDAMERICA COMMODITY EXCHANGE

T-Bonds
T-Bills
T-Notes

NEW YORK COTTON EXCHANGE

Five Year Treasury Note
Two Year Treasury Note

NEW YORK FUTURES EXCHANGE

NYSE Composite Index
Russell 2000
Russell 3000
T-Bond (30 Year)

Mr. LEAHY. Mr. President, I spoke at some length on this matter when it first came up Tuesday. I spoke again on it today. I suspect that perhaps there are Senators now who find that excitement waning.

So, Mr. President, I am perfectly willing to shut down the debate on the CFTC authorization, which I understand we can do under the unanimous-consent agreement.

Of course, the unanimous-consent agreement would then control the order of votes tomorrow. I ask as a parliamentary inquiry, Mr. President, what is necessary to end the debate on CFTC tonight? Is it necessary for the proponents of the amendment or opponents to yield back any time, or is it just necessary for debate to stop?

The PRESIDING OFFICER. There is no time to yield back. It can simply cease.

Mr. LEAHY. Mr. President, it sounds like a pretty sensible thing to me. I cease.

*Assumes all futures or securities or group of securities are covered. Other major groups of futures, such as those of currencies and precious metals, may also be included as having value based on "elements of" securities.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the Senator from Wisconsin [Mr. KOHL] as chairman of the Senate delegation to the Canada-United States Interparliamentary Group during the 102d Congress.

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

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

MORNING BUSINESS

Mr. LEAHY. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

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 NATIONAL SCIENCE FOUNDATION MESSAGE FROM THE PRESIDENT—PM 40

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 Labor and Human Resources:

To the Congress of the United States:

I am pleased to send you the annual report of the National Science Foundation for Fiscal Year 1990. This report describes research supported by the Foundation in the mathematical, physical, biological, social, behavioral, and computer sciences; engineering; and education in those fields.

Achievements such as the ones described here are the basis for much of our Nation's strength—its economic growth, national security, and the overall well-being of our people.

As we move into the 1990's, the Foundation will continue its efforts to expand our Nation's research achievements, our productivity, and our ability to remain competitive in world markets through innovation and discoveries.

I commend the Foundation's work to you.

GEORGE BUSH.

THE WHITE HOUSE, *April 17, 1991.*

MESSAGES FROM THE HOUSE

At 1:52 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution:

S. Con. Res. 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.

At 10:35 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 joint resolutions, each without amendment:

S.J. Res. 16. Joint resolution designating the Week of April 21-27, 1991, as "National Crime Victims' Rights Week";

S.J. Res. 64. Joint resolution to authorize the President to proclaim the last Friday of April 1991, as "National Arbor Day"; and

S.J. Res. 119. Joint resolution to designate April 22, 1991, as "Earth Day" to promote the preservation of the global environment.

The message also announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 218. Joint resolution to designate the week beginning April 21, 1991, and the week beginning April 19, 1992, each as "National Organ and Tissue Donor Awareness Week; and

H.J. Res. 222. Joint resolution to provide for a settlement of the railroad labor-management disputes between certain railroads represented by the National Carriers' Conference of the National Railway Labor Conference and certain of their employees.

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-945. A communication from the Secretary of the Army and the Acting Secretary of Education, transmitting, pursuant to law, notice of the intention of the Departments of the Army and Agriculture to interchange jurisdiction of lands and facilities surrounding Lake Isabella and Pine Flat Lake, California; to the Committee on Agriculture, Nutrition, and Forestry.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

The following-named persons to be members of the National Advisory Council on Educational Research and Improvement, for the terms indicated:

Eunice N. Sato, of California, for a term expiring September 30, 1991;

Dale P. Gold, of Virginia, for a term expiring September 30, 1992;

Jack Raymond Reed, of Mississippi, for a term expiring September 30, 1993;

Sandra Mills, of Wisconsin, for a term expiring September 30, 1993; and

Pedro Roig, of Florida, for a term expiring September 30, 1992.

The following-named persons to be members of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for the terms indicated:

Timothy W. Tong, of Arizona, for the remainder of the term expiring August 11, 1992;

Donald J. Sutherland, of New York, for a term expiring August 11, 1996; and

Hans M. Mark, of Texas, for a term expiring April 17, 1996.

Peter deCourcy Hero, of California, to be a member of the National Council on the Arts for the remainder of the term expiring September 3, 1994.

(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. GORTON (for himself and Mr. BRYAN):

S. 832. A bill to authorize the Secretary of Commerce to develop and expand new national markets for recycled paper and other commodities; and to carry out a program requiring Federal departments to procure and use recycled paper and paper products in carrying out their functions; to the Committee on Governmental Affairs.

By Mr. FOWLER (for himself, Mr. NUNN, Mr. HOLLINGS, Mr. GRAHAM, Mr. SASSER, Mr. SHELBY, Mr. GORE, Mr. SANFORD, and Mr. PRYOR):

S. 833. A bill to amend title XIX of the Social Security Act to allow for State matching payments through voluntary contributions; to the Committee on Finance.

By Mr. STEVENS:

S. 834. A bill to amend title 38, United States Code, to increase the salary of the Governors of the United States Postal Service, and for other purposes; to the Committee on Governmental Affairs.

By Mr. MOYNIHAN:

S. 835. A bill to amend title IV of the Social Security Act to establish AFDC minimum payment standards; to the Committee on Finance.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 836. A bill to amend the Energy Policy and Conservation Act with respect to the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

By Mr. BUMPERS (for himself and Mr. DANFORTH):

S. 837. A bill to amend the Internal Revenue Code of 1986 with respect to the discharge, or repayment, of student loans of students who agree to perform services in certain professions; to the Committee on Finance.

By Mr. DODD (for himself, Mr. COATS, Mr. KENNEDY, Mr. PELL, and Mr. ADAMS):

S. 838. A bill to amend the Child Abuse Prevention and Treatment Act to revise and extend programs under such act, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. MCCAIN (for himself and Mr. DANFORTH):

S. 839. A bill to amend the Federal Aviation Act of 1958 to ensure that airline computer reservation systems are available to users on a nondiscriminatory basis, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DURENBERGER:

S. 840. A bill to amend the Internal Revenue Code of 1986 to provide a simplified method for computing the deductions allowable to home day care providers for the business use of their homes; to the Committee on Finance.

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 841. A bill to amend the Internal Revenue Code of 1986 to allow an additional 50-percent deduction for the costs to employers of providing family leave in certain cases involving a birth, an adoption, or a serious illness of a child, spouse, or dependent of the employee; to the Committee on Finance.

By Mr. BREAUX:

S. 842. A bill to amend the Clayton Act to prohibit certain activities by local governments that operate airports, and for certain other purposes; to the Committee on the Judiciary.

By Mr. BREAUX (for himself, Mr. KASTEN, Mr. PRYOR, Mr. HOLLINGS, Mr. LOTT, and Mr. BIDEN):

S. 843. A bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI (for himself, Mr. ADAMS, Mr. BOND, Mr. BURNS, Mr. COCHRAN, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. HARKIN, Mr. MCCAIN, and Mr. SYMMS):

S. 844. A bill to provide for the minting and circulation of $1 coins; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LAUTENBERG:

S. 845. A bill to direct the Secretary of State to seek an agreement from the Arab countries to end certain passport and visa policies, and for other purposes; to the Committee on Foreign Relations.

By Mr. MITCHELL (for Mr. PRYOR) (for himself, Mr. DASCHLE, Mr. RIEGLE, Mr. DURENBERGER, Mr. BURDICK, Mr. BAUCUS, Mr. ROCKEFELLER, and Mr. MCCAIN):

S. 846. A bill to amend title XIX of the Social Security Act to establish Federal standards for long-term care insurance policies; to the Committee on Finance.

By Mr. BRADLEY (for himself and Mr. HATCH):

S.J. Res. 124. Joint resolution to designate "National Visiting Nurse Associations Week" for 1992; to the Committee on the Judiciary.

By Mr. SIMON (for himself, Mr. DIXON, Mr. BIDEN, Mr. BURDICK, Mr. CHAFEE, Mr. CONRAD, Mr. DECONCINI, Mr. DODD, Mr. DURENBERGER, Mr. GLENN, Mr. KERRY, Mr. LAUTENBERG, Mr. MOYNIHAN, Ms. MIKULSKI, Mr. RIEGLE, Mr. ROTH, and Mr. BROWN):

S.J. Res. 125. Joint resolution to designate October 1991 as "Polish American Heritage Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GORTON (for himself and Mr. BRYAN):

S. 832. A bill to authorize the Secretary of Commerce to develop and expand new national markets for recycled paper and other commodities; and to carry out a program requiring Federal departments to procure and use recycled paper and paper products in carrying out their functions; to the Committee on Governmental Affairs.

RECYCLED PAPER NATIONAL MARKET ENHANCEMENT ACT

Mr. GORTON. Mr. President, today I am introducing a bill designed to decrease landfills, increase the market for recycled goods, and further to encourage the Federal Government to "practice what it preaches."

Currently, recycling is costly and inefficient, due to the lack of sufficient markets for recycled commodities. Though many municipalities have implemented effective recycling programs, a viable market for recycled paper and paper products remains to be created.

The Recycled Paper National Market Enhancement Act of 1991 will help combat our Nation's serious problems with municipal solid waste disposal. It will increase the available markets for recycling and thus decrease recycling's costs. It will increase the amount of municipal solid waste recycled. It will require the Federal Government to purchase recycled paper and encourage private business to do the same.

Specifically, this legislation will require the Secretary of Commerce to: prepare a report determining how recycled paper can be better utilized; conduct a domestic market analysis for recycled paper; and establish a Federal procurement program for recycled paper.

Each year, the Federal Government purchases an estimated 734,000 tons of paper products. In 1988, the United States produced 179.6 million tons of municipal solid waste; of this, 40 percent (or 71.8 million tons), was paper and paper products.

By purchasing recycled paper, the Federal Government will enhance the market for recycled paper and paper products. Federal procurement will decrease the cost of recycling and increase the amount of municipal solid waste recycled. I hope that once recycled paper becomes more cost-effective, private industry will join the Government's lead in purchasing recycled paper.

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

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

S. 832

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 "Recycled Paper National Market Enhancement Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Secretary of Commerce should undertake a national search for new markets for recycled paper and other commodities, and advise interested States and other entities on how to expand existing markets for recycled matter;

(2) the United States is producing too much solid waste;

(3) solid waste is overflowing municipal landfills, and that this overflow causes environmental degradation, including hazardous and toxic waste sites, polluted land and water, and the need for additional incinerators;

(4) sending valuable material to landfills instead of reusing and recycling that material is a waste of our natural resources;

(5) the amount of land currently used by landfills could be used in other more productive ways;

(6) the handling and transporting of municipal solid waste is a large cost to the taxpayer;

(7) recycling is a proven way to reduce the amount of the solid waste stream;

(8) though many municipalities have implemented effective recycling programs one of the impediments to enhancing successful recycling programs is the lack of markets for recycled goods, and lack of markets increases the costs of recycling, and decreases the amount of solid waste recycled;

(9) according to the Environmental Protection Agency, paper is 40 percent of the total volume, by weight, of existing landfills;

(10) the Federal Government can expand the existing markets for recycled paper and paper products which will result in a reduction of the amount of municipal solid waste;

(11) the Federal Government purchases over 700,000 tons of paper each year at a cost exceeding $600,000,000, and by purchasing recycled paper and paper products, the Federal Government will enhance the market for recycled paper and paper products; and

(12) specific targets for procurement of recycled paper and paper products by the Federal Government are necessary and will increase recycling.

SEC. 3. REPORT BY SECRETARY OF COMMERCE.

(a) RECYCLED PAPER.—Prior to the expiration of the 60-day period following the date of the enactment of this Act, the Secretary of Commerce shall conduct a study for the purpose of—

(1) determining in what manner and to what extent recycled paper can be better utilized by the United States, and the several States, including political submissions of such States;

(2) determining the costs likely to be incurred in recycling and the most effective way of minimizing such costs; and

(3) conducting a domestic market analysis of recycled paper.

(b) REPORT.—The Secretary of Commerce shall report the results of such study conducted pursuant to subsection (a), together with his views and recommendations, in the Federal Register.

SEC. 4. PROCUREMENT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Commerce shall, by regulation, establish a program for the purpose of requiring each Federal department to purchase and use a certain percentage of recycled paper and paper products in its operations.

(b) PROCUREMENT.—Under the program established pursuant to subsection (a), the Secretary of Commerce shall require each Federal department to take such action as may be necessary to assure that recycled paper and paper products are purchased under each contract, including subcontracts, for the procurement of 10,000 pounds or more of paper or paper products.

(c) EXCEPTIONS.—(1) Under such program, any decision not to use recycled paper and paper products shall be based on a determination that such items are—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) available only at an unreasonable price.

(2) For purposes of this section, an unreasonable price is one which exceeds by more than 10 percent the price of nonrecycled paper or paper products.

(d) LEVELS.—The program established pursuant to this Act shall establish procurement levels for Federal departments for the acquisition of recycled paper and paper products as follows:

(1) For fiscal years 1993 and 1994, 33 percent of all paper and paper products procured during those fiscal years shall be recycled paper and paper products.

(2) For fiscal years 1995 and 1996, 42 percent of all paper and paper products procured during those fiscal years shall be recycled paper and paper products.

(3) For fiscal year 1997, and each fiscal year thereafter, 50 percent of all paper and paper products procured during such fiscal year shall be recycled paper and paper products.

SEC. 5. PUBLICATION; EFFECTIVE DATE; ENFORCEMENT.

(a) PUBLICATION.—Within 90 days following the establishment of the program required by this Act, the Secretary of Commerce shall publish a copy of such program in the Federal Register, and shall submit a copy thereof to Congress.

(b) EFFECTIVE DATE.—Such program shall take effect upon the expiration of the 60-day period following the date of its publication in the Federal Register.

(c) ENFORCEMENT.—It shall be the responsibility of the Secretary of Commerce to enforce the recycled paper and paper products procurement program established pursuant to this Act.

SEC. 6. DEFINITIONS.

As used in this Act, the term—

(1) "paper and paper products" includes nonpermanent printing and writing paper, corrugated boxes, napkins, tissue paper, and such other paper and paper products as may be considered necessary or appropriate to be included in such term by the Secretary of Commerce;

(2) The term "recycled paper and paper products" means paper and paper products that contain no less than 20% post-consumer materials, as defined by the E.P.A.

(3) "Federal department" means any department, agency, or other instrumentality of the executive, legislative, or judicial branch of the United States Government.

By Mr. FOWLER (for himself, Mr. NUNN, Mr. HOLLINGS, Mr. GRAHAM, Mr. SASSER, Mr. SHELBY, Mr. GORE, Mr. SANFORD, and Mr. PRYOR):

S. 833. A bill to amend title XIX of the Social Security Act to allow for State matching payments through voluntary contributions; to the Committee on Finance.

STATE MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS

• Mr. FOWLER. Mr. President, today I rise before you to introduce important legislation to assist State Medicaid budgets with the financial burden of recent federally mandated expansions and address the hardship which disproportionate share hospitals currently face in providing indigent care. This bill will allow States to use voluntary contributions from hospitals as a portion of the State Medicaid match.

During these tough budget times—when health care costs are skyrocketing and the Federal Government keeps setting new mandates for the Medicaid Program—we must allow the States to use creative methods of financing their Medicaid match. I would much rather see a system of voluntary contributions from hospitals than the tax increases that might otherwise be needed to fund essential health-care services for indigent patients.

For the past few years the Health Care Financing Administration has attempted to limit how the States are able to finance their individual Medicaid programs. Congress has examined this issue for several years, but refused to take definitive action. This is the year to send a message to the States that the Federal Government is willing to work together with them to improve access to proper health care for our indigent citizens.

Under this legislation, not more than 10 percent of the total State Medicaid match may come from voluntary donations. Also, individual hospital donations may not exceed 10 percent of the participating hospital's gross revenues. These caps, along with current law, will ensure that there is no abuse by the States or individual hospitals.

In my home State of Georgia, the State legislature has implemented an Indigent Care Trust Fund to financially assist numerous disproportionate share hospitals. This program receives donations from contributing hospitals and utilizes the funds generated to help pay for indigent care throughout the State. Fifty-seven hospitals are currently participating in this program, which provides valuable assistance to the poor, including much needed perinatal case management and postpartum home visits for women and children. Due to forthcoming regulations by the Health Care Financing Administration, there is a growing uncertainty of the Indigent Care Trust Fund's future. Thus, the Georgia Department of Medical Assistance has been unable to proceed with plans to expand Medicaid coverage for pregnant women and children from 133 percent of the poverty level to 150 percent or higher.

Mr. President, the Congress needs to act now and put this issue to rest by allowing the States to use proven methods of expanding Medicaid benefits to indigent citizens. If we sit back and wait, the administration may, indeed, move to take this important financing tool away from State governments.

Mr. President I urge all my fellow colleagues in the Senate to join me, Mr. NUNN, Mr. HOLLINGS, Mr. GRAHAM of Florida, Mr. SASSER, Mr. SHELBY, Mr. GORE, Mr. SANFORD, and Mr. PRYOR in support of this bill. I also ask unanimous consent that this amendment to title XIX of the Social Security Act be printed in the RECORD immediately following my statement.

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

S. 833

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

SECTION 1. STATE MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS.

(a) VOLUNTARY CONTRIBUTIONS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 4755(a) of the Omnibus Budget Reconciliation Act of 1990, is amended by adding at the end the following new subsection:

"(z)(1)(A) Subject to subparagraphs (B) and (C), financial participation described in subsection (a)(2) may include the application of private funds donated by hospitals to, and subject to the unrestricted control of, the State.

"(B) Financial participation may not include—

"(i) donations to the extent their aggregate amount exceeds in any Federal fiscal year 10 percent of the non-Federal portion of expenditures under the plan in the year, or

"(ii) donations made by, or on behalf of, or with respect to, any particular hospital, to the extent that their aggregate amount in an annual cost reporting period exceeds 10 percent of the gross revenues of the hospital (not taking into account any Federal revenues under this title or under title V or title XVIII).

"(C) For purposes of this paragraph, the fact that a hospital may receive some benefit from a transfer of funds to a State shall not prevent the transfer from being treated as the donation of funds, unless the amount of benefit to the hospital is directly related, in timing and amount, to the timing and amount of the transfer.".

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to funds donated on or after January 1, 1992.●

By Mr. STEVENS:

S. 834. A bill to amend title 38, United States Code, to increase the salary of the Governors of the U.S. Postal Service, and for other purposes; to the Committee on Governmental Affairs.

POSTAL SERVICE GOVERNORS COMPENSATION ACT OF 1991

Mr. STEVENS. Mr. President, today I am introducing a long-needed change in the Postal Reorganization Act relating to the pay of the Board of Governors of the U.S. Postal Service. In addition, the legislation, if enacted, would enhance their ability to carry out their sworn duties.

The annual salary of the Postal Service Governors was set in 1970 at $10,000. My bill will increase the annual salaries to $30,000, to recover the reduction in compensation caused by 253 percent inflation since the date of enactment. This increase would be in line with the increased compensation granted to fellow postal workers who have seen a 286-percent increase in their wages since 1970.

As recognized from the beginning by the Kappel Commission, which laid the foundation for postal reorganization in 1968, the essential element for the success of the Postal Service is a governing Board with full authority for postal management. The immense size of the Postal Service, together with its $40 billion budget, its geographic scope, and its pervasive impact on every household, business, and community, requires oversight by persons of ability, energy, and experience. It is inconsistent with this requirement that the salary paid to those essential individuals since the enactment of the Postal Reorganization Act, should be reduced, through inflation, by approximately two-thirds of its original value. Moreover, the reduction of the value of the compensation is contrary to trends in the private sector, where the fees paid to outside directors of large corporations are rising. Companies in the private sector have come to depend upon the diligent, objective judgment of outside directors to monitor and evaluate the decisions of operating management, and they are increasingly willing to pay substantial amounts to obtain the time and energy of qualified directors. Similar considerations apply no less in a vast public enterprise such as the Postal Service, an enterprise I might add would be, in effect, the eighth largest private company in the United States, if it were a private company. To ensure that service as a Governor of the Postal Service remains attractive to persons of talent and stature, the salary paid to the Governors should be adjusted to restore some of the value lost through inflation.

It has also become increasingly apparent over the past 20 years that the Board of Governors of the Postal Service, as a group and as individuals, from time to time need to obtain the services of others to help them perform their duties effectively. Such assistance may take the form of clerical help to deal with a surge of correspondence occasioned by a major postal rate proceeding, or the need to utilize expert advice to aid in the evaluation of a major policy initiative or capital expenditure facing the Board. Although it is implicit in the Postal Reorganization Act that the Board of Governors may employ clerical or professional help, consistent with their overall authority to direct the exercise of these responsibilities, it is appropriate to codify that explicit recognition of authority. But more important, it is inherent upon the whole concept of the Board of Governors that they are independent of management and that they have the duty to ensure, on behalf of the American people, that the actions requested by management are in the proper interest of all ratepayers and postal customers. They cannot do that job adequately if their only source, or their primary source, is postal management. The current Board has a capable secretary who does all that can be done. But one person cannot do it all. This legislation simply gives the members, with the approval of the Board, the ability to hire limited supplemental staff either in Washington, or in their own communities, to help them carry out their duties.

I do not perceive a huge bureaucracy being created. I do not perceive even a very large staff, but we must authorize some staff. We cannot hold the Board of Governors accountable for action and deny them the ability to freely probe, question, and assure themselves that the course the postal management wishes to take is the proper course. Those hired will be retained with the approval of the Board of Governors and will be subject to the same basic policies and restrictions which govern all U.S. Postal Service employees. These statutory policies include a 5-year time limit, right of removal applicable to executive employee contracts, prohibition of political job recommendations, and general applicable principles of pay applicability, executive salary limitations, and employment opportunities for the disadvantaged and handicapped. In addition, in order to ensure that the Board and its members should not establish a separate bureaucracy, individuals employed, or contracted to assist the Board or its members, will not be considered members of the postal career service. Mr. President, I ask unanimous consent to print at the end of my remarks the complete text of the bill.

Incidentally the total amount of money involved in this is very small and because of the circumstances it will not come out of the taxpayers' funds, it will come out of the ratepayers' funds. But those ratepayers deserve better service from the Board of Governors and I believe they will get that service if the compensation is in line with modern conditions; conditions now as compared to 1970, and they have the staff preparation that enables them to do their job in a shorter period of time when they are in session.

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

S. 834

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 "Postal Service Governors Compensation Act of 1991".

SEC. 2. INCREASED SALARY FOR POSTAL SERVICE GOVERNORS.

Section 202(a) of title 39, United States Code, is amended by striking "$10,000" and inserting in lieu thereof "$30,000".

SEC. 3. STAFF ASSISTANCE FOR BOARD OF GOVERNORS.

(a) IN GENERAL.—Section 205(a) of title 39, United States Code, is amended by adding at the end the following: "The Board is authorized, by contract or other employment subject to the policies and restrictions of sections 1001(c), 1002, and 1003 of this title, to obtain such staff to assist the Board or its members as the Board shall determine by resolution to be appropriate.".

(b) CONFORMING AMENDMENT.—Section 1001(b) of title 39, United States Code, is amended by striking "and 1001(c)" and inserting in lieu thereof "205(a), and 1001(c)".

SEC. 4. EFFECTIVE DATE.

The provisions of this Act shall take effect on October 1, 1991.

SECTIONAL ANALYSIS

SEC. 1. SHORT TITLE

The Postal Service Governors Compensation Act of 1991.

SEC. 2. INCREASED SALARY FOR POSTAL SERVICE GOVERNORS

This section amends 39 U.S.C. 202(a) to increase the yearly salary of the Governors of the United States Postal Service from $10,000 to $30,000.

SEC. 3. STAFF ASSISTANCE FOR BOARD OF GOVERNORS

Subsection (a) amends 39 U.S.C. 205(a) to make explicit the authority of the Board of Governors of the Postal Service, by employment contracts or other arrangements, to obtain support staff for the Board as a whole, or its individual members. (Any such contracts or arrangements must be approved by a resolution of the Board of Governors.) All such employment arrangements, moreover, will be subject to certain policies and restrictions which govern employment within the Postal Service, including the five-year time limit and right of removal applicable to executive employment contracts (39 U.S.C. 1001(c)), the prohibition of political recommendations (39 U.S.C. 1002), and the policies of pay comparability, executive salary limitation, and opportunity for the disadvantaged and handicapped (39 U.S.C. 1003).

Subsection (b) makes a conforming amendment to 39 U.S.C. 1001(b) to provide that individuals employed under contracts or other arrangements to provide staff assistance to the Board or individual Board members will not be members of the postal career service.

By Mr. MOYNIHAN:

S. 835. A bill to amend title IV of the Social Security Act to establish AFDC minimum payment standards; to the Committee on Finance.

MINIMUM BENEFIT FOR FAMILIES ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce a bill that would require that AFDC payments, when combined with food stamp benefits, equal at least 50 percent of the poverty level. Under this proposal, the minimum monthly AFDC-food stamp benefit for a family of three would be $464.

Children now make up the largest proportion of poor persons in the United States. Some 12.6 million, 39.9 percent of the poor. This development is linked to recent changes in the American family. Today, nearly one-quarter of all families are headed by a single mother. That's up from 19.4 percent in 1980, 11.5 percent in 1970.

Single parent families now represent two-thirds of all poor families. And they seem out of the reach of the standard economic prescriptions. The annual poverty status report recently issued by the Bureau of the Census suggests that the economic growth and high employment levels of the last decade made no impact on this group.

In 1988, we enacted legislation, the Family Support Act, to address child poverty and welfare dependency. This proposal introduced a wholly new concept to welfare, a social compact. Society owed single mothers support while they acquired the means of self-sufficiency; mothers owed society the effort to achieve this goal. Absent fathers owed child support to both. But the social calamity that is welfare dependency will not be reversed overnight. What took near a generation to create will take near a generation to remedy.

Meanwhile, we have 12.6 million children who live in pauperdom; who at the very least must be provided with food, clothing, and shelter.

The Federal Government does not set benefit levels. States do. And some States set their's quite low—Alabama: $118 a month for a family of three; Mississippi: $120; Tennessee: $184; Texas: $184; and Louisiana: $190. By contrast, the State of Alaska pays $846. This is over seven times as much as Alabama and Mississippi, a range that greatly exceeds geographical differences in the cost of living.

Since the 1970's, Social Security benefits have been indexed to inflation. As a result, poverty among the elderly has been nearly eliminated—surely one of our most significant achievements. Indeed, by 1989 the proportion of the elderly who were poor had dropped to 11.4 percent, down from 35.2 percent in 1959. Similarly, Supplemental Security Income, a national program of income assistance for the aged, blind and disabled, also provides federally set benefits which are indexed to inflation. By contrast, the value of AFDC benefits has steadily dropped over the past two decades. From 1970 to 1989, the median maximum benefit for a family of three declined in real terms by 37 percent. In Texas the decline was 60 percent.

The welfare benefits required under this bill are extremely modest—some $217 a month in AFDC payments for a family of three. If we took the minimum benefit for a family of three included in President Nixon's family assistance plan and passed by the House back in 1970, and inflated it forward to today, we would have a payment of $364—over two-thirds more than that required by this proposal. Many people would argue that a much higher minimum payment is justified, and I might well agree. But in support of the proposal, I would advance three points. One, the minimum benefit will increase over time. As the poverty level goes up with inflation, the minimum benefit will increase also. Two, in the States that are affected, this bill would increase income going to some of our neediest families. And three, the cost is bearable—$250 million to the Federal Government.

It is time we took this badly needed step to ensure that the poorest children in the Nation receive at least the barest level of support.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 835

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 "Minimum Benefit for Familes Act of 1991."

SECTION 2. AFDC MINIMUM PAYMENT STANDARDS.

(a) STATE PLAN REQUIREMENT.—(1) Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(A) by striking "and" at the end of paragraph (44);

(B) by striking the period at the end of paragraph (45) and inserting "; and"; and

(C) by inserting after paragraph (45) and before the matter following such paragraph the following new paragraph:

"(46) provide for payment standards under the plan that meet the requirements of section 411.".

(2) Part A of title IV of such Act is amended by inserting after section 410 the following new section:

"MINIMUM PAYMENT STANDARDS

"SEC. 411. (a)(1) In order to be approved under section 402, subject to paragraph (2), a State plan shall provide that the payment standard in effect under the plan for a family of a given size is such that the amount of aid payable under the plan to a family of such size with no income other than income under this part (and reducing such income only by the applicable standard deduction as specific in section 5(e) of the Food Stamp Act of 1977), when added to the value of any food stamp allotment to which such family or the household of such family is entitled, equals or exceeds an amount equal to 50 percent of the income official poverty line established by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(2) For the purposes of paragraph (1)—

"(A) the total value of any food stamp allotment in the case of any family shall be considered to be the total value of the allotment which such family would receive if it were considered a household with no income (except under this part) for purposes of the Food Stamp Act of 1977 (whether it is actually living along or with one or more other persons or families); and

"(B) in the case of a family which includes one or more dependent children but in which there is no adult whose needs are taken into account in determining the amount of aid payable (unless the application of this clause would result in a larger amount of aid for such family than the amount of aid which would be paid to a family of the same size and income which includes one or more such adults), the payment standard established by the State shall be such that the standard (without taking into account the value of any food stamp allotment) will equal an amount that is not less than 50 percent of the difference between the income official poverty line described in paragraph (1) applicable to a family with 3 members and the income official poverty line described in paragraph (1) applicable to a family with 3 members and the income official poverty line applicable to a family with a number of members equal to 3 plus the number of such dependent children.".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section shall become effective on October 1, 1992.

(2) In the case of a State plan under section 402 of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 836. A bill to amend the Energy Policy and Conservation Act with respect to the petroleum reserve; to the Committee on Energy and Natural Resources.

REGIONAL PETROLEUM RESERVES

• Mr. AKAKA. Mr. President, today I am introducing legislation to establish an emergency petroleum reserve in Hawaii. I offer this bill on behalf of myself and Senator INOUYE.

The Islands of Hawaii are rich in many things—especially beauty—but poor in fossil fuels. We rely on oil for 90 percent of our energy needs. All of it arrives by ocean tanker. That is why an emergency oil reserve is of great concern to the people of Hawaii.

Compared to the mainland, Hawaii faces a much greater risk of an oil supply disruption. The reason for this is obvious: We have no overland access to domestic sources of crude. While the lower 48 States and Alaska have access to oil transported by pipeline, rail, or highway, all of Hawaii's crude oil and refined products arrive by ocean tanker.

Our total reliance on tanker deliveries makes Hawaii exceptionally vulnerable to a cutoff of oil supplies should a crisis disrupt imports. A severe disruption of imports would cause our oil supplies to run dry and Hawaii's economy would grind to a halt.

In a crisis, Hawaii's only means of access to the petroleum reserve would be by tanker delivery from the Gulf of Mexico through the Panama Canal. Studies commissioned by the State of Hawaii have determined that the delivery time for strategic petroleum reserve oil to Hawaii from the Gulf of Mexico would be as much as 53 days. This exceeds the State's average commercial working inventory by 23 days.

That's why an oil supply disruption is Hawaii's greatest nightmare. When the Middle East sneezes, the mainland may catch a cold, but Hawaii comes down with double pneumonia. That is why we need an emergency petroleum reserve.

Hawaii tax dollars help fill and maintain the strategic petroleum reserve. But Hawaii doesn't benefit from the energy security the reserve provides. That's not fair. And it's not right.

Hawaii should be able to enjoy the same energy security that the rest of the Nation enjoys. It's a matter of simple equity.•

By Mr. BUMPERS (for himself and Mr. DANFORTH):

S. 837. A bill to amend the Internal Revenue Code of 1986 with respect to the discharge, or repayment, or student loans of students who agree to perform services in certain professions; to the Committee on Finance.

TREATMENT OF CERTAIN STUDENT LOANS

• Mr. BUMPERS. Mr. President, I am today introducing legislation that will correct an inequity in the taxation of students whose education loans are canceled. This legislation updates section 108(f) of the Internal Revenue Code to take into account new programs for the cancellation of student loan debts that did not exist when this section was enacted.

Normally, when an idividual's debts are discharged or canceled, the individual is deemed to have received taxable income in the amount of the discharge or cancellation. However, section 108(f) currently provides that when a debt or loan of a student is discharged or canceled by the Federal or a State government, the student is not considered to have received taxable income in the amount of the cancellation. This is similar to provisions of section 108(f) that have the same effect when it is the debt or loan of a farmer is discharged or canceled.

The problem is that section 108(f) does not apply to the many new programs where private universities and colleges are the ones discharging or canceling the student loan debts. This means that in these cases the loan discharge or cancellation generates taxable income for the student in the amount of the discharged or canceled debt.

It is not fair to provide different tax treatment for the discharge or cancellation of debts when it is the Federal Government or a State government is the moving party than when it is a private university or college that is involved. There is no tax policy that would justify or explain this different tax treatment based on who discharges or cancels the debt or loan.

Section 108(f) only applies to cancellation of Federal or State government student loans because these were the only loan cancellation programs in existence in the mid-seventies when this section of the code was enacted. Section 108(f) was enacted to deal with Federal and State loan cancellation programs that sought to encourage doctors to serve in rural areas. Other grounds for cancellation of Federal and State student loans have been adopted since then and they all fit within the language of section 108(f) regarding the discharge of indebtedness/taxable income question.

In the past few years, however, a large number of universities and colleges have established loan cancellation programs where their own loans are the ones being canceled. These newer loan cancellation programs seek to encourage students to serve as low-paid employees of a community service organization and to serve as public interest of legal services lawyers. These new programs are not covered by the existing language of section 108(f).

The growth of these new loan cancellation programs is a response to: First, the increase in the size and importance of university and college loan programs; second, cutbacks in Federal loan programs; third, the rapid increase in the cost of higher education; fourth, the rapid increase in student loan indebtedness; and fifth, the perception that financial considerations are undermining the commitment of the next generation to public and community service.

The most well developed private loan cancellation programs so far are for law law school graduates who are entering public interest law or legal services work. There are now 32 law schools with loan cancellation programs: American University, Boston College, Brooklyn Law School, Columbia, Cornell, Duke University, Emory University, Franklin Pierce Law Center, Georgetown University, Hamline University, Harvard, Hastings College of the Law, Loyola Law School in Los Angeles, New York University, Northeastern University, Northwestern University, Santa Clara University, Southwestern University, Stanford University, Suffolk University, Tulane University, University of California—Berkeley, University of California—Davis, University of Chicago, University of Iowa, University of Michigan, University of Notre Dame, University of Southern California, University of Virginia, and Yale University.

Other loan cancellation programs have been established by the bar associations of Arizona, Arizona Bar Foundation; the State of Maryland, Maryland State Scholarship Administration; the bar association of North Carolina, North Carolina Legal Education Assistance Foundation; and the bar association of Tennessee, Tennessee Interest on Lawyers' Trust Accounts. There are two local communities that have established programs, New Haven, CT, Real Estate Education Fund, and Columbus, OH, Columbus Bar Association. The ABA house of delegates has passed a resolution calling on law schools to get up these loan cancellation programs.

It is more difficult to obtain lists of other, nonlaw school loan cancellation programs. The Maryland program covers doctors, nurses, and social workers. There is a loan cancellation program at Stanford's Engineering School for grads going into teaching. Consideration has been given to establishing such programs at the Kennedy School of Government, the Harvard and Stanford Business Schools, and the Yale School of Public Management.

Loan cancellation is a new idea that is spreading beyond the law schools. And the legislation I am introducing today would encourage the spread of this loan cancellation for public service idea. Much of the experience so far is with law school graduates, but the same idea could well be extended to graduates of medical schools, schools of social work, schools of architecture, or to undergraduates.

At present the total amount of university/college sponsored student loans is dwarfed by the Federal and State loan programs. And, the Federal and State loan cancellation programs also dwarf the loan cancellation programs that have been established by these schools. At present only a fairly wealthy university or college can afford to set up its own loan program. And, even fewer universities or colleges can afford to set up a loan cancellation program. But, these are both trends that this legislation will encourage.

The National Association for Public Interest Law [NAPIL] has compiled statistics that find that the total amount of the loans canceled in 1989 for law students was $1.1 million and that 361 law school graduates had loans partially cancelled. Harvard University Law School was the largest participant with $537,000 in loans canceled for 129 graduates. Second was Columbia Law School with $208,700 in loans canceled for 41 graduates. A new survey is being conducted by NAPIL regarding the Nation's legal services, legal aid, and public defenders programs and it should be ready in a few months.

These loan cancellation programs at law schools respond to two realities in the marketplace. First, the tuition increase at law schools has increased much faster than the rate of inflation. The median tuition increase at public law schools for in-State students has been 181 percent between 1985 and 1986, at public law schools for out-of-State students has been 205.1 percent, and at private law schools has been 186.8 percent. The inflation during this period has amounted to only 85.8 percent.

Second, salaries in the marketplace for public and community service positions are low, particularly in relation to the student debt load and competing salaries at law firms and elsewhere in the legal community. According to the National Association for Law Placement, the average salary for 1987 law graduates was $35,800 and the average salary for first year associates with large firms was $53,638. By way of contrast the salaries at public interest law firms was around $20,000 for first year associates and less than $30,000 for lawyers with 5 years of experience.

This extreme salary differential is the key reality that has led to the establishment of so many loan cancellation programs at America's law schools. For example, based on a major survey 84 percent of the Nation's public defender programs found difficulties in recruitment and educational debts played an important role in limiting the number of applicants and 81 percent of these programs found this to be true in the recruitment of minority applicants.

The original purpose of section 108(f) is well served if it is modified to cover the new loan cancellation programs of private universities and colleges. These loan cancellation programs have the same basic purpose and goal of the Federal and State government student loan cancellation programs which are already covered by section 108(f).

Extending section 108(f) is also consistent with the current tax policy with respect to university and college scholarship funds, which are not considered to be income to the student receiving the scholarship unless the amount of the scholarship exceeds the costs of tuition and course related expenses. If the university or college had given the student a scholarship rather than a loan, the scholarship would not have constituted taxable income. When the college or university cancels a loan, it is, in effect, converting a loan into a scholarship and this also should not generate taxable income.

The schools that are participating in these loan cancellation programs can leverage their funds if they cancel loans rather than simply expand the amount of scholarships they award in the first place. A scholarship that is awarded to a law student who immediately goes to work for a law firm for a $75,000 salary can easily repay a $5,000 scholarship, but the money is much more effective if the same $5,000 is spent to cancel the loan of a law school graduate who is working in a public defender program for $20,000. In this case the need for the "scholarship" is better determined after a student graduates.

Most of these loan cancellation programs at law schools are ingeniously tailored to carefully limit expenditures. Programs only provide assistance while an individual remains in the public sector and in most programs educational debts are not discharged until the individual's third year in practice and then are forgiven gradually over the next 6 years. If at any point, a graduate accepts employment in the private sector or his or her salary exceeds a maximum amount, no further loan cancellation will take place.

Amending section 108(f) would encourage universities and colleges to establish and expand loan cancellation programs and to solicit charitable contributions to fund loan cancellation programs, encourage more young people to perform public and community service under these programs, and help to relieve the student loan debt problem. This would be much cheaper to the Federal Government than sponsoring its own loan cancellation programs for its own loans.

If the loan cancellation programs are established in the private sector at each university and college, there would be a great deal more innovation and experimentation and promotion of it than if there's a national program. This is a case where a very small investment of the Federal Government's revenue can have a multiplier effect for actions in the private sector.

Amending section 108(f) does not undermine the 1986 tax reform law. Basically it just updates section 108(f) so that it applies to the range of student loan cancellation programs which have come into existence since section 108(f) was enacted in 1976. This is a technical problem that extends the current tax policy to similarly situated taxpayers. It does not involve adoption of any new policy on the discharge of indebtedness issue.

The Joint Committee on Taxation has found that this bill would result in a negligible revenue loss in each of the five fiscal years contained in the 1992-96 budget period. (March 15, 1991, letter from Stuart A. Brown.) With only $1.1 million in loans canceled for law students, the bill would lose an insignificant amount of revenue. Most of the students whose loans are cancelled are probably in the 15-percent tax bracket. This amendment might be a catalyst to spur the formation of more loan cancellation programs, but the revenue impact of this would be long term and probably would not be reflected in the estimate.

These loan cancellation programs and this legislation is strongly supported by the American Bar Association, the National Senior Citizens Law Center, NAPIL, the Association of American Law Schools, the National Legal Aid and Defenders Association, the National Association for Law Placement, the Project Advisory Group, and the Law School Admissions Council. I am sure that the coalition in favor of the legislation will expand rapidly when we publicize what we are doing with the bill.

I am interested in this issue because I have been the principal advocate in the Congress for amending the Federal student aid programs to provide for loan cancellation for students who perform full-time, low-paid community service upon graduation. Because my proposals concern cancellation of a Federal Government loan by the Federal Government itself, it falls within the current language of section 108(f). But, this work on my other bill brought this issue covered in this bill to my attention.

The bill I am introducing covers three types of loan cancellation programs.

First, it extends the current discharge of indebtedness provision to include discharge of loan debt by institutions of higher education. This provision covers programs where it is the university or college's own loans that are being cancelled.

This provision also covers cases where a private bank is canceling its own loans. Banks might in some cases be persuaded to cancel the loans of some students in exchange for community service in the community in which the bank is located. I know of no programs where banks are now doing this, but given the problems we've had with the limitations of section 108(f), we might as well try to take future developments into account this time.

Second, the bill also includes a provision that provides the same tax treatment if a university or college extends an additional loan—which it then cancels—to the student to help the student repay loans from some other source, including the Federal and State government. This would cover plans where the loan was not extended by the university or college itself but where it helps the student to repay other loans. The college or university must take steps to ensure that the loans given to the student which are then canceled are, in fact, used by the student for the purpose of repaying the student's other loans.

Third, the bill includes a provision that permits the university or college itself to repay the other loan. The second provision is different only in that the student is the one who actually makes the payment, while with the third it is the university or college that cuts the check.

We want to make sure to cover all of the different types of loan cancellation programs. We want to encourage innovation and not constrain the programs in ways that have no bearing on the Federal Government's legitimate tax policy interests.

The bill provides that the loan cancellation cannot be funded by the employer of the student. We need this limitation to avoid any possibility of an employer substituting loan cancellation, which this bill ensures does not generate taxable income, for wages and salary, which is fully taxable.

The employment of the student must be in a field that is related to the education provided by the university or college to the student.

Finally, the bill is prospective in application. It applies only to loan cancellations that occur after the date of enactment of the legislation. It confers no retroactive windfall on any student for a loan cancellation in the past.

This legislation should enjoy bipartisan support. It is basically a technical amendment to bring section 108(f) up to date to cover the new loan cancellation programs that have come into existence since section 108(f) was last amended. We all will benefit from these loan cancellation programs as they encourage more of our young people to serve the community.•

• Mr. DANFORTH. Mr. President, today I, along with Senator BUMPERS, am introducing legislation to amend section 108(f) of the Internal Revenue Code to include new programs for the cancellation of loan debts. Under current law, if the Federal or a State government cancels student loan debts, no income is generated to the student debtor. Today, there are many new programs that use the cancellation of student debt to encourage people to enter public service. These new programs are often instituted by someone other than the Federal or State governments. Because these loan cancellation programs are not covered by section 108(f), the student debtors are taxed on the amount of the canceled loan. For a recent graduate working in a low-paid public interest job, the tax burden created by this is heavy. These new loan cancellation programs are an excellent way to encourage advanced degree students to enter the public service. In order to make them truly effective and more widely used, the Tax Code must be updated.

Section 108(f) of the Internal Revenue Code was enacted in the mid-seventies with the intent of encouraging doctors to practice in rural areas. This part of the Code has been expanded to include other grounds for cancellation of Federal and State student loans. The inclusion of private loan cancellation programs, based on the same basic premise, would be a natural extension of section 108(f). A revenue estimate done by the Joint Committee on Taxation found that the amendments to the Code would result in a negligible revenue loss for the fiscal years 1992-96.

More and more private institutions have begun to offer loan cancellation as an incentive for students considering public interest work. These programs help defray the costs of increasingly expensive graduate studies while making up for the decreasing availability of Government loans. They also offset the salary advantages of entering the private sector instead of public interest work. The programs instituted by universities serve the same purpose as those administered by the Federal and State governments. They should therefore receive the same tax treatment.

Many of the new loan cancellation programs are sponsored by law schools. Each program is structured differently, but most are designed for graduates who perform law related work for the Government, private groups serving the public interest, or nonprofit organizations. The Jaffin Loan Assistance Program at Columbia University School of Law is an example of one such loan cancellation system. The program at Columbia applies to all loans received under institutionally approved and certified loan plans. Columbia offers loan forgiveness for graduates according to their adjusted gross income, based on a scale of decreasing benefits for income over $35,000. Loan forgiveness begins in the 4th year of public interest work, with full forgiveness by the 10th year. The number of graduates who entered the program has risen steadily since 1983, with 31 students entering in 1988. While the structure of each loan cancellation program is different, the results are similar.

Loan cancellation programs are not limited to private institutions, nor are they only present at law schools. Public universities, such as the University of Maryland, the University of Virginia, the University of Michigan, and many schools in the California system have different types of loan cancellation programs. Organizations such as the Minnesota Bar Foundation and the Florida Bar Foundation are currently studying loan forgiveness programs, and the Arizona Bar Foundation has begun implementing its own statewide program. Other types of graduate programs, such as the Kennedy School of Government at Harvard, and Stanford Business School are considering loan cancellation programs. The Stanford School of Engineering currently has in place a loan cancellation program for its graduates who go into teaching. These are worthwhile programs and should be encouraged.

Private loan cancellation programs, like Government sponsored programs, are an important way to make public interest careers more feasible for debt burdened graduate students. They help meet the needs of the community at large by increasing the number of professionals available to serve. It is natural that they should receive the same tax treatment as Government programs, under section 108(f). By supporting all loan cancellation programs we can help encourage graduate students to enter into public service.•

By Mr. DODD (for himself, Mr. COATS, Mr. KENNEDY, Mr. PELL, and Mr. ADAMS):

S. 838. A bill to amend the Child Abuse Prevention and Treatment Act to revise and extend programs under such Act, and for other purposes; to the Committee on Labor and Human Resources.

CHILD ABUSE, DOMESTIC VIOLENCE, ADOPTION AND FAMILY SERVICES ACT

• Mr. DODD. Mr. President, I rise today, to introduce legislation to reauthorize and amend CAPTA—the Child Abuse Prevention and Treatment Act.

Even as we focused on the Persian Gulf in recent months, all of us knew that unresolved problems continue to mount at home. In complexity and importance, our domestic issues present greater national challenges than our conflict overseas. Our national well-being is more vitally dependent upon their resolution. And no single item is more important on our home agenda than the welfare and protection of our children.

The children of America, Mr. President, are under assult. Poverty, illicit drugs, community dysfunction, and family disintegration are destroying young lives. Abuse occurs in all parts of our country and across all socio-economic strata. In some instances, it kills. At the very least, it cripples.

The terms "national emergency" and "crisis" are clearly both apt and valid—though I hesitate to use them. Great problems are hard to convey; we have difficulty appreciating large magnitudes and synthesizing multiple facets. Far easier to identify with a small child trapped in a well than it is to hold the thought that 2.4 million reports of child mistreatment were filed in 1989—more than 900,000 of them officially substantiated.

"National emergency" and "crisis," sadly enough, are terms that have lost their impact from overuse. What we need is new vocabulary to convey the truth that the threats to our children constitute a fundamental, primal, and grave danger to our society. And we must show the widsom, resources, determination, and compassion to confront it, now.

It is estimated that 2.5 percent of American children are abused or neglected each year. In 1989, 360,000 children were under foster care. And behind these startling statistics lie further unpleasant and difficult, but relevant, facts. From trailer parks to inner cities, many families are isolated and devoid of any community support. Median family income has plateaued since the 1970's despite proportionally more two-income families. Half of all marriages now end in divorce—most of them involving children. And the median income of families headed by a single mother in 1987 was $9,838. As Commissioner Horn of the Administration for Children, Youth and Families testified, "the American family is struggling to survive under enormous pressures."

Other factors contribute to abuse and neglect: Teen pregnancy results in children becoming parents, but with neither the skills nor the capacity for parenting. Substance abuse leads to disability and abandonment—there were 2,400 drug-exposed newborns in Los Angeles in 1989, and possibly 375,000 nationwide each year. HIV infection and physical or mental disabilities are other causes for neglect.

The response on behalf of children, meanwhile, has been piecemeal and inadequate. Child protection services are shorthanded and overburdened. The child welfare system itself is but an amalgam of Federal and local programs and agencies lacking coherent strategy and leadership. The U.S. Advisory Board on Child Abuse and Neglect accurately concludes that we spend billions of dollars on programs that belatedly attempt to remedy the consequences of what we've failed to prevent, detect, and treat early on. This, Mr. President, is why CAPTA is important.

CAPTA is a package of programs designed to support families at risk—to identify problems before they become crisis and to intervene before there is abuse. It seeks to interrupt the cycle of abuse in families and across generations.

Recognizing the disturbing increase in child abuse, the majority of States have established children's trust funds to allow States to pay for abuse and neglect prevention efforts. Matching Federal funds are provided for innovative, neighborhood-oriented prevention programs under the community-based prevention grants.

The child abuse treatment improvement grants fund demonstrates to address the effects of abuse and neglect on children placed in out-of-home care. Too often, there are no services for children beyond their removal from the abusive or neglectful environment. There are few services that consider the child in the context of his or her family—that address the needs of the family as a unit. These grants would enable State or local child welfare agencies to vary the approaches to better out-of-home care and reunification.

The Emergency Protective Child Services Grants enable child welare agencies to hire more workers and improve staff training, thereby reducing caseloads and strengthening their care. It was originally enacted in the 1988 drug bill. This provision attempts to reach families affected by substance abuse.

Child protective services are currently overwhelmed by the complexity and volume of their caseloads. Lack of housing, AIDS, substance abuse, and high staff turnover rates are all contributing problems. The General State Grant Program, a new provision, would restructure the formula grant program to States, strengthening their intake, investigation, and disposition of child abuse and neglect reports. It would also improve case management services and enhance general systems for data retrieval, referrals, assessments, and training. The States would specify how the funds are to be used to these ends and provide baseline data.

The legislation introduced today represents a modest starting point—an effort to stem the tide. It must also be a rallying point around which we gather consensus, cohesion, and support. The needs of these families and children are urgent and the consequences of delay, in many cases, will be devastating and lasting. Level funding—the failure to make progress—will mean the deepening of crisis rather than its resolution. We must consider the lives at risk and how their individual predicaments amount to our social peril.

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. 838

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Abuse, Domestic Violence, Adoption and Family Services Act of 1991".

SEC. 2. FINDINGS.

Congress finds that—

(1) each year, hundreds of thousands of American children are victims of abuse and neglect with such numbers having increased dramatically over the past decade;

(2) many of these children and their families fail to receive adequate protection or treatment;

(3) the problem of child abuse and neglect requires a comprehensive approach that—

(A) intergrates the work of social service, legal, health, mental health, education, and substance abuse agencies and organizations;

(B) strengthens coordination among all levels of government, and with private agencies, civic, religious, and professional organizations, and individual volunteers;

(C) emphasizes the need for abuse and neglect prevention, investigation, and treatment at the neighborhood level;

(D) ensures properly trained and supported staff with specialized knowledge, to carry out their child protection duties; and

(E) is sensitive to ethnic and cultural diversity;

(4) the failure to coordinate and comprehensively prevent and treat child abuse and neglect threatens the futures of tens of thousands' of children and results in a cost to the Nation of billions of dollars in direct expenditures for health, social, and special educational services and ultimately in the loss of work productivity;

(5) all elements of American society have a shared responsibility in responding to this national child and family emergency;

(6) substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority;

(7) national policy should strengthen families to remedy the causes of child abuse and neglect, provide support for intensive services to prevent the unnecessary removal of children from families, and promote the reunification of families if removal has taken place;

(8) the child protection system should be comprehensive, child-centered, family-focused, and community-based, should incorporate all appropriate measures to prevent the occurrence or recurrence of child abuse and neglect, and should promote physical and psychological recovery and social re-integration in an environment that fosters the health, self-respect, and dignity of the child;

(9) because of the limited resources available in low-income communities, Federal aid for the child protection system should be distributed with due regard to the relative financial need of the communities;

(10) the Federal government should ensure that every community in the United States has the fiscal, human, and technical resources necessary to develop and implement a successful and comprehensive child protection strategy;

(11) the Federal government should assist communities in their child protection efforts by—

(A) promoting coordinated planning among all levels of government;

(B) generating and sharing knowledge relevant to child protection, including the development of models for service delivery;

(C) strengthening the capacity of States to assist communities;

(D) allocating sufficient financial resources to implement community plans;

(E) helping communities to carry out their child protection plans by promoting the competence of professional, paraprofessional, and volunteer resources; and

(F) providing leadership to end the abuse and neglect of the nation's children and youth.

TITLE I—CHILD ABUSE PREVENTION AND TREATMENT ACT

SEC. 101. REFERENCES.

Except as otherwise provided, whenever in this title 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 Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.).

Subtitle A—General State Program

SEC. 110. GRANT PROGRAM FOR CHILD ABUSE NEGLECT PREVENTION AND TREATMENT.

Section 107 (42 U.S.C. 5106a) is amended—

(1) by striking out subsections (a) and inserting in lieu thereof the following new subsection:

"(a) DEVELOPMENT AND OPERATION GRANTS.—The Secretary, acting through the Center, shall make grants to the States, based on the population of children under the age of 18 in each State that applies for a grant under this section, for purposes of assisting the States in improving the child protective service system of each such State in—

"(1) the intake and screening of reports of abuse and neglect through the improvement of the receipt of information, decisionmaking, public awareness, and training of staff;

"(2)(A) investigating such reports through improving response time, decisionmaking, referral to services, and training of staff;

"(B) creating and improving the use of multidisciplinary teams and interagency protocols to enhance investigations; and

"(C) improving legal preparation and representation;

"(3) case management and delivery services provided to families through the improvement of response time in service provision, improving the training of staff, and increasing the numbers of families to be served;

"(4) enhancing the general child protective system by improving assessment tools, automation systems that support the program, information referral systems, and the overall training of staff to meet minimum competencies; or

"(5) developing, strenghtening, and carrying out child abuse and neglect prevention, treatment, and research programs."; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c) STATE PROGRAM PLAN.—To be eligible to receive a grant under this section, a State shall annually submit a plan to the Secretary that specifies the child protective service system area or areas described in subsection (a) that the State intends to address with funds received under the grant. The plan shall describe the current system capacity of the State in the relevant area or areas from which to assess programs with grant funds and specify the manner in which funds from the State's programs will be used to make improvements. The plan required under this subsection shall contain, with respect to each area in which the State intends to use funds from the grant, the following information with respect to the State:

"(1) INTAKE AND SCREENING.—

"(A) STAFFING.—The number of child protective service workers responsible for the intake and screening of reports of abuse and neglect relative to the number of reports filed in the previous year.

"(B) TRAINING.—The types and frequency of pre-service and in-service training programs available to support direct line and supervisory personnel in report-taking, screening, decision-making, and referral for investigation.

"(C) PUBLIC EDUCATION.—An assessment of the State agency's public education program with respect to—

"(i) what is child abuse and neglect;

"(ii) who is obligated to report and who may choose to report; and

"(iii) how to report.

"(2) INVESTIGATION OF REPORTS.—

"(A) RESPONSE TIME.—The number of reports of child abuse and neglect filed in the State in the previous year, the agency response time to each with respect to initial investigation, the number of substantiated and unsubstantiated reports, and where appropriate, the response time with respect to the provision of services.

"(B) STAFFING.—The number of child protective service workers responsible for the investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

"(C) INTERAGENCY COORDINATION.—A description of multidisciplinary investigation teams and interagency coordination processes that exist, including the extent to which they are available Statewide, whether protocols or formal policies governing interagency relationships (among agencies responsible for child protective services, criminal justice, schools, health, mental health, and substance abuse) and responsibilities for prevention, intervention and treatment exist, the extent to which there is use of special interagency child fatality review panels including a listing of those agencies that are involved and how all teams are trained.

"(D) TRAINING.—The types and frequency of pre-service and in-service training programs available to support direct line and supervisory personnel in such areas as investigation, risk assessment, court preparation, and referral to and provision of services.

"(E) LEGAL REPRESENTATION.—An assessment of the State agency's current capacity for legal representation, including the manner in which workers are prepared and trained for court preparation and attendance.

"(3) CASE MANAGEMENT AND DELIVERY OF ONGOING FAMILY SERVICES.—For children for whom a report of abuse and neglect has been substantiated and the children remain in their own homes and are not currently at risk of removal the State shall and assessment of the following:

"(A) RESPONSE TIME.—The number of cases opened for services as a result of investigation of child abuse and neglect reports filed in the previous year, including the response time with respect to the provision of services from the time of initial report and initial investigation.

"(B) STAFFING.—The number of child protective service workers responsible for providing services to children and their families in their own homes as a result of investigation of reports of child abuse and neglect.

"(C) TRAINING.—The types and frequency of pre-service and in-service training programs available to support direct line and supervisory personnel in such areas as risk assessment, court preparation, provision of services and determination of case disposition, including how such training is evaluated for effectiveness.

"(D) INTERAGENCY COORDINATION.—The extent to which treatment services for the child and other family members are coordinated with child welfare, social service, mental health, education, and other agencies.

"(4) GENERAL SYSTEM ENHANCEMENT.—

"(A) AUTOMATION.—An assessment of the capacity of current automated systems for tracking reports of child abuse and neglect from intake through final disposition and how personnel are trained in the use of such system.

"(B) ASSESSMENT TOOLS.—A description of whether, how, and what risk assessment tools are used for screening reports of abuse and neglect, determining whether child abuse and neglect has occurred, and assessing the appropriate level of State agency protection and intervention, including the extent to which such tool is used statewide and how workers are trained in its use.

"(C) INFORMATION AND REFERRAL.—A description and assessment of—

"(i) information and referral systems, including their availability and ability to link families to various child welfare services such as homemakers, intensive family-based services, emergency caretakers, home health visitors, daycare and services outside the child welfare system such as housing, nutrition, health care, special education, income support, and emergency resource assistance; and

"(ii) efforts undertaken to disseminate to the public information concerning the problem of child abuse and neglect and the prevention and treatment programs and services available to combat instances of such abuse and neglect.

"(D) Staff capacity and competence.—An assessment of basic and specialized training needs of all staff and current training provided staff. Assessment of the competencies of staff with respect to minimum knowledge in areas such as child development, cultural and ethnic diversity, functions and relationship of other systems to child protective services and in specific skills such as interviewing, assessment, and decisionmaking relative to the child and family, and the need for training consistent with such minimum competencies.

"(5) INNOVATIVE APPROACHES.—A description of—

"(A) research and demonstration efforts for developing, strengthening, and carrying out child abuse and neglect prevention, treatment, and research programs, including the interagency efforts at the State level; and

"(B) the manner in which proposed research and development activities build on existing capacity in the programs being addressed.".

SEC. 111. GRANT PROGRAM FOR INVESTIGATION AND PROSECUTION OF CHILD ABUSE CASES.

Section 109 (42 U.S.C. 5106c) is amended—

(1) by striking out the section heading and inserting in lieu thereof the following:

"SEC. 109. GRANTS TO STATES FOR PROGRAMS RELATING TO THE INVESTIGATION AND JUDICIAL HANDLING OF CHILD ABUSE AND NEGLECT CASES.";

(2) in subsection (a), by striking out paragraphs (1) and (2), and inserting in lieu thereof the following new paragraphs:

"(1) the handling of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child victim;

"(2) the handling of cases of suspected child abuse or neglect related fatalities;

"(3) the investigation and civil and criminal court handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and

"(4) the handling of cases that involve a combination of jurisdictional authorities, such as interstate, Federal-State, and State-Tribal.";

(3) in subsection (b)—

(A) by striking out "and 8(e) or receive a waiver under section 8(c)" in paragraph (1);

(B) by striking out "and" at the end of paragraph (3);

(C) by inserting "annually" after "submit" in paragraph (4); and

(D) by striking out the period at the end thereof and inserting the following: "; and

"(5) submit annually to the Secretary a report on the manner in which assistance received under this program was expended throughout the State, with particular attention focused on the areas described in paragraphs (1) through (4) of subsection (a).";

(4) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting ", and maintain" after "designate"; and

(ii) by striking out "child abuse" and inserting in lieu thereof "child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment related fatalities";

(B) by striking out "judicial and legal officers", in subparagraph (B) and inserting in lieu thereof "judges and attorneys involved in both civil and criminal court proceedings related to child abuse and neglect";

(C) by inserting before the semicolon in subparagraph (C), the following: ", including both attorneys for children and, where such programs are in operation, court appointed special advocates";

(D) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraph:

"(E) representatives from child protective service agencies, including attorneys who legally represent such agencies;";

(F) by striking out "handicaps;" in subparagraph (F), and inserting in lieu thereof "disabilities; and"; and

"(G) by striking out subparagraph (G) and redesignating subparagraph (H) as subparagraph (G);

(5) in subsection (d)—

(A) by striking out "the State task force shall" in the matter preceding paragraph (1), and inserting in lieu thereof "and at three year intervals thereafter, the State task force shall comprehensively";

(B) by striking out "judicial" and all that follows in paragraph (1), and inserting in lieu thereof the following: "both civil and criminal judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal;";

(C) by inserting "legislative, policy, and trainings" before "recommendations" in paragraph (2); and

(6) in subsection (e)(1)—

(A) by striking out "child abuse" and all that follows through "child victim" in subparagraph (A), and inserting in lieu thereof the following: "child abuse and neglect, particularly child sexual abuse and exploitation, as well as cases involving suspected child maltreatment related fatalities and cases involving a potential combination of jurisdictions, such as interstate, Federal-State, and State-Tribal, in a manner which reduces the additional trauma to the child victim and the victim's family";

(B) by striking out "improve the rate" and all that follows through "abuse cases" in subparagraph (B), and inserting in lieu thereof the following: "improve the prompt and successful resolution of civil and criminal court proceedings or enhance the effectiveness of judicial and administrative action in child abuse and neglect cases, particularly child sexual abuse and exploitation cases, including the enhancement of performance of court-appointed attorneys and guardians ad litem for children"; and

(C) in subparagraph (C)—

(i) by inserting ", protocals" after "regulations"; and

(ii) by inserting "and exploitation" after "sexual abuse".

Subtitle B—Community-Based Prevention Grants

SEC. 121. TITLE HEADING AND PURPOSE.

(a) TITLE HEADING.—The heading for title II (42 U.S.C. 5116 et seq.) is amended to read as follows:

"TITLE II—COMMUNITY-BASED CHILD ABUSE AND NEGLECT PREVENTION GRANTS".

(b) PURPOSE.—Section 201 (42 U.S.C. 5116) is amended—

(1) in the section heading to read as follows:

"SEC. 201. PURPOSES."; and

(2) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"It is the purpose of this title, through the provision of community-based child abuse and neglect prevention grants, to assist States in supporting child abuse and neglect prevention activities.".

SEC. 122. DEFINITIONS.

Section 202 (42 U.S.C. 5116a) is amended—

(1) in paragraph (1), by striking out "and" at the end thereof;

(2) in paragraph (2), by striking out the period and inserting in lieu thereof "; and"; and

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

"(3) the term 'children's trust fund' means **[To be supplied].**".

SEC. 123. STATE ELIGIBILITY.

Section 204 (42 U.S.C. 5116c) is amended in the matter preceding paragraph (1), by striking out "or other funding mechanism".

SEC. 124. LIMITATIONS.

Section 205 (42 U.S.C. 5116d) is amended—

(1) by striking out paragraph (1) of subsection (a) and inserting in lieu thereof the following new paragraph:

"(1) ALLOTMENT FORMULA.—

"(A) IN GENERAL.—Amounts appropriated to provide grants under this title shall be allotted among eligible States in each fiscal year so that—

"(i) 50 percent of each such State allotment is based on the number of children in each such State; and

"(ii) the remaining 50 percent of each such allotment shall be an amount equal to 25 percent of the total amount collected by each such State, in the fiscal year prior to the fiscal year for which the allotment is being determined, for the children's trust fund of the State for child abuse and neglect prevention activities.

"(B) USE OF AMOUNTS.—Not less than 50 percent of the amount of a grant made to a State under this title in each fiscal year shall be utilized to support community-based prevention programs as authorized in section 204(a), except that this subparagraph shall not become applicable until amounts appropriated under section 203(b) exceed $10,000,000."; and

(2) in subsection (b)(1)—

(A) by striking out "advisory board" and all that follows through "Treatment Act" in subparagraph (A);

(B) by redesignating subparagraph (B) and (C) as subparagraphs (F) and (G), respectively; and

(C) by inserting after subparagraph (A), the following new subparagraphs:

"(B) demonstrate coordination with other child abuse and neglect prevention activities and agencies at the State and local levels;

"(C) demonstrate the outcome of services and activities funded under this title;

"(D) provide evidence that Federal assistance received under this title has been supplemented with non-Federal public and private assistance (including in-kind contributions) at the local level (Federal assistance expended in support of activities authorized under paragraphs (1), (2), and (3) of section 204 shall be supplemented by State assistance);

"(E) demonstrate the extent to which funds received under this title are used to support community prevention activities in underserved areas, in which case the supplemental support required under subparagraph (D) shall be waived for the first 3 years in which assistance is provided to a grantee described in this subparagraph;".

Subtitle C—Certain Preventive Services Regarding Children of Homeless Families or Families at Risk of Homelessness

SEC. 131. CERTAIN PREVENTIVE SERVICES REGARDING CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS.

Section 302(b) (42 U.S.C. 5118a(b)) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) by redesignating paragraph (4) as paragraph (6); and

(3) by inserting after paragraph (3), the following new paragraphs:

"(4) the provision of emergency housing-related assistance necessary to prevent the placement of children in out-of-home care, to facilitate the reunification of children with their families, and to enable the discharge of youths not less than 16 years of age from such area, including assistance in meeting the costs of—

"(A) rent or utility arrears to prevent an eviction or termination of utility services;

"(B) security and utility deposits, first month's rent, and basic furnishings; and

"(C) other housing-related assistance;

"(5) the provision to families, and to youths not less than 16 years of age who are preparing to be discharged from such care, of temporary rent subsidies necessary to prevent the initial or prolonged placement of children in out-of-home care, which subsidies are provided in an amount not exceeding 70 percent of the local fair market rental value and are provided for a period not to exceed 180 days; and".

Subtitle D—Child Abuse Treatment Improvements Grants

SEC. 141. ESTABLISHMENT OF PROGRAM.

The Act is amended by adding at the end thereof the following new title:

"TITLE IV—MISCELLANEOUS PROGRAMS

"SEC. 401. CHILD ABUSE TREATMENT IMPROVEMENTS GRANT PROGRAM.

"(a) AUTHORITY.—The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary'), acting through the Administration for Children, Youth and Families, may award grants to eligible entities to improve the treatment of children exposed to abuse or neglect and the families of such children, particularly when such children have been placed in out-of-home care.

"(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall—

"(1) be a State or local public or nonprofit private entity;

"(2) have the approval of the State agency responsible for administering public child welfare services, to apply for such grant;

"(3) be responsible for administering or providing child welfare services (including out of home services); and

"(4) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require including the information required under subsection (c).

"(c) CONTENTS OF APPLICATION.—An application submitted by an entity under subsection (b)(4) shall contain—

"(1) a description of the proposed program to be established, implemented or improved using amounts received under a grant, including the specific activities to be undertaken, the agencies that will be involved, the process that has been established for evaluating such activities, and the nature of any innovations proposed;

"(2) evidence of the need that the activity or program, to be conducted using amounts received under the grant, will address;

"(3) assurances that amounts received under the grant will be used to supplement, not supplant, existing funds provided by the State for child welfare purposes;

"(4) assurances that the applicant entity will provide not less than 20 percent of the total amounts needed to pay the costs associated with the program funded under such grant;

"(5) assurances that the applicant entity will provide information to the Secretary concerning the progress and outcome of the program to be funded under such grant;

"(6) a description of the procedures to be used to disseminate the findings derived from the program to be funded under such grant within the State;

"(7) a description of the extent to which multiple agencies will be involved in the design, development, operation, and staffing of the program to be funded under such grant; and

"(8) and other information determined appropriate by the Secretary.

"(d) USE OF FUNDS.—An entity may use amounts provided under a grant awarded under this section to—

"(1)(A) develop models of out-of-home care that are designed to promote the reunification of children with their families, including training and support components for foster parents to enable such parents to assist the birthparents with reunification efforts;

"(B) develop comprehensive service approaches for child out-of-home care and for the families of such children, specifically focused on reunification; and

"(C) establish activities that are designed to promote visitation of parents and children, such as the establishment of neutral settings for structured visits between biological parents and children in care;

"(2) develop activities that are designed to support relatives caring for children who have been abused or neglected or children from families where substance abuse is present;

"(3) enhance the reimbursement and other support provided to foster parents, including relatives, to promote better recruitment and retention of foster parents;

"(4) develop activities and programs designed to—

"(A) promote the healthy physical, social, emotional, and educational development of children in out-of-home care and under child abuse preventive services supervision, including—

"(i) the conduct of comprehensive, multidisciplinary assessments of the physical, social, emotional, and educational development of such children, with particular attention given to the needs and strengths of the families of such children; and

"(ii) the development of services to meet such needs which involve multiple service agencies and alternative support systems within the community;

"(B) provide training for foster parents to address the physical, social, emotional, and educational needs of the children in their care; or

"(C) provide special programs to assist children with academic or developmental problems;

"(5) develop and implement programs that provide mentors, who are adults from the community or who are former foster youths, to use and out-of-home care, in order to address their special needs, increase self esteem, and provide role models;

"(6) provide incentives that may be necessary to establish and recruit foster family homes for special populations, including children who are medically fragile or have other special physical, mental, and emotional disabilities, adolescent mothers and their children who are in care, and children who have been sexually abused;

"(7) hire staff with specialized knowledge in the areas of substance abuse, child development, education, health care, and adolescents, to provide support and act as a resource for caseworkers working with children and families with special needs in these areas; and

"(8) conduct other activities as the Secretary determines appropriate.

"(e) CONSIDERATIONS IN AWARDING GRANTS.—In awarding grants under this section the Secretary shall consider—

"(1) the geographic dispersion of the applicants for such grants;

"(2) the likelihood that the proposed service approach of the applicant would be transferable to other sites; and

"(3) the need for variety in the problems to be addressed be the applicants and in the models used to address similar problems.

"(f) ADMINISTRATION.—In administering the grant program established under this section the Administration for Children, Youth and Families shall—

"(1) require grantees to submit annual reports concerning the projects funded under such grants and a final report assessing the outcome of such projects;

"(2) arrange for the dissemination of project results through such means as the child welfare resource centers and the National Clearinghouse on Child Abuse and Neglect; and

"(3) provide for the evaluation of projects funded under this section.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $30,000,000 for fiscal year 1992, and such sums as may be necessary in each of the fiscal years 1993 and 1994.".

SEC. 142. TECHNICAL AMENDMENT.

The Act is amended in the table of contents in section 1(b) by adding at the end thereof the following new items:

"TITLE IV—MISCELLANEOUS PROGRAMS

"Sec. 401. Child abuse treatment improvements grant program.".

Subtitle E—Reauthorization of Certain Programs

SEC. 151. EMERGENCY GRANT PROGRAM.

Section 107A(e) (42 U.S.C. 5106a-1(e)) is amended by striking out "and such sums" and all that follows through the end thereof and inserting "such sums as may be necessary for fiscal year 1991, $40,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.".

SEC. 151. GENERAL GRANT PROGRAMS.

Subsection (a) of section 114 (42 U.S.C. 5106h(a)) is amended to read as follows:

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title, except for section 107A, $150,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994. Of amounts appropriated under this section in any fiscal year—

"(1) 33⅓ percent of such amounts shall be made available in each such fiscal year for activities under sections 104, 105 and 106; and

"(2) 66⅔ percent of such amounts shall be made available in each such fiscal year for activities under sections 107 and 108.

A State may spend the entire amount provided to such State under this title in a fiscal year for the purposes described in subsection (a)(5) of section 107, except that subsequent to the date on which the amount appropriated and available under paragraph (2) exceeds $40,000,000, such State shall not spend in excess of 15 percent of such amounts for the purposes described in subsection (a)(5) of section 107.".

SEC. 152. COMMUNITY-BASED PREVENTION GRANTS.

Section 203 (42 U.S.C. 5116b) is amended—

(1) by striking out subsection (b);

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

(3) in subsection (b) (as so redesignated), by striking out "such sums" and all that follows through the period and inserting in lieu thereof "$50,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.".

SEC. 153. PREVENTIVE SERVICES FOR CHILDREN OF HOMELESS FAMILIES OR FAMILIES AT RISK OF HOMELESSNESS.

Section 306(a) (42 U.S.C. 5118e(a)) is amended by inserting ", and such sums as may be necessary in each of the fiscal years 1993 and 1994" before the period.

TITLE II—CHILDREN WITH DISABILITIES TEMPORARY CARE

SEC. 201. SHORT TITLE.

This title may be cited as the "Children With Disabilities Temporary Care Reauthorization Act of 1991".

SEC. 202. REFERENCES TO CHILDREN WITH DISABILITIES.

The Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 (42 U.S.C. 5117) is amended—

(1) in section 203, in the first sentence, by striking "handicapped children" and inserting "children with disabilities"; and

(2) in section 205—

(A) by striking "working with handicapped" and all that follows through "families" in subsection (a)(2)(C), and inserting the following: "working with children with disabilities, with chronically ill children, and with the families of such children,"; and

(B) by striking "the term" and all that follows through "such term in" in subsection (d)(2), and inserting the following: "the term 'children with disabilities' has the meaning given the term 'handicapped children' in".

SEC. 203. STATE INTERAGENCY COORDINATION.

(a) IN GENERAL.—Section 205(a)(1) of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 (42 U.S.C. 5117) is amended—

(1)(A) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(B) in clause (iii) (as so redesignated), by striking "and" after the semicolon at the end;

(C) in clause (iv) (as so redesignated), by striking the period at the end and inserting "; and"; and

(D) by inserting after such clause (iv) the following new clause:

"(v) with respect to State agencies described in subparagraph (B), provide documentation of a commitment by all such agencies to develop a State plan for coordination among the agencies in carrying out programs and activities provided by the State pursuant to a grant under section 203."; and

(2)(A) by inserting "(A)" after "(1)"; and

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

"(B) State agencies referred to in subparagraph (A)(v) are State agencies responsible for providing services to children with disabilities or with chronic or terminal illnesses, or responsible for financing services for such children, or both, including State agencies responsible for carrying out State programs that—

"(i) receive Federal financial assistance; and

"(ii) relate to social services, maternal and child health, comprehensive health and mental health, medical assistance and infants, or toddlers and families.".

(b) DEFINITION.—Section 205(d) of such Act (42 U.S.C. 5117c(d)) is amended—

(1) in paragraph (3), by striking out "and" at the end thereof;

(2) in paragraph (4), by striking out the period and inserting in lieu thereof "; and"; and

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

"(5) the term 'State' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.".

SEC. 204. REPORTS.

Section 205(c) of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 (42 U.S.C. 5117) is amended in the second sentence to read as follows: "Such report shall include—

"(1)(A) information concerning costs, the number of participants, impact on family stability, the incidence of abuse and neglect, the types, amounts, and costs of various services provided, demographic data on recipients of services, and such other information as the Secretary may require; and

"(B) with respect to services provided by the States pursuant to section 203, information concerning the number of families receiving services and documentation of parental satisfaction with the services provided;

"(2) a specification of the amount and source of public funds, and of private funds, expended in the State for temporary child care for children with disabilities or with chronic or terminal illnesses; and

"(3) a State strategy for expanding the availability in the State of temporary child care, and other family support, for families of children with disabilities or with chronic or terminal illnesses, which strategy specifies the manner in which the State intends to expend any Federal financial assistance available to the State for such purpose, including any such assistance provided to the State for programs described in section 205(a)(1)(B).".

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

Section 206 of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 (42 U.S.C. 5117) is amended—

(1) in the first sentence, by inserting before the period the following: ", and $20,000,000 for each of the fiscal years 1992 through 1994"; and

(2) in the second sentence, by striking "Such sums" and inserting "Amounts appropriated under the preceding sentence".

SEC. 206. REVISION OF SHORT TITLE.

Section 201 of the Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986 (42 U.S.C. 5117) is amended by striking "This title" and all that follows and inserting the following: "This title may be cited as the 'Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986'.".

SEC. 207. EFFECTIVE DATE.

The amendments made by this title shall take effect October 1, 1991, or on the date of the enactment of this Act, whichever occurs later.

TITLE III—REAUTHORIZATION OF PROGRAMS WITH RESPECT TO ADOPTION AND FAMILY VIOLENCE

SEC. 302. ADOPTION OPPORTUNITIES.

Section 205 of the Child Abuse Prevention and Treatment Act of 1978 (42 U.S.C. 5115) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

"(a) There are authorized to be appropriated, $30,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994, to carry out programs and activities under this Act except for programs and activities authorized under sections 203(b)(8) and 203(c)(1)."; and

(2) in subsection (b), by striking out "and 1991" each place that such occurs and inserting in lieu thereof "1991, 1992, 1993, and 1994".

SEC. 302. FAMILY VIOLENCE PREVENTION.

Section 310(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10409(a)) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this Act, $75,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.".●

By Mr. MCCAIN (for himself and Mr. DANFORTH):

S. 839. A bill to amend the Federal Aviation Act of 1958 to ensure that airline computer reservation systems are available to users on a nondiscriminatory basis, and for other purposes; to the Committee on Commerce, Science, and Transportation.

AIRLINE COMPUTER RESERVATION SYSTEM AVAILABILITY ACT

● Mr. MCCAIN. Mr. President, the last several months have seen an acceleration of the trend toward concentration and a lack of competition in the airline industry. Midway Airlines, formed in 1979 in response to deregulation, is in chapter 11 bankruptcy. Similarly, Pan Am and Continental are also in bankruptcy court. Eastern Airlines is in the process of liquidation. Today, just eight carriers control over 90 percent of the market.

The Secretary of Transportation, in recent testimony before Congress, could be certain only that at least three air carriers will survive. How have we come to this state?

A primary cause is the airline ownership of computer reservation systems or CRS's. There is virtual unanimity that something must be done in this area to restore the competitive balance.

Recent testimony by the General Accounting Office [GAO] illustrates the anticompetitive effect of CRS's. According to GAO, each carrier must, as a practical matter, have its flights listed on each CRS system. The booking fees charged by the CRS systems far exceed the costs of providing the service, hence transferring hundreds of millions of dollars in revenues from carriers that do not own CRS's to those that do.

The GAO has calculated that United and American Airlines, who together control 75 percent of the CRS market, each receive over $300 million per year in monopoly CRS profits, paid for by other carriers. This $300 million is in addition to a reasonable profit for the service provided.

Is there any question why American and United are the two leading candidates to survive the current shakedown in the industry? Is there any doubt why American and United have the resources to buy international routes from troubled carriers? These two carriers are prospering because they are each drawing over $300 million a year in excess profits, at the expense of their competitors.

The excess profits come about in two ways. First, the CRS's charge excessive booking fees, which other carriers must pay to successfully market their product. Second, there is the "halo effect," whereby the airlines owning CRS's are able to achieve from 10 to 15 percent of their bookings as a result of owning a CRS system, not from some competitive factor associated with the airline service.

As one airline analyst has noted:

It is difficult to fully grasp the enormity of the transfer of wealth among airlines caused by CRS monopoly power. * * * At the starting line American is allowed to step forward over half a billion dollars' worth in revenues, over a third of a billion dollars' worth in profits, while all other competitors have to step back behind the starting line equal amounts. Then at the end of the first year of the race everyone is held in place for an instant while American is moved that same distance ahead again and the other competitors are moved back that same distance. This is repeated every year. The cumulative effects of this annual distortion in airline competition have grown to enormous proportions and continue to grow.

During the Easter recess, the Department of Transportation [DOT] issued a Notice of Proposed Rulemaking on CRS systems. I congratulate Secretary Skinner for recognizing the problem and issuing these rules. The rules would require that all CRS's be available from a single terminal, allow CRS users to reconfigure their systems, and cut to 3 years from 5 years the subscription term that CRS vendors can require of travel agents. These proposed rules are a step in the right direction; however, a rulemaking alone will not solve the inherent anticompetitive effects of airline ownership of CRS systems.

The DOT rulemaking does not deal with booking fees, stating that it is impracticable and inefficient to regulate the fees. The Department takes this position despite its own 1988 study on CRS systems which concluded that booking fees by the two largest CRS's appeared to equal 192 percent and 233 percent of their average unit costs for producing reservations during 1986. How does this translate into actual fees paid by airlines: DOT data for 1988 showed that the big two CRS systems received $62 million in fees from USAir, $56 million from Delta, $50 million from Northwest, and the list goes on.

In addition, the nexus is so tight between airline ownership of CRS systems and the same airline's marketing practices, that a rulemaking alone will never completely dispel the halo effect.

What is needed is legislation requiring airlines to divest themselves of CRS systems. The DOT rulemaking does not deal with excessive booking fees nor would it fix the halo effect. Only divestiture can cure the anticompetitive effects of CRS's. Only divestiture can level the playing field for airline competition. Only divestiture can ensure that the promise of airline deregulation is upheld.•

By Mr. DURENBERGER:

S. 840. A bill to amend the Internal Revenue Code of 1986 to provide a simplified method for computing the deductions allowable to home day care providers for the business use of their home; to the Committee on Finance.

DAY CARE PROVIDER TAX SIMPLIFICATION ACT

• Mr. DURENBERGER. Mr. President, over the past several years, Congress, working with the President, has adopted important legislation to help address the problems of day care availability and affordability. Just last year, we expanded the tax credit for child care and adopted the bipartisan ABC child care bill.

Unfortunately, it appears that every time we take a step toward expanding day care, a new hurdle presents itself. While obstacles can be expected from time to time in grappling with day care issues, it is inexcusable when these obstacles are created by the Federal Government.

But that is just what happened 2 weeks ago, when the Internal Revenue Service issued a technical advice memorandum affecting a home day care provider in Minnesota. If the IRS adopts this ruling nationwide, which I expect they will, it will create a severe and irrational compliance problem for every home day care provider in this country who seeks to legitimately deduct the expenses associated with operating a day care facility in their homes.

According to the IRS, home day care providers are entitled to a tax deduction for the expenses associated with their day care operations only in proportion to the amount of time that a child uses a given room each day. This means, for example, that a home day care provider would be entitled to a deduction for its childrens' playroom only during the time in the day when a child is actually physically present in the room. If a child crawls in the playroom for 10 minutes, crawls out of the room into the living room for 10 minutes, crawls into the kitchen for 10 minutes, and then returns to the playroom—traveling through the living room—the day care provider would have to keep exact records to determine the amount of time the child spends in each room in order to claim an appropriate tax deduction. Mr. President, that is absurd:

Mr. President, to comply with the IRS ruling, day care providers will have to follow children around the house with a clip board, or will have to install video cameras in each room to monitor the comings and goings of children, in order to justify their legitimate day-care expenses. I believe that Congress never intended such an onerous recordkeeping burden to be placed on family day care providers. That is why I am today introducing legislation that would spell out clear and simple tax deduction rules for day care providers.

In 1977, Congress created a special section of the Internal Revenue Code to ease the recordkeeping burdens of providers. This separate treatment reflects the belief that caring for our children, and adults who are not able to care for themselves, is more important than keeping scrupulously detailed daily logs for tax purposes. I believe my legislation will facilitate Congress' intent in this area.

The Day Care Provider Tax Simplification Act, which has been endorsed by a leading Minnesota day care advocacy group, Resources for Child Caring, will permit home day care providers to claim a home expense deduction based simply on the total amount of time that rooms in the house are open and available for providing day care services.

Deductions will be allowed for the areas of the house regularly used by the children at least 1 hour per day. This rule would apply in those cases where the rooms are used for 80 percent of the days that the facility is open for business. Deductible areas will be measured as a portion of the total square footage of the house. Those rooms, such as a family room, kitchen, bathroom, and bedrooms, which are determined to be in regular use, will be considered to be available for use throughout the day and fully deductible for the day.

For example, if a home day care facility is to accept children for 10 hours each day, and the children spent an hour in the kitchen, and 3 hours in the playroom, and 6 hours in the bedroom, the day care provider could fully deduct the square footage of all three rooms for the 10 hour day that it was open. In addition, if the provider spent an hour prior to opening, cooking and preparing the house for the children, the house would be deemed open for the children for 11 hours each day.

Under this bill, utility expense accounting would also be simplified. Utility expenses, including electric, gas and fuel oil, and telephone expenses, could be deducted in proportion to the number of hours out of the year that a home is used as a day care facility.

Mr. President, Minnesota is the first State that has been affected by this IRS ruling. But I can assure every member of the Senate that when this ruling is applied nationwide, all of my colleagues will be hearing from family day care providers in their States. I hope all of you will join me in overturning this onerous and ill-conceived tax compliance burden arbitrarily imposed by the IRS.

Mr. President, I ask unanimous consent that the text of the bill and a copy of the letter of support from Resources for Child Caring be included in the RECORD.

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

S. 840

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 "Day Care Provider Tax Simplification Act".

SEC. 2. SIMPLIFIED METHOD OF COMPUTING DEDUCTIONS OF HOME DAY CARE PROVIDERS.

(a) IN GENERAL.—Subparagraph (C) of section 280A(c)(4) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new clauses:

"(ii) SIMPLIFIED ALLOCATION METHOD.—If a portion of a dwelling unit is used for the purposes described in subparagraph (A) for at least 1 hour on at least 80 percent of the days that such dwelling unit is used for such purposes, then the amount of the expenses attributable to that portion shall be determined under clause (i) as if such portion was used—

"(I) on all days the dwelling unit was used for such purposes, and

"(II) for the total number of hours that any portion of the dwelling unit was used for such purposes on such day (rather than the number of hours actually used).

"(iii) SPECIAL RULE FOR UTILITY EXPENSES.—Notwithstanding clause (i) or (ii), the amount of expenses for utilities which are treated as attributable to the use of a dwelling unit for the purposes described in subparagraph (A) shall be equal to the product of the total amount of such expenses for the taxable year, multiplied by the percentage determined by dividing—

"(I) the total number of hours any portion of the dwelling unit was used for such purposes during the taxable year, by

"(II) the total number of hours in such taxable year.

For purposes of this clause, the term 'utilities' means electrical energy, gas and fuel oil, water and sewer services, and telephone services."

(b) CONFORMING AMENDMENT.—Subparagraph (C) of section 280A(c)(4) is amended by striking "(C) ALLOCATION FORMULA.—If" and inserting:

"(C) ALLOCATION FORMULAS.—

"(i) IN GENERAL.—If".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

RESOURCES FOR CHILD CARING,
St. Paul, MN, April 16, 1991.

Senator DAVE DURENBERGER,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR DURENBERGER: We are very pleased to hear that you are introducing a bill that supports the important work of hundreds of thousands of family child care providers across the country. In doing so you will be reducing the record keeping burden on providers and allowing them to spend more time caring for children. This will also help support parental choice in choosing child care and improve the quality of care that our children receive.

We support a bill that allows family child care providers to allocate their house expenses based on the following Time-Space formula: The Time percent is determined by adding up the hours that a home is used for business purposes, divided by the total number of hours in a year. A home is considered used for business purposes when children being cared for are present, or when the provider is conducting business activities in the home, such as cleaning, cooking activity preparation, record keeping, etc., when children are not present. The Space percent is based on whether or not a room is regularly used for business purposes, rather than how many hours each room is used for business purposes. The square footage of those rooms regularly used for business purposes is divided by the total square footage of the house. Multiplying the Time percent and the Space percent together equals the Time-Space formula.

This interpretation of the Time-Space formula has been used for many years by family child care providers. Because of recent attempts by the IRS to change this interpretation and require providers to keep an unreasonable amount of records for each room used in business, we believe it is vital to change the law to prevent confusion and misunderstanding.

We are grateful for your efforts on behalf of family child care providers and children and we will fully support a bill that meets this description.

Thank you for your concern.

Sincerely,

DAVID ALLEN,
Executive Director.●

By Mr. CRAIG (for himself and Mr. SYMMS):

S. 841. A bill to amend the Internal Revenue Code of 1986 to allow an additional 50 percent deduction for the costs to employers of providing family leave in certain cases involving a birth, an adoption, or a serious illness of a child, spouse, or dependent of the employee; to the Committee on Finance.

FAMILY LEAVE BENEFITS ASSISTANCE ACT

● Mr. CRAIG. Mr. President, I am today introducing a bill that will give this body a chance.

The Family Leave Benefits Assistance Act of 1991 will give the Senate an alternative to the strong-arm, mandated features of the Family and Medical Leave Act currently being considered.

The choice is this: We can either spend our time productively, placing before the President a bill that will relieve the very real burdens of families and employers—or we can waste our time wrangling over a bill that might give benefits to some people and place an even heavier burden on businesses.

We can pass a voluntary family leave bill that will offer incentives to employers and will likely win favor with the President—or we can end up with a mandatory approach that ignores many small businesses, loads heavy costs on others—and will be voted by the President. The first approach will yield a necessary and beneficial legislative product; the second, only talking points for the next campaign.

The Family Leave Benefits Assistance Act which I am introducing today has, in most instances, the same or better benefits to offer as the veto-bound Family and Medical Leave Act.

It offers leave for the serious illness of a spouse, while the other bill offers nothing in this area. It is available to all businesses, while the mandatory bill ignores small businesses with fewer than 50 employees.

I know my State of Idaho depends on these small businesses for its economic survival and I suspect your States do, too. It is a fact that more than 95 percent of America's employers would be exempt from the mandatory bill.

But the major difference between the bill being introduced today and the legislation it would replace is simply the fact that it is voluntary, with incentives, rather than mandatory, with penalties. It is the carrot, rather than the stick. It is leadership by moral example, rather than by using force.

If the burdens of families facing the birth or adoption of a child, or the serious illness of a spouse or family member, can be alleviated by tax incentives for employers, then such a course is charitable to both. The mandatory bill will force employers to bear that hardship alone; the bill I am introducing will allow a sharing of the burden.

Mr. President, I do not believe that most of my colleagues in the Congress have, as their first priority, their own reelections. I believe that most of us came here for the same reasons: to do what is best for the country; to find solutions to the real problems that our constituents face. This is our chance to prove why we are really here. This is an opportunity to offer workers the leave time they must have for critical family needs.

This bill will give employers an incentive to grant that leave. This measure will be available to employers of every size. And this bill will most likely be signed by a President who has promised to veto any mandatory approach.

I urge your careful consideration and your support of the Family Leave Benefits Assistance Act of 1991.●

By Mr. BREAUX:

S. 842. A bill to amend the Clayton Act to prohibit certain activities by local governments that operate airports, and for certain other purposes; to the Committee on the Judiciary.

FAIR AIRPORT ACCESS ASSURANCE ACT

● Mr. BREAUX. Mr. President, today I am reintroducing the Fair Airport Access Assurance Act, legislation that will restore competition in the ever growing market for airport services. This legislation is identical with S. 1822, a bill that I introduced in the 101st Congress that would amend the Clayton Act to prohibit federally financed airports from imposing unreasonable and unjustly discriminatory taxes, fees, or conditions on nontenant, nonaeronautical, commercial users of the airport, where the effect of such taxes, fees, or conditions may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This bill does not interfere with the ability of an airport to restrict competition on its premises. Nor does the bill interfere with the ability of an airport and an on-airport concessionaire to enter into a revenue-enhancing fee agreement. This bill will, however, interfere with any airport scheme to restrict competition by charging gross receipts fees that prevent off-airport service providers from competing with on-airport concessionaires.

On-airport concessionaires such as car rental companies have complained for some time about their off-airport competitors. And, perhaps coincidentally in some cases, we have approximately 80 airports now taxing the gross receipts of off-airport small business men and women who are the competitors of these on-airport concessionaires. In the car rental industry, small off-airport operators compete with giant on-airport counterparts by offering lower prices to the consumer who is often willing to endure the inconvenience of venturing off-airport to rent his or her car. Taxes and fees on off-airport operators at amounts that are near or equal to amounts negotiated by on-airport concessionaires threaten the ability of off-airport operators to offer consumers lower prices; such fees and taxes are, therefore, a serious threat to the survival of these businesses as competitors of on-airport concessionaires.

Last year's bill, S. 1822, was the subject of hearings by the Judiciary Subcommittee on Antitrust, Monopolies and Business Rights. I urge my colleagues to examine the record of those hearings because it amply demonstrates the need for this legislation.

The subcommittee heard, for example, from a small businessman in Louisiana, Ed Chance, who testified that, by taxing off-airport businesses, the airports were simply seeking to remove any price differential between off- and on-airport businesses. "Once the off-airport operator has increased his or her prices, the large on-airport companies have achieved their objective—they have removed the price differential between on- and off-airport rental cars. If the price of renting on- or off-airport is the same, the customer will forego the inconvenience of renting cars from off-airport companies."

Another small businessman who testified was a Dollar Rent-A-Car licensee with a fleet of only five cars. When the Montrose, Colorado Airport assessed an 8-percent fee that was equal to the amount paid by the on-airport operators, he, quite justifiably, complained. The airport responded by more than doubling his fee to 15 percent, over twice the amount negotiated by the on-airport operators.

The effect of gross receipts access fees on the small business men and women that operate off-airport businesses is clear. What is also clear is that if the off-airport car rental market is destroyed, rental care prices will rise and consumer choices will diminish. Indeed, a 1989 Department of Transportation study of gross receipts fees concluded that the mere imposition of such fees will have an adverse affect on consumer prices and choices.

The Consumer Federation of America, which supports this legislation, estimates that these fees could cost consumers approximately $125 million per year. The American Association of Retired Persons is also concerned, and states that "it is in the interest of our members that this legislation succeed if the market is to remain open." The off-airport services market is finding it very difficult to remain open without the legal means to challenge an airport's anticompetitive conduct.

As matters now stand, the airports, when confronted with charges of anticompetitive conduct, claim that they are immunized from the antitrust laws by the State action doctrine. Because State law permits them to set fees and prices, they argue that they are immune from the marketplace discipline imposed by the antitrust laws. I believe, Mr. President, that if that is the case, then the law should be changed.

This legislation, Mr. President, is not anti-airport. It would only affect those federally financed airports that are charging unreasonable and unjustly discriminatory fees on nontenant, nonaeronautical businesses, and then only if the effect of such fees can be shown to substantially lessen competition or tend to create a monopoly.

Moreover, airports can no longer claim that, by restricting their ability to eliminate competition, this legislation will somehow deny then access to needed revenues. Last year, the Congress authorized airports to assess passenger facility charges [PFC's], against air travelers. Estimates of the annual increase in airport revenues run as high as a billion dollars, and press reports estimate that individual large airports will now be able to raise tens of million of dollars annually.

Mr. President, it is rare that we enact legislation that is badly needed by both small business and consumers. Enactment of my legislation provides that opportunity. I hope that my colleagues will join me in supporting legislation to ensure that airport access fees are not anticompetitive.

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. 842

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 Fair Airport Access Assurance Act of 1991".

SEC. 2. ANTITRUST LIABILITY OF LOCAL GOVERNMENTS.

The Clayton Act (15 U.S.C. 12 et seq.) is amended by redesignating section 27, and any reference to such section, as section 28 and inserting after section 26 the following new section:

"SEC. 27. It shall be unlawful for any city, county, parish, town, township, village, or other general or special function governmental unit that owns or operates an airport that receives Federal assistance or issues airport improvement bonds the interest on which is tax exempt under the Internal Revenue Code of 1986 to impose an unreasonable and unjustly discriminatory tax, fee, or condition on non-tenant, non-aeronautical, commercial users of such airport, where the effect of such tax, fee, or condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce, whether or not such tax, fee, or condition is authorized by State law.".

SEC. 3. LIMITATION ON APPLICABILITY TO CIVIL ACTIONS.

This Act and amendments made by this Act shall not apply to any civil action in which a judgment has been entered on or before the date of the enactment of this Act.•

By Mr. BREAUX (for himself, Mr. KASTEN, Mr. PRYOR, Mr. HOLLINGS, Mr. LOTT, and Mr. BIDEN):

S. 843. A bill to amend title 46, United States Code, to repeal the requirement that the Secretary of Transportation collect a fee or charge for recreational vessels; to the Committee on Commerce, Science, and Transportation.

REPEAL OF COAST GUARD RECREATIONAL BOAT TAX

• Mr. BREAUX. Mr. President, 10 years after the administration first asked the Congress to impose a user fee on recreational boat use, the 1990 Budget Reconciliation Act, a primary tool for controlling Federal spending and the expansion of the Federal budget deficit, authorized the collection of recreational boating user fees. Many of us were under the impression that a fee would be charged for specific services to be rendered by the U.S. Coast Guard. It is now clear, Mr. President, that the Federal Government would be under no requirement to render any specific service to boat users in relation to any fees charged to them. The Coast Guard is required to implement the collection of the fees, but as far as I can tell, Mr. President, not one penny of the collection will directly benefit the Coast Guard.

Under the law, the Coast Guard will collect $25 per year from owners of boats that are 16 to 20 feet long, and $35 if the boat is 20 to 27 feet. Those in the 17 to 40 feet category will pay $50, and those longer than 40 feet will pay $100. Boat owners who do not pay up, may be subjected to a fine of $5,000.

These boat user fees, approximately $130 million will be generated, will be consigned, not to the Coast Guard for rendering services to boat users, Mr. President, but, to the General Treasury.

We are not playing it straight with America's boat-owners: These moneys that will be collected as boat user fees, Mr. President, are in fact deficit reduction taxes. A deficit reduction tax will be charged to 6 million recreational boat users—even some canoe and kayak owners—in America; 300,000 recreational boat users are in the State of Louisiana.

Ten thousand registered recreational boat owners often join you, Mr. President, in the pleasures of pleasure-boating, or what was pleasure before this federal intrusion. These boat owners already pay fees to their respective states, and endure Federal excise and fuel taxes to engage in pleasure boating activities.

The 6,000 of them who drop their boats in Coast Guard jurisdictional waters off the Atlantic, Pacific, and Gulf of Mexico, however, are railing against the singling out of their particular activities to shoulder the misery of Federal taxes, not-so-well-disguised as boat user fees, in support of the Federal deficit.

This is clearly a discriminatory tax, Mr. President, and today I am joined by Senators BOB KASTEN of Wisconsin and DAVID PRYOR of Arkansas in introducing in the Senate a bill that would repeal it. I note, Mr. President, that our bill is the companion bill to the House bill and introduced by Representatives DAVIS and BATEMAN in January 1991. The Davis-Bateman bill now has 117 cosponsors.

I urge my colleagues in the Senate to join us in supporting this legislation.

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. 843

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

SECTION 1. COAST GUARD RECREATIONAL BOAT TAX REPEAL.

Section 2110 of title 46, United States Code, is amended—

(1) by repealing subsection (b);

(2) in subsection (c), by striking "subsections (a) and (b)," and inserting "this section,"; and

(3) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.•

• Mr. KASTEN. Mr. President, I am pleased to join my colleague from Louisiana, Mr. BREAUX, in introducing this bill to repeal the fees imposed on recreational boaters which were mandated by last fall's Omnibus Budget Reconciliation Act of 1990. While there were lots of reasons that I voted against the budget bill, this disguised tax as one of them.

Probably the most ironic thing about these fees is that they are sometimes called the Coast Guard user fees. While the Coast Guard will have to expend its resources to be the traffic cop and collect these fees, the fees certainly are not set aside for any of the Coast Guard's important missions.

This is just another Federal tax that only serves to beef up the U.S. Treasury. This is a boating tax, not a fee—and it doesn't benefit the Coast Guard at all. The roughly $130 million collected from boaters across the country—who already pay their fair share of taxes—goes directly to Uncle Sam. Money collected from these fees will not go to the Coast Guard or any other Federal program that will benefit U.S. recreational boaters.

The fees proposed range from $25 for vessels over 16 feet but less than 20 feet, to $100 for vessels over 40 feet in length. These fees will make boating more expensive, and thus be one more threat to the viability of the boat and other manufacturers who have already been impacted by the luxury tax that was enacted in the same Budget Act.

With 81 boat manufacturers, 79 motor, trailer and accessory manufacturers, 20 fishing tackle manufacturers, and 735 marine dealers, the damage this measure could cause is widespread in my State.

This fee is really a wolf in sheep's clothing that will only serve to put Wisconsin's boating industry on the rocks. Coupled with other taxes—such as the new gas tax, luxury taxes, and other user fees—this proposed tax will hit the Great Lakes' boating industry.

The imposition of these fees—or tax—will hit hard the 482,000 recreational boaters in my State of Wisconsin. My State is proud to rank sixth in the Nation in the number of registered boats. Wisconsinites take full advantage of the lovely lakes and rivers that Wisconsin offers our citizens and those who visit our State.

I look forward to working through the Commerce Committee and with my Senate colleagues on this matter. But this fee has to go.•

By Mr. DOMENICI (for himself, Mr. ADAMS, Mr. BOND, Mr. BURNS, Mr. COCHRAN, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. HARKIN, Mr. MCCAIN, and Mr. SYMMS):

S. 844. A bill to provide for the minting and circulation of $1 coins; to the Committee on Banking, Housing, and Urban Affairs.

UNITED STATES ONE DOLLAR COIN ACT

• Mr. DOMENICI. Mr. President, I am pleased to reintroduce a bill I introduced in the 101st Congress, which was cosponsored by 30 of my distinguished colleagues, to create a $1 coin. This legislation offers two great advantages to every American: Cost savings and convenience.

Creation of a $1 coin can save the Government and consumers millions of dollars spent each year to print $1 bills and to retrofit machines to accept bills. In these times of burdensome deficit numbers, creation of a durable $1 coin is intuitively logical.

My bill authorizes the minting of a golden-colored Christopher Columbus $1 coin, to observe his discovery of the New World. It is appropriate to honor Columbus at this time because the 500th anniversary of his discovery is in 1992. The proposal directs the Department of the Treasury to place the new coin into circulation within 18 months of enactment of the legislation.

We are not the first industrialized nation to update our currency. Due to inflation, the $1 bill now buys about what 25 cents purchased in 1950. Many other countries have experienced this phenomenon and have updated their coinage to meet the demands of today's commerce. A $1 coin is similarly necessary in the United States.

Japan, England, Norway, Australia, and most recently Canada, are among seven of the nations that have circulated such coins, golden in color, with great success. They have learned from our experience with the Susan B. Anthony coin that a distinctive gold-colored $1 coin is most acceptable to consumers, while a silver-colored one, similar to the quarter, is not.

These countries have replaced the equivalent paper currency with a coin, generally over a 3-year period. My legislation does not require the elimination of the $1 bill. However, replacement of the $1 bill has been suggested to me and I believe it has merit.

Why is coinage reform necessary? The most significant reason to me is the savings to be realized by the Government and consumers. Based on data from the General Accounting Office, over a 30-year period, the Government can save an estimated $318 million each year in costs associated with minting a $1 coin instead of a $1 bill. According to the Government Accounting Office, this could average $1.3 billion annually in cash-flow dollars.

We are literally throwing our money away with a $1 bill. Every year the U.S. Government prints 3.2 billion dollar bills, at a cost per bill of 2.6 cents. These bills have an average life of 17 months. At the end of that period, the bills are returned to the Government, taken to a special facility, shredded, and dumped into a landfill. This is an undesirable and unnecessary abuse to the environment and the taxpayer. By contrast, the $1 coin would cost 6 cents to mint, but would remain in circulation for up to 30 years.

Any environmentalist will tell you that reusable articles are better than disposable ones. The same holds true for money: Twenty-one $1 bills are needed to do the job of a single $1 coin.

One dollar bills also contribute to the increasing cost of vending machine products. It costs $2,400 to purchase a bill changer and $400 to retrofit a vending machine to accept $1 bills. This cost is passed on to the consumer. The $1 coin, however, eliminates the need for these costs, costs that are ultimately paid by the consumer.

Our mass transit systems face expensive retrofitting of fare machines on buses. This expense could be avoided by the circulation of a $1 coin. Such retrofitting cost Cleveland, Washington, and Chicago $5 million, $8.7 million, and $15 million respectively. Additionally, paper counters must be hired to sort and stack $1 bills at the end of each day. This is a tedious, labor-intensive task that significantly increases the cost of mass transit.

I would like to share with you a scenario that has occurred in Chicago that demonstrates the compelling need for a $1 coin. The Chicago Transit Authority [CTA] spends about $2 million each year processing the 285,000 $1 bills it receives every day. To reduce this expense, the CTA tried to encourage people to use tokens by raising the cash fare from 95 cents to $1.25 and giving a deep discount on tokens purchased in bulk: 10 for $9 or 90 cents per ride. The CTA succeeded in reducing the volume of $1 bills from 350,000 to 285,000 daily. The tragedy of this story lies in the fact that economically wise commuters who could afford to purchase bulk fares benefited while those who could only afford to purchase one fare at a time saw an increase per ride of 31 percent.

Clearly, the cost savings to the Government and consumers of a $1 coin is evident.

A second compelling reason for a $1 coin can be said in one word: Convenience. More and more common transactions require handfuls of quarters—coin laundries, parking meters, long-distance phone calls, for those who don't use calling cards, newspaper stands, and even change from a $5 bill in Washington's Metro.

Additionally, with edges easily distinguishable by touch from the quarter, a $1 coin is strongly supported by those among us who are visually handicapped. This $1 coin, therefore, has the potential for improving the ease of purchases for the visually handicapped and provides protection from unscrupulous cashiers.

An efficient and convenient society requires this change.

In conclusion, Mr. President, I am convinced that putting a $1 coin in our pocket will be a great convenience, and it will prove a significant savings to the taxpayer—savings that will add up to over $10 billion over the life of these gold-colored dollars. I urge my colleagues to lend their support to the United States One Dollar Coin Act of 1991.•

By Mr. LAUTENBERG:

S. 845. A bill to direct the Secretary of State to seek an agreement from the Arab countries and end certain passport and visa policies and other purposes; to the Committee on Foreign Relations.

ANTIBOYCOTT PASSPORT ACT OF 1991

• Mr. LAUTENBERG. Mr. President, Secretary Baker is back in the Middle East today searching for ways to get the peace process going again. I just recently returned from the Middle East. Frankly I must say I was surprised and discouraged by attitudes evinced by Arab States in the gulf conflict. What discouraged me is the intransigence toward Israel I encountered with virtually all Arab diplomats and their lack of perspective on the obstacles this poses to peace.

Mr. President, the Arab nations, except for Egypt, continue to isolate and alienate Israel politically. They continue to refuse the reality of Israel's existence. They boycott her and anyone who does business with her. They even boycott any company doing business with a company doing business with Israel. How foolish. They maintain a state of war against her. After 43 years of existence, they refuse to accept Israel as a permanent neighbor. That is not a basis for peace.

To crystallize the point, and to show the depth of Arab rejection of Israel, I want to share with the Senate my experience in trying to get a visa for a recent Senate leadership trip to Saudi Arabia and Kuwait.

Because my diplomatic passport had an Israeli entrance stamp from a previous visit to Israel, the Saudi Arabian Government said it would not give me a visa. Like Saudi Arabia, the Kuwait Government has a longstanding policy of rejecting passports with Israeli entrance stamps. So do a majority of the Arab League countries. Because of these policies, the State Department followed its established guidelines. It issued to me an entirely new diplomatic passport as the only means to secure a visa from the Saudi Arabian and Kuwaiti Governments, and thus enable me to participate in the leadership trip.

An editorial in yesterday's Washington Post correctly characterized this visa rebuff as an offense against the United States. It aptly criticized the American Government for kowtowing to Saudi Arabia by issuing duplicate passports.

Mr. President, it is the height of absurdity that the Governments of Saudi Arabia and Kuwait are prepared to refuse a United States Senator a visa for a congressional delegation visit because his diplomatic passport has an Israeli entrance stamp. It is a slap in the face to all Americans. In maintaining their visa policies, Saudi Arabia and Kuwait are sending a clear but disturbing message to all Americans. American soldiers coming to fight to restore security in the region are welcome. But, Americans who have committed the offense of ever having visited Israel are not. Would the Saudis and Kuwaitis have denied an American soldier entry if he or she had visited Israel?

Mr. President, the U.S. Government condones this policy. It accepts this policy. It accepts the fact that American diplomats and other travelers have to endorse the Arabs' refusal to even recognize Israel's existence in order to travel to a majority of Arab countries. It buys into this hatred and totally unacceptable view.

Rather than condoning and acquiescing to this policy, Mr. President, the U.S. Government should demand that Arab countries eliminate this practice. The State Department should no longer issue two passports for diplomats traveling in the region. It's an insult to Israel, to our Ambassadors, and to our country that our Ambassadors and other American government personnel, and tourists, should have to have two passports to travel in the Middle East if they want to visit Israel.

Israel is a friend and ally. Her security is essential to American security interests in the region. By providing two passports—especially to diplomats—the U.S. Government is slapping Israel in the face and supporting Arab efforts to isolate and completely alienate Israel. Arab countries—especially our allies in the war—should welcome U.S. diplomats to their country, especially after our role in the gulf war, and should support U.S. foreign policy interests. They should welcome American companies to their shores, and not boycott them.

Mr. President, today I am introducing legislation to require the Secretary of State to instruct our Middle Eastern diplomatic corps to immediately commence negotiations with Arab countries toward a reversal of their policy of not providing entrance visas for citizens and diplomats if their passport contains an Israeli entrance stamp. It would require the Secretary of State to report to Congress within 60 days of enactment on progress and prospects for securing a reversal of this outdated policy. If, within 90 days of enactment, negotiations have not resulted in a commitment from each Arab country to reverse this policy, the State Department will be prohibited from issuing duplicate passports to officials of the U.S. Government traveling in the Middle East. It would also immediately prohibit the issuance of passports designated for travel only to Israel.

Mr. President, the Arab countries' policy of rejecting passports from any citizen that has been to Israel is a stark reminder that despite all the developments of recent months, Arab nations except for Egypt still pursue a far-reaching policy of rejection of Israel. The policy is an impediment to peace and flies in the face of U.S. national security interests in the region. It brings nothing to Arab countries and is an insult to American diplomats, citizens, and soldiers. It should be reversed. I have asked Secretary Baker to lodge a formal complaint about the visa matter with the Governments of Saudi Arabia and Kuwait and to place it on his agenda as the United States continues to search for ways to bring peace to the Middle East.

I also raised this matter personally in Cairo earlier this month, when I had the opportunity to meet with President Hosni Mubarak and Egyptian Foreign Minister Ahmed Esmat Abdel Meguid, who has been nominated by Mubarak to head the Arab League. In my meetings, I called on them to seek a reversal of Arab policy of rejecting anyone who shows evidence of even visiting Israel.

Mr. President, Secretary Baker is in the Middle East now. He will be visiting Saudi Arabia and other Arab countries that continue to cling to this hateful and woefully outdated policy of isolating Israel and anyone who has ever been to Israel. I hope Secretary Baker will raise this issue in his discussions with Arab leaders. Our Arab League coalition partners should discard this visa policy, along with the boycott against Israel and companies doing business with Israel, as relics of the past which pose obstacles to peace.

Mr. President, I ask unanimous consent that the following documents be included in the RECORD: the text of the bill, copies of the April 16 Washington Post and an April 17 Bergen Record editorial, and a letter I sent to Secretary Baker on March 26 on this matter. I urge my colleagues to support this legislation.

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

S. 845

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, This Act may be cited as the "Anti-Boycott Passport Act of 1991".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The nations of the Arab League except Egypt remain in a state of war with Israel, a friend and ally of the United States, and refuse to recognize Israel and her right to exist.

(2) As part of their effort to isolate Israel and her allies, the majority of Arab countries generally reject the passports of, and deny entrance visas to, private persons and governmental officials whose passport or other documents bear an Israeli entrance stamp or marking or otherwise reflect that the person has visited Israel.

(3) The passport and visa policy of the majority of Arab League nations is an impediment to peace in the Middle East and must be reversed.

(4) The passport and visa policy of the majority of Arab League nations is an affront to the Government of the United States.

(5) The passport and visa policy of Saudi Arabia and Kuwait, both members of the Arab League, demonstrates a business as usual attitude and lack of appreciation for the successful efforts of the United States to reverse the Iraqi occupation of Kuwait and to restore the security of Kuwait and Saudi Arabia.

(6) Officials of the United States Government traveling in the Middle East are, as a general practice, issued two passports so that they can travel to Israel and to Arab countries in compliance with the passport and visa policy of the majority of Arab League nations.

(7) To avoid challenging the passport and visa policy of the majority of Arab League nations the State Department has issued official passports to United States Government officials, designated for travel only to Israel.

(8) The United States Government's policy of issuing two passports for official travel in the Middle East, and its policy of issuing official passports designated for travel only to Israel, constitute acquiesence in, and the appearance of acceptance of, the rejection of Israel by Arab countries.

(9) The United States Government's policy of issuing two passports for official travel in the Middle East, and its policy of issuing official passports designated for travel only to Israel, are at odds both with the recognition of Israel by the United States and with the rejection in United States policy and law of the Arab boycott of Israel.

(10) The reversal of the passport and visa policy described above would be an important confidence-building measure and would contribute to the peace process in the Middle East.

(11) The administration should vigorously encourage the nations of the Arab League which maintain the passport and visa policy described in this section to reverse their policy of rejecting passports of, and denying entrance visas to, persons whose passport or other documents reflect that the person has visited Israel.

SEC. 3. PURPOSES.

It is the purpose of this Act to—

(1) direct the Secretary of State to seek an end to the policy of the majority of Arab League nations of rejecting passports, and denying entrance visas to persons whose passport or other documents reflect that the holder has visited Israel, and to secure the adoption of policies that assure that the travel to such Arab League nations by persons who have visited Israel shall not be unreasonably impeded; and

(2) prohibit United States Government acquiescence in the policy of the majority of Arab League nations of rejecting Israel by rejecting passports of, and denying entrance visas to, persons whose passport or other documents reflect that the holder has visited Israel, especially with respect to travel by officials of the United States.

SEC. 4. NEGOTIATIONS.

The Secretary of State shall immediately instruct the United States Middle Eastern diplomatic corps to seek an end to the policy of the majority of Arab League nations of rejecting passports of, and denying entrance visas to, private persons and officials of all nations whose passport or other documents reflect that the holder thereof has visited Israel.

SEC. 5. REPORT TO CONGRESS.

The Secretary of State shall submit a report to the Foreign Relations Committee and Appropriations Committee of the Senate, and the Foreign Affairs Committee and Appropriations Committee of the House of Representatives within 60 days of the date of enactment of this Act. The report shall describe the status of efforts to secure an end to the passport and visa policy of the majority of Arab League nations as described in section 4, and describe the prospects that such efforts would be successful within 90 days of the date of enactment of this Act.

SEC. 6. PROHIBITION ON THE ISSUANCE OF ISRAEL-ONLY PASSPORTS.

Notwithstanding any other provision of law, the Secretary of State shall not issue any passport that is designated for travel only to Israel. Within 90 days of the date of enactment of this Act, the Secretary of State shall cancel any passport already issued which is designated for travel only to Israel.

SEC. 7. POLICY OF NONACQUIESCENCE.

(a) The Secretary of State shall not issue more than one official or diplomatic passport to any official of the United States Government for the purpose of enabling that official to acquiesce in or comply with, the policy of the majority of Arab League nations of rejecting passports of, or denying entrance visas to, persons whose passport or other documents reflect that the person has visited Israel.

(b) The Secretary of State shall promulgate such rules and regulations as are necessary to assure that officials of the United States Government do not comply with, or acquiesce in, the policy of the majority of Arab League nations of rejecting passports of, or denying entrance visas to, persons whose passport or other documents reflect that the person has visited Israel.

(c) This section shall take effect within 90 days of the date of enactment of this Act, except that, if the Secretary of State fails to conduct negotiations pursuant to section 4 or to submit a report under section 5, this Act shall take effect on the date of such refusal.

[From the Washington Post, Apr. 16, 1991]

KOWTOWING TO SAUDI ARABIA

The Saudis and Kuwaitis were kind enough to receive half a million American troops to save their necks from Saddam Hussein. But they could not then see their way clear to receiving Frank Lautenberg, one among 17 U.S. senators who sought to visit the Gulf. Typhoid? No, it was the fact that Sen. Lautenberg (D-NJ.) had an Israeli stamp in his passport from an earlier trip. Twice the Saudi Embassy in Washington refused to stamp in the requisite visa. The State Department then issued Mr. Lautenberg the second passport that has come to be routinely provided to Americans caught in this bind. The visit went on.

In a letter, Sen. Lautenberg urged the secretary of state to stir a policy review by Saudi Arabia, Kuwait and other Arab nations conducting this secondary boycott of Israel and suggested that the secretary place the matter on the agenda of regional peacemaking.

But the visa rebuff is only tangentially an offense against Israel. It is directly an offense against the United States—the more sordid and insidious for seldom being accurately recognized. The Saudis and others are saying that they and not the U.S. government will determine the validity of an American passport. They are forcing a distinction between two kinds of Americans, those who will submit to Saudi derogation of American sovereignty and those who will not. This is being done, to repeat, by a couple of family-run governments that but for the United States would be provinces of Iraq.

For decades now, this form of humiliation of the United States has been greeted with a shrug or an indulgent chuckle by many traveling Americans, journalists as well as diplomats and businessmen. It even happens that Israelis are sometimes seen as villains of the piece for conforming with the law and dignity of their own visa procedures and inconveniencing Americans as a result. Who can tell to what extent such habits of shabby complicity have nourished in Arab minds the rejection of Israel, which is a root cause of the whole Middle East dispute? Not one day longer should the American government kowtow to Saudi Arabia in this manner.

[From the Bergen (NJ) Record]

ABSURDITY IN ARABIA

Saudi Arabia and Kuwait welcomed half a million American troops willing to risk death to defeat Saddam Hussein. But when Sen. Frank Lautenberg, D-N.J., applied for a visa recently, he ran into a wall.

Mr. Lautenberg's offense? He visited Israel. He has a stamp on his passport to show it.

Mr. Lautenberg is furious. He is, rightly, angry not only at the Kuwaitis and Saudis, but also with the U.S. State Department for tolerating this nonsense. It was mid-March when Mr. Lautenberg applied for his visa. He and 16 other senators planned to visit Saudi Arabia and Kuwait to study post-war conditions. "We were trying to get an assessment of the needs of the area," he says. "I would have thought the delegation would be welcomed."

Instead, congressional aides reported, neither Kuwait nor Saudi Arabia would grant the visa because Mr. Lautenberg's passport showed that he had visited Israel. Mr. Lautenberg said the denial was unacceptable, and told aides to try again.

On the second go-around, the State Department tried to sidestep the issue by issuing Mr. Lautenberg a brand-new passport. This acquiescence made Mr. Lautenberg even angrier. The policy pursued by Saudi Arabia, Kuwait, and many other Arab states—with the honorable exception of Egypt—is first and foremost an insult to Israel. The rejection of Israel by many Arab states is so total and so unreasoning that they refuse to allow tourists, business people, journalists, and even high-ranking foreign officials such as Mr. Lautenberg to visit if their passports show any sign of an Israeli visit. Arab states also impose rigid economic boycotts against companies that do business with Israel.

But the Arab passport policy is also, as Mr. Lautenberg argues, an insult to the United States. Arab governments are refusing to recognize the validity of a U.S. passport unless the passport's owner will kowtow to Arab foreign policy, and Arab hatreds. This humiliation has been shrugged off for years by American visitors to the Middle East because access would otherwise be impossible.

Mr. Lautenberg refuses to wink and look the other way. He has written to Secretary of State James A. Baker III to ask that Mr. Baker raise this issue with Arab heads of state, as he tries to arrange Arab-Israeli peace talks. "The policy is an impediment to peace and must be reversed," Mr. Lautenberg wrote.

Dropping the outmoded passport policy would cost Arab countries nothing. But it would be a sign to Israel, and to the world, that Arab leaders are willing to take a modest step toward recognizing the realities of the late 20th century. Israel exists, and Israel will continue to exist. No real progress on a lasting Middle East peace can be made until the Arab states recognize this.

Using American passports to pretend otherwise is a disgraceful charade, demeaning to Arab leaders who insist on such a policy and to the State Department officials who go along with it.

U.S. SENATE,
Washington, DC, March 26, 1991.

Hon. JAMES A. BAKER III,
Secretary of State, State Department, Washington, DC.

DEAR SECRETARY BAKER: I am writing to ask you to insist that our Arab coalition allies reverse their long-standing policy of denying entry to Americans who have an Israeli visa stamp in their passports.

I was outraged that the governments of Saudi Arabia and Kuwait were prepared to refuse me a visa for a Congressional delegation visit because my diplomatic passport had an Israeli immigration stamp. In maintaining their visa policies, Saudi Arabia and Kuwait are sending a clear but disturbing message to all Americans. American soldiers prepared to fight to restore security in the region are welcome. But, Americans who have ever visited Israel are not.

The policy is a sad reminder that despite all the developments of recent months, Arab nations except for Egypt still pursue a far-reaching policy of rejection of Israel. Indeed, it is a rejectionism that goes so far as rejecting Americans who have visited Israel. The policy is an impediment to peace and must be reversed. As you seek confidence building measures in the region, I encourage you to urge Saudi Arabia, Kuwait and all Arab nations to abandon their outdated policy.

If Arab countries agreed to reverse this policy, it would demonstrate a positive first step toward recognizing Israel's right to exist. It would bring hope to many that Arab nations will one day formally end their state of war with Israel and enter direct negotiations for peace agreements with that country.

I urge you to lodge a complaint with the governments of Saudi Arabia and Kuwait over this matter and place it on your agenda as you continue to search for ways to bring peace and stability to the Middle East.

Sincerely,

FRANK R. LAUTENBERG.●

By Mr. MITCHELL (for Mr. PRYOR, for himself, Mr. DASCHLE, Mr. RIEGLE, Mr. DURENBERGER, Mr. BURDICK, Mr. BAUCUS, Mr. ROCKEFELLER, and Mr. MCCAIN):

S. 846. A bill to amend title XIX of the Social Security Act to establish Federal standards for long-term care insurance policies; to the Committee on Finance.

LONG-TERM INSURANCE CONSUMER PROTECTION ACT

Mr. MITCHELL. Mr. President, I rise to introduce legislation for Senator PRYOR, who, as we are all aware, has been hospitalized. Our prayers and best wishes are with Senator PRYOR in his recuperation.

The legislation Senator PRYOR had intended to introduce himself today is the Long-Term Care Insurance Consumer Protection Act. This legislation will require States to adopt minimum consumer protection for private long-term care insurance.

I commend Senator PRYOR, as chairman of the Special Committee on Aging, for his commitment to the protection of consumers who purchase private long-term care insurance. I share Senator PRYOR's interest in the quality, availability, and affordability of private long-term care insurance.

During the 100th Congress I introduced legislation to provide a comprehensive Medicare long-term care benefit. My legislation provided for a significant role for private long-term care insurance because I believe that long-term care is an insurable event, and that if affordable, quality long-term care insurance policies could be made more available to persons with the financial ability to purchase them.

Since the introduction of my legislation, more information has become available about the private long-term care insurance market. The news has been mixed. On the one hand, the number of private long-term care policies being marketed has increased. But, initial cost estimates of such policies may have been underestimated.

If private long-term care insurance is to play a part in protecting elderly and disabled Americans from the financial devastation of chronic illness, policies must be affordable and of good quality. It is important that the private insurance industry develop policies that are balanced in that regard.

I look forward to working with Senator PRYOR as he continues to refine his legislation in an effort to improve consumer protections for private long-term care insurance, and I commend him for his continued efforts in this important area.

Mr. President, I ask unanimous consent that a statement, previously prepared by Senator PRYOR, be submitted for the RECORD.

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

• Mr. PRYOR. Mr. President, I am pleased to be joined by Senators DASCHLE, RIEGLE, DURENBERGER, BAUCUS, ROCKEFELLER, BURDICK and MCCAIN in introducing today the Long-Term Care Insurance Consumer Protection Act of 1991. This legislation will provide basic, Federal consumer protections for long-term care insurance.

I would like to take this opportunity to applaud the ongoing efforts and commitment of my colleagues who are joining me today in introducing this bill. All have played leadership roles on the issue of health insurance for older Americans, and I am glad to be working with them. Today, Representatives WYDEN, COLLINS, and others are introducing a companion measure in the House.

During the Pepper Commission's struggle to find solutions to our long-term care problem, I became interested in the possibilities that private long-term care insurance may hold. Recognizing that, for the foreseeable future, the public sector, will not be able to comprehensively meet every long-term care need of our Nation, the Commission recommended the promotion and regulation of private long-term care insurance.

In recent years, the growth in the sales of these policies has been rapid. The number of policies sold, and the number of companies selling these policies, has doubled in less than 3 years. Long-term care insurance policies have improved over the past few years, they continue to evolve. Despite the gains that have been made, room for improvement remains. Many policies contain overly restrictive limitations on benefits and do not meet basic standards recommended by the NAIC [National Association of Insurance Commissioners].

There is also room for improvement in the regulation of this insurance. The NAIC has made progress in the development of the model standards. However, recent reports from the HHS inspector general and the General Accounting Office [GAO] indicate that many States do not have important consumer protections in place. The GAO found that most policies contain definitions that potentially limit access to beneficiaries. Such definitions can eliminate coverage for policyholders who would otherwise qualify for benefits. Also, the GAO noted that consumers risk unpredictable premium increases that make it difficult for them to retain their policies. The inspector general found that 33 States do not provide minimum consumer protections. The fact that States are adopting these standards in varying degrees and a lack of support from the industry for these standards is troublesome.

Already at risk because of inadequate regulation of this market and the fear associated with long-term care, consumers face difficult choices in the purchase of this type of insurance. It is clear that consumers face even more complexities in understanding long-term care insurance policies than they do in understanding Medigap policies.

As chairman of the Aging Committee, I want to ensure that abuses that have plagued the Medigap market are not repeated in the long-term care market. Unfortunately, we are already hearing about problems that we cannot let go unaddressed. Here are just three examples:

A man in Illinois had been paying $1,000 per year for a so-called guaranteed renewable and level premium nursing home policy he had for 10 years. Just when he was entering a nursing home, he received a notice that the company had been sold to another corporation and his new rates were $11,000 per year. Unable to meet the new premium, he was forced to drop the policy, receiving no benefits or refund.

An insurance company collected annual premiums of almost $2,000 for 3 years for an 80-year-old widow from Philadelphia. When the widow entered a nursing home, the company canceled the policy, claiming she had not fully disclosed her health history. The agent had taken the health history from the widow's daughter over the phone and then sent the widow a blank application to sign.

An 89-year-old widow from Oregon took out two nursing home policies. In selling her the policies, the insurance agent said that, with this insurance, she would never be a burden to her children should she ever have to go into a nursing home. The widow paid more than $5,000 in premiums on the policies, only to find they wouldn't pay any of the $10,000 in nursing home bills she later accumulated. The insurance company said her care didn't meet their definition of "skilled care."

Mr. President, as with any legislation being introduced, this bill is but the first step in the legislative process. We have attempted to craft what we believe represents a fair response to the varying recommendations of consumers and their advocates, the National Association of Insurance Commissioners, the insurance industry and the insurance agents. In this effort, our goal has always been to strike the appropriate balance between the need for consumer protection with the need to assure affordability. With that in mind, each of these interested parties will have the opportunity to analyze and respond to this legislation. I look forward to their comments and suggestions on how we can strengthen this legislation and assure these important consumer protections.

The Long-Term Care Insurance Consumer Protection Act of 1991 is supported by the American Association of Retired Persons, the National Committee to Preserve Social Security and Medicare, Families United for Senior Action, and Consumers Union. I urge my colleagues to join us by cosponsoring this bill.

Mr. President, I ask unanimous consent that the text of the bill as well as a summary of its provisions be printed in the RECORD.

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

S. 846

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 "Long-Term Care Insurance Consumer Protection Act of 1991".

SEC. 2. ESTABLISHMENT OF FEDERAL STANDARDS FOR LONG-TERM CARE INSURANCE POLICIES.

(a) IN GENERAL.—Title XIX of the Social Security Act is amended by adding at the end the following new section:

"LONG-TERM CARE INSURANCE STANDARDS

"SEC. 1931. (a) IMPLEMENTATION OF POLICY STANDARDS.—

"(1) IN GENERAL.—

"(A) NEW ISSUES.—No long-term care insurance policy (as defined in subsection (i)) may be issued, sold, or offered for sale in a State on or after the date specified in paragraph (4) unless—

"(i) the Secretary determines that the State has established a regulatory program that—

"(I) provides for the application and enforcement of the standards established under paragraph (3), and

"(II) complies with the requirements of paragraph (5),

by the date specified in paragraph (4), and the policy has been approved by the State commissioner or superintendent of insurance under such program; or

"(ii) if the State has not established such a program, the policy has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the standards established under paragraph (3).

For purposes of this paragraph, the advertising or soliciting with respect to a policy, directly or indirectly, shall be deemed the offering for sale of the policy.

"(B) REVIEW OF STATE REGULATORY PROGRAMS.—The Secretary periodically shall review regulatory programs described in subparagraph (A)(i) to determine if they continue to provide for the application and enforcement of the standards established under paragraph (3).

"(2) SANCTIONS.—Any person who issues or renews a policy, on or after the date specified in paragraph (4), in violation of paragraph (1), is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(3) PROMULGATION OF STANDARDS.—

"(A) IN GENERAL.—If, within 12 months after the date of the enactment of this section, the National Association of Insurance Commissioners (in this section referred to as the 'NAIC') promulgates model standards that incorporate the requirements of subsections (d) through (h), such standards shall apply under paragraph (1).

"(B) DEFAULT.—If the NAIC does not promulgate the model standards under subparagraph (A) by the deadline established in that paragraph, the Secretary shall promulgate, within 12 months after such deadline, a regulation that provides standards that incorporate the requirements of subsections (d) through (h) and such standards shall be applied under paragraph (1).

"(C) CONSULTATION.—In establishing standards under this paragraph, the NAIC or Secretary shall consult with a working group composed of representatives of issuers of long-term care insurance policies, consumer groups, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

"(D) LIMITED PREEMPTION.—The standards established under this paragraph preempt provisions of State law which conflict with such standards, but nothing in this section shall be construed as preventing a State from applying standards that provide greater protection to policyholders of long-term care insurance policies.

"(4) DEADLINE FOR APPLICATION OF STANDARDS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is—

"(i) the date the State adopts the standards established under paragraph (3), or

"(ii) 1 year after the date such standards are first established,

whichever is earlier.

"(B) STATE REQUIRING LEGISLATION.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

"(i) requiring State legislation (other than legislation appropriating funds) in order for the standards established under paragraph (3) to be applied, but

"(ii) having a legislature which is not scheduled to meet in 1993 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1993. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(5) ADDITIONAL REQUIREMENTS FOR APPROVAL OF STATE REGULATORY PROGRAMS.—For purposes of paragraph (1)(A)(i)(II), the requirements of this paragraph for a State regulatory program are as follows:

"(A) CONSUMER ACCESS TO COMPLIANCE INFORMATION.—

"(i) IN GENERAL.—The program must provide for consumer access to complaints filed with the State commissioner or superintendent of insurance with respect to long-term care insurance policies.

"(ii) CONFIDENTIALITY.—The access provided under clause (i) shall be limited to the extent required to protect the confidentiality of the identity of individual policyholders.

"(B) ACCESS TO OTHER INFORMATION.—The program must provide for consumer access to information reported under subsection (c)(4).

"(C) PROCESS FOR APPROVAL OF PREMIUMS.—The program must provide for a process for approving or disapproving proposed premium increases with respect to long-term care insurance policies and must establish a policy for the holding of public hearings prior to approval of such a premium increase. No such premium increase shall be approved (or deemed approved) unless the proposed increase is accompanied by an actuarial memorandum which supports the increase and which contains such information as may be required under the standards under subsection (a)(3).

"(b) REGULATION OF SALES PRACTICES.—

"(1) DUTY OF GOOD FAITH AND FAIR DEALING.—

"(A) IN GENERAL.—Each individual who is selling or offering for sale a long-term care insurance policy has the duty of good faith and fair dealing to the purchaser or potential purchaser of such a policy.

"(B) PROHIBITED PRACTICES.—An individual is considered to have violated subparagraph (A) if the individual engages in any of the following practices:

"(i) TWISTING.—Knowingly making any misleading representation or incomplete or fraudulent comparison of any health care insurance policy or insurers for the purpose of inducing, or tending to induce, any person to retain or effect a change with respect to a long-term care insurance policy.

"(ii) HIGH PRESSURE TACTICS.—Employing any method of marketing having the effect of, or intending to, induce the purchase of long-term care insurance policy through undue pressure.

"(iii) COLD LEAD ADVERTISING.—Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

"(2) COMPLETION OF MEDICAL HISTORIES PROHIBITED.—A person who is selling or offering for sale a long-term care insurance policy may not complete the medical history portion of an application.

"(3) PROHIBITION OF SALE OR ISSUANCE TO MEDICAID BENEFICIARIES.—A person may not knowingly sell or issue a long-term care insurance policy to an individual who is eligible for medical assistance (other than only as a qualified medicare beneficiary) under this title.

"(4) PROHIBITION OF SALE OR ISSUANCE OF DUPLICATE SERVICE BENEFIT POLICIES.—A person may not sell or issue a service-benefit long-term care insurance policy—

"(A) knowing that the policy provides for coverage that duplicates coverage already provided in another service-benefit long-term care insurance policy (unless the policy is intended to replace such other policy), or

"(B) for the benefit of an individual unless the individual (or a representative of the individual) provides a written statement to the effect that the coverage (i) does not duplicate other coverage in effect under a service-benefit long-term care insurance policy or (ii) will replace another service-benefit long-term care insurance policy.

In this paragraph, the term 'service-benefit long-term care insurance policy' means a long-term care insurance policy which provides for benefits based on the amount and type of services furnished, rather than on the amount of expenses incurred.

"(5) PROVISION OF OUTLINE OF COVERAGE.—No person may sell or offer for sale a long-term care insurance policy without providing to the purchaser or potential purchaser (or representative) an outline of coverage that complies with the standards established under subsection (a)(3).

"(6) CIVIL MONEY PENALTY.—Any person who sells, offers for sale, or issues a long-term care insurance policy in violation of this subsection is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(c) ADDITIONAL RESPONSIBILITIES OF ISSUERS.—

"(1) REFUND OF PREMIUMS.—If an application for a long-term care insurance policy (or for a certificate under a group long-term care insurance policy) is denied or an applicant returns a policy or certificate within 30 days of the date of its issuance pursuant to subsection (h), the issuer shall refund to the applicant, not later than 30 days after the date of the denial or return, any premiums paid with respect to such a policy.

"(2) MAILING OF POLICY.—If an application for an long-term care insurance policy (or for a certificate under a group long-term care insurance policy) is approved, the issuer shall transmit to the applicant the policy (or certificate) of insurance not later than 30 days after the date of the approval.

"(3) INFORMATION ON DENIALS OF CLAIMS.—If a claim under a long-term care insurance policy is denied, the issuer shall, within 60 days of the date of a written request by the policyholder or certificate holder (or representative)—

"(A) provide a written explanation of the reasons for the denial, and

"(B) make available all information directly relating to such denial.

"(4) REPORTING OF INFORMATION.—The issuer of a long-term care insurance policy shall periodically (not less often than annually) report to the Commissioner or superintendent of insurance of each State in which the policy is sold, and shall make available to the Secretary, upon request, information respecting—

"(A) the long-term care insurance policies of the issuer that are in force,

"(B) the most recent premiums for such policies and the premiums imposed for such policies during the previous 5-year period,

"(C) the lapse rates, replacement rates, and rescission rates for policies (by agent), and

"(D) the claims denied (as a percentage of claims submitted) for such policies.

Information under this paragraph shall be reported in a format specified in the standards established under subsection (a)(3) to carry out this subsection. For purposes of subparagraph (C), there shall not be included as a lapse of policy such a lapse due to the death of the policyholder. For purposes of subparagraph (D), there shall not be included as a denied claim a claim that is denied solely because of the failure to meet a deductible, waiting period, or exclusionary period.

"(5) ACCESS TO INFORMATION.—Each such issuer shall provide the Secretary and the Commissioner or superintendent of insurance of each State in which the policy is sold such information as the Secretary, Commissioner, or superintendent, may request.

"(6) PROVISION OF OUTLINE OF COVERAGE FOR RENEWALS.—Each issuer of a long-term care insurance policy shall provide, at the time of renewal of such a policy, an outline of coverage that meets the applicable standards established pursuant to this section.

"(7) MEDICAL ASSESSMENTS FOR THE ELDERLY.—Before issuing a long-term care insurance policy to an applicant who is 75 years of age or older, if the policy is not guaranteed issue the issuer shall obtain one of the following:

"(A) A report of a physical examination.

"(B) An assessment of functional capacity.

"(C) Copies of medical records.

"(8) CIVIL MONEY PENALTY.—Any issuer of a long-term care insurance policy who—

"(A) fails to make a refund in accordance with paragraph (1),

"(B) fails to transmit a policy in accordance with paragraph (2),

"(C) fails to provide, make available, or report information in accordance with paragraph (3), (4), or (5),

"(D) fails to provide an outline of coverage in violation of paragraph (6), or

"(E) issues a policy without obtaining certain information in violation of paragraph (7),

is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(d) REQUIREMENTS RELATING TO RENEWABILITY.—

"(1) IN GENERAL.—No long-term care insurance policy may be canceled or nonrenewed for any reason other than nonpayment of premium or material misrepresentation.

"(2) CONTINUATION AND CONVERSION RIGHTS FOR GROUP POLICIES.—

"(A) IN GENERAL.—Each group long-term care insurance policy shall provide covered individuals with a basis for continuation or conversion in accordance with this paragraph.

"(B) BASIS FOR CONTINUATION.—For purposes of subparagraph (A), a policy provides a basis for continuation of coverage if the policy maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. A group policy which restricts provision of benefits and services to or contains incentives to use certain providers or facility, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy.

"(C) BASIS FOR CONVERSION.—For purposes of subparagraph (A), a policy provides a basis for conversion of coverage if the policy entitles each individual—

"(i) whose coverage under the group policy would otherwise be terminated for any reason, and

"(ii) who has been continuously insured under the policy (or group policy which was replaced) for at least 6 months before the date of the termination,

to issuance of a policy providing benefits identical to, substantially equivalent to, or in excess of, those of the policy being terminated, without evidence of insurability.

"(D) TREATMENT OF SUBSTANTIAL EQUIVALENCE.—In determining under this paragraph whether benefits are substantially equivalent, there shall be taken into consideration the differences between managed care and non-managed care plans.

"(E) GROUP REPLACEMENT OF POLICIES.—If a group long-term care insurance policy is replaced by another long-term care insurance policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

"(e) BENEFIT STANDARDS.—

"(1) USE OF STANDARD DEFINITIONS AND TERMINOLOGY AND UNIFORM FORMAT.—

"(A) IN GENERAL.—Each long-term care insurance policy shall, pursuant to standards established under subsection (a)(3)—

"(i) use uniform language and definitions, and

"(ii) use a uniform format for presenting the outline of coverage under such a policy.

"(B) CERTAIN VARIATION IN LANGUAGE PERMITTED.—Such standards may permit the use of non-uniform language, but only to the extent required to take into account differences among States in the licensing of nursing facilities and other providers of long-term care.

"(2) DISCLOSURE.—

"(A) OUTLINE OF COVERAGE.—The outline of coverage for each long-term care insurance policy shall include at least the following:

"(i) A description of the principal benefits and coverage under the policy.

"(ii) A statement of the principal exclusions, reductions, and limitations contained in the policy.

"(iii) A statement of the terms under which the policy (or certificate) may be continued in force or discontinued, the terms for continuation or conversion, and any reservation in the policy of a right to change premiums.

"(iv) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy (or master policy) contains the contractual provisions that govern.

"(v) A statement of the value of the policy (determined in accordance with standard established to carry out this subparagraph).

"(vii) A description of the terms, specified in subsection (h), under which a policy or certificate may be returned and premium refunded.

"(viii) Information on national average costs for nursing facility and home health care and information (in graphic form) on the relationship of the benefits provided under the policy to such national average costs.

"(ix) A statement of the percentage limit on annual premium increases that is provided under the policy pursuant to paragraph (8).

"(x) Information (in graphic form) on the projected effect of inflation on the value of benefits provided under the policy during a period of at least 20 years.

"(B) CERTIFICATES.—A certificate issued pursuant to a group long-term care insurance policy shall include—

"(i) a description of the principal benefits and coverage provided in the policy;

"(ii) a statement of the principal exclusions, reductions, and limitations contained in the policy; and

"(iii) a statement that the group master policy determines governing contractual provisions.

"(C) LONG-TERM CARE AS PART OF LIFE INSURANCE.—In the case of a long-term care insurance policy issued as a part of or a rider on a life insurance policy, at the time of policy delivery there shall be provided a policy summary that includes—

"(i) an explanation of how the long-term care benefits interact with other components of the policy (including deductions from death benefits);

"(ii) an illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits (if any) for each covered person; and

"(iii) any exclusions, reductions, and limitations on benefits of long-term care.

"(3) LIMITING CONDITIONS ON BENEFITS; MINIMUM BENEFITS.—

"(A) IN GENERAL.—A long-term care insurance policy may not condition or limit eligibility—

"(i) for benefits for a type of services to the need for or receipt of any other services,

"(ii) for any noninstitutional benefit on the medical necessity for such benefit,

"(iii) for benefits furnished by licensed providers on compliance with conditions which are in addition to those required for licensure under State law, or

"(iv) for custodial care (if covered under the policy) only (I) to care provided in facilities which provide a higher level of care or (II) to care provided in facilities which provide for 24-hour or other nursing care not required in order to be licensed by the State.

"(B) HOME HEALTH CARE SERVICES.—If a long-term care insurance policy provides benefits for home health care services, the policy—

"(i) may not limit such benefits to services provided by registered nurses or licensed practical nurses;

"(ii) may not require benefits for such services to be provided by a nurse or therapist that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of the worker's licensure or certification;

"(iii) may not limit such benefits to services provided by agencies or providers certified under title XVIII; and

"(iv) must provide benefits for personal care services (including home health aide and homemaker services), home health services, and respite care in an individual's home.

"(C) NURSING FACILITY SERVICES.—If a long-term care insurance policy provides benefits for nursing facility services, the policy must provide such benefits with respect to all nursing facilities that are licensed in the State.

"(D) MINIMUM PERIOD OF COVERAGE.—Each long-term care insurance policy shall provide benefits over a period of at least 12 consecutive months.

"(4) PROHIBITION OF DISCRIMINATION.—A long-term care insurance policy may not treat benefits under the policy in the case of an individual with Alzheimer's disease, with any related progressive degenerative dementia of an organic origin, or with any organic or inorganic mental illness differently from an individual having another medical condition for which benefits may be made available.

"(5) LIMITATION ON USE OF PREEXISTING CONDITION LIMITS.—

"(A) INITIAL ISSUANCE.—

"(i) IN GENERAL.—Subject to clause (ii), a long-term care insurance policy may not exclude or condition benefits based on a medical condition for which the policyholder received treatment or was otherwise diagnosed before the issuance of the policy.

"(ii) 6-MONTH LIMIT.—A long-term care insurance policy may exclude benefits under a policy, during its first 6 months, based on a condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before the policy became effective.

"(B) REPLACEMENT POLICIES.—If a long-term care insurance policy replaces another long-term care insurance policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new policy for similar benefits to the extent such time was spent under the original policy.

"(6) USE OF FUNCTIONAL ASSESSMENT.—

"(A) IN GENERAL.—Each long-term care insurance policy—

"(i) shall determine eligibility for, and level of, benefits (other than for nursing facility services) available under the policy based on a professional assessment of the policyholder's functional ability, and

"(ii) shall specify the level (or levels) of functional impairment required under such an assessment to obtain benefits other than for nursing facility services) under the policy.

"(B) APPEALS PROCESS.—Each long-term care insurance policy shall provide for an appeals process, meeting standards established under this subsection, for individuals who dispute the results of an assessment conducted under this paragraph.

"(7) INFLATION PROTECTION.—

"(A) OPTIONAL RIDER AT TIME OF INITIAL ISSUANCE.—Each long-term care insurance policy shall permit the policyholder, at the time of initial sale, an option of providing for inflation protection described in subparagraph (B).

"(B) INFLATION PROTECTION DESCRIBED.—The inflation protection described in this subparagraph provides, at the time of each annual renewal of a policy, for an increase of a specified percentage (but not less than 5 percent) in the dollar payment levels and the maximum payment limit on benefit coverage above the levels or limit in effect during the previous policy year. In applying this subparagraph, the increases shall be compounded annually and the policy may provide for rounding such an increase to the nearest multiple of $1 (in the case of dollar payment levels) or $100 (in the case of the maximum payment limit).

"(8) SPECIFICATION OF LIMITS ON PREMIUM INCREASES.—Each long-term care insurance policy shall specify a limit on the percentage increase in premiums for a policy that may be made in any between one policy year and the subsequent policy year.

"(f) NONFORFEITURE.—

"(1) IN GENERAL.—Each long-term care insurance policy shall provide that if the policy lapses after the policy has been in effect for a minimum period (specified under the standards under subsection (a)(3)), the policy will provide without payment of any additional premiums benefits equal to—

"(A) a percentage (specified under such standards) of the benefits otherwise available at term, or

"(B) such other type of benefits as such standards may provide.

"(2) ESTABLISHMENT OF STANDARDS.—The standards under subsection (a)(3)—

"(A) may not provide more than 2 additional types of benefits under paragraph (1)(B), and

"(B) may provide that the percentage or amount of benefits under paragraph (1) must increase based upon the period of time in which the policy was in effect.

"(g) LIMIT OF PERIOD OF CONTESTABILITY.—The issuer of a long-term care insurance policy may not cancel such a policy or deny a claim under the policy based on fraud or misrepresentation relating to the issuance of the policy unless notice of such fraud or misrepresentation is provided within 6 months after the date of the issuance of the policy.

"(h) RIGHT TO RETURN (FREE LOOK).—Each applicant for a long-term care insurance policy shall have the right to return the policy (or certificate) within 30 days of the date of its delivery (and to have the premium refunded) if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

"(i) LONG-TERM CARE INSURANCE POLICY DEFINED.—

"(1) IN GENERAL.—In this section, except as otherwise provided in this subsection, the term 'long-term care insurance policy' means any insurance policy, certificate, or rider advertised, marketed, offered, or designed to provide coverage for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes a group or individual annuity or life insurance policy or rider which provides directly (or which supplements) long-term care insurance.

"(2) POLICIES EXCLUDED.—Except as provided in paragraph (4), the term 'long-term care insurance policy' does not include any medicare supplemental policy (as defined in section 1882(g)) and any insurance which is offered primarily to provide—

"(A) basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, or major medical expense coverage,

"(B) disability income or related asset-protection coverage,

"(C) accident only coverage,

"(D) specified disease or specified accident coverage, or

"(E) limited benefit health coverage.

"(3) TREATMENT OF CERTAIN LIFE INSURANCE POLICIES.—Except as provided in paragraph (4), the term 'long-term care insurance policy' does not include life insurance policies—

"(A) which accelerate the death benefit specifically for—

"(i) one or more of the qualifying events of terminal illness,

"(ii) medical conditions requiring extraordinary medical intervention, or

"(iii) permanent institutional confinement;

"(B) which provide the option of a lump-sum payment for those benefits; and

"(C) in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

"(4) INCLUSION OF POLICIES MARKETED AS LONG-TERM CARE INSURANCE.—The term 'long-term care insurance policy' also means any product which is advertised, marketed, or offered as long-term care insurance.".

(b) REPORT ON ASSESSMENT METHODS FOR FUNCTIONAL ABILITY.—Within 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the different methods that may be used to conduct assessments of functional ability described in section 1931(e)(6)(A) of the Social Security Act and the relative effectiveness of each of such methods.

(c) REPORT ON SOLVENCY PROTECTION.—Within 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on standards that may be applied to assure the solvency of insurers with respect to long-term care insurance policies.

(d) STUDY OF STANDARD MEASURE OF VALUE FOR LONG-TERM CARE INSURANCE POLICIES.—The Secretary of Health and Human Services shall provide for a study to develop a standard measure of value for long-term care insurance policies. Within 2 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on such study.

SEC. 3. INCREASE IN FUNDING FOR LONG-TERM CARE INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE.

The subsection (f) of section 4360 of the Omnibus Budget Reconciliation Act of 1990 relating to authorization of appropriations for grants is amended by inserting before the period at the end the following: "and an additional $20,000,000 for each of fiscal years 1993, 1994, and 1995, to fund such grant programs for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate long-term care insurance".

LONG-TERM CARE INSURANCE CONSUMER PROTECTION ACT—SUMMARY

1. CONSUMER ACCESS TO INFORMATION

Requires states to make available to consumers information regarding:

Complaints received with respect to long-term care insurance policies;

The number of policies sold by company;

The most recent premiums for each policy sold in the state;

The lapse and replacement rates for policies

The number of policy rescissions; and

The claims denied as a percentage of claims submitted (excluding claims denied because the policyholder has not met deductibles or waiting periods)

Why needed: Most states do not maintain separate files on long-term care insurance complaints, making it virtually impossible for consumers to get good, objective information about the reputation and quality of a particular company or agent. Consumers have the right to know basic information long-term care insurance before they spend their hard-earned dollars.

2. INFLATION PROTECTION

Requires all policies to offer an inflation protection feature that provides for an increase of a specified percentage not less than 5 percent in the policy's dollar payment levels and maximum payment limit. The increases are to be compounded annually.

Why needed: Consumers should have the option to purchase inflation protection and should be informed as to how benefits are eroded without this type of protection. However, to assure consumer flexibility and affordability, this legislation does not require all policies to have inflation protection. Assuming a conservative inflation estimate of 5 percent per year, without inflation protection a long-term care insurance policy benefit is eroded by 50 percent in just 10 years. Seniors pour thousands of dollars per year into these policies only to find that their benefits have been whittled away, just when they need protection the most.

3. NONFORFEITURE BENEFITS

Requires each policy to contain a nonforfeiture benefit which conforms to one of the 3 nonforfeiture models developed by the National Association of Insurance Commissioners (NAIC). At least one of the models identified by the NAIC must be a reduced paid-up model whereby policyholders would be guaranteed a specified percentage of benefits after a certain vesting period. Similar to a whole life policy or a home mortgage, a nonforfeiture benefit for long-term care insurance would assure that a policyholder did not have to forfeit vested equity in a policy should the policy lapse.

Why needed: Because long-term care policies are typically held for 10 or 20 years before their benefits are used, the possibility of a policy lapsing during this period is significant. For example, assuming a conservative lapse rate of 10 percent per year, only 7 percent of policies purchased at age 65 are still in force at age 85, when they are most likely to need the coverage.

When a long-term care insurance policy lapses, the policyholder forfeits a significant amount of equity which has been built up to pre-fund future needs. Individuals often pay into long-term care insurance policies for 10, 15, 20 years or more only to find that a premium increase suddenly makes the policy unaffordable. When this happens, policyholders surrender years of equity and are left with no long-term care protection whatsoever.

4. MARKETING ABUSES

a. Explicitly prohibits "churning" whereby an individual is pressured into switching policies in order for the agent to capture a new sales commission.

Why Needed: When an individual drops an old policy to buy a new policy, they will be forced to meet new preexisting condition waiting periods, during which time they will not be covered by insurance.

b. Explicitly prohibits high pressure sales tactics.

Why needed: Using threats, or capitalizing on the fear of financial catastrophe associated with going into a nursing home should not be tolerated, particularly with the frail elderly.

c. Prohibits agents from filling in the medical history portion of an application.

Why needed: There is evidence of problems with agents who fill in medical history questions incorrectly. If an agent incorrectly answers these questions on behalf of an applicant, an applicant would likely face the possibility of having claims denied at a later date on the basis that the applicant misrepresented his/her health status at the time of application.

d. Prohibits sale of a long-term care insurance policy to an individual who is eligible for Medicaid. An exception is made for qualified Medicare beneficiaries (QMBs).

Why needed: Medicaid beneficiaries, by definition, already receive comprehensive coverage for long-term care services without cost-sharing requirements.

5. OUTLINE OF COVERAGE

Requires the NAIC to develop insurers to provide a standardized outline of coverage which states:

The principal benefits and exclusions under the policy

Graphic information on national average nursing home and home health care costs and their relationship to benefits provided under the policy

Graphic information on the effects of inflation on benefits provided under the policy over at least a 20 year period

A statement that the premium for the policy will not increase more than a specified percentage during any given calendar year (the percentage specified will be developed by the insurer and may not be exceeded)

Why needed: Currently, many insurance companies have devised their own outline of coverage which is very different in format and content than other companies, making it very difficult for individuals to compare policy provisions. In addition, consumers generally do not receive any information about how the benefits under the policy compare to average costs of such benefits, or how much the policy can be expected to be worth over time. The requirement to disclose maximum annual premium increases under the policy will bring predictability and accountability.

6. GUARANTEED RENEWABILITY

Requires all policies to be guaranteed renewable. Policies could only be cancelled for nonpayment of premuim or material misrepresentation.

Why needed: Some states still allow insurers to cancel long-term care insurance policies because the health of the policyholder has deteriorated. Guaranteed renewability prevents insurers from suddenly dropping coverage for policyholders who are no longer considered "profitable".

7. STANDARD DEFINITIONS AND TERMINOLOGY

Requests the NAIC to develop, within 12 months of enactment, standard definitions and terminology for benefits used in long-term care insurance policies.

Why needed: Today, frivolous variations in policy definitions leave consumers confused and highly susceptible to high pressure sales pitches which try to convince them that their coverage is substandard. Consumers have the right to know that "home health care", for example, means the same thing in every policy so that they can make true comparisons based upon benefit levels and price.

8. PRIOR INSTITUTIONALIZATION

Prohibits the imposition of prior hospitalization requirements on the receipt of benefits. Also prohibits the use of prior institutionalization (i.e., a nursing home stay) requirements on the receipt on non-institutional (i.e., home and community care) benefits.

Why needed: Despite the fact that the NAIC model act contains a prohibition on the use of prior institutionalization, several states have not adopted this provision and several insurers (large and small) still sell policies that restrict eligibility for benefits upon a stay in the hospital (usually 3 days) or a prior stay in a skilled nursing facility. A prior hospitalization requirement effectively excludes two-thirds of the policyholders from receiving nursing home benefits.

9. HOME HEALTH CARE

Prohibits limiting such benefits to services provided to RNs or LPNs or to Medicare-certified agencies and facilities. Prohibits exclusion of personal care services, such as home health aide and respite care. Requires use of functional assessment tool for home care eligibility. Provide policyholders with an explicit right to appeal denials for home care eligibility.

Why needed: Restricting home health care services to specific providers or Medicare-certified facilities severely limits the options of the policyholder. Often, policyholders do not need skilled nursing care; rather, they need assistance with the activities of daily living, things such as bathing, walking, feeding, toileting, and eating. In addition, Medicare-certified facilities are the exception, not the rule, and they often have long waiting lists. Policyholders should have the right to use their benefits at any license nursing or home health facility in the state.

11. TIMELY PROVISION OF INFORMATION

Requires:

a. Insurers to refund premiums to policyholders within 30 days of an application denial or return under the fee look period.

b. Insurers to transmit the policyholder, within 30 days of a policy application approval, a copy of the actual policy or certificate.

c. Insurers to give written notice, within 60 days of a claim denial, the reasons for such denial. Insurers must also make available to policyholders all information directly relating to such denial.

d. Insurers to obtain, prior to the issuance of a policy, a physical exam report, a functional capacity assessment, or medical records for all applicants age 75 or older.

Why needed: Policyholders have the right to know why their claims were denied in a timely manner and to have timely refund of premiums when appropriate. There have been documented instances where insurers delay timely information or refunds in order to buy time or discourage the policyholders from getting payment. Many policyholders are frail elderly individuals who cannot afford to fight the insurance company, or wait months for payment. Because nursing home stays are very expensive, delay in receiving claims payments can quickly result in bankruptcy for the individual and increased government costs through Medicaid.

12. COUNSELING

Provides a $20 million authorization for states to establish long-term care insurance counseling programs.

Why needed: Counseling programs now exist in several states and have proven to be a valuable and cost effective resource for consumers seeking to get objective information about policies.●

● Mr. DASCHLE. Mr. President, I rise today with Senators PRYOR, RIEGLE, DURENBERGER, BAUCUS, and BURDICK to introduce the Long-Term Care Insurance Consumer Protection Act of 1991, a measure that establishes basic consumer protection standards for the rapidly expanding long-term care insurance [LTCI] market. The ultimate goal of this legislation is to ensure that individuals who purchase LTCI have the peace of mind that, when and if they need it, their policy will afford them the long-term care protection that they expect and deserve.

As we look to the next decade, one of the foremost health challenges we face as a nation is how to ensure that our senior citizens and disabled individuals have access to high quality long-term care services. There is much debate in Washington about if and how a public long-term care program should be established. Even if enacted, given the Federal budget deficit and the costs of such a program, the benefits may be rather limited. Good private long-term care insurance therefore, is becoming increasingly important to protect against what can be astronomical expenses for nursing home stays and home health care.

Though LTCI will never be able to cover the majority of our society's long-term care needs, this is a growing market that will, undoubtedly, continue to expand over the years. While just 10 years ago there was essentially no long-term care insurance market, recently the field has burgeoned with over 100 companies having sold nearly 2 million policies.

With this dramatic proliferation of business has come not only beneficial innovations in coverage, but also, unfortunately, numerous instances of abuse by some unscrupulous companies. While the majority of insurance companies and their agents strive to provide high value insurance policies to their customers, a growing body of evidence suggests that thousands of individuals every year are victimized by marketing and sales abuses from a minority of companies and agents who exploit the fears of the elderly and use the complexity of insurance to confuse policy holders.

For example, Jake and Martina Holzer, an elderly couple from Trail City, SD, lost their farm and their life savings after an insurance company refused to reimburse Martina for nursing home expenses she incurred after she had a stroke and required institutionalization. Martina had been paying premiums to this company for a long-term care policy she purchased in 1985. The company engaged in post-claim underwriting to avoid paying the bill, even though there was no indication when Martina originally applied for the insurance that she had any medical condition that would preclude her from coverage. Though the couple won a $13.5 million settlement on this case, the insurance company committing the fraud is still operating in a number of States across the country.

Unfortunately, this example is not unique. Congressional investigations have uncovered numerous examples of fraud and abuse in this market. Policies are sold to unsuspecting individuals that duplicate benefits they already possess, or agents persuade people to buy inappropriate and more expensive replacement policies rather than renew their existing coverage. A few companies engage in predatory pricing, enticing consumers to purchase insurance with extremely low premiums, only later to boost them so high they are unaffordable. As a result, policies lapse, investments are lost, and benefits disappear.

Perhaps most frightening of all is when insurers refuse to pay claims because of inaccuracies on the insurance application, even when the agent bears responsibility for the incomplete information. In addition to post-claim underwriting, many policies promise more than they deliver by disguising limitations in technical legalese or in the fine print of a policy. Thinking they are protected, policyholders discover they have no coverage at all just as they enter a nursing home. Often alone, frail, and without additional resources, they have no recourse for challenging the company's action.

Even policies sold by the reputable companies and responsible agents that represent most of the market may confuse consumers and provide benefits that are more illusory than real. First, companies employ widely varying terms and practices, making it difficult to compare policies and choose the one most suited to individual needs. Second, individuals typically forfeit all of their benefits if they let their policies lapse for whatever reason. Despite years of faithful payment of premiums, investing tens of thousands of dollars, most lapsed long-term care policies, unlike whole life insurance, return nothing to the policyholder. As few as 2 out of every 10 people who initially buy long-term care insurance and eventually enter a nursing home will actually receive long-term care benefits.

The insurance industry has tried to tell us that the combination of industry self-policing, market pressures, and State adoption and enforcement of vigorous standards developed by the National Association of Insurance Commissioners is cleaning up this market. Unfortunately, a recently released GAO study paints a very different picture. That study reports that many States do not meet NAIC standards. For example, 24 States still have not developed standards requiring insurers to guarantee policy renewal, and 18 States have not adopted standards disallowing Alzheimer's disease exclusions. Though insurers have adopted NAIC standards more quicky than States have, most policies GAO reviewed still did not meet all of NAIC's standards. In recent testimony before the House Ways and Means Committee, GAO concluded that, while NAIC standards provide the foundation for consumer protection, many problems remain in this market.

Before more individuals invest their hard-earned money in insurance coverage that may prove nonexistent or deficient, it is imperative that we adopt minimum Federal standards that all long-term care insurance products must meet. These standards must provide consumers with reasonable protections while also preserving the flexibility needed by the insurance industry to innovate in response to new information and changing consumer demands. We need to continue to encourage and stimulate private sector responses to our long-term care needs.

The bill Senators PRYOR, RIEGLE, DURENBERGER, BURDICK, and I are introducing today attempts to strike that balance by carefully defining a set of basic mandates that leave room for alternative approaches. The Federal standards prohibit agent and marketing abuses ensure that policies are understandable and comparable, grant consumers greater access to information about insurance companies and their practices, and provides protection against inflation, forfeited investments, and inadequate benefits.

In sum, this legislation is our first attempt to set out guidelines we believe will offer important consumer protections in this market. We look forward to working with insurers, consumers, and other interested parties to improve the bill as it makes its way through the legislative process.

Our legislation is not a substitute for the well-designed public program this country needs to finance long-term care. But it will offer consumers of private insurance the peace of mind that their policies meet minimum standards and are likely to furnish the promised benefits when expected and needed.

I hope that the Senate will give timely consideration to this legislation.•

• Mr. RIEGLE. Mr. President, today I am introducing with Senators PRYOR and DASCHLE and others, S. 846, the Long-term Care Insurance Consumer Protection Act. This bill provides for minimum standards for private, long-term care to protect individuals who want to purchase policies consistent with their individual needs and resources.

The long-term care insurance market today, in Michigan and across the country, is confusing and the potential for abuse is high, particularly because information that consumers need to purchase policies is not readily available. It's not easy to make comparisons in benefits and price among different policies and materials explaining benefits use different terminology and formats that add to confusion. People must sort through a maze of limitations, waivers and charges. Under these circumstances, it is no wonder some buy policies that don't meet their needs or adequately protect them against the high costs of long-term care. People can often make decisions out of fear and spend large sums but get little or no return.

Many policies are also limited in their coverage or very expensive. Problems include cancellation of policies or limitations of benefits such as requirements of prior institutionalization to even receive benefits, or very restrictive definitions limiting the type of care one can receive. In some cases, policies appear to be designed so an individual is not likely to receive benefits. We have even heard stories where, one of most vulnerable groups, low-income seniors, have been pressured to buy policies, even though they are eligible for comprehensive benefits under Medicaid. These are problems similar to those prevalent in the Medigap market in which Congress recently enacted changes to address the problems. We must act here as well.

Several studies by the U.S. General Accounting Office and Inspector General underscore the need for action and, among other things, outline abuses in sales practices such as pressuring people to switch policies that require them to meet new requirements before receiving benefits. In some cases, people have little or no information about policies. Objective information about the quality and coverage of a particular policy is needed in a timely fashion.

Mr. President, I was recently contacted in Michigan about a case that is a particularly good example of what can happen if changes are not enacted.

A Detroit area couple was approached in their home by an insurance agent who implied that he was from the Social Security Administration [SSA]. Since they thought he was with the government, they let him in their home. The agent told them they would receive great benefits—all levels of care, no prior hospitalization, guaranteed renewable—and only have to pay premiums for two years. Since the coverage sounded good, the couple wrote out a check for $1,085. The only information the agent provided was a reprinted copy of the Health Care Financing Administration guide to Medicare supplemental coverage. He left no outline of benefits. After three weeks, the couple hadn't received any more information and started to get suspicious. They called the SSA who told them they had nothing to do with these policies. They were unable to get in contact with the agent. They never received a copy of the policy contract. After repeated attempts to get their money refunded, they contacted someone at the Area Agency on Aging to advocate on their behalf. The couple eventually received a refund about three months later.

This couple is certainly not the only one being approached is such a way and they were fortunate to get their refund. This is just one example of why reform is needed. This is a new and growing market, making it even more important that we act now. This legislation we introduce today will begin the debate on this very important issue. People who can afford long-term care policies need basic protections so that policies are appropriate and affordable.

Mr. President, this bill uses a model similar to that used to enact important reforms to the Medigap supplemental insurance market. Specifically, the legislation provides a mechanism for developing a national standards for long-term care policies. The model standards will be developed through the State Insurance Commissioners with input from consumer groups, Medicare beneficiaries, insurers and others. These national standards include protections regarding sales practices, access to information, and policy coverage issues. The bill also expands current enforcement capacity and authority as well as provided grants to States for counseling.

In the past, I have been concerned about unnecessarily imposing financial penalties on insurers selling nonapproved policies in States that do not adopt the model simplification regulation. But in this case, recent studies show that States have not adopted the Model regulation on a voluntary basis. The voluntary, State-by-State approach to regulation is resulting in drastic differences in consumer protection and minimum standards in many States. While my home state of Michigan has been active in passing State laws intended to protect citizens in this area, all States have not. Some uniformity is need so citizens are informed about their choices and afforded basic protections.

In introducing the Long-Term Care Consumer Protection Act of 1991 today, we want the reaction of interested parties about this bill and their input. The model developed by the National Association of Insurance Commissioners was used in designing the legislation. But there are other issues to be considered such as how to ensure enforcement, other simplification methods, and the need for more information on long-term care.

The bill is supported by Consumers Union, Families U.S.A., American Association of Retired Persons, and the National Committee to Preserve Social Security and Medicare. As I have in the past, I also intend to work closely with the National Association of Insurance Commissioners as well as the Michigan Insurance Bureau. I know insurers are concerned that this is a new market where products are constantly changing and improving. But we need some minimum standards. And in fact, this bill would still allow such innovation in the current market to occur. We will continue to work closely with these groups and all other interested groups as we refine and improve the bill.

Choosing a long-term care policy is one of the most important decisions a person can make and it can also be one of the most complicated. I believe this proposal puts into place a mechanism for significantly reducing the potential for abusive sales practices in the long-term care market and ensuring that reasonably priced and quality insurance products are sold.

Older Americans are a growing percentage of the population, 12 percent this year and rising. Together with this, is a growth in the number of people needing long-term care. These demographics should be a force for change. Future increases in the number of patients requiring these services underscore the need for a sound and efficient system. This is the start in this Congress of our continuing efforts to address this country's long-term health care needs. I will continue to work in Congress to ensure access to high quality long-term care for all Americans.

I hope that my colleagues in the Senate will join me in cosponsoring this important piece of legislation to ensure affordable high quality long term health care for Americans.•

By Mr. BRADLEY (for himself and Mr. HATCH):

S.J. Res. 124. Joint resolution to designate "National Visiting Nurse Associations Week" for 1992; to the Committee on the Judiciary.

NATIONAL VISITING NURSE ASSOCIATIONS WEEK

• Mr. BRADLEY. Mr. President, I rise today with my distinguished colleague from Utah, Mr. HATCH, to introduce a resolution proclaiming the week of February 16 through February 22, 1992, as National Visiting Nurse Associations Week.

Mr. President, the contributions that the Visiting Nurses Associations have made in caring for and improving the lives of thousands of Americans for more than a century are deserving of our recognition and support. The best way I can think of to highlight their special place in our country's health care system is to simply look at one of many people they provide needed care for every day.

Bobby, not his real name, is a 2-year-old boy in Springville, NY, who is suffering from a very rare disease called severe combined immune deficiency [SCID], a disease in which victims are sometimes referred to as "bubble babies." There are only 15 known SCID patients in the United States. Until recently, the future for these children was bleak—most died at an early age or faced a life of isolation in a plastic environment. A new drug called Adagen has recently been approved to treat the disease, making it possible for patients like Bobby to live independently outside of their plastic bubbles. The Visiting Nurse Association of Western New York in Amherst is helping Bobby to achieve his independence. The agency administers the weekly injections, monitors his condition, and provides the education his family needs to keep him at home with his parents and six brothers and sisters.

Bobby is one of the more than 2 million patients each year who benefit from the home health care service provided by the 422 Visiting Nurse Associations [VNA's] in the United States. VNA's are located in both rural and urban areas and provide a wide range of services that enable patients of all ages to live independently in their homes. More importantly, VNA's provide care to all who need it, regardless of their ability to pay. The role VNA's play in our health care system is indisputable. The availability of VNA services brings relief and support to the Americans who truly want to convalesce, recover, or spend their remaining days in the comfort of their own homes.

We are asking you to support this unique concept of health care by cosponsoring our resolution to designate February 16 through 22, 1992, as Visiting Nurse Associations Week. Last year, 51 Senators joined us in this effort to ensure that Visiting Nurse Associations obtain the recognition they deserve.

Mr. President, I would ask that the text of the resolution be printed in the RECORD.

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

S.J. RES. 124

Whereas Visiting Nurse Associations have served homebound Americans since 1885;

Whereas such Associations annually provide home care and support services to more than 1,500,000 men, women, children, and infants;

Whereas such Associations serve 422 urban and rural communities in 45 States;

Whereas such Associations adhere to high standards of quality and provide personalized and cost-effective home health care and support, regardless of an individual's ability to pay;

Whereas such Associations are voluntary in nature, independently owned, and community based;

Whereas such Associations ensure the quality of care through oversight provided by professional advisory committees composed of local physicians and nurses;

Whereas such Associations enable hundreds of thousands of Americans to recover from illness and injury in the comfort and security of their homes;

Whereas such Associations ensure that individuals who are chronically ill or who have physical or mental handicaps receive the therapeutic benefits of care and support services in the home;

Whereas, in the absence of such Associations, thousands of patients with mental or physical handicaps or chronically disabling illnesses would have to be institutionalized;

Whereas such Associations provide a wide range of services, including health care, hospice care, personal care, homemaking, occupational, physical, and speech therapy, "friendly visiting services", social services, nutritional counseling, specialized nursing care by registered nurses, and meals on wheels;

Whereas in each community serviced by such an Association, local volunteers support the Association by serving on the board of directors, raising funds, visiting patients in their homes, assisting patients and nurses at wellness clinics, delivering meals on wheels to patients, running errands for patients, working in the Association's office, and providing tender loving care; and

Whereas the need for home health care for young and old alike continues to grow annually: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That February 16 through February 22, 1992, is designated as "National Visiting Nurse Associations Week," and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.●

By Mr. SIMON (for himself, Mr. DIXON, Mr. BIDEN, Mr. BURDICK, Mr. CHAFEE, Mr. CONRAD, Mr. DECONCINI, Mr. DODD, Mr. DURENBERGER, Mr. GLENN, Mr. KERRY, Mr. LAUTENBERG, Mr. MOYNIHAN, Ms. MIKULSKI, Mr. RIEGLE, Mr. ROTH, and Mr. BROWN):

S.J. Res. 125. Joint resolution to designate October 1991 as "Polish American Heritage Month"; to the Committee on the Judiciary.

POLISH AMERICAN HERITAGE MONTH

Mr. SIMON. Mr. President, as in previous years, I am today introducing a joint resolution to designate October 1991 as "Polish-American Heritage Month." I am always honored to sponsor this measure, but this year the privilege is even greater given the courageous steps taken by Poland to create an open market economy which has not been seen in Eastern Europe in 45 years.

On May 3, 1791, Poland ratified the first liberal constitution in Europe. It was patterned after our constitution and it established three independent branches of government—executive, legislative and judicial. Their constitution threatened the domination of the monarchies in Europe, and Poland was subsequently partitioned by foreign powers in 1795 and would not become an independent state again until 1918. After two world wars and decades of imposed Communist rule, Poland was the first Warsaw Pact country to hold free democratic elections.

However, freedom has not come without cost to the Polish people. The opening of their economy to market forces, while cutting inflation and drastically reducing shortages of food and other goods, has also brought severe recession, unemployment and a lower standard of living to the people of Poland. We have been able to show its support for this fledgling democracy by forgiving 70 percent of the $3 billion in foreign debt owed to our government. This action will be of tremendous help to Poland in her difficult transition to an open economy.

Poles all over the world are proud of such compatriots as His Holiness Pope John Paul II, who has been a strong advocate of human rights, and the Nobel Peace Prize winner and now President of Poland, Lech Walesa. In the United States, Polish-Americans have added incalculably to American life. Whether in arts and letters, entertainment, sports, the military, politics, science or education all our lives are enriched by the achievements of Polish-Americans.

By designating October as Polish-American Heritage Month, we can assure the people of Poland of our continued support for them in this exciting but difficult time. We share the Polish people's love of freedom, and we commend them for their brave steps toward a free and prosperous society.

Mr. President, I ask unanimous consent that the resolution marking Polish-American Heritage Month be printed in the RECORD in full.

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

S.J. RES. 125

Whereas the first Polish immigrants to North America were among the first settlers of Jamestown, Virginia, in the seventeenth century;

Whereas Kazimierz Pulaski, Tadeusz Kosciuszko, and other Poles came to the British colonies in America to fight in the Revolutionary War and to risk their lives and fortunes for the creation of the United States;

Whereas Poles and Americans of Polish descent have distinguished themselves by contribution to the development of arts, sciences, government, military service, athletics, and education in the United States;

Whereas, the Polish Constitution of May 3, 1791, was modeled directly on the Constitution of the United States, is recognized as the second written constitution in history, and is revered by Poles and Americans of Polish descent;

Whereas Poles and Americans of Polish descent take great pride and honor in the greatest son of Poland, his Holiness Pope John Paul the Second;

Whereas Poles and Americans of Polish descent and people everywhere applauded the efforts of Solidarity's leader and now President Lech Walesa in fighting for freedom, human rights, and economic reform in Poland;

Whereas the Polish American Congress is observing its forty-seventh anniversary this year and is celebrating October 1991 as "Polish-American Heritage Month": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1991 is designated "Polish-American Heritage Month", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such a month with appropriate ceremonies and activities.

Mr. DIXON. Mr. President, I am proud to join with my distinguished colleague, PAUL SIMON, to introduce Polish-American Heritage Month. This resolution would designate October 1991, as a time of celebration for Americans of Polish descent.

The last year has brought exciting times to Poland, as well as to the Polish community in Illinois and the Nation. Poles in this country have shared the exhilaration and frustration felt by their countrymen overseas, as they work to eliminate the vestiges of Communism.

Polish-Americans have contributed greatly to the richness of American life. From the contributions of Gen. Thaddeus Kosciuszko and Gen. Casimir Pulaski in the Revolutionary War, to Nobel Prize winner Marie Sklodowski Curie, and diplomat, statesman and concert pianist Ignace Paderewski, Polish-Americans have been leaders in a great many fields.

Illinois is a place of special importance to the Polish-American community. Chicago is home to the largest Polish community outside of Warsaw. Two of its Congressmen, my distinguished colleagues DAN ROSTENKOWSKI, and BILL LIPINSKI, are prime examples of the talent within the community.

Mr. President, should one drive along Milwaukee Avenue, on the northwest side of Chicago, one would see numerous businesses whose storefronts have Polish signs out front. It is a bit of Warsaw in Chicago.

The resiliency of the Polish people throughout the centuries, in the face of adversity, motivates the community today. It is therefore most appropriate that we in Congress dedicate October of this year as "Polish-American Heritage Month."

I urge my colleagues to join Senator SIMON and me in this effort.

I thank my colleagues.

ADDITIONAL COSPONSORS

S. 26

At the request of Mr. MOYNIHAN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 26, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income the value of certain transportation furnished by an employer, and for other purposes.

S. 50

At the request of Mr. SYMMS, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Colorado [Mr. BROWN] were added as cosponsors 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. 150

At the request of Mr. MOYNIHAN, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 150, a bill to amend the Internal Revenue Code of 1986 to generally treat bonds issued for section 501(c)(3) organizations in a manner similar to Government bonds.

S. 250

At the request of Mr. FORD, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 250, a bill to establish national voter registration procedures for Federal elections, and for other purposes.

S. 313

At the request of Mr. SPECTER, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 313, a bill to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from a person who engages in torture or extrajudicial killing.

S. 377

At the request of Mrs. KASSEBAUM, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 377, a bill to amend the International Air Transportation Competition Act of 1979.

S. 396

At the request of Mr. WIRTH, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 396, a bill to amend the Solid Waste Disposal Act to require producers and importers of tires to recycle a certain percentage of scrap tires each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirement, to establish a management and tracking system for such tires, and for other purposes.

S. 397

At the request of Mr. WIRTH, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 397, a bill to amend the Solid Waste Disposal Act to require producers and importers of newsprint to recycle a certain percentage of newsprint each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirement, to establish a management and tracking system for such newsprint, and for other purposes.

S. 398

At the request of Mr. WIRTH, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 398, a bill to amend the Solid Waste Disposal Act to provide management standards and recycling requirements for spent lead-acid batteries.

S. 399

At the request of Mr. WIRTH, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 399, a bill to amend the Solid Waste Disposal Act to prohibit the Administrator of the Environmental Protection Agency from listing used oil and affiliated materials as a hazardous waste under that act, to require producers and importers of lubricating oil to recycle a certain percentage of used oil each year, to require the Administrator to establish a recycling credit system for carrying out such recycling requirement, and for other purposes.

S. 400

At the request of Mr. SYMMS, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 400, a bill to set aside tax revenues collected on recreational fuels not used on highways for the purposes of improving and maintaining recreational trails.

S. 416

At the request of Mr. DANFORTH, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 416, a bill to amend the Internal Revenue Code of 1986 to make permanent the tax credit for increasing research activities.

S. 465

At the request of Mr. GLENN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 465, a bill to require the Secretary of Agriculture to conduct a pilot program to permit two States to enter into a reciprocal agreement for the interstate shipment and marketing of State inspected meat and poultry products and to establish a task force to advise the Secretary with respect to such pilot program, and for other purposes.

S. 493

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 493, a bill to amend the Public Health Service Act to improve the health of pregnant women, infants and children through the provision of comprehensive primary and preventive care, and for other purposes.

S. 554

At the request of Mr. GLENN, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 554, a bill to establish an interagency Committee on Degradable Plastics Standards for the development of uniform definitions, standards, and testing procedures for plastic products made from certain commodities, to encourage the development, production, and use of environmentally safe degradable plastic products, and for other purposes.

S. 555

At the request of Mr. BRADLEY, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Arizona [Mr. DECONCINI] were added as a cosponsor of S. 555, a bill to amend the Drug Free Schools and Communities Act of 1986 to provide education on the problems associated with the use of tobacco.

S. 603

At the request of Mr. GLENN, the names of the Senator from South Dakota [Mr. PRESSLER], and the Senator from North Dakota [Mr. CONRAD] were added as a cosponsor of S. 603, a bill to require the Administrator of General Services to establish procurement criteria for plastic products containing recycled material; to establish an interagency task force on plastic container coding to coordinate the expertise, responsibilities, and initiatives of Federal agencies to facilitate use of degradable plastics, without adversely affecting recycling of nondegradable plastic products, to require coding of plastic containers to facilitate separation of degradable plastic containers from nondegradable plastic containers and sorting of nondegradable plastic containers by resin type to promote recycling containers, and for other purposes.

S. 642

At the request of Mr. COATS, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 642, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependents of a taxpayer.

S. 643

At the request of Mr. COATS, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 643, a bill to amend the Internal Revenue Code of 1986 to increase the personal exemption for dependent children of a taxpayer who are 6 years old or younger.

S. 701

At the request of Mr. COATS, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of 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.

S. 716

At the request of Mr. JEFFORDS, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 716, a bill to establish a replacement fuels and alternative fuels program, and for other purposes.

S. 736

At the request of Mr. GRAHAM, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 736, a bill to amend the Outer Continental Shelf Lands Act.

S. 752

At the request of Mr. CHAFEE, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 752, a bill to amend the Internal Revenue Code of 1986 to make the allocation of research and experimental expenditures permanent.

S. 786

At the request of Mr. MOYNIHAN, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 786, a bill to amend the Foreign Assistance Act of 1961 to authorize the provision of medical supplies and other humanitarian assistance to the Kurdish peoples to alleviate suffering.

S. 816

At the request of Mr. MOYNIHAN, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 816, a bill to amend the Foreign Assistance Act of 1961 to authorize the provision of medical supplies and other humanitarian assistance to the Baltic peoples to alleviate suffering.

SENATE JOINT RESOLUTION 8

At the request of Mr. BURDICK, the names of the Senator from Tennessee [Mr. GORE], the Senator from North Carolina [Mr. HELMS], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Joint Resolution 8, a joint resolution to authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week."

SENATE JOINT RESOLUTION 12

At the request of Mr. DECONCINI, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of Senate Joint Resolution 12, a joint resolution proposing a constitutional amendment to limit congressional terms.

SENATE JOINT RESOLUTION 36

At the request of Mr. PRESSLER, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of Senate Joint Resolution 36, a joint resolution to designate the months of November 1991, and November 1992, as "National Alzheimer's Disease Month."

SENATE JOINT RESOLUTION 82

At the request of Mr. SPECTER, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Carolina [Mr. HELMS], the Senator from Hawaii [Mr. AKAKA], the Senator from Delaware [Mr. BIDEN], the Senator from California [Mr. CRANSTON], the Senator from Arizona [Mr. DECONCINI], the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUYE], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Michigan [Mr. LEVIN], the Senator from Alabama [Mr. SHELBY], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from New Jersey [Mr. BRADLEY] were added as cosponsors of Senate Joint Resolution 82, a joint resolution to designate the week beginning May 19, 1991, as "National Police Athletic League Week."

SENATE JOINT RESOLUTION 97

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from Nevada [Mr. BRYAN], the Senator from Utah [Mr. HATCH], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 97, a joint resolution to recognize and honor members of the reserve components of the Armed Forces of the United States for their contributions to victory in the Persian Gulf.

SENATE JOINT RESOLUTION 107

At the request of Mr. MOYNIHAN, the names of the Senator from Indiana [Mr. COATS], the Senator from New York [Mr. D'AMATO], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Nevada [Mr. REID], the Senator from Michigan [Mr. RIEGLE], the Senator from Utah [Mr. GARN], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 107, a joint resolution to designate October 15, 1991, as "National Law Enforcement Memorial Dedication Day."

SENATE JOINT RESOLUTION 110

At the request of Mr. MOYNIHAN, the names of the Senator from Colorado [Mr. WIRTH] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of Senate Joint Resolution 110, a joint resolution expressing the sense of the Congress that the United States and the Soviet Union should lead an effort to promptly repeal United Nations General Assembly Resolution 3379 (XXX).

SENATE JOINT RESOLUTION 111

At the request of Mr. BRADLEY, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Oklahoma [Mr. BOREN], the Senator from Louisiana [Mr. BREAUX], the Senator from Arkansas [Mr. BUMPERS], the Senator from Arkansas [Mr. PRYOR], the Senator from Illinois [Mr. DIXON], the Senator from Connecticut [Mr. DODD], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Tennessee [Mr. GORE], the Senator from Michigan [Mr. LEVIN], the Senator from Michigan [Mr. RIEGLE], the Senator from Georgia [Mr. NUNN], the Senator from Nevada [Mr. REID], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from North Carolina [Mr. SANFORD], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of Senate Joint Resolution 111, a joint resolution marking the seventy-fifth anniversary of chartering by Act of Congress of the Boy Scouts of America.

SENATE JOINT RESOLUTION 121

At the request of Mr. DECONCINI, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 121, a joint resolution designating September 12, 1991, as "National D.A.R.E. Day."

SENATE CONCURRENT RESOLUTION 19

At the request of Mr. CRANSTON, the name of the Senator from Hawaii [Mr. INOUYE] 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 26

At the request of Mr. KERRY, the names of the Senator from Colorado [Mr. WIRTH], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Concurrent Resolution 26, a concurrent resolution calling for the United States to support a new agreement among the Antarctic Treaty Consultative Parties which would provide comprehensive environmental protection of Antarctica and would prohibit indefinitely commercial mineral development and related activities in Antarctica.

SENATE RESOLUTION 61

At the request of Mr. GRASSLEY, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of Senate Resolution 61, a resolution relating to the role of the Corps of Engineers in the management of the Missouri River System.

SENATE RESOLUTION 103

At the request of Mr. DIXON, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Resolution 103, a resolution relating to the contributions to Operation Desert Storm made by the defense-related industries of the United States.

AMENDMENTS SUBMITTED

DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PERSONNEL ACT

CRANSTON AMENDMENT NO. 65

Mr. LEAHY (for Mr. CRANSTON) proposed an amendment to the bill (S. 675) to amend title 38, United States Code, to improve the capability of the Department of Veterans Affairs to recruit and retain physicians and dentists through increases in special pay authorities and to authorize collective bargaining over conditions of employment of health-care employees of the Department of Veterans Affairs, and for other purposes, as follows:

On page 55, line 14, strike out "(d)" and insert in lieu thereof "(c)".

On page 55, line 17, strike out "(e)" and insert in lieu thereof "(d)".

On page 55, line 20, strike out "(f)" and insert in lieu thereof "(e)".

On page 88, line 11, insert ", respectively" before the period.

On page 95, line 2, strike out "Expanded-duty" and insert in lieu thereof "Expanded-function".

On page 110, line 10, strike out "201" and insert in lieu thereof "202".

On page 134, line 6, strike out "and".

On page 134, line 8, strike out "respectively." and insert in lieu thereof "respectively; and"

On page 134, between lines 8 and 9, insert the following new subclause:

(E) by redesignating section 5096 as section 8241.

On page 137, line 5, strike out "8270(f)" and insert in lieu thereof "8201(f)".

On page 137, line 9, strike out "8296" and insert in lieu thereof "8241".

On page 138, in the matter between line 22 and line 23, strike out "7001" and insert in lieu thereof "7101".

FUTURES TRADING PRACTICES ACT

LEAHY AMENDMENT NO. 66

Mr. LEAHY proposed an amendment to the bill (S. 207) to amend the Commodity Exchange Act to authorize appropriations for and enhance the effectiveness of the Commodity Futures Trading Commission, to curb abuses in the making of trades and the execution of orders at designated contract markets, to provide greater representation of the public interest in the governance of such contract markets, to enhance the integrity of the U. S. financial markets by providing for Federal oversight of margins on stock index futures, clarifying jurisdiction over innovative financial products and providing mechanisms for addressing intermarket issues, and for other purposes, as follows:

Beginninng on page 83, strike line 19 and all that follows through page 85, line 8, and insert the following new section:

SEC. 102. HIRING AUTHORITY OF THE COMMISSION.

Section 12(b) (7 U.S.C. 16(b)) is amended—

(1) by designating the first through third sentences as paragraphs (1) through (3), respectively; and

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

"(4) The Commission may request (in accordance with the procedures set forth insubchapter II of chapter 31 of title 5, United States Code) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on the date of enactment of this sentence.".

LEAHY (AND OTHERS) AMENDMENT NO. 67

Mr. LEAHY (for himself, Mr. KERREY, and Mr. HARKIN) Proposed an amendment to the bill S. 207, supra, as follows:

On page 137, between lines 12 and 13, insert the following new section:

SEC. 262. PUBLICATION OF COMMISSION OPTIONS.

Section 2(a)(9) (7 U.S.C. 4a(h)) is amended by adding at the end the following new subparagraph:

"(C) Whenever the Commission issues for official publication any option, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.".

On page 137, line 13, strike "262" and insert "263".

On page 144, line 11, strike "263" and insert "264".

On page 145, line 8, strike "264" and insert "265".

On page 147, line 1, strike "265" and insert "266".

On page 148, line 12, strike "266" and insert "267".

On page 151, line 20, strike "267" and insert "268".

On page 153, line 21, strike "268" and insert "269".

On page 154, line 20, strike "269" and insert "270".

On page 155, line 10, strike "270" and insert "271".

On page 156, line 1, strike "271" and insert "272".

On page 156, line 4, strike "272" and insert "273".

On page 157, line 6, strike "273" and insert "274".

On page 157, line 15, strike "274" and insert "275".

BOND (AND OTHERS) AMENDMENT NO. 68

Mr. BOND (for himself, Mr. WIRTH, and Mr. GARN) proposed an amendment to the bill S. 207, supra, as follows:

1. At the end of the bill add the following:

"SEC. . Nothing in this Act shall be considered to be applicable to any deposit (as defined under the Federal Reserve Act and regulations promulgated thereunder in effect on the date of enactment of this amendment) if the deposit is offered by—

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(2) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); or

"(3) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"SEC. . (a) Nothing in this Act shall be considered to be applicable to—

"(1) any loan, made by—

"(A) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(b) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(C) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)); or

"(D) a foreign bank (as defined in section 1(b)(7) of the International Banking Act (12 USC 3101(7)), to a person specified in subsection (i)(3); or

"(2) any loan that is a consumer credit transaction subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.).

"(b) The provisions of subsection (a) of this section shall not apply to a loan made by a person required to be registered under this Act in connection with transactions regulated under this Act."

BOND (AND OTHERS) AMENDMENT NO. 69

Mr. BOND (for himself, Mr. WIRTH, Mr. RIEGLE, Mr. DODD, Mr. GARN, and Mr. MOYNIHAN.) proposed an amendment to the bill S. 207, supra; as follows:

Beginning on page 4 of the Committee modification, strike line 1 and all that follows through page 12, line 9, and insert the following new sections:

SEC. 302. EXEMPTIVE AUTHORITY.

Section 4 (7 U.S.C. 6) is amended—

(1) in subsection (a), by striking "It shall be unlawful" and inserting "Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful"; and

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

"(c)(1) In order to promote responsible economic or financial innovation and vigorous and fair competition, both nationally and internationally, the Commission by rule, regulation, or order, shall (on application of any person) exempt any agreement, contract, or transaction (or classes thereof) otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods, from any of the requirements of subsection (a), or from any other provision of this Act except section 2(a)(1)(B), if the Commission determines that the exemption would be consistent with the public interest and the purposes of this section.

"(2) The Commission, after notice and opportunity for hearing, shall have the authority to revoke any exemption previously granted under paragraph (1) if the Commission determines that any of the minimum requirements prescribed in paragraph (1), any or additional conditions imposed by the Commission, is no longer being satisfied.".

SEC. 303. HYBRID COMMODITY INSTRUMENTS, SWAP AGREEMENTS, DEMAND DEPOSITS, TIME DEPOSITS, AND INSURANCE PRODUCTS.

Section 4c (7 U.S.C. 6c) (as amended by section 203(a) of this Act) is further amended by adding at the end the following new subsections:

"(h)(1) Notwithstanding any other provision of law, nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an instrument, other than an index participation (as defined in subsection (f)), if—

"(A)(i) to the extent that the instrument has the elements of a commodity option, its predominant characteristics are not those of a commodity option, or the instrument derives less than 50 percent of its value at the date of issuance from the value of the commodity option; and

"(ii) to the extent that an instrument has the elements of a contract of sale of a commodity for future delivery, its predominant characteristics are not those of a contract of sale of a commodity for future delivery, or at the date of issuance it is expected that less than 50 percent of the change in the value of the instrument or its performance will be due to movement in the price of the commodity or commodities specified in the instrument or in the terms and conditions of the transaction pursuant to which the instrument was issued;

"(B) the instrument is determined by the Securities and Exchange Commission to have as its predominant characteristics those of securities (as defined under section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)) or section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1))) or at least 50 percent of its value derived from the elements of a group of securities; or

"(C) the instrument is a security (as defined under section 3(a)(10) of the Securities Exchange Act of 1934) listed or traded on a national securities exchange or quoted through an automated interdealer quotation system operated by a national securities association registered with the Securities and Exchange Commission.

"(2)(A) To the extent that the designation is consistent with the other provisions of this Act (including section 2(a)(1)(B)), nothing in paragraph (1) shall be considered to prevent the Commission from designating any board of trade as a contract market for any instrument.

"(B) If an instrument may trade other than on a designated contract market pursuant to paragraph (1), and if the Commission designates any board of trade as a contract market for that instrument—

"(i) this Act (including section 2(a)(1)(B)) shall apply only to transactions in that instrument that are conducted on a designated contract market (including transactions between a futures commission merchant and the customer of the futures commission merchant that are incidental to a transaction on a designated contract market); and

"(ii) this Act (including section 2(a)(1)(A)) shall not apply to transactions in that instrument that are conducted pursuant to paragraph (1) other than on a designated contract market.

"(C) To the extent that transactions in any instrument are conducted pursuant to paragraph (1) other than on a designated contract market, the transactions shall not be considered to be transactions involving contracts of sale of a commodity for future delivery.

"(i)(1) Notwithstanding any other provision of law, nothing in this Act shall be considered to govern or in any way be applicable to any swap agreement or class of swap agreements (as defined in section 101 of title 11, United States Code) where—

"(A) each party to the swap agreement is a person included in one of the categories specified in paragraph (3) at the time the party enters into the swap agreement;

"(B) the creditworthiness of any party having an actual or potential future payment obligation under the swap agreement is a material consideration in entering into or evaluating the terms (including credit enhancement terms) of the swap agreement, except that creditworthiness shall not be considered to be immaterial as a result of an agreement for the exchange, payment, or delivery of mark-to-market payments, margin, collateral, or any other form of credit enhancement or replenishment to reduce the credit risk or exposure of any party to the swap agreement; and

"(C) the swap agreement is not both standardized and fungible in all material terms with a class of other swap agreements, except that, for purposes of this subparagraph, a swap agreement shall not be considered to be standardized or fungible in all material terms with a class of other swap agreements if it is subject to individual negotiation between the parties as to material terms.

"(2) A swap agreement shall not fail to satisfy the requirements of the foregoing subparagraphs (B) and (C) of paragraph (1) as a result of a bilateral or multilateral arrangement or facility between or among parties to swap agreements that provides for the netting of payment obligations resulting from the swap agreements or for the netting of obligations to make mark-to-market, margin, or collateral payments or transfers or to provide any other form of credit enhancement or replenishment relating to the swap agreements.

"(3) For purposes of paragraph (1), the term 'person' shall mean the following persons or classes thereof:

"(A) A bank or trust company (acting in an individual or fiduciary capacity).

"(B) A savings and loan institution.

"(C) An insurance company.

"(D) A registered investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

"(E) A commodity pool subject to regulation under this Act.

"(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K).

"(G) An employee benefit plan with assets exceeding $1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisors Act of 1940 (15 U.S.C. 80a-1 et seq.), or a commodity trading advisor registered under this Act.

"(H) Any governmental entity (including the United States, any State, or any foreign government) or political subdivision thereof, any multinational or supranational entity, or any instrumentality, agency or department of any of the foregoing.

"(I) A broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another institutional participant.

"(J) A futures commission merchant, floor broker, or floor trader registered under this Act acting on its own behalf or on behalf of another institutional participant.

"(K) Such other persons that the Commission determines have the financial and other qualifications adequate to fulfill the terms and conditions of the agreement, contract, or transaction.

"(j) Nothing in this Act shall be considered to be applicable to any deposit (as defined under the Federal Reserve Act) if the deposit is offered by—

"(1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(2) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)); or

"(3) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"(k) Nothing in this Act shall be considered to govern or in any way be applicable to any instrument that is issued by an insurance company that is exempt under paragraph (2) or (8) of section 3(a) of the Securities Act of 1933 (15 U.S.C. 78c(a)).

"(l) Nothing in this Act shall be considered to govern or in any way to be applicable to—

"(1) any loan made by—

"(A) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

"(B) an insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7));

"(C) a Federal or State branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)); or

"(D) a foreign bank (as defined in section 1(b)(7) of the International Banking Act (12 U.S.C. 3101(7)), to person specified in subsection (i)(3);

"(2) any loan that is a consumer credit transaction subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.); or

"(3) any loan made in connection with transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.".

SEC. 304. INDEX PARTICIPATIONS.

Subsection (f) of section 4c (7 U.S.C. 6c(f)) is amended to read as follows:

"(f)(1) Nothing in this Act shall be considered to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

"(2)(A) Nothing in this Act shall be considered to govern or in any way be applicable to any index participation traded on a national securities exchange or quoted through an automated inter-dealer quotation system operated by a securities self-regulatory organization if the index participation has been approved for trading by the Securities and Exchange Commission.

"(B) The Commission shall have the power, right, and authority to designate any board of trade as a contract market for any index participation, if the Commission determines that the designation is consistent with the requirements of this Act (other than section 2(a)(1)(B)).

"(C) If the Commission designates any board of trade as a contract market for any index participation—

"(i) this Act (other than section 2(a)(1)(B)) shall apply only to transactions in that index participation that are conducted on a designated contract market (including transactions between a futures commission merchant and the customer of the futures commission merchant that are incidental to a transaction on a designated contract market); and

"(ii) this Act (including sections 2(a)(1)(A) and 2(a)(1)(B)) shall not apply to transactions in that index participation, or in any other index participation, that are conducted on a national securities exchange or through the facilities of an automated inter-dealer quotation system operated by a securities self-regulatory organization.

"(D) Notwithstanding any other provision of law, no index participation shall be traded on a national securities exchange or a designated contract market, or quoted through an automated inter-dealer quotation system operated by a securities self-regulatory organization, unless that index participation meets the following minimum requirements:

"(i) Trading in the index participation shall not be readily susceptible to manipulation of the price of the index participation, nor to causing or being used in the manipulation of the price of any underlying security, option on the security or option on a group or index of the securities.

"(ii) The group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to the measure.

"(E) To the extent that such transactions in any index participation are conducted pursuant to subsection (a) on a national securities exchange or through the facilities of an automated inter-dealer quotation system operated by a securities self-regulatory organization, such transactions shall not be considered to be transactions involving contracts of sale of a commodity for future delivery.

"(F) For purposes of this paragraph, the term 'index participation' means an instrument that is an interest of indefinite duration in the current value of a portfolio of securities.".

SEC. 305. DIRECTIVES REGARDING INTERMARKET ISSUES.

(a) IN GENERAL.—Not later than 1 year after the effective date of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission, in consultation with the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System, shall each respectively—

(1) adopt such rules and regulations, issue such orders, and, subject to applicable requirements, approve such rules of the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to strengthen the overall stability of domestic equity and equity derivative markets and maintain fair and orderly markets through the adoption and approval of appropriate coordinated "circuit breaker" mechanisms and similar requirements;

(2) establish (for all domestic equity and equity derivative markets) effective prohibitions on intermarket frontrunning, and require the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to establish effective procedures for sharing price, trading, and enforcement data for the detection of intermarket frontrunning, fraud, and other violations;

(3) adopt (for all domestic equity and equity derivative markets) such rules and regulations, issue such orders, and approve, subject to applicable requirements, such rules of the self-regulatory organizations and contract markets subject to their respective regulatory authority as may be necessary to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions;

(4) adopt such rules and regulations, issue such orders, and, subject to applicable requirements, approve such rules of the self-regulatory organizations and contract markets and clearing organizations subject to their respective regulatory authority as may be necessary or appropriate to authorize the prompt implementation of systems for the cross-margining of intermarket positions and the use of such intermarket positions as security interest for loans and other extensions of credit and the establishment or maintenance of margin on futures and options contracts; and

(5) establish policies with regard to the negotiation and development of international regulatory agreements and standards involving intermarket issues.

(b) OTHER ISSUES.— The Securities and Exchange Commission and the Commodity Futures Trading Commission, in consultation with the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System shall identify and address other intermarket issues as the issues arise.

(c) REPORT.—Not later than 15 months after the effective date of this Act, the Securities Exchange Commission and the Commodity Futures Trading Commission shall report to Congress on the actions the Commissions have taken to carry out this section.

NATIONAL COMMISSION ON A LONGER SCHOOL YEAR

PELL (AND KASSEBAUM) AMENDMENT NO. 70

Mr. LEAHY (for Mr. PELL, for himself and Mrs. KASSEBAUM) proposed an amendment to the bill (S. 64) to provide for the establishment of a National Commission on a Longer School Year, and for other purposes, as follows:

Beginning on page 29, line 14, strike Title IV, and all that follows through and including page 31, line 13.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing on Tax Fairness: Ensuring Corporate Compliance.

This hearing will take place on Wednesday, April 17, 1991, at 9 a.m., in room 342 of the Dirksen Senate Office Building. For further information, please contact Eleanore Hill of the Subcommittee staff at 224-3721.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing, and Urban Affairs, be allowed to meet during the session of the Senate Wednesday, April 17, 1991, at 10 a.m. to conduct a hearing on issues in the UMTA reauthorization legislation.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LEAHY. Mr. President, I ask unanimous consent that the full committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., April 17, 1991, to consider S. 341.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LEAHY. 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, April 17, 1991, at 9:30 a.m., to receive testimony on S. 250, the National Voter Registration Act of 1991. Witnesses include the following: Mr. R.H. Brennenman, chairman of the Board of Commissioners and Board of Elections, Lancaster County, Pennsylvania; Mr. Tony Bernhard, associate chairman, Legislative Committee, California County Clerks Association; Ms. Elaine R. Jones, deputy director-counsel, NAACP Legal Defense and Educational Fund; Mr. Edward A. Hailes, Jr., counsel, Washington Bureau of the NAACP; Ms. Birgit Seifert, public policy analyst, Mexican American Legal Defense and Educational Fund; Mr. Steve Barr, political director, Rock the Vote, Beverly

Hills, California; and Mr. Robert G. Krause, director of address information systems, Marketing and Customer Service Group, U.S. Postal Service.

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

SUBCOMMITTEE ON TOXIC SUBSTANCES, ENVIRONMENTAL OVERSIGHT, RESEARCH, AND DEVELOPMENT

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, April 17, beginning at 2 p.m., to conduct a markup on the Lead Exposure Act of 1991.

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

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesay, April 17, at 2:30 p.m. to hold a hearing entitled "Cyprus: International Law and the Prospects for Settlement."

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesday, April 17, at 10 a.m. to hold a hearing on "START: Present Status and Prospects."

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

Mr. LEAHY. Mr. President, I ask unanimous consent that the Foreign Relations Committee be authorized to meet during the session of the Senate on Wednesday, April 17, at 2 p.m. to hold a nomination hearing on Raymond Seitz to be Ambassador to the United Kingdom and Northern Ireland.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. LEAHY. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding an Oversight Hearing on April 17, 1991, beginning at 2 p.m., in 216 Hart Senate Office Building on "The Status of Tribal Jurisdictional Authority in Indian Country: An Assessment of Emerging Issues."

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, April 17, 1991 at 2 p.m., to hold a closed hearing on intelligence matters.

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

COMMITTEE ON FINANCE

Mr. LEAHY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on April 17, 1991 at 10 a.m., to hold a hearing on the Uruguay round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade [GATT].

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

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel, of the Committee on Armed Services be authorized to meet in open session on Wednesday, April 17, 1991 at 9:30 a.m., to receive testimony on manpower programs in the defense authorization request for fiscal years 1992 and 1993.

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

SUBCOMMITTEE ON PERMANENT INVESTIGATIONS

Mr. LEAHY. Mr. President, I ask unanimous consent that the Governmental Affairs Subcommittee on Permanent Investigations be authorized to meet on Wednesday, April 17, at 9 a.m., for a hearing on IRS collection of corporate tax.

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

SUBCOMMITTEE ON READINESS, SUSTAINABILITY AND SUPPORT

Mr. LEAHY. Mr. President, I ask unanimous consent that the Subcommittee on Readiness, Sustainability and Support, of the Committee on Armed Services be authorized to meet in open/closed session on Wednesday, April 17, 1991 at 2 p.m., to receive testimony on logistics programs in the fiscal year 1992-93 defense authorization request.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. LEAHY. Mr. President, the Committee on Veterans' Affairs hereby requests unanimous consent to conduct a hearing on April 17, 1991, to receive testimony regarding the legislative agenda of veterans' organizations, AMVETS, Ex-POW's, Jewish War Veterans, and Veterans of World War I.

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

ADDITIONAL STATEMENTS

HUNGARIAN HUMAN RIGHTS STATEMENT

• Mr. LIEBERMAN. Mr. President, 1989 was truly a marvelous year. To quote the distinguished British historian, Michael Howard, now of Yale University: "In 1989, while the nations of Western Europe celebrated the bicentenary of the French Revolution, the nations of Eastern Europe reenacted it." Like the Parisians who stormed the Bastille, the peoples of Eastern Europe tore down the barbed wire and the walls that separated them from the West. Eastern Europe has begun to return to the heart of Western civilization.

Like the French Revolution, however, this new burst of freedom has had its darker side. Political passions have led to increased appeals to nationalism. In some cases, these appeals have exacerbated the persecution of minority groups.

This has been particularly true for Europe's largest minority, the Hungarians. It is not widely known that there are two and a half million Hungarians living in Rumania, mainly in Transylvania, and smaller numbers in Slovakia, Yugoslavia, and the U.S.S.R. This diaspora is a legacy of the dismemberment of the Austro-Hungarian Empire; as a result of the Triainon Peace Treaty of 1919, Hungary lost two-thirds of its territory and three-fifths of its population. These Hungarians, who had lived for centuries in their homeland, suddenly found themselves dispossessed.

Given their large numbers, the status of the Hungarians in Rumania is of particular concern. Not surprisingly, they were extremely poorly treated under the cruel reign of Nicolai Ceausescu. Ceausescu forbade the teaching of the Hungarian language and closed the Hungarian Bolyai University in 1959. It was no accident, therefore, that the revolt against Ceausescu was led by the heroic Hungarian pastor, Rev. Laszlo Tokes.

Because of my concerns about the status of the Hungarian minority in Rumania, and the country's democratic prospects in general, I participated in a United States delegation that observed the national elections in May 1990. During my stay in Bucharest, I met with some of the leading figures of the Hungarian community there, including Geza Domokos. We discussed the past problems of the Hungarian community and their prospects for improvements. I left more committed than ever to supporting the Hungarians in their struggle for freedom and dignity inside Rumania.

Unfortunately, the fall of the Ceausescu regime has not meant the end of discrimination against Hungarians. The most egregious example was a violent incident involving the well-known writer, Andras Suto. Suto's left eye burst apart when he was beaten in March 1990 by pitchfork-wielding nationalists in his hometown of Tirgu Mures, Rumania. Suto had been attending a meeting with approximately 70 other members of the Democratic

Alliance of Hungarians in Rumania at the organization's local office.

The next day, ethnic Rumanians armed with farm tools again attacked a peaceful crowd of 10,000 ethnic Hungarians who had gathered in the city's main square to protest the previous day's anti-Hungarian riot. Tragically, at least 6 people were killed and more than 300 injured.

Discrimination has also taken more subtle forms. In the field of education, the Rumanian authorities have revived the Ceausescu-era law that required a minimum of 15 ethnic minority students for any native-language class. The authorities have also rejected the idea of reopening the Bolyai University in Kolozsvar.

Rumanian authorities have restricted access to the mass media. Just last February, the Hungarian-language TV program was reduced to 180 hours per week. And half of this broadcast time has been relegated to a channel which is inaccessible in Transylvania, the areas where most Hungarians live. The draft of the new Rumanian Constitution bans political parties along ethnic, religious, or linguistic lines, thereby preventing Hungarians from organizing themselves.

Mr. President, the breakdown of the totalitarian order in Eastern Europe must not be replaced by the vitriolic hatreds of the pre-war era. If the new governments of Eastern Europe want to be fully accepted by the West, they must adhere to standards of tolerance and minority rights. These countries must create democratic institutions and promote tolerance of minorities, including their large Hungarian populations. Hungarians have now rediscovered their freedom in their homeland. But they will not be fully free until they have these same rights in other countries. Until then, we must support their struggle with the same tenacity that we demonstrated in the fight against Communist tyranny.•

RESOLUTION OF LANCASTER, NH

• Mr. SMITH. Mr. President, the town of Lancaster, NH, has expressed support for a resolution which requests that Congress propose an amendment to the Constitution to prohibit desecration of the American flag.

I agree that the "law as interpreted by the United States Supreme Court no longer accords to the flag the reverence, respect, and dignity to which * * * (the flag) is entitled." Therefore, I join with the town of Lancaster and urge Congress to pass a constitutional amendment to protect the American flag. Interestingly, those who seek protection for the provocative act of flag-burning under the first amendment are often the same who aspire to limit other provisions of the Bill of Rights, such as the right to bear arms which is explicitly guaranteed under the second amendment.

Mr. President, I ask that the town of Lancaster's resolution be entered into the RECORD immediately following my remarks:

The resolution follows:

RESOLUTION

Whereas, Although the right of free expression is part of the foundation of the United States Constitution, very carefully drawn limits on expression in specific instances have long been recognized as legitimate means of maintaining public safety and decency, as well as orderliness and productive value of public debate; and

Whereas, There are symbols of our nation such as the Washington Monument, the United States Capitol Building, memorials to our greatest leaders, and our flag, which are the property of every American and are therefore worthy of protection from desecration and dishonor; and

Whereas, The law as interpreted by the United States Supreme Court no longer accords to the flag the reverence, respect, and dignity to which it is entitled; and

Whereas, It is only fitting that people everywhere should join in a forceful call for the restoration of the flag to its proper station under law and decency: Now, therefore, be it

Resolved, That the voters of the Town of Lancaster, New Hampshire respectfully request the Congress of the United States to propose an amendment of the United States Constitution, for ratification by the states, specifying that Congress and the states shall have the power to prohibit the physical desecration of the flag of the United States.•

A NEW TRADITIONALISM FOR DEMOCRATS

• Mr. SIMON. Mr. President, one of the most stimulating people in America today is John Silber, the president of Boston University. Sometimes I disagree with him strongly, and then at other times, he comes up with things that are absolutely on target.

His call for a program that pays people for being productive rather than nonproductive is absolutely on target.

I do not agree with everything he says in a recent item in the Wall Street Journal, but his call for a revival of a WPA-type program is precisely what the Nation needs. In addition, we ought to screen people as they come in so that if they have no ability to read and write, or have no marketable skills, we may get them into programs providing these things.

To do that would be the real anti-drug program. It would start diminishing rather than increasing the underclass in our society.

The bill that I have introduced to guarantee a job opportunity for all Americans out of work 5 weeks or longer moves us to exactly that position. It would pay people at the minimum wage for 32 hours a week on projects selected by people in their community.

I ask to insert the John Silber article into the RECORD at this point.

The article follows:

[From the Wall Street Journal, Apr. 5, 1991]

A NEW TRADITIONALISM FOR DEMOCRATS

(By John Silber)

The Democrats can win the White House in 1992. But to do so, we must assess our party's situation with painful honesty.

Having lost five of the past six presidential elections, the Democrats can count on only the District of Columbia, claiming at best that as the District goes, so goes either Massachusetts or Minnesota. The Democratic hold on Congress is little consolation, for the direction of the nation is charted in the White House.

Nineteen months from now a Democrat can win—but only if, first, the party recalls and reaffirms its guiding principle that government can make a positive difference for the working men and women of America. Republican presidents are fond of invoking the name of John F. Kennedy, but nearly 11 years of Reagan-Bush have revealed this as a ploy. Republicans do not share President Kennedy's central conviction that government cannot sit on the sidelines but can and must confront the domestic problems of this nation.

Second, our party must recognize the failures in its nominating process that have distanced it from its constituents. Democrats must once again become the party of inclusion—not just in caucuses and conventions, but at the polls as well.

Once the party of farmers, working men and women (union and nonunion alike), teachers and other professionals, racial and ethnic minorities, Protestants, Catholics and Jews, Democrats appealed—victoriously—to Americans as Americans. But in 1972 the party abandoned FDR's grand alliance and began to appeal to voters as members of special interest groups. As these groups became increasingly important in the nominating process, the party became increasingly ideological and hostile to compromise.

Now traditional Democrats have come to feel abandoned or ignored, and they have wondered what has happened to their party. In great numbers they voted for Ronald Reagan and George Bush—not because they had become Republicans but because they saw traditional Democratic values best represented in these candidates.

THE REPUBLICAN EXAMPLE

Third, Democrats must re-establish bipartisanship on national security and foreign policy. In 1947, Sen. Arthur S. Vandenberg of Michigan, who with many Republican leaders had been a firm isolationist before the war, reversed his position to support Harry S. Truman on the Marshall Plan and NATO. By turning his party away from its discredited isolationist past, he gave it new life. We should profit by the Republican example. It is folly to disagree with the opposing party when it is right. If Republicans say two plus two is four, Democrats are not obligated to argue that it is five.

Democrats need to reassert their belief in a positive role for government. They do not believe that the best government is almost no government at all, nor that deregulation is the remedy for all problems. Americans have seen the havoc wrought by hands-off government: ineffective regulation of the S&Ls, deterioration of the banking system, conversion of the stock market into a computer-driven casino, the loss of competitiveness in American business with the consequent loss of jobs, the failure of the war on drugs, increased crime and violence, the decline in personal security, in our basic infrastructure, and in the quality of our schools.

Democrats need to develop the knowledge, common sense, vision and courage to address our greatest responsibility—our children. The Department of Education should serve as a National Bureau of Educational Standards to provide tests to measure student competence and the competence of teachers; persuade states to deny certification to high schools in which less than 80% of the graduating class passes the 12th-grade test, and colleges to deny academic credit to students until they pass that exam; encourage choice by urging school boards to contract with private companies to achieve schools of higher quality; and offer day-care programs for all children from three to six years of age every working day of the year so that working and single teen-age mothers who need to work or go to school can escape permanent entrapment in welfare.

In this way we can ensure for the first time in our nation's history that all children have the ability to enter the first grade prepared to succeed, to experience school as a place of fulfillment and delight, prepared to stay in school and to avoid the use of drugs, alcohol, and the practice of irresponsible sex. And if we succeed in this, we can begin to reduce the destruction and loss wrought by random crime and violence, drug and alcohol addiction, and adolescent pregnancy.

If we do not give all children a vision of themselves as competent, responsible individuals able to support themselves and their families, and a vision of the consequences of moral irresponsibility, we will never restore civil order or reduce the need for jails, welfare and increased police protection. Unless young people can earn an honest living and look ahead to a good life without crime or drugs, they will make a dishonest living and take their pleasures, however short-lived and destructive, where they find them.

Democrats should acknowledge that the War on Poverty, despite good intentions and some successes, has increased poverty and dependency. Incentives are needed to help those on welfare regain control of their lives and liberate themselves from entrapment in an underclass. Americans are disgusted with filthy cities and decaying infrastructure, while able-bodied, mentally sound people are unemployed. They are ready for a revival of the WPA and programs that require work for remuneration: programs that rebuild our infrastructure, provide thousands of jobs, and rehabilitate those addicted to drugs or alcohol.

Americans want an end to welfare fraud by the rich who use Medicaid trusts to defraud taxpayers. They want common sense used in the allocation of health dollars where major savings can be made through preventive medicine, including inoculations for children. It has been estimated that 40% of our children lack one or more essential inoculations. The lack of these ounces of prevention will inflict great human suffering and millions of dollars in expenses for avoidable cures. They want an end to mandated heroic treatment of patients for whom it is futile, cruel and expensive. They want an end to the ambulance-chasing that has driven malpractice insurance costs so high that many communities are without obstetricians or adequate medical care.

As crime and violence increasingly dominate our streets Democrats can offer more than the "hands off" Republican prescription. They can stand up to the gun lobby on automatic weapons. They can state the plain truth that these guns have one purpose, to kill people, and that they are no more sporting weapons than the Patriot missile. They can convince Americans that in the long run the use of abandoned military bases as sites for prison-schools to transform ill-educated young offenders into responsible citizens will be far less costly than endlessly building more prison warehouses, or putting hardened criminals back on the streets.

THE MOST IMPORTANT RESOURCE

Democrats, while supporting free trade, should, unlike the Republicans, act to protect sound companies from corporate raiders and encourage basic research and its translation into products made by American workers to be sold competitively on world markets. Under the Republicans we lost immense parts of the microchip industry and run the risk of losing high-definition television to Japan. The Democrats can ensure that American industry will have the level playing field that will prevent more such disasters.

America is still a young, powerful nation rich in natural resources, including the most important—the intelligence and imagination of its people. When we develop our human capital and restore the banks and stock markets to provide financial capital, we will again have an America where life is good, where families and children flourish, where all are safe not only in their homes but on the streets, an America in which working men and women can enjoy in peace and security the fruits of their labor and anticipate a future unclouded by random violence.

The great years of America lie not behind us but before us. We are too young and strong to step back or step down. We are ready for leadership that will use government positively to harness the strengths, the talents and the virtues of our people. If the Democrats offer new hope and hard work, they can win.•

TRIBUTE TO AL GORE OF TENNESSEE FOR HIS LEADERSHIP OF THE ENVIRONMENTAL AND ENERGY STUDY CONFERENCE

• Mr. McCAIN. Mr. President, as Senate Vice Chairman of the Environmental and Energy Study Conference, I rise today to express the conference's gratitude to our colleague from Tennessee, AL GORE. AL is concluding 4 years of service as the study conference's Senate chairman. He was first elected to serve for the 100th Congress and was reelected for the 101th Congress.

It is, of course, the purpose of the study conference to provide those 90 of us in the Senate and the 290 Members of the House who receive its services with balanced information that will enable us make the best informed policy decisions. AL has made an exceptional contribution to that effort.

We all are aware of AL'S great concern about these issues. He has studied them deeply. His foresight in calling attention to problems, often years before they become a public concern, is well known.

AL'S guidance has been invaluable in making sure the conference has provided us with the opportunity to debate current and emerging issues and keep well ahead of the headlines. This has been especially true on issues such as climate change and the international environment.

AL has been extremely generous with his time, chairing innumerable discussions for Senators and House Members with administration officials, outside experts and others. He has made sure we have been aware of the latest scientific findings and the full array of policy options on the issues.

I am very pleased that AL is continuing to serve on the study conference's executive committee, and it is my expectation that he will continue to make an invaluable contribution to the conference.

On behalf of House Chairman BOB WISE, House Vice Chair JAN MEYERS, the executive committee and the Senators and House Members who rely on the study conference, many thanks to AL for his outstanding service.•

UNITED STATES ONE DOLLAR COIN ACT OF 1991

• Mr. D'AMATO. Mr. President, today I rise to speak in support of legislation, introduced by my distinguished colleague from New Mexico, to mint and circulate a gold-colored Christopher Columbus $1 coin. I am pleased to be a cosponsor of Senator DOMENICI'S bill, the United States One Dollar Coin Act of 1991.

I also cosponsored this legislation in the 101st session of Congress because the $1 coin will provide savings to the Government in addition to providing many consumer benefits.

According to the General Accounting Office, the $1 coin could save the Government over $100 million each year for the next 30 years. The $1 coin's durability—20 years, compared to dollar bills that last for approximately 18 months, will contribute greatly to this overall savings. A decrease in the cost of transporting currency to the Federal Reserve banks and not having to shred old bills also contributes to the savings.

The $1 coin would make using vending machines easier and less expensive. Individuals would not have to be weighed down by pockets full of coins in order to use coin laundries, and other vending machines, pay telephones, and parking meters.

The mass transit industry would save between $50 and $100 million in costs associated with straightening and counting dollar bills. Costs incurred with the retrofitting of fare machines on buses could also be avoided by the use of a dollar coin.

The visually handicapped would benefit from the $1 coin because they could safely identify it by its distinctive design.

Although the Susan B. Anthony coin makes many of us shudder when considering the likelihood of the success of a $1 coin. The $1 coin contemplated by my esteemed colleague from New Mexico is easily distinguished from the quarter. The bill provides for a gold-colored coin with smooth edges.

Moreover, the bill provides for the commemoration of the 500-year anniversary of Christopher Columbus' discovery of the New World. It seems fitting to acknowledge and honor Christopher Columbus' discovery of this country in connection with an integral part of the success of this country—our economy.

I urge my colleagues to support this coin reform legislation.•

ARMS TO ENEMIES

• Mr. SIMON. Mr. President, Anthony Sampson had an article in Newsweek magazine titled "A Last Chance To Call a Halt."

It is an appeal to the arms producing nations of the world to slow down the arms bazaar. Our long-term interest compels us to move in that direction. Unfortunately, short-term gain and political pressures militate against that rational, long-term answer.

I hope we will pay more attention to this eloquent appeal.

I ask to enter the article into the RECORD at this point, and I urge my colleagues who have not read it to do so.

The article follows:

[From Newsweek, Apr. 8, 1991]

A LAST CHANCE TO CALL A HALT

(By Anthony Sampson)

It didn't take long. At the Singapore arms fair two weeks ago European arms manufacturers were boasting that their system had been "combat-tested" in the gulf war. But this was a war that provided a caricature of the danger of the international arms trade: it was the Soviets and the West who sold Saddam Hussein the weapons which enabled him to build up the world's fourth biggest fighting force. Will the West ever stop selling weapons to potential foreign enemies?

Arms-control experts insist that we now have a unique chance—perhaps a last chance—to stop the reckless selling of weapons. There is a lesson in the history of the last 20 years in the Middle East. Ever since oil prices quadrupled in 1973, arms sellers have been turning oil into arms, with little sign of any consistent diplomatic objective on the part of the buyers. In the 1970s they equipped the Shah of Iran with the most sophisticated tanks and planes, supposedly to defend him against the Russians; but the shah's arsenal was then taken over by the Ayatollah Khomeini, who used it against Iraq. Saddam was armed to defend Iraq against Khomeini, and then turned his weapons against Kuwait and Saudi Arabia. In the meantime the Saudis and Kuwaitis were spending billions of dollars on planes, tanks and high-tech systems which proved almost useless when they faced a real danger. In the words of Adnan Khashoggi, the arms middleman for the Saudis in the '70s: "The Arabs have learned that it's no good buying arms if you can't use them."

The gulf war has certainly produced some agonized rethinking among arms buyers. The Kuwaitis were humiliated by their defenselessness against the Iraqis. The Saudis made little effective use of their own costly weaponry. Soviet exports also suffered; the Scud missile was a clumsy instrument compared with the pinpoint-accurate Patriot and Tomahawk systems.

It is the effectiveness of computerized missiles that provides both a new danger and a new opportunity for arms control. Nearly every country in the Middle East now wants Patriots or their successors, and the United States is for the time being the only supplier. The French and the British are lagging behind the Americans in most sophisticated weaponry, and the Soviets are still more backward. The old excuse for selling weaponry—that if we don't, the Russians will—is now less persuasive.

The Americans thus have a clear opportunity, and responsibility, to take a new initiative to control arms sales. There are some hopeful signs. The Missile Technology Control Regime (MTCR), set up by seven nations in 1987, has already had some effect, particularly in stopping the Condor 2 missile which Iraq was developing with Argentina and Egypt. There is also a new opportunity to restrain competition among manufacturers in NATO countries. If Europe had a more integrated arms industry, there would be less pressure to find markets abroad.

OLD JUSTIFICATION

The most effective way to cut back on arms buying is to stop the flow of money financing it. The most startling fact about the arming of Iraq was the willingness of the West to provide not only the finances but also the subterranean channels, including the Italian Banca nazionale del Lavoro, currently under investigation in Washington. And the most worrying development since the gulf war has been the decision of President George Bush to revive export credits for Americans arms companies, to enable them to compete more effectively with European arms exporters. The president's motive is clear: "Maintenance of a viable U.S. defense is critical," as presidential spokesman Marlin Fitzwater explained it. It is an old justification. But in the past the providers of aid to the developing world, including the World Bank, have been far to little concerned with the linkage with arms. Now at last the World Bank and the IMF are insisting on restrictions on military spending—strongly backed by the former president of the World Bank, Robert McNamara. And donor countries, particularly Japan, are watching their clients' military aspirations more carefully.

Controlling arms sales today is mainly a question of political will. The five permanent members of the U.N. Security Council—the Russians, Americans, French, Chinese and British—between them sold 87 percent of the weapons bought by developing countries in the late 1980s. Having acted in unison over the gulf war, they should be able to confront the mistakes which helped to cause the war. The United Nations, with its enhanced prestige, should be able to monitor sales more effectively, perhaps with the help of a register of arms sales, as advocated by Norway's former prime minister Gro Brundtland. The United States' missile superiority gives it the power to extend and enforce missile-technology control. And the Japanese, who do not export weapons but who supply critical components, could become important participants in new plans for the control and monitoring of arms sales. It will not be easy to withstand national pressure to sell weapons for short-term economic advantage. But if we cannot face up to the danger and the opportunity this time, we may not have another chance.•

HONORING GRAHAM MANUFACTURING CORP.

• Mr. KASTEN. Mr. President, I rise today to honor the achievement of a truly distinguished corporate constituent—the Graham Manufacturing Corp. of Marshfield, WI.

Last month, the Marshfield Area Chamber of Commerce and Industry awarded Graham the distinction of "Firm of the Year." Founded by Thomas and Ruth Graham in 1968, the company has been producing wood doors for over two decades.

Graham Manufacturing has built a lasting tradition of excellence—and deserves the attention and praise of all who are concerned with the health of our business sector. I ask my colleagues to join me in congratulating the Grahams and President Mike Clem on this important occasion.•

HOLOCAUST MEMORIAL DAY

• Mr. SIMON. Mr. President, I would like to spend a few moments talking about Holocaust Memorial Day, which was commemorated April 12, 1991. Holocaust Memorial Day serves as a reminder of the atrocities committed against humanity. And we need to remind ourselves that the scourge of inhumanity still plagues us as we approach the 21st century.

The millions of humans that suffered and died under the Nazi regime must never be forgotten. Their memory must live in our hearts and souls as a reminder of the evils of racism. All of Europe was caught in the horrible conflagration of World War II, and many people suffered because of their religion and nationality—but none more than the Jewish people. European Jewry was singled out for extermination, and, as we know all too well, Hitler succeeded in murdering 6 million Jews.

The day we have chosen to remember the Holocaust has come at a time when we are witnessing another brutal attack on humanity in the form of Saddam Hussein's vicious assault on the Kurdish people. The scale and scope are clearly different than the Nazi Holocaust, but the horrors are starkly reminiscent. In Cambodia in the mid-1970's, Pol Pot decimated his own people in a wild killing spree that boggles the mind. International condemnation followed the disclosure of this genocide, with vows that the world cannot and will not stand by and allow such crimes to occur, or to go unpunished.

We are now in a situation in Iraq where Saddam seems to be exacting vengeance for those opposed to his rule—Shiites in the south, Kurds in the north, Sunnis who joined the insurrection. Just as it is important to understand what happened 45 years ago, we must recognize what is happening now—and act before it is too late. Saddam's military attacks against the Kurds have resulted in a huge exodus, with tragic results. The United States ought to take the lead worldwide in ensuring that humanitarian aid on an adequate scale reaches the Kurds as quickly as possible.

I join with my colleagues here in the Senate, and with all Americans, in hope and prayer that the world shall never witness such atrocities again. While great strides have been made, anti-Semitism has not been eradicated from the world scene. Holocaust Remembrance Day is an important occasion to remember the horrors of anti-Semitism, genocide, racism, and aggressive war, because it is our collective memory of the Holocaust that will prevent future holocausts. We can never forget.•

HONORING EAU CLAIRE SMALL BUSINESS DEVELOPMENT CENTER AND BADGER WINDOW SYSTEMS

• Mr. KASTEN. Mr. President, the small businesses of Wisconsin are the powerhouse of our State's economic growth. Over 62 percent of the new jobs created are directly attributable to these small businesses—ventures on the cutting edge of society, creating the products and services sought by the American people.

I recently had the privilege of touring a number of successful small businesses in Wisconsin that have been assisted by small business development centers [SBDC's]. These SBDC's are excellent incubators of small business growth—and I'd like to draw my colleagues' attention to the achievement of one of these centers today.

On April 2, I visited Badger Window Systems, Inc., of Eau Claire, WI—a firm that specializes in producing vinyl commercial and residential windows. Begun in June 1986, it has expanded from 3 to 30 employees—and is still growing.

Badger Windows has taken a master business plan and turned it into a reality through unflinching dedication to quality.

The Badger Windows success story is due in large part to the hard work of president Art Syth. But it would not have been possible without the assistance and counsel of assistant dean for business outreach, Fred Waedt, and the local SBDC.

At a time when some are proposing drastic cuts in the Federal budget for SBDC's, it is important to note successes like that of Badger Windows.

Let us keep this system of small business incubators alive—by supporting full funding for SBDC's.•

THE 2506 BRIGADE

• Mr. GRAHAM. Mr. President, I rise today to pay tribute to the heroic efforts of the 2506 Brigade on the 30th anniversary of their valiant effort to liberate Cuba from one of the most oppressive dictatorships the Western World has known. It was 30 years ago today, on April 17, 1961, that a military brigade made up of brave Cuban patriots of all ages landed on the beaches of Giron. Their hearts were filled with passion and courage as they fought in the early hours of dawn to liberate their beloved homeland, to realize the promise that Fidel Castro had cynically betrayed. Their vision of a new Cuba was palpable, just a few hours away. That vision never materialized. These brave men never received the expected military support to successfully complete their mission. Yet, their victory was one of courage and one that earned them worldwide respect and admiration.

On this day, let us reaffirm the plight of the Cuban diaspora, but most importantly, let us remember that the brigade's mission has not been accomplished: the total and unconditional liberation of Cuba. The tyrant Castro must not in any way hinder Cubans from fulfilling their dream of a free and independent Cuba. "Cuba libre" means democracy, an open economy, a man's right to express freely and without fear to his neighbor his thoughts, where there is no longer need for Radio Marti or TV Marti because communication is free and open and dynamic. It means a vibrant Cuban culture in the best tradition of Marti, which will flourish and stand out once again among the Latin American community of nations when liberty is restored. It means a Cuba that is at the center of world attention not due to its militarism at home and adventurism abroad, but because it is the Cuba that has allowed its people freely to express their historical creativity.

On this solemn anniversary, Mr. President, let us reiterate our respect and support for the political prisoners that continue to languish in Castro's jails and pray for those Cubans who have lost their lives and endured the pain of family separation in the pursuit of liberty.

It is with great pride and hope for the liberation of Cuba that I submit this resolution honoring the brave men of the Brigade 2506.•

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,223d day that Terry Anderson has been held captive in Lebanon.

Mr. MOYNIHAN. Mr. President, as the distinguished Republican Leader BOB DOLE records in his estimable "Historical Almanac of the United States Senate," the Senate created its first staff position, the post of Doorkeeper, on April 7, 1789. James Mathers—"an Irish immigrant who earlier had distinguished himself in the Revolutionary War"—was chosen for this post which he held for 22 years until his death.

In the two and more centuries since, the staff of the Senate has grown, and with it the number of exceptionally able and devoted persons who have given some or all of their working careers to the institution. But I would not know of any whose service can be compared to that of Peter Galbraith of the staff of the Committee on Foreign Relations who has, quite literally, risked his life in the performance of his duties.

On Easter weekend, March 30-31, Mr. Galbraith crossed the Tigris River—under bombardment—from Syria into northern Iraq. There he spent two harrowing, incredibly heroic days among the Kurdish inhabitants of that region. This included one hellish night in the city of Dihok, then held by the Kurdish resistance and under continuous bombardment from the forces of Saddam Hussein.

This bombardment included the use of phosphorus shells.

In utter disregard of his own safety, Mr. Galbraith met with Kurdish leaders, spoke with refugees, watched and recorded the unimaginable devastation of that region and those people. The Mathers spirit is still alive in this Chamber.

Somehow, he survived. He crossed back into Syria and returned to the United States where he reported his experiences to the American public on television programs and in a graphic article in the current New Republic. He has of course provided even more information to the Committee on Foreign Relations itself.

In any organization within the executive branch there would surely exist a form of recognition for such service above and beyond the call of duty. A military medal, a departmental citation. We have nothing of that sort for members of the Senate staff. This is no dereliction on our part. It is simply that in two and more centuries we have not seen the like of young Galbraith: The indifference to his own welfare and safety; the all-consuming concern for the welfare and safety of an oppressed people caught up in a ghastly travail. At minimum I would wish to record this Senator's admiration for an incredible display of grace under pressure. I ask unanimous consent that his New Republic article be printed in the RECORD at this point.

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

[From the New Republic, Apr. 29, 1991]

LAST STAND

(By Peter Galbraith)

KURDISTAN.—Dihok is a pleasant northern Iraqi city of 100,000, situated on the gently sloping sides of a valley and surrounded by mountains. On this Easter morning its people, mostly Kurds but also Christian Assyrians and Chaldeans, were fleeing. Since my arrival the previous evening, the city had been under continuous bombardment from Iraqi forces. After eight months of sanctions and two months of war, little gasoline remained in this oil-producing region of Iraq. So mostly the refugees walked—long lines of women, children, and armed men—streaming toward the relative safety of the high mountains north of the Zakho-Amadiyah Road. The few vehicles that did move were extraordinarily over-burdened. Even the trunks of cars provided passage to one or two adults, or several children. It was a scene strikingly reminiscent of the photographs of the exodus from Paris just before the arrival of the Nazis.

I drove through the high mountain region that was to become the refugees' destination. With spring rains, the rocky Kurdish landscape was green, and there were wild flowers in the new grass. The almond trees in abandoned orchards were in bloom, and I stopped to photograph some newly arrived refugee children. On that sunny day at least some of the children seemed to enjoy the novelty of their new location. But in the mountains it gets cold at night. In the 1980's, the Iraqi regime systematically dynamited or bulldozed every village in Kurdistan, and thus there were no shelters within miles. These urban refugees had only the food they could carry—not much for those who came by foot and only a little more for those who drove.

I had come to Dihok at the invitation of Jalal Talabani, the chairman of the Patriotic Union of Kurdistan and one of the two principal Kurdish leaders. He was deeply frustrated by the unwillingness of the Bush administration to talk to any Iraqi opposition figures. Obviously he also hoped the information I collected on the visit might influence Congress to support the anti-Saddam rebellion in northern and southern Iraq. As it turned out, my trip coincided with the collapse of the Kurdish insurgency and the beginning of a new humanitarian calamity.

I'd entered Iraq a day earlier under sporadic artillery fire, by crossing the Tigris River in a small boat from Syria. (Alone among the Kurds' neighbors, Syria permitted people and supplies to pass through its frontier to the rebels.) The next stop was Zakho. Just across the Khabur River from Turkey, Zakho was under the rule of the Kurdish guerrillas, the Peshmerga, literally "those who face death." The streets were crowded, shops open, and a sense of purposefulness and order prevailed. Loudspeakers played political messages, and slogans, some in imperfect English ("We librated Kurdistan"), adorned public buildings. The Peshmerga were using earth-moving equipment to tow abandoned Iraqi trucks to repair sheds. And they were attempting to rebuild a span on the bridge to Turkey (blown up by the departing Iraqis), in the hope of making an avenue for food, gasoline, and other commodities in desperately short supply. The Kurds had even restored electricity, something the Baath regime is still unable to do in Baghdad. Yet this picture of Zakho proved illusory. Two days later the city fell.

In Dihok I joined Talabani as he presided over a meeting of local notables. A large man who looked even larger in his baggy Peshmerga uniform, Talabani is a genuinely charismatic figure, and evidently a skilled politician. The gathering had the air of a lively town meeting, with much give and take between Talabani and his interlocutors. A former judge said the priority must be on restoring the courts. A teacher urged the execution of several citizens accused of passing on military information to the Iraqis. Talabani demurred, saying that a fair hearing was essential. An Assyrian raised the issue of religious minorities, and Talabani said that the protection of these rights is an integral part of the Iraqi Kurdistan Front program, which also includes Kurdish autonomy and support for a democratic Iraq.

The principal reason given for the administration's reluctance to support the Kurdish rebellion was a fear that the rebel agenda includes the breakup of Iraq. Yet to his own people in Dihok, Talabani said much the same thing that he had told the Senate Foreign Relations Committee a month before: "It is very difficult to change the borders of five countries. We are not for an independent Kurdistan; we are asking for our national rights within the framework of Iraq. I know of dreams and reality. All Kurds dream of an independent, unified Kurdistan, but we have to face the reality."

Later Talabani and his top lieutenants adjourned to the home of an engineer, Lizginn Hamzani, where forty guests were served a lavish meal. Hamzani is one of the men who made the Kurdish revolution, and he did so because he thought he had the backing of President Bush. Until a month ago Hamzani was the commander of the National Defense Battalion of Dihok, an all-Kurdish light battalion financed by the Baghdad regime. Through this sinecure, he had grown quite wealthy and was able to build a solid stone house. Following Iraq's military collapse and the Shiite uprising in the south, Hamzani and his fellow officers saw an opportunity to join a cause in which he says he always believed. He assumed, as did all other Kurds with whom I spoke, that Bush's call on the Iraqi people to overthrow Saddam would also mean U.S. backing for the rebellion. And with U.S. support, Hamzani figured, Saddam would surely fall. Nearly 300 Kurdish officers in various territorial units made the same calculation. The meal I shared with Hamzani in his fine stone house was surely the last he was able to eat there.

Heading from Dihok toward the relative safety of the mountain town of Amadiyah, we stopped at Saddam's hilltop palace, an opulent retreat with imported marble floors, enormous bathtubs, and fancy Italian fixtures. Two hundred acres, including a private lake, orchard, and vegetable patch, lie within a high concrete wall studded with numerous guard towers. From this palace we could see another on top of Gera Peak that is accessible only by helicopter or pack animal. Talabani told me these are just two of fifteen of Saddam's palaces within a fifty-kilometer radius. He never spends more than a day or two a year at each. But it will be a while before Saddam returns to this palace. The local people have smashed every window and every light.

What the refugees fleeing Kurdistan's cities fear most is the vengeance of the Iraq army. In 1988, after the Iran-Iraq war ended, the Iraqi air force launched massive chemical weapon attacks on villages along the Iraq-Turkey border. The villages were adjacent to Peshmerga camps, but characteristically the regime did not attack the rebels. Instead it went after villages, where the terrifying impact of poison gas could be most effectively exploited. This year, with whole cities having joined the rebellion, it is frightening to contemplate the scale of the potential vengeance. I heard tales of massacres of entire neighborhoods as the army retook Kurkuk. Certainly the bombardment of Dihok was intended to maximize civilian casualties.

After the Baath regime destroyed the villages of Kurdistan, they moved the inhabitants to overcrowded new settlements that were under the eve of the army. They were called Victory Cities but were really concentration camps. One such settlement sits just outside Zakho. When I went there on Easter Sunday, the army was gone but so was the food. One man carried a bag of grain, treated for use as rat poison. This is all the inhabitants had left to eat, he said, and they were trying to wash the poison off the grain. The water supplies had also broken down, and the people were using a very polluted well. Even worse off than the city-dwellers, the inhabitants of the settlements have no food or transportation resources to get them to the mountain refuges. Unless help comes they will either be slaughtered or starve.

By late in the day we were back in Zakho, and the mood among my Kurdish companions had changed sharply. Clearly they were becoming aware of the extent of their military collapse. Dihok had fallen that morning and the shelling sounded close to Zakho. They decided to get me out to Syria as soon as possible, rather than waiting, as we had earlier agreed, to make the crossing under the cover of darkness. A young Kurd named Mohid was assigned to take me back to Syria. We drove out of Zakho along the Iraqi army road that parallels the Khabur River, which is the Turkish border. As we approached the Syrian border, we came under frequent artillery fire. With shells landing as close as fifteen yards away, I made a dash across the mudflats to a sandbagged position at the river's edge. From there a small boat took me to Syria. The next day the Iraqis seized the border crossing.

Some of my Kurdish companions are now in Turkey, as I have discovered from seeing them quoted in the Western press. But so far I have heard nothing about Talabani or Hamzani. And of course I'll never know what happened to the children playing on Easter Sunday among the mountain almond blossoms.

TELEPHONE RATES AND PROCEDURES FOR OPERATION DESERT STORM PERSONNEL

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 56, Senate Joint Resolution 77 regarding telephone rates and procedures for Desert Storm personnel.

The PRESIDING OFFICER. The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 77) relative to telephone rates and procedures for Operation Desert Storm personnel.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment.

Mr. HOLLINGS. Mr. President, I rise to express my complete and wholehearted support for Senate Joint Resolution 77. As my colleagues know, I am an original cosponsor of this legislation, and I am pleased that the Commerce Committee, which I chair, could repair this resolution so that it could be considered in a timely manner by the Senate today.

Mr. President, this resolution will help relieve thousands of U.S. soldiers and their loved ones of the burden of paying inordinate sums to communicate with their loved ones while they are stationed in the Persian Gulf region. The costs of telephone calls and fax communications to that region of the world are simply too high. Americans are putting their lives on the line to protect Saudi Arabia, yet still the Saudis are charging a $.73 surcharge per call. It is enough of a hardship to be separated from loved ones, and to know that those people are in great danger. It is even worse when the only way one has of keeping in touch with loved ones in the gulf region—the telephone—costs so much.

Our service personnel and their families should not have to choose between going broke or denying themselves the comfort of hearing each others' voices and sharing life's troubles and joys.

This is not a new problem—we have been fighting these surcharges for years. However, in times like these, it is only fair that our allies substantially reduce, and even waive, these charges. Long-distance companies in this country have themselves reduced prices of telephone calls to Saudi Arabia, and I commend them for that. The Saudis should do the same. Quite simply, it is the right thing to do.

Although this resolution does not specifically mention the government of Turkey, I also encourage Turkey to take its own steps to reduce their telephone rates now that United States service personnel are stationed in that country. I believe that such action by the Turkish Government can only serve to strengthen the ties between our two nations.

The resolution calls for the State Department to negotiate with the Saudi Arabian Government to eliminate these charges and for the Federal Communications Commission to use its existing regulatory powers to ensure that telephone service providers adopt flexible building policies and procedures in connection with these calls. I urge these government agencies to act quickly to implement the terms of this joint resolution.

The PRESIDING OFFICER. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment.

The amendment was agreed to.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, shall it pass?

So the joint resolution (S.J. Res. 77), as amended, was passed.

The preamble was agreed to.

The joint resolution and its preamble are as follows:

S.J. RES. 77

Whereas United States service men and women deployed in the Persian Gulf for Operation Desert Storm rely heavily on telephone service to communicate with their families at home;

Whereas, in addition to the significant cost of a call to or from Saudi Arabia, there is imposed a $0.73 per minute surcharge by Saudi Arabia on all calls not using Saudi telecommunications facilities;

Whereas the expense of these calls has placed an additional burden on members and families of the Armed Forces at a time when they are already bearing great burdens for the Nation and the world; and

Whereas the Federal Communications Commission has special tariff procedures which allow for promotional offerings such as an "Operation Desert Storm Special Offering": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the sacrifices borne by the men and women of the United States Armed Forces participating in Operation Desert Storm, and by their families—

(1) the Department of State should immediately undertake to convince the Government of Saudi Arabia to eliminate the $0.73 per minute surcharge where Saudi facilities are not used in transmission, and to reduce the charge applicable to calls using Saudi facilities;

(2) The Federal Communications Commission exercise its existing regulatory authority to ensure that local and interexchange telephone service providers adopt flexible billing procedures and policies in connection with costs incurred by service persons or their families for telephone calls to and from the Persian Gulf;

(3) the Federal Communications Commission work with appropriate State authorities to ensure that no family or spouse is disconnected from basic telephone service due to financial hardship imposed by such costs; and

(4) United States long distance service carriers should file, and the Federal Communications Commission should immediately consider, special reduced rates to and from the Saudi Arabia theater, to be effective for the duration of the conflict.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

NATIONAL TOURISM WEEK

Mr. LEAHY. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 102, a joint resolution designating the second week in May as "National Tourism Week," and that the Senate proceed to its immediate consideration.

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

The clerk will report the joint resolution by title.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 102) designating the second week in May 1991 as "National Tourism Week."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 102) was ordered to be engrossed for a third reading, was read the third time, and passed.

The preamble was agreed to.

The joint resolution and its preamble are as follows:

S.J. RES. 102

Whereas travel and tourism is the third largest retail industry and the second largest private employer in the United States, generating nearly six million jobs and indirectly employing another two million six hundred and forty thousand Americans.

Whereas total travel expenditures in the United States amount to more than $350,000,000,000 annually, or about 6.5 percent of the gross national product;

Whereas tourism is an essential American export, as thirty-eight million seven hundred thousand foreign travelers spend approximately $44,000,000,000 annually in the United States;

Whereas development and promotion of tourism have brought new industries, jobs and economic revitalization to cities and regions across the United States;

Whereas tourism contributes substantially to personal growth, education, appreciation of intercultural differences, and the enhancement of international understanding and good will; and

Whereas the abundant natural and manmade attractions of the United States and the hospitality of the American people establish the United States as the preeminent destination for both foreign and domestic travelers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning the first Sunday in May 1991 is designated as "National Tourism Week". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe that week with appropriate ceremonies and activities.

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

MEASURE INDEFINITELY POSTPONED

Mr. LEAHY. Mr. President, I ask unanimous consent that Calendar No. 39, S. 647, be indefinitely postponed.

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

NATIONAL COMMISSION ON A LONGER SCHOOL YEAR ACT

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 50, S. 64, regarding a longer school year commission.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 64) to provide for the establishment of a National Commission on a Longer School Year, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. TABLE OF CONTENTS.

The table of contents is as follows:

TITLE I—NATIONAL COMMISSION ON A LONGER SCHOOL YEAR

SEC. 101. SHORT TITLE.

This title may be cited as the "National Commission on a Longer School Year Act".

SEC. 102. NATIONAL COMMISSION ON A LONGER SCHOOL YEAR ACT.

(a) ESTABLISHMENT.—There is hereby established a National Commission on a Longer School Year Act (hereafter in this title referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall consist of nine members, of whom—

(A) three members shall be appointed by the President from among the Secretaries of the executive departments as set forth in section 101 of title 5, United States Code;

(B) three members shall be appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives; and

(C) three members shall be appointed by the President pro tempore the Senate upon the recommendation of the Majority Leader and Minority Leader of the Senate.

(2) REQUIREMENTS.—

(A) Members of the Commission shall be appointed on the basis of exceptional education, training, or experience from—

(i) individuals who are representatives of nonprofit organizations or foundations committed to the improvement of American education;

(ii) individuals who are engaged in the professions of teaching;

(iii) individuals engaged in school administration, members of school boards, parents or representatives of parents or parent organizations;

(iv) individuals who are State officials directly responsible for education; and

(v) individuals representing organizations with an interest in lengthening the academic year or lengthening the school day.

(B) The first nine members of the Commission shall be appointed no later than 60 days after the date of enactment of this Act.

(3) VACANCIES.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(4) TERMS.—Members of the Commission shall be appointed to serve for the life of the Commission.

(5) COMPENSATION.—Each member of the Commission shall serve without compensation, but shall be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Commission duties.

(6) ACTIVITY OF COMMISSION.—The Commission may begin to carry out its duties under this subsection when at least 5 members of the Commission have been appointed.

(c) FUNCTIONS OF THE COMMISSION.—

(1) STUDY.—The Commission shall study and make recommendations regarding the advisability of lengthening the school day to a predetermined minimum number of hours and lengthening the academic year in all United States public elementary and secondary schools. Such recommendations shall include—

(A) a comparative analysis of the length of academic days and academic years in schools throughout the United States and in schools of other nations;

(B) a recommendation of the appropriate number of hours per day and days per year of instruction for United States public elementary and secondary schools;

(C) an examination as to whether an increase in the length of school days and school years should be accompanied by an appropriate increase in teacher compensation;

(D) a model plan for adopting a longer academic day and academic year in all United States public elementary and secondary schools by the end of this decade, including recommendations regarding mechanisms to assist States, school districts, schools, and parents in transitioning from current academic day and year to an academic day and year of a longer duration;

(E) suggestions for such changes in laws and regulations as may be required to facilitate States, school districts, and schools in adopting longer academic days and years;

(F) an analysis and estimate of the additional costs, including the cost of increased teacher compensation, to States and local school districts if longer academic days and years are adopted; and

(G) a plan to assist States and local districts in meeting all such additional costs.

(2) REPORT.—The Commission shall submit a final report and plan pursuant to subsection (d).

(d) COMMISSION REPORT.—

(1) REQUIREMENT.—Not later than September 1, 1991, or one year after the Commission concludes its first meeting of members, whichever is longer, the Commission shall submit a report to the President and the Congress on the study and recommendations required pursuant to the provisions of this subsection.

(2) CONSIDERATIONS.—The report described in paragraph (1) shall consider current educational policies and practices regarding the length of the school year and school day throughout the United States and the world.

(e) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission may, for the purpose of carrying out this subsection, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) TESTIMONY; PUBLIC HEARINGS.—In carrying out this subsection, the Commission shall receive testimony and conduct public hearings in different geographic areas of the country, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public regarding the advisability of lengthened academic day and year.

(3) INFORMATION.—The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this subsection. Upon request of the Chairman of the Commission, the head of the agency shall furnish such information to the Commission.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

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

(6) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative and support services as the Commission may request.

(f) ADMINISTRATIVE PROVISIONS.—

(1) MEETINGS.—The Commission shall meet on a regular basis, as necessary, at the call of the Chairman or a majority of its members.

(2) QUORUM.—A majority of the appointed members of the Commission shall constitute a quorum for the transaction of business.

(3) CHAIRMAN AND VICE CHAIRMAN.—

(A) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission for the life of the Commission.

(B) The Chairman of the Commission, in consultation with the Vice Chairman, shall appoint and fix the compensation of a staff administrator and such support personnel as may be reasonable and necessary to enable the Commission to carry out its functions without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates.

(4) OTHER FEDERAL PERSONNEL.—Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any personnel of such agency to the Commission to assist the Commission in carrying out its duties under the subsection. Such detail shall be without interruption or loss of civil service status or privilege.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after submitting the final report required by subsection (d).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994 to carry out the provisions of this title.

TITLE II—NATIONAL WRITING PROJECT

SEC. 201. FINDINGS.

The Congress finds that—

(1) the United States faces a crisis in writing in schools and in the workplace;

(2) only 25 percent of 11th grade students have adequate analytical writing skills;

(3) over the past two decades, universities and colleges across the country have reported increasing numbers of entering freshmen who are unable to write at a level equal to the demands of college work;

(4) American businesses and corporations are concerned about the limited writing skills of entry-level workers, and a growing number of executives are reporting that advancement was denied to them due to inadequate writing abilities;

(5) the writing problem has been magnified by the rapidly changing student populations in the Nation's schools and the growing number of students who are at risk because of limited English proficiency;

(6) most teachers in the United States elementary schools, secondary schools, and colleges, have not been trained to teach writing;

(7) since 1973, the only national program to address the writing problem in the Nation's schools has been the National Writing Project, a network of collaborative university-school programs whose goal is to improve the quality of student writing and the teaching of writing at all grade levels and to extend the uses of writing as a learning process through all disciplines;

(8) the National Writing Project offers summer and school year inservice teacher training programs and a dissemination network to inform and teach teachers of developments in the field of writing;

(9) the National Writing Project is a nationally recognized and honored nonprofit organization that recognizes that there are teachers in every region of the country who have developed successful methods for teaching writing and that such teachers can be trained and encouraged to train other teachers;

(10) the National Writing Project has become a model for programs in other academic fields;

(11) the National Writing Project teacher-teaching-teachers program identifies and promotes what is working in the classrooms of the Nation's best teachers;

(12) the National Writing Project teacher-teaching-teachers project is a positive program that celebrates good teaching practices and good teachers and through its work with schools increases the Nation's corps of successful classroom teachers;

(13) evaluations of the National Writing Project document the positive impact the project has had on improving the teaching of writing, student performance, and student thinking and learning ability;

(14) the National Writing Project programs offer career-long education to teachers, and teachers participating in the National Writing Project receive graduate academic credit;

(15) each year approximately 85,000 teachers voluntarily seek training through word of mouth endorsements from other teachers in National Writing Project intensive summer workshops and school-year inservice programs through one of the 141 regional sites located in 43 States, and in 4 sites that serve United States teachers teaching overseas;

(16) 250 National Writing Project sites are needed to establish regional sites to serve all teachers;

(17) 13 National Writing Project sites in 8 different States have been discontinued in 1988 due to lack of funding; and

(18) private foundation resources, although generous in the past, are inadequate to fund all of the National Writing Project sites needed and the future of the program is in jeopardy without secure financial support.

SEC. 202. NATIONAL WRITING PROJECT.

(a) AUTHORIZATION.—The Secretary is authorized to make a grant to the National Writing Project (hereafter in this section referred to as the "grantee"), a nonprofit educational organization which has as its primary purpose the improvement of the quality of student writing and learning, and the teaching of writing as a learning process in the Nation's classrooms—

(1) to support and promote the establishment of teacher training programs, including the dissemination of effective practices and research findings regarding the teaching of writing and administrative activities;

(2) to support classroom research on effective teaching practice and to document student performance; and

(3) to pay the Federal share of the cost of such programs.

(b) REQUIREMENTS OF GRANT.—The grant shall provide that—

(1) the grantee will enter into contracts with institutions of higher education or other nonprofit educational providers (hereafter in this section referred to as "contractors") under which the contractors will agree to establish, operate, and provide the non-Federal share of the cost of teacher training programs in effective approaches and processes for the teaching of writing;

(2) funds made available by the Secretary to the grantee pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating teacher training programs as provided in paragraph (1); and

(3) the grantee will meet such other conditions and standards as the Secretary determines to be necessary to assure compliance with the provisions of this section and will provide such technical assistance as may be necessary to carry out the provisions of this section.

(c) TEACHER TRAINING PROGRAMS.—The teacher training programs authorized in subsection (a) shall—

(1) be conducted during the school year and during the summer months;

(2) train teachers who teach grades kindergarten through college;

(3) select teachers to become members of a National Writing Project teacher network whose members will conduct writing workshops for other teachers in the area served by each National Writing Project site; and

(4) encourage teachers from all disciplines to participate in such teacher training programs.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2) or (3) and for purposes of subsection (a), the term "Federal share" means, with respect to the costs of teacher training programs authorized in subsection (a), 50 percent of such costs to the contractor.

(2) WAIVER.—The Secretary may waive the provisions of paragraph (1) on a case-by-case basis if the National Advisory Board described in subsection (f) determines, on the basis of financial need, that such waiver is necessary.

(3) MAXIMUM.—The Federal share of the costs of teacher training programs conducted pursuant to subsection (a) may not exceed $40,000 for any one contractor, or $200,000 for a statewide program administered by any one contractor in at least 5 sites throughout the State.

(4) SPECIAL RULE.—For the purposes of paragraph (1), the costs of teacher programs do not include the administrative costs, publication cost, or the cost of providing technical assistance to the grantee.

(e) CLASSROOM TEACHER GRANTS.—

(1) IN GENERAL.—The National Writing Project may reserve an amount not to exceed 5 percent of the amount appropriated pursuant to the authority of this section to make grants, on a competitive basis, to elementary and secondary school teachers to enable such teachers to—

(A) conduct classroom research;

(B) publish models of student writing;

(C) conduct research regarding effective practices to improve the teaching of writing; and

(D) conduct other activities to improve the teaching and uses of writing.

(2) SUPPLEMENT AND NOT SUPPLANT.—Grants awarded pursuant to paragraph (1) shall be used to supplement and not supplant State and local funds available for the purposes set forth in paragraph (1).

(3) MAXIMUM GRANT AMOUNT.—Each grant awarded pursuant to this subsection shall not exceed $2,000.

(f) NATIONAL ADVISORY BOARD.—

(1) ESTABLISHMENT.—The National Writing Project shall establish and operate a National Advisory Board.

(2) COMPOSITION.—The National Advisory Board established pursuant to subsection (a) shall consist of—

(A) national educational leaders;

(B) leaders in the field of writing; and

(C) such other individuals as the National Writing Project deems necessary.

(3) DUTIES.—The National Advisory Board established pursuant to subsection (a) shall—

(A) advise the National Writing Project on national issues related to student writing and the teaching of writing;

(B) review the activities and programs of the National Writing Project; and

(C) support the continued development of the National Writing Project.

(g) EVALUATION.—The National Writing Project may reserve up to $100,000 from the amount authorized to be appropriated pursuant to the authority of this section to evaluate the teacher training programs conducted pursuant to this Act. The results of such evaluation shall be made available to the appropriate committees of the Congress.

(h) RESEARCH AND DEVELOPMENT ACTIVITIES.—

(1) GRANTS AUTHORIZED.—From amounts available to carry out the provisions of this subsection, the Secretary, through the Office of Educational Research and Improvement, shall make grants to individuals and institutions of higher education to conduct research activities involving the teaching of writing.

(2) PRIORITY.—(A) In awarding grants pursuant to paragraph (1), the Secretary shall give priority to junior researchers.

(B) The Secretary shall award not less than 25 percent of the funds received pursuant to subsection (i)(2) to junior researchers.

(C) The Secretary shall make available to the National Writing Project and other national information dissemination networks the findings of the research conducted pursuant to the authority of paragraph (1).

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for the grant to the National Writing Project, $10,000,000 for fiscal year 1991 to carry out the provisions of this section.

(2) RESEARCH AND DEVELOPMENT.—There are authorized to be appropriated $500,000 for fiscal year 1991 to carry out the provisions of subsection (h).

(j) DEFINITION.—As used in this Act—

(1) the term "institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965;

(2) the term "junior researcher" means a researcher at the assistant professor rank or the equivalent who has not previously received a Federal research grant; and

(3) the term "Secretary" means the Secretary of Education.

TITLE III—MISCELLANEOUS

SEC. 301. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

Part F of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3151 et seq.) is amended—

(1) by redesignating section 4608 (as added by Public Law 100-297) as section 4610; and

(2) by inserting before section 4610 (as redesignated by paragraph (1) of this section) the following:

"SEC. 4609. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

"(a) GENERAL AUTHORITY.—

"(1) PROGRAM ESTABLISHED.—The Secretary shall carry out a program to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights, and to foster civic competence and civil responsibility. Such program shall be known as 'We the People . . . The Citizen and the Constitution'.

"(2) EDUCATIONAL ACTIVITIES.—The program required by paragraph (1) shall continue and expand the educational activities of the National Bicentennial Competition of the Constitution and Bill of Rights administered by the Center for Civic Education.

"(3) CONTRACT AUTHORIZED.—The Secretary is authorized to enter into a contract with the Center for Civic Education to carry out the program required by paragraph (1).

"(b) PROGRAM CONTENT.—The education program authorized by this section shall provide—

"(1) a course of instruction on the basic principles of our constitutional democracy and the history of the Constitution and Bill of Rights;

"(2) school and community simulated congressional hearings following the course of study at the request of participating schools; and

"(3) an annual competition of simulated congressional hearings at the congressional district, State, and national levels for secondary students who wish to participate in such program.

"(c) PROGRAM PARTICIPANTS.—The education program authorized by this section shall be made available to public and private elementary schools in the 435 congressional districts, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

"(d) SPECIAL RULE.—Funds provided under this section may be used for the advanced training of teachers about the Constitution and Bill of Rights after the provisions of subsection (b) have been implemented.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for the fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the provisions of this section.".

TITLE IV—EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS

SEC. 401. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

Part C of the Adult Education Act (20 U.S.C. 1211 et seq.) is amended by inserting at the end thereof the following new section:

"SEC. 373. EDUCATION PROGRAMS FOR COMMERCIAL DRIVERS.

"(a) PROGRAM AUTHORIZED.—The Secretary is authorized to make grants on a competitive basis to pay the Federal share of the costs of establishing and operating adult education programs which increase the literacy skills of eligible commercial drivers so that such drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

"(b) FEDERAL SHARE.—The Federal share of the costs of adult education programs authorized under subsection (a) shall be 50 percent. Nothing in this subsection shall be construed to require States to meet the non-Federal share from State funds.

"(c) ELIGIBLE ENTITIES.—Entities eligible to receive a grant under this section include—

"(1) private employers employing commercial drivers in partnership with agencies, colleges, or universities described in paragraph (2);

"(2) local educational agencies, State educational agencies, colleges, universities, or community colleges;

"(3) approved apprentice training programs; and

"(4) labor organizations, the memberships of which include commercial drivers.

"(d) REFERRAL PROGRAM.—Grantees shall refer individuals who are identified as having literacy skill problems to appropriate adult education programs as authorized under this Act.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'approved apprentice training programs' has the meaning given such term in the National Apprenticeship Act of 1937.

"(2) The term 'eligible commercial driver' means a driver licensed prior to the requirements of the Commercial Motor Vehicle Safety Act of 1986.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for each of fiscal years 1991, 1992, and 1993 to carry out the provisions of this section.".

AMENDMENT NO. 70.

Mr. LEAHY. Mr. President, I send a technical amendment on behalf of Senators PELL and KASSEBAUM to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for Mr. PELL (for himself and Mrs. KASSEBAUM), proposes an amendment numbered 70:

Beginning on page 29, line 14 strike title IV, and all that follows through and including page 31, line 13.

The PRESIDING OFFICER. The question is an agreeing to the amendment.

The amendment (No. 70) was agreed to.

Mr. DURENBERGER. Mr. President, I would like to ask my good friend from Massachusetts for a clarification both on the makeup of the Commission under title I of this act and on the information gathered by this Commission. It is my understanding that membership on the Commission is not intended to be restrictive to education groups only, and that in order to receive the comprehensive input that is envisioned under this study that membership on the Commission include noneducational entities with an interest in lengthening the school year. Is that correct?

Mr. KENNEDY. Yes, that is correct.

Mr. DURENBERGER. It is also my understanding that the language in the act outlining information gathered at public hearing was purposefully left broad enough to allow a variety of interests input into the process, including agricultural groups and other business and recreational groups that may have an interest in the length of the school year, but not necessarily a direct interest in education.

Mr. KENNEDY. The Senator from Minnesota is correct, the committee's intent was to conduct a comprehensive study of the issue surrounding the length of the school year.

Mr. DURENBERGER. I thank the Senator from Massachusetts for this clarification.

Mr. COCHRAN. Mr. President, I am pleased to support S. 64, a bill to study extending the school year, authorize funding for the national writing project, authorize funding for classroom instruction on the Constitution of the United States, and authorize funding for programs to improve literacy skills for commercial truck drivers.

Each title of this bill is important and for a modest funding level will offer Federal support to improve the quality of education in the Nation's classrooms.

I am particularly pleased that the legislation includes a bill introduced earlier this year as S. 264, to support the national writing project. The bill garnered 40 Senate sponsors in the 101st Congress and has similar bipartisan support in the 102d. Identical legislation passed the other body during the 101st Congress unanimously and currently has over 100 cosponsors. In addition, the Appropriations Committees of both Houses agreed to a $2 million appropriation for the program in fiscal year 1991, pending enactment of authorizing legislation.

The United States faces a crisis in writing both in our schools and in the workplace. The "Writing Report Card," the Nation's assessment of student writing ability, conducted by the U.S. Department of Education, recently reported that fewer than 25 percent of our high school juniors can write an adequate letter. Universities and colleges across the country report increasing numbers of entering freshmen who are unable to meet the writing demands of college work. Lack of writing skill also contributes to the unfavorable comparisons of American students with those in other countries in many academic subjects. In testimony before the Senate Labor and Human Resources Committee, business leaders expressed serious concern about the basic skills of entry level workers. They indicated that the lack of writing ability is a key element of our Nation's illiteracy problem.

S. 64 authorizes $10 million in Federal support for the national writing project, which currently provides training to teachers to enhance the teaching of writing at 143 sites in 44 States, most of which are associated with universities. Last year, 87,000 teachers voluntarily sought training in one of the national writing project intensive summer and school-year workshops.

The national writing project is a teachers-teaching-teachers program which identifies and promotes productive techniques used in the classrooms of our best teachers. It is a positive program celebrating good teaching practice, one which through its work with schools, increases the Nation's corps of successful classroom teachers. When the project was funded for an unprecedented 10th year by the National Endowment for the Humanities, a spokesman said:

I have no hesitation in saying that the national writing project has been by far the most effective and cost-effective project in the history of the endowment's support for elementary and secondary education programs.

In Mississippi, national writing project sites have contributed greatly to the remarkable improvement in the quality of teaching. Program participants include not only English teachers but also teachers of history, geography, math, reading, science, and elementary schools. The result has been a measurable improvement in student performance and a rekindling of teachers' enthusiasm, confidence, and morale.

Over the past 17 years, the national writing project has received numerous national awards and has been generously funded by private foundations such as the Carnegie and Mellon Foundations, as well as State and local agencies. However, program needs have far exceeded the funding potential of these organizations. Each year more and more teachers seek training from one of the existing sites. In light of the need for approximately 250 regional sites to establish a network to serve all the Nation's teachers, it is discouraging to note that 13 sites in 8 States have become inactive within the past year due to inadequate funding.

S. 64 authorizes the funding of 50 percent of the cost of existing sites and 50 percent of the cost of establishing new sites, with a maximum of $40,000 per site on a dollar-for-dollar matching basis. It would fund matching grants to teachers to conduct research on effective classroom practices and to the national writing project to disseminate information on effective teaching of writing. The Office of Educational Research and Information in the U.S. Department of Education would receive $500,000 to conduct research on the teaching of writing and on methods to use as a learning tool to improve the quality of education.

In light of the widespread problems described in the "Writing Report Card," this legislation could not be more timely. As Union Carbide warned in its report "Undereducated, Undercompetitive USA":

Without improvements, we have, at best, an undereducated population which keeps this Nation from reaching its highest economic potential.

Since the ability to put thoughts into words is fundamental to learning, it is unfortunate that many teachers are not prepared to teach writing as part of basic education and consequently fail to concentrate on their students' writing abilities. By improving writing instruction as part of a basic education, I believe this legislation will provide a very high return for a modest investment and will take us further toward our goal of improving the quality of education in our Nation.

I thank other Senators for joining in support of this legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 64) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 64

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

SECTION 1. TABLE OF CONTENTS.

The table of contents is as follows:

TITLE I—NATIONAL COMMISSION ON A LONGER SCHOOL YEAR

SEC. 101. SHORT TITLE.

This title may be cited as the "National Commission on a Longer School Year Act".

SEC. 102. NATIONAL COMMISSION ON A LONGER SCHOOL YEAR ACT.

(a) ESTABLISHMENT.—There is hereby established a National Commission on a Longer School Year Act (hereafter in this title referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall consist of nine members, of whom—

(A) three members shall be appointed by the President from among the Secretaries of the executive departments as set forth in section 101 of title 5, United States Code;

(B) three members shall be appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives; and

(C) three members shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader and Minority Leader of the Senate.

(2) REQUIREMENTS.—

(A) Members of the Commission shall be appointed on the basis of exceptional education, training, or experience from—

(i) individuals who are representatives of nonprofit organizations or foundations committed to the improvement of American education;

(ii) individuals who are engaged in the professions of teaching;

(iii) individuals engaged in school administration, members of school boards, parents or representatives of parents or parent organizations;

(iv) individuals who are State officials directly responsible for education; and

(v) individuals representing organizations with an interest in lengthening the academic year or lengthening the school day.

(B) The first nine members of the Commission shall be appointed no later than 60 days after the date of enactment of this Act.

(3) VACANCIES.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(4) TERMS.—Members of the Commission shall be appointed to serve for the life of the Commission.

(5) COMPENSATION.—Each member of the Commission shall serve without compensation, but shall be allowed travel expenses including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, when engaged in the performance of Commission duties.

(6) ACTIVITY OF COMMISSION.—The Commission may begin to carry out its duties under this subsection when at least 5 members of the Commission have been appointed.

(c) FUNCTIONS OF THE COMMISSION.—

(1) STUDY.—The Commission shall study and make recommendations regarding the advisability of lengthening the school day to a predetermined minimum number of hours and lengthening the academic year in all United States public elementary and secondary schools. Such recommendations shall include—

(A) a comparative analysis of the length of academic days and academic years in schools throughout the United States and in schools of other nations;

(B) a recommendation of the appropriate number of hours per day and days per year of instruction for United States public elementary and secondary schools;

(C) an examination as to whether an increase in the length of school days and school years should be accompanied by an appropriate increase in teacher compensation;

(D) a model plan for adopting a longer academic day and academic year in all United States public elementary and secondary schools by the end of this decade, including recommendations regarding mechanisms to assist States, school districts, schools, and parents in transitioning from current academic day and year to an academic day and year of a longer duration;

(E) suggestions for such changes in laws and regulations as may be required to facilitate States, school districts, and schools in adopting longer academic days and years;

(F) an analysis and estimate of the additional costs, including the cost of increased teacher compensation, to States and local school districts if longer academic days and years are adopted; and

(G) a plan to assist States and local districts in meeting all such additional costs.

(2) REPORT.—The Commission shall submit a final report and plan pursuant to subsection (d).

(d) COMMISSION REPORT.—

(1) REQUIREMENT.—Not later than September 1, 1991, or one year after the Commission concludes its first meeting of members, whichever is longer, the Commission shall submit a report to the President and the Congress on the study and recommendations required pursuant to the provisions of this subsection.

(2) CONSIDERATIONS.—The report described in paragraph (1) shall consider current educational policies and practices regarding the length of the school year and school day throughout the United States and the world.

(e) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission may, for the purpose of carrying out this subsection, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) TESTIMONY; PUBLIC HEARINGS.—In carrying out this subsection, the Commission shall receive testimony and conduct public hearings in different geographic areas of the country, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public regarding the advisability of lengthened academic day and year.

(3) INFORMATION.—The Commission may secure directly from any Federal agency such information as may be necessary to enable the Commission to carry out this subsection. Upon request of the Chairman of the Commission, the head of the agency shall furnish such information to the Commission.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

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

(6) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission on a reimbursable basis such administrative and support services as the Commission may request.

(f) ADMINISTRATIVE PROVISIONS.—

(1) MEETINGS.—The Commission shall meet on a regular basis, as necessary, at the call of the Chairman or a majority of its members.

(2) QUORUM.—A majority of the appointed members of the Commission shall constitute a quorum for the transaction of business.

(3) CHAIRMAN AND VICE CHAIRMAN.—

(A) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission for the life of the Commission.

(B) The Chairman of the Commission, in consultation with the Vice Chairman, shall appoint and fix the compensation of a staff administrator and such support personnel as may be reasonable and necessary to enable the Commission to carry out its functions without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates.

(4) OTHER FEDERAL PERSONNEL.—Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any personnel of such agency to the Commission to assist the Commission in carrying out its duties under the subsection. Such detail shall be without interruption or loss of civil service status or privilege.

(g) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after submitting the final report required by subsection (d).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for fiscal year 1991 and such sums as may be necessary in each of the fiscal years 1992 through 1994 to carry out the provisions of this title.

TITLE II—NATIONAL WRITING PROJECT

SEC. 201. FINDINGS.

The Congress finds that—

(1) the United States faces a crisis in writing in schools and in the workplace;

(2) only 25 percent of 11th grade students have adequate analytical writing skills;

(3) over the past two decades, universities and colleges across the country have reported increasing numbers of entering freshmen who are unable to write at a level equal to the demands of college work;

(4) American businesses and corporations are concerned about the limited writing skills of entry-level workers, and a growing number of executives are reporting that advancement was denied to them due to inadequate writing abilities;

(5) the writing problem has been magnified by the rapidly changing student populations in the Nation's schools and the growing number of students who are at risk because of limited English proficiency;

(6) most teachers in the United States elementary schools, secondary schools, and colleges, have not been trained to teach writing;

(7) since 1973, the only national program to address the writing problem in the Nation's schools has been the National Writing Project, a network of collaborative university-school programs whose goal is to improve the quality of student writing and the teaching of writing at all grade levels and to extend the uses of writing as a learning process through all disciplines;

(8) the National Writing Project offers summer and school year inservice teacher training programs and a dissemination network to inform and teach teachers of developments in the field of writing;

(9) the National Writing Project is a nationally recognized and honored nonprofit organization that recognizes that there are teachers in every region of the country who have developed successful methods for teaching writing and that such teachers can be trained and encouraged to train other teachers;

(10) the National Writing Project has become a model for programs in other academic fields;

(11) the National Writing Project teacher-teaching-teachers program identifies and promotes what is working in the classrooms of the Nation's best teachers;

(12) the National Writing Project teacher-teaching-teachers project is a positive program that celebrates good teaching practices and good teachers and through its work with schools increases the Nation's corps of successful classroom teachers;

(13) evaluations of the National Writing Project document the positive impact the project has had on improving the teaching of writing, student performance, and student thinking and learning ability;

(14) the National Writing Project programs offer career-long education to teachers, and teachers participating in the National Writing Project receive graduate academic credit;

(15) each year approximately 85,000 teachers voluntarily seek training through word of mouth endorsements from other teachers in National Writing Project intensive summer workshops and school-year inservice programs through one of the 141 regional sites located in 43 States, and in 4 sites that serve United States teachers teaching overseas;

(16) 250 National Writing Project sites are needed to establish regional sites to serve all teachers;

(17) 13 National Writing Project sites in 8 different States have been discontinued in 1988 due to lack of funding; and

(18) private foundation resources, although generous in the past, are inadequate to fund all of the National Writing Project sites needed and the future of the program is in jeopardy without secure financial support.

SEC. 202. NATIONAL WRITING PROJECT.

(a) AUTHORIZATION.—The Secretary is authorized to make a grant to the National Writing Project (hereafter in this section referred to as the "grantee"), a nonprofit educational organization which has as its primary purpose the improvement of the quality of student writing and learning, and the teaching of writing as a learning process in the Nation's classrooms—

(1) to support and promote the establishment of teacher training programs, including the dissemination of effective practices and research findings regarding the teaching of writing and administrative activities;

(2) to support classroom research on effective teaching practice and to document student performance; and

(3) to pay the Federal share of the cost of such programs.

(b) REQUIREMENTS OF GRANT.—The grant shall provide that—

(1) the grantee will enter into contracts with institutions of higher education or other nonprofit educational providers (hereafter in this section referred to as "contractors") under which the contractors will agree to establish, operate, and provide the non-Federal share of the cost of teacher training programs in effective approaches and processes for the teaching of writing;

(2) funds made available by the Secretary to the grantee pursuant to any contract entered into under this section will be used to pay the Federal share of the cost of establishing and operating teacher training programs as provided in paragraph (1); and

(3) the grantee will meet such other conditions and standards as the Secretary determines to be necessary to assure compliance with the provisions of this section and will provide such technical assistance as may be necessary to carry out the provisions of this section.

(c) TEACHER TRAINING PROGRAMS.—The teacher training programs authorized in subsection (a) shall—

(1) be conducted during the school year and during the summer months;

(2) train teachers who teach grades kindergarten through college;

(3) select teachers to become members of a National Writing Project teacher network whose members will conduct writing workshops for other teachers in the area served by each National Writing Project site; and

(4) encourage teachers from all disciplines to participate in such teacher training programs.

(d) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2) or (3) and for purposes of subsection (a), the term "Federal share" means, with respect to the costs of teacher training programs authorized in subsection (a), 50 percent of such costs to the contractor.

(2) WAIVER.—The Secretary may waive the provisions of paragraph (1) on a case-by-case basis if the National Advisory Board described in subsection (f) determines, on the basis of financial need, that such waiver is necessary.

(3) MAXIMUM.—The Federal share of the costs of teacher training programs conducted pursuant to subsection (a) may not exceed $40,000 for any one contractor, or $200,000 for a statewide program administered by any one contractor in at least 5 sites throughout the State.

(4) SPECIAL RULE.—For the purposes of paragraph (1), the costs of teacher programs do not include the administrative costs, publication cost, or the cost of providing technical assistance to the grantee.

(e) CLASSROOM TEACHER GRANTS.—

(1) IN GENERAL.—The National Writing Project may reserve an amount not to exceed 5 percent of the amount appropriated pursuant to the authority of this section to make grants, on a competitive basis, to elementary and secondary school teachers to enable such teachers to—

(A) conduct classroom research;

(B) publish models of student writing;

(C) conduct research regarding effective practices to improve the teaching of writing; and

(D) conduct other activities to improve the teaching and uses of writing.

(2) SUPPLEMENT AND NOT SUPPLANT.—Grants awarded pursuant to paragraph (1) shall be used to supplement and not supplant State and local funds available for the purposes set forth in paragraph (1).

(3) MAXIMUM GRANT AMOUNT.—Each grant awarded pursuant to this subsection shall not exceed $2,000.

(f) NATIONAL ADVISORY BOARD.—

(1) ESTABLISHMENT.—The National Writing Project shall establish and operate a National Advisory Board.

(2) COMPOSITION.—The National Advisory Board established pursuant to subsection (a) shall consist of—

(A) national educational leaders;

(B) leaders in the field of writing; and

(C) such other individuals as the National Writing Project deems necessary.

(3) DUTIES.—The National Advisory Board established pursuant to subsection (a) shall—

(A) advise the National Writing Project on national issues related to student writing and the teaching of writing;

(B) review the activities and programs of the National Writing Project; and

(C) support the continued development of the National Writing Project.

(g) EVALUATION.—The National Writing Project may reserve up to $100,000 from the amount authorized to be appropriated pursuant to the authority of this section to evaluate the teacher training programs conducted pursuant to this Act. The results of such evaluation shall be made available to the appropriate committees of the Congress.

(h) RESEARCH AND DEVELOPMENT ACTIVITIES.—

(1) GRANTS AUTHORIZED.—From amounts available to carry out the provisions of this subsection, the Secretary, through the Office of Educational Research and Improvement, shall make grants to individuals and institutions of higher education to conduct research activities involving the teaching of writing.

(2) PRIORITY.—(A) In awarding grants pursuant to paragraph (1), the Secretary shall give priority to junior researchers.

(B) The Secretary shall award not less than 25 percent of the funds received pursuant to subsection (i)(2) to junior researchers.

(C) The Secretary shall make available to the National Writing Project and other national information dissemination networks the findings of the research conducted pursuant to the authority of paragraph (1).

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for the grant to the National Writing Project, $10,000,000 for fiscal year 1991 to carry out the provisions of this section.

(2) RESEARCH AND DEVELOPMENT.—There are authorized to be appropriated $500,000 for fiscal year 1991 to carry out the provisions of subsection (h).

(j) DEFINITION.—As used in this Act—

(1) the term "institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965;

(2) the term "junior researcher" means a researcher at the assistant professor rank or the equivalent who has not previously received a Federal research grant; and

(3) the term "Secretary" means the Secretary of Education.

TITLE III—MISCELLANEOUS

SEC. 301. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

Part F of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3151 et seq.) is amended—

(1) by redesignating section 4608 (as added by Public Law 100-297) as section 4610; and

(2) by inserting before section 4610 (as redesignated by paragraph (1) of this section) the following:

"SEC. 4609. INSTRUCTION ON THE HISTORY AND PRINCIPLES OF DEMOCRACY IN THE UNITED STATES.

"(a) GENERAL AUTHORITY.—

"(1) PROGRAM ESTABLISHED.—The Secretary shall carry out a program to educate students about the history and principles of the Constitution of the United States, including the Bill of Rights, and to foster civic competence and civil responsibility. Such program shall be known as 'We the People . . . The Citizen and the Constitution'.

"(2) EDUCATIONAL ACTIVITIES.—The program required by paragraph (1) shall continue and expand the educational activities of the National Bicentennial Competition of the Constitution and Bill of Rights administered by the Center for Civic Education.

"(3) CONTRACT AUTHORIZED.—The Secretary is authorized to enter into a contract with the Center for Civic Education to carry out the program required by paragraph (1).

"(b) PROGRAM CONTENT.—The education program authorized by this section shall provide—

"(1) a course of instruction on the basic principles of our constitutional democracy and the history of the Constitution and Bill of Rights;

"(2) school and community simulated congressional hearings following the course of study at the request of participating schools; and

"(3) an annual competition of simulated congressional hearings at the congressional district, State, and national levels for secondary students who wish to participate in such program.

"(c) PROGRAM PARTICIPANTS.—The education program authorized by this section shall be made available to public and private elementary schools in the 435 congressional districts, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

"(d) SPECIAL RULE.—Funds provided under this section may be used for the advanced training of teachers about the Constitution and Bill of Rights after the provisions of subsection (b) have been implemented.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for the fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993 to carry out the provisions of this section.".

Mr. LEAHY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

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

STRENGTHENING EDUCATION FOR AMERICAN FAMILIES

Mr. MITCHELL. Mr. President, earlier today, the Senate Labor and Human Resources Committee approved S. 2, the Strengthening Education for American Families Act.

As I said in January, this legislation is the guideline for our education agenda. It is not the full agenda, but it sets the path that we will follow during the remainder of the 102d Congress.

S. 2 can be broken down into four simple components.

The bill enhances economic growth, which is particularly important now for so many areas that are facing economic hardship. The bill improves accountability for programs already in place. It expands important efforts we know are effective, and it raises student performance by providing parents, teachers, and principals with the flexibility necessary to better target local needs.

In effect, S. 2 restores common sense to education.

We have established in legislation eight national education goals. These goals are designed to ensure excellence by the year 2000.

But goals alone cannot be the answer. We need accountability. We need to measure performance. Parents need to know if their children are learning.

That is why we disagree with the President's approach to measuring student performance.

The President has created a joint council with the Governors to measure student achievement. The intent of this council is meritorious. The intent is to measure student achievement against national education goals. But intent is not the question at hand.

The question that I have, and that many in Congress share, is whether a council designed to be objective and free of political pressure in measuring student performance can be objective, when several of the voting members on the council work in the White House.

I do not know the answer to that question. But I do not want to wait to find out. I do not think Americans want to wait to find out.

For that reason, S. 2 includes a truly independent National Council on Educational Goals. This council will have no White House representation. It will have no Members of Congress as official or ex officio members.

This council will be comprised of a bipartisan group of Governors, and others, who have experience working with education issues—either in States and local school districts or in higher education.

If our students are to reach the goals by the year 2000, there is no question that we need an objective council to measure our Nation's progress.

True accountability begins with measuring where we are and measuring our progress as it is achieved.

Another critical component to S. 2 is designed to ensure that today's adults, as well as tomorrow's adults, are ready for the work force of the future.

We simply cannot enhance economic growth when between 23 and 27 million Americans are functionally illiterate. We cannot afford to leave these Americans behind as we move toward an ever more technological economy.

S. 2 includes an interagency task force to coordinate literacy programs throughout the Federal Government. State literacy resource centers will provide training, technical assistance, and coordination among available programs as well.

Coordination is another form of accountability. Again, we seek to make sure that existing efforts work.

Through workplace literacy partnerships and work force literacy assistance to small- and medium-sized businesses, we hope to expand our partnership effort with the business community to improve productivity on the job.

As critical as literacy efforts are for adults, even less fortunate is the fact that too many of our high school seniors graduate with poor reading skills. Too many graduate with poor math and science skills. Far too many do not graduate at all.

American education is in need of a revolution. To really spur effective teaching methods and raise student achievement, we need to provide communities with flexibility to design and implement their own targeted strategies.

That is why S. 2 fosters local vision. Through school-based management, Democrats are inviting parents, teachers, and principals to design their own plan to raise student performance levels. Only through this type of flexibility will innovative techniques be created to target local problems.

Local problems cannot be micromanaged from Washington. S. 2 provides the flexibility necessary to enhance local innovation.

To further local efforts in areas with large numbers of economically disadvantaged students, S. 2 includes a Model Schools of Excellence Program.

Model schools will be designed by local school districts working together or working with an area university or community organization or State educational agency to improve the quality of education offered, to ensure that students have a place to which they want to go, not a place to which they have to go.

We recognize that not all students learn at the same pace. And, not all students learn in the same manner. For some, learning by the chalk and blackboard method is not enough. For this reason, S. 2 includes Classrooms for the Future.

This program will enable local schools to develop curricula that combines classroom teaching methods with interactive technology.

Some students may learn concepts from a computer, working at their own pace or working with groups of other students, that they otherwise may not grasp in a large classroom from a blackboard. Democrats invite parents, teachers, principals, and school administrators to think about classes in nontraditional ways.

S. 2 also increases funding for the effective Star Schools Program to assist more communities in linking up for learning. While it may not be possible to have topnotch teachers in all subjects in every school, while that is certainly our goal, the satellite technology under Star Schools can give all students access to expert instruction regardless of where students live.

High technology is not only for businesses. It is for schools as well.

Another way in which we hope to foster local vision is by increasing funds for the Eisenhower Math and Science Program. Math and science education are critically important today and we cannot afford to let our students' abilities in these areas slip further.

Rounding up our efforts to reach the national education goals is an extension of the Dropout Demonstration Assistance Program.

S. 2, as approved by the Labor Committee today, is truly a commonsense plan. We set goals. We create a council to measure progress on the goals. We improve accountability. We provide flexibility. And, we invite the real experts, those parents, teachers, principals, and school administrators who work with students on a daily basis, to design their own plans of excellence.

As I said in January, S. 2 is our blueprint for education. For each of the national education goals, we will work on legislation during this Congress. Many of the goals are addressed in S. 2, but others will be addressed later this year and next year.

We will increase funding for Head Start. A quality education begins with preschool and we need to increase our efforts in early childhood development.

We will pass legislation addressing the recruitment and retention of teachers. We simply must make sure that we have enough teachers and that those teachers are qualified to teach the subjects for which they were hired.

We will pass legislation to reauthorize the Higher Education Act. As I've said many times, no student who studies hard should be precluded from higher education because of cost alone.

The ideas presented in S. 2 are revolutionary. We are not proposing changes at the margins. We are proposing changes that will change the way education is delivered. We are looking at tomorrow and we are asking communities to join with us in meeting that challenge.

As John F. Kennedy said in 1961, "Our progress as a nation can be no swifter than our progress in education."

Mr. MITCHELL. Mr. President, with each day, the United States and other nations expand their efforts to provide relief to Kurdish, Shi'ia, and other Iraqi civilians fleeing Saddam Hussein's retribution.

We can only hope and pray that this massive humanitarian relief effort will not be too late to prevent widespread death and disease. The Iraqi people, having already suffered greatly at the hands of the Iraqi military, certainly deserve to find safe haven at the border.

It is unfortunate that the United States, as General Scowcroft recently said, had not anticipated the extent of the refugee crisis. It is perhaps impossible to have predicted the scale of the uprising against Saddam Hussein, or the indiscriminate brutality to which all Iraqis subsequently would be subjected.

Still, our response has been painfully slow in the context of the enormous need. The United States and its coalition partners have a compelling responsibility to help alleviate the human suffering that has followed our success in forcing Iraqi troops from Kuwait.

I, therefore, am pleased that the President has recognized this responsibility by proposing an expanded United States role in assisting Iraqi refugees. This will involve significant numbers of American troops in the setting up of secure camps and facilitating food delivery to those in need.

While the administration has funds at its disposal to use in such an emergency, I am confident that the Congress will fully support requests for additional assistance to make American participation as effective as possible.

It is fortunate that the administration has reversed its opposition to such a direct and significant American role in the humanitarian relief effort.

The horrendous plight of over 1 million refugees along the Iraqi border affords no one, and certainly not the United States, the luxury of remaining uninvolved. I hope that the President's statement reflects an American commitment to doing all it can to end the suffering.

I believe there is another step the United States should take. It is a simple and straightforward action. The President should clearly state the United States Government's support for democracy in Iraq.

It is regrettable that there appears to be confusion on this point. But last week I met with leaders of various Iraqi opposition groups. They all asked that the United States express its support for democracy in their country.

Each of these Shi'ia and Kurdish leaders said he felt that democracy represented the best guarantee of the peoples' rights in the long run.

They did not request American military intervention on behalf of their efforts to depose Saddam Hussein. But they do not seek the removal of one brutal military regime only to have it replaced by another military regime.

This is why they all agreed that the most important thing the United States can do to promote their struggle against Saddam Hussein is simply to support democracy in Iraq.

Just last Thursday, the Senate, in Senate Resolution 99, unanimously called for a United States policy "in support of democracy and respect for human rights and international law in Iraq."

The Senate shares the Iraqi opposition's desire that United States support for a democratic Iraq be clearly articulated.

This is not inconsistent with maintaining Iraq's territorial integrity. Indeed, a representative government might best ensure the survival of the Iraqi State.

Yet United States support for Iraq's territorial integrity should not be misconstrued as a preference for just another dictator in Baghdad.

The Iraqi opposition leaders I met with only asked for an unequivocal statement of American support for a democratic Iraq.

I hope that President Bush will join the Senate in clearly stating that the United States supports democracy in Iraq.

Mr. President, I yield the floor, and 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. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. CONRAD). Without objection, it is so ordered.

RAILWAY LABOR DISPUTE SETTLEMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 222, a resolution regarding the ongoing rail strike; that the joint resolution be deemed to have been read three times, passed, the preamble be agreed to; and that the motion to reconsider be laid upon the table; that Senator GRAHAM of Florida be authorized to sign the enrolled joint resolution; and that the House be immediately notified of the Senate's action.

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

So the joint resolution (H.J. Res. 222) was deemed passed.

Mr. KENNEDY. Mr. President, the reason for following this particular procedure is that it is the understanding of the majority and minority leaders that this expedites the engrossment of the legislation and expedites the matter going to the President, who anticipates signing the measure this evening.

It is important for the RECORD that we understand why we are following that particular procedure.

Mr. President, first of all, I want to express my appreciation to my colleague, Senator HATCH, for all of his help and assistance in moving this measure to the time this evening where we are able to take this action. We have seen over the period of the past days a remarkable coming together of not only the membership of our committee in the Senate, but also the full membership of the Senate and the House of Representatives with Secretary Skinner, who has been a very constructive and positive force, as well as the President.

I think all of us understand the significance of a national strike and all of us understand the importance of meeting our responsibilities in a timely way. I think this is really an example of the institution at its finest in responding to a matter of emergency.

I am grateful to my colleague, Senator HATCH, for all of his constructive suggestions and his cooperation in working together with me and with the majority leader.

Second, I want to thank Senator MITCHELL in particular for his constancy in ensuring that we were going to be able to move expeditiously. Over the period of the last several days, he has taken an enormous amount of his own time in familiarizing both himself and the interested Members of the Senate with the particular details of the legislation that was being considered and also indicating his strong support for the measure. This, I think, has been indispensable in bringing us to the point of where we are this evening.

I am grateful as well for all the cooperation that we have had from Speaker FOLEY and from the chairmen of the Commerce and Labor Committees, and, I believe, even the Environmental Committee in the House of Representatives, but primarily Chairman DINGELL for all of his work. He is a knowledgeable individual on this issue.

Over the period of the last 29 years, we have had, I believe, 10 or 11 different occasions where we have had to take action with regard to a strike in the railroad industry. None have involved disputes over issues as extensive as the range of issues that are involved in this strike—disputes over working conditions, wages, health care issues. These complex issues involve 98 carriers, 11 unions, and some 200,000 employees in the railroad industry.

This has been an enormously important question for the country, and I think all of us should be satisfied that we are able to meet our responsibilities in a relatively short period of time.

Mr. President, I will speak very briefly, but I would like to just give a summation as to what is incorporated in the legislation. First, let me thank my colleague, Senator METZENBAUM, who has been involved in all of the details of resolving this issue.

Senator METZENBAUM is the chairman of the Labor Subcommittee of our Labor and Human Resources Committee and has a great deal of understanding and knowledge in the area of labor-management relations, and he has been invaluable in helping to move this process along.

I would also like to thank the members of the staff who have been absolutely magnificent in helping us this evening. They have done really yeoman work around the clock for a period of days. I know Senator HATCH feels as I do in regard to the work that has been done by Sarah Fox of my staff. We are all enormously obligated to staff on both sides of the aisle for really an outstanding job.

Mr. President, I am pleased to say that a satisfactory bipartisan compromise has been reached on legislation to end the railroad strike and resolve the remaining issues in the dispute. Legislation implementing the compromise will be fashioned this evening by unanimous consent without the need for a rollcall vote by the Senate once the House of Representatives has acted.

The essence of the compromise is that the remaining issues in the dispute will be resolved by a follow-on special board to be promptly appointed by the President. The Special Board will consist of three members under an informal understanding that was reached between Congress, the administration, and the parties. And that is the heart of the present compromise.

It is expected that one of the members of the Board will be a member of the former Presidential Emergency Board. He will therefore have extensive experience with the many complex issues in this controversy. The other two members of the Special Board will not be members of the former Board and will therefore bring a fresh look to these challenging issues.

Within 5 days after the new Board is appointed, any party may ask it to clarify ambiguities in the recommendations of the former Board. Within 15 days after the Board is appointed, it must issue an interim report responding to these requests by the parties. Within 10 days after that report, any party may ask the Board to modify any specific recommendation made by the previous Board on which parties are still in disagreement. Issues that were not part of specific recommendations by the previous Board will not be considered by the new Board.

In another important part of the compromise the new Board is required to give a presumption of validity to the recommendations of the old Board. Any party requesting a modification of those recommendations will have the burden of persuasion and must show that the old recommendation was demonstrably inequitable or based on a material error or material misunderstanding. After 30 more days the new Board must issue its final report, and 10 days later the report will become binding on the parties with the force of law. Additional procedures are included to enable the parties to obtain any necessary clarification from the Board and the determinations in its finality report. Finally, the parties are entitled through mutual written agreements to reach whatever settlement they wish, notwithstanding the Board's report.

Again, I want to commend the Members of the Congress, including the Senate and House leadership, for all of their skillful cooperation. I also commend the many staff members on both sides of the aisle who facilitated our efforts to reach this compromise. I also commend Secretary Skinner and other members of the Bush administration who have been a central part of this bipartisan effort.

We have all worked closely together to expedite this satisfactory resolution of this long dispute without a long divisive strike and with a minimum of disruption for the Nation, for business, and for the traveling public. This accord is good for labor, good for business, good for the economy, and good for the Nation, and I look forward to its implementation.

Mr. HATCH. Mr. President, I appreciate the comments of my colleague, and I appreciate the efforts and the work he has expended in helping to bring this to pass. We have been working day and night on this for almost a week and, frankly, for a long time before that in other ways.

I have to say that this is a reasonable and good, effective resolution of what could have been a disastrous problem to this country. The railway industry handles better than a third of all the tonnage shipped in this country and a lot of businesses depend upon it, a lot of workers depend upon it, more than 200,000 workers and, frankly, these problems just had to be solved. Everybody felt that the Presidential Emergency Board recommendations might have solved these problems but there were some loose ends that had to be gathered up.

Mr. President, I am pleased that we have been able to act on this legislation so promptly.

As my colleagues and all of our constituents know, it is in our Nation's best interest to settle this rail strike as quickly as possible. Our economy depends on the regular transportation of goods by rail.

President Bush has urged expeditious action to restore this essential service.

At the outset, I want to commend the President, Secretary Skinner, Senator KENNEDY, Senator METZENBAUM, Senator MITCHELL, Senator DOLE, and Congressmen DINGELL and LENT for their concerted efforts to end this strike.

But, we should also not fail to commend the months and months of work put in by the Presidential Emergency Board, chaired by Robert Harris. There can be no disagreement that this was a mammoth undertaking; it involved the review of thousands of pages of testimony and documents to produce a 100-page report.

Additionally, I want to recognize the service performed so admirably by the members of the National Mediation Board.

The legislative action we are taking today builds on the work of the PEB.

The pre-strike status quo will be restored until the process described below is complete. The timeframe for completion is 65 days from the appointment of the Special Board.

During this period, a Special Board will be appointed by the President which will consist of 3 members. One of the members will be from the Presidential Emergency Board just completed. It is my understanding that this member will be Robert O. Harris.

This special panel will have until the expiration of the cooling off period to perform two functions: First, answer questions of interpretation about the meaning of provisions in the Presidential Emergency Board report; and second, to resolve issues still in disagreement between the parties only where the PEB made specific recommendations. Where the PEB made no specific recommendation, the issue would not be subject to review by the Special Board. For example, the Special Board would not review the line sales issue.

In the latter case, there is presumptive validity to the current PEB provisions. Second, the party seeking the change has the burden of proof that any such recommendation was demonstrably inequitable or involved a material error or material misrepresentation.

There will also be a process for addressing loose ends on the drafting of contracts.

This joint resolution may not be exactly what any of the parties would have preferred. It should be obvious that, in any negotiation, any individual or organization tries to win as much as it can.

But, Mr. President, this resolution is fair. And, most importantly, it takes a strong stand in favor of collective bargaining as the way to develop labor agreements. It does not set up the Congress of the United States as an arbitrator now and forever.

Again, I commend my colleagues for their dedication to resolving this strike and urge immediate passage of this joint resolution by the Senate.

I would like also to acknowledge the hard work of the number of our staff members: Sarah Fox of Senator KENNEDY's staff, who has been a very strong worker on this matter; Jim Brudney, and Al Cacozza of Senator METZENBAUM's staff; Jim McMillan of Senator DOLE's staff; Bob Carolla of Senator MITCHELL's staff; the House Energy and Commerce staff, and officials from the Department of Transportation—all have been very, very important.

Last, but certainly not least, I want to express special thanks to my personal labor counsel, Sharon Prost. She has worked day and night on this. I think she deserves an awful lot of credit for the work she has done along with Sarah Fox and of course all the other staff people.

I want Ken, Matthew, and Jeffrey to know how hard she worked to solve this difficult strike in a fair and effective way.

Mr. President, the Presidential Emergency Board, on page 78 of the report, states that "it is clear that the retroactive payment which will be recommended as well as the general wage increases proposed, may be larger than one or two carriers can reasonably afford." Further, the Board cites in this connection "uncertainty and possible loss of jobs that the inability of a railroad to meet its financial obligations would entail."

The Board accordingly recommends that the parties negotiate "to adapt the Board's recommendations to the particular circumstances present in each railroad." That recommendation may make perfect sense in the context of the PEB, which is meant in part to provide a structure for negotiation, for voluntary settlement by the parties.

A particular problem may arise here, however, when we use the recommendation of the PEB in a legislative solution. In the absence of a voluntary agreement on individual adaptation, we could be imposing upon the carrier "impracticable," even ruinous, wage and benefit levels.

Such an outcome could have a particularly harmful impact on my State of Utah, its shippers and rail workers, and on the western part of the country in general. One of the major carriers serving my State and the west has been very actively negotiating with its unions in an attempt to adopt the PEB-recommended wage and payment levels to its circumstances.

It is my understanding, that the legislation we are considering today establishes a binding process under which the Special Board would have authority to adapt the wage and benefit levels to that which the page 78-carrier's operations can sustain—if the Special Board, in accordance with the procedures established in this resolution, were to find that such a modification was in order. Similarly, it is my understanding that if the Special Board so finds, it would have authority to refer the matter of adaptation of these provisions to the carrier's financial circumstances to binding arbitration should the Board believe that such a procedure is appropriate.

I ask my friend from the State of Massachusetts if my understanding is correct.

Mr. KENNEDY. The understanding of my friend from Utah is correct, and I might add that I know this is also an issue of particular concern to our colleague on the Labor and Human Resources Committee, Senator BINGAMAN, who has spoken with me about his concerns.

Under this legislation the Special Board would have authority to adapt the recommended wage and benefit levels to fit the individual circumstances of the carrier, if the Board in accordance with the procedures we have established were to find that the evidence submitted to the Special Board so warrants. Further, as the gentleman states, if the Special Board finds that the appropriate process to accomplish such an adaptation is a separate binding arbitration process, the Board could so provide.

We are also concerned that page 78 of the report not become a loophole used to evade or delay payment of the recommended benefit levels by carriers who do not fit the page-78 description and who have not engaged in the negotiation process contemplated by page 78. The PEB recommended that any carrier seeking relief under page 78 engage in bargaining with its unions to attempt to adapt the recommended wage and benefit levels to its individual circumstances. It is our understanding that only one carrier has attempted to do so. It is our understanding that only one carrier notified its unions of its intent to seek relief under page 78; only one carrier has actively engaged in negotiations to that end; and, only one carrier was identified in the formal communication to the unions on this issue by the National Railway Labor Conference. I ask unanimous consent that a copy of the Railway Conference's letter of April 8, 1991, on this point be printed in the RECORD. It is our view that only one carrier has acted in compliance with the PEB's requirements regarding page 78, and thus only one carrier has preserved its rights under the provision.

Mr. HATCH. I thank my good friend.

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

NATIONAL RAILWAY LABOR CONFERENCE,
Washington, DC, April 8, 1991.

Messrs. R.I. KILROY, V.M. SPEAKMAN, D.C. BUCHANAN, DONALD CARVER, W.G. FAIRCHILD, MAC FLEMING, F.A. HARDIN, R.J. IRVIN, C.W. JONES, E.P. MCENTEE, L.D. MCFATHER, J.L. WALKER.

GENTLEMEN: This is to inform you that the National Railway Labor Conference fully supports the findings and recommendation in Emergency Board Report No. 219 contained on page seventy-eight as follows:

"It is clear that the retroactive payment which will be recommended, as well as the general wage increases proposed, may be larger than one or two carriers can reasonably afford. If that is the case it will be up to the Carrier involved to show the Brotherhoods the particular economic facts on which it relies and which make the Board's recommendations impracticable. The Board anticipates that the Brotherhoods would sympathetically examine the situation and take into account that a delay or even denial of a retroactive wage payment and/or immediate wage increase may be more desirable than the uncertainty and possible loss of jobs that the inability of a railroad to meet its financial obligations would entail. It is up to the parties, in other words, to adapt the Board's recommendations to the particular circumstances present on each railroad."

The conference understands this language to have vitality and meaning. The conference is further aware that the Southern Pacific Lines carriers have made known to you their position that the language quoted is applicable to them. We support the right of a carrier (believing the language quoted to be applicable to it) to follow the procedures suggested by that language and to obtain a remedy(s) consistent with that language and its spirit and intent.

Very truly yours,

C.I. HOPKINS, Jr.

Mr. DOLE. Mr. President, I would like to express my strong agreement with the colloquy of my good friends, the Senators from Utah and Massachusetts, regarding adaptation of the PEB-recommended wage and payment levels to the particular circumstances of a carrier which cannot afford the PEB-recommended levels. I believe this is absolutely vital to the shippers, rail workers and citizens of my State and indeed to the Nation's transportation system as a whole.

It would be a grave error if this Congress were to impose upon any carrier wage and benefit levels that its operations cannot sustain and which could indeed contribute to financial failure. I look forward to the Board's careful examination of this and other matters within the scope of its mandate.

Mr. HATCH. Mr. President, once again this is an effective resolution of what has been a horrendous problem. I think everybody concerned deserves a great deal of credit for it.

Again, I just want to thank my great colleague from Massachusetts for the work he has done, for the efforts he has made, and for the energy that he has expended on this matter. And, frankly, without him, it would not have happened. That is true of a number of other people as well.

Certainly, I want to pay specific tribute this evening to this Senator at 11:30 p.m., and we are anxious to get this down to the President for his signature so that this matter will be ended and we can go about our country's business and, hopefully, get the country back on its feet again.

Mr. KENNEDY. Mr. President, the Senator from Utah has been typically kind and generous in mentioning a number of members of our staff on our side of the aisle who are indispensible.

I, too, want to underline the yeoman service of Sarah Fox of the Labor and Human Resources Committee, who recently joined our committee and has really been enormously valuable and helpful and dedicated, and has done extraordinary work; Jim Brudney and Al Cacozza, of Senator METZENBAUM'S staff, and Bob Carolla of Senator MITCHELL's staff, who were involved in all of the negotiations and have provided invaluable assistance; and Sharon Prost, of Senator HATCH's staff, who has been enormously effective and valuable in helping us to shape this bipartisan legislation, with Jim McMillan of the minority leader's staff.

I would also like to thank Paul Donovan, Lorrie McHugh, Nick Littlefield, Gary Hernberg, Suzanne Butler, and Esther Higginbotham for all their hard work in connection with this issue. I think this is, as I mentioned earlier, a fair and just conclusion.

Mr. METZENBAUM. Mr. President, I rise to support this emergency resolution that creates an orderly, balanced process to resolve the current dispute between railway labor and the national freight carriers. This resolution represents the culmination of long hours of bipartisan negotiation between both Houses of Congress and the administration. I want to applaud the leadership of Senators KENNEDY, HATCH, MITCHELL, and DOLE, along with Chairman DINGELL and Secretary Skinner, who have worked tirelessly to craft the resolution.

This consensus resolution embodies two crucial principles. First, it fulfills our duty to the public to minimize the dramatic economic impact of a national railroad shutdown by ordering the parties back to work immediately. At the same time, it respects the principle of collective bargaining by establishing a process that I believe could result in mutual, voluntary agreements by the parties to this dispute. Everyone agrees that such a result is preferable to Congress precipitously short-circuiting the bargaining process by prematurely imposing a contract.

The resolution provides a new Special Board to help the parties narrow their remaining differences. Both sides should try to settle their differences voluntarily to avoid the uncertain rulings of this new Board. But each party will have the option to be heard by this new Board on the remaining areas of true disagreement. After a period of 65 days from the time this new Board is appointed by the President, if the parties have not reached a voluntary agreement, then and only then, the final determination of this new Board will be imposed on the parties. This imposition will be automatic without need for further action by Congress or the President.

Mr. President, this is a compromise. I would have preferred not to allow any bypass of the collective bargaining process. But given the urgency of this situation, I accept the need to enact this resolution on an expedited basis, I urge my colleagues to support this fair, balanced resolution.

ORDERS FOR TOMORROW

Mr. KENNEDY. Mr. President, I ask, on behalf of the majority leader, unanimous consent that when the Senate completes its business today, it stand in recess until 9:30, Thursday, April 18, that following the prayer, the Journal of proceedings be deemed approved to date; that there then be a period for morning business not to extend beyond 11 a.m., with Senators permitted to speak therein; that the time from 9:30 a.m. to 10 a.m. be under the control of the majority and the minority leaders; and that the time from 10 a.m. to 11 a.m. be under the control of the majority leader or his designee; and that at 11 a.m. the Senate stand in recess until 12 noon.

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

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. KENNEDY. Mr. President, if there be no further business to come before the Senate, and if the acting Republican leader has no further business, I ask unanimous consent the Senate stand in recess, as under the previous order, until 9:30 a.m., Thursday, April 18.

There being no objection, the Senate, at 11:30 p.m., recessed until Thursday, April 18, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 17, 1991:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

DAPHNE WOOD MURRAY, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 1995, VICE BEVERLY FISHER WHITE, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be general

GEN. CARL E. VUONO, [redacted] U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS CHIEF OF STAFF OF THE ARMY AND REAPPOINTMENT TO THE GRADE OF GENERAL WHILE SERVING IN THAT POSITION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 601 AND 3033:

TO BE CHIEF OF STAFF OF THE ARMY

To be general

GEN. GORDON R. SULLIVAN, [redacted] U.S. ARMY.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS OF THE MARINE CORPS FOR PERMANENT APPOINTMENT TO THE GRADE OF MAJOR UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

ROBERT J. ABBLITT, [redacted]
MICHAEL P. ABRAHAM, [redacted]
KEVIN P. ADAMS, [redacted]
RICHARD C. ADAMS, [redacted]
LEROY R. ALBRIGHT, [redacted]
JOHN J. ALLEN, [redacted]
KATHRYN A. ALLEN, [redacted]
TRAVIS M. ALLEN, [redacted]
GEORGE S. AMLAND, [redacted]
FRANK K. ANDERSON, JR., [redacted]
HOWARD W. ANDERSON, JR., [redacted]
KEITH R. ANDERSON, [redacted]
TERRY N. ANDERSON, [redacted]
BRUCE J. ANICH, [redacted]
MICHAEL S. ARCHER, [redacted]
WALTER H. AUGUSTIN, [redacted]
BRUCE A. AVERITT, [redacted]
RONALD F. BACZKOWSKI, [redacted]
KURT A. BADEN, [redacted]
GREGORY P. BALZER, [redacted]
GEORGE N. BAMBROUGH, JR., [redacted]
JOHN N. BARCLAY, [redacted]
HOWARD F. BARKER, [redacted]
ROBERT H. BARROW, JR., [redacted]
WILLIAM L. BARTELS, II, [redacted]
GREGORY A. BASS, [redacted]
MARK H. BEAN, [redacted]
MARK L. BEBO, [redacted]
DAVID R. BECKER, [redacted]
DAVID M. BELL, [redacted]
WILLIAM S. BENNETT, [redacted]
DAVID W. BERKMAN, [redacted]
RANDALL E. BERNARD, [redacted]
DAVID A. BETHEL, [redacted]
ROBERT R. BICKEL, [redacted]
DEBRA M. BIELY, [redacted]
CHRISTOPHE H. BIGGS, [redacted]
KEITH A. BIRKHOLZ, [redacted]
ELVIS E. BLUMENSTOCK, [redacted]
MICHAEL S. BOHN, [redacted]
EUGENE L. BOLEY, [redacted]
MICHAEL S. BONEM, [redacted]
JOHNNY D. BORJA, [redacted]
VINCENT P. BOUSA, [redacted]
TONI G. BOWERS, [redacted]
GREGORY D. BOYD, [redacted]
FRANK R. BOYNTON, [redacted]
STEPHEN D. BRAAM, [redacted]
KENT W. BRADFORD, [redacted]
SCOTT G. BRADLEY, [redacted]
RONALD R. BRASSARD, [redacted]
MICHAEL J. BRENNAN, [redacted]
STEVEN J. BRENNAN, [redacted]
ROGER C. BRENT, [redacted]
BROOKS R. BREWINGTON, [redacted]
MICHAEL M. BROGAN, [redacted]
MICHAEL F. BROOKER, [redacted]
JEROME W. BROWN, JR., [redacted]
STEPHEN E. BROWN, [redacted]
PHILIP R. BROWNING, [redacted]
JAMES F. BROWNLOWE, [redacted]
JOHN J. BRYANT, [redacted]
PAUL A. BRYGIDER, [redacted]
WILLIAM H. BUCKEY, [redacted]
EDWARD C. BUCKNER, [redacted]
ROBERT C. BURGE, [redacted]
MARK A. BURGER, [redacted]
DONALD M. BURLINGHAM, [redacted]
JOHN R. BURNETTE, [redacted]
JEFFERY L. BUSH, [redacted]
LARRY R. BUYNAK, [redacted]
BARETT R. BYRD, [redacted]
SCOTT R. CAMPBELL, [redacted]
SCOTT T. CAMPBELL, [redacted]
SHAWN E. CARR, [redacted]
STEPHEN D. CHACE, [redacted]
THOMAS M. CHANEY, [redacted]
MICHAEL A. CHENGERI, [redacted]
FRANCIS W. CHESNEY, [redacted]
PHILIP G. CHURCHILL, III, [redacted]
DON D. CLINE, [redacted]
NORMAN R. COBB, [redacted]
DAVID D. COBERT, [redacted]
MARK W. COCHRAN, [redacted]
PATRICK COFFEY, [redacted]
JOSEPH M. COLE, [redacted]
JOHN T. COLLINS, [redacted]
DANIEL J. CONN, [redacted]
KEVIN E. CONYERS, [redacted]
WILLIAM C. COOK, [redacted]
STEPHEN B. COOPERIDER, [redacted]
BRADFORD T. COPPOCK, [redacted]
GREGORY V. CORBETT, [redacted]
BRIAN T. COSTELLO, [redacted]
STEPHEN R. COTE, [redacted]
PETER J. COTSONAS, [redacted]
ROBERT A. COTTERELL, [redacted]
RICHARD E. COYLE, JR., [redacted]
PETER B. COZ, [redacted]
LYLE M. CROSS, [redacted]
CHARLES A. DALLACHIE, [redacted]
DAVID F. DAMBRA, [redacted]
RAYMOND C. DAMM, JR., [redacted]
PAUL J. DAVIDOVICH, [redacted]
KEITH T. DAVIES, [redacted]
CLAUDE H. DAVIS, III, [redacted]
JON M. DAVIS, [redacted]
MICHAEL J. DEAN, [redacted]
RAYMOND F. DEATHERAGE, [redacted]
MICHAEL H. DECKER, [redacted]
JEAN C. DERESCHUK, [redacted]
GILBERT DESROCHES, [redacted]
JOHN P. DIFFLEY, [redacted]
PAUL E. DIMARCO, [redacted]
JOHN K. DODGE, [redacted]
JAMES M. DOLL, [redacted]
JOHN D. DONAHUE, [redacted]
JOSHUA W. DORSEY, I [redacted]
FRANK H. DUCKWORTH, JR., [redacted]
RICHARD D. DUDLEY, [redacted]
JAMES C. DUNCAN, [redacted]
EDWARD T. DUNLAP, [redacted]
MICHAEL G. DUNNAGAN, [redacted]
JOHN J. DUPRAS, [redacted]
WILLIAM O. DWIGGINS, [redacted]
ANDREW P. DWYER, [redacted]
KARL S. ELEBASH, III, [redacted]
MICHAEL B. ELKO, [redacted]
DONALD M. ELLIOTT, [redacted]
JAMES J. EMERSON, [redacted]
ANDREW D. ENGELKE, [redacted]
ANGELA F. EPPS, [redacted]
DAVID W. ESTRIDGE, [redacted]
JOHN E. EVANS, [redacted]
JOHN F. FELTHAM, [redacted]
ROBERT A. FITZGERALD, JR., [redacted]
PAUL D. FLOWER, [redacted]
STEPHEN A. FOGLIO, [redacted]
JOHN D. FOLDBERG, [redacted]
GARY F. FORJAN, [redacted]
ERNEST H. FORNI, III, [redacted]
KEVIN B. FOSSETT, [redacted]
STEVEN L. FRANKLIN, [redacted]
KEVIN F. FREDERICK, [redacted]
LEE P. FUTCH, [redacted]
JOHN E. GALLI, [redacted]
THOMAS B. GALVIN, [redacted]
MARK E. GANDER, [redacted]
STEPHEN T. GANYARD, [redacted]

MICHAEL A. GARRISON [redacted]
STEVEN L. GAUDREAU [redacted]
STEPHEN L. GEIGER [redacted]
MICHAEL D. GEORGE [redacted]
THOMPSON A. GERKE [redacted]
PAUL C. GIBBONS [redacted]
STEPHEN V. GIUSTO [redacted]
WILLIAM W. GO [redacted]
PATRICK R. GOOD [redacted]
TIMOTHY R. GOSSETT [redacted]
PATRICK J. GOUGH [redacted]
JOHN S. GRACZYK [redacted]
DAVID J. GRECO [redacted]
DAVID L. GREENFIELD [redacted]
FREDERICK R. GRIGGS, III [redacted]
GREGORY W. GROVE [redacted]
RICHARD W. GUIDRY [redacted]
DAVID H. GURNEY [redacted]
ANDREW S. HAEUPTLE [redacted]
JOHN W. HALINSKI [redacted]
DARREL L. HANDGRAAF [redacted]
WILLIAM E. HARRIS [redacted]
GORDON E. HARTWAY, II [redacted]
CALVIN E. HASTINGS [redacted]
MARK R. HAUCK [redacted]
MANTFORD C. HAWKINS, II [redacted]
STEPHEN D. HAWKINS [redacted]
ERIC HEIDHAUSEN [redacted]
JOSEPH A. HEINS [redacted]
HUGH A. HENRY [redacted]
GARY B. HERBOLD [redacted]
EUGENE A. HERRERA [redacted]
CLIFFORD D. HESTER, JR [redacted]
CHAD W. HOCKING [redacted]
MELINDA HOFSTETTER [redacted]
WILLIAM P. HOLOWECKI [redacted]
TIMOTHY W. HOONAN [redacted]
JAMES E. HORR, JR [redacted]
GREGG H. HORSTMAN [redacted]
RICHARD G. HOUCK [redacted]
RAYMOND W. HOWER [redacted]
STEPHEN P. HUBBLE [redacted]
CARL F. HUENEFELD [redacted]
NORA S. HUETE [redacted]
PAUL D. HUGHES [redacted]
KENNETH S. HUNTER [redacted]
GARY R. IBANEZ [redacted]
DONALD M. INGRAM [redacted]
TIMOTHY J. JACKSON [redacted]
KENNETH E. JACOBSEN [redacted]
BRIAN J. JAMES [redacted]
JAMES F. JAMISON [redacted]
MITCHELL A. JAURENA [redacted]
CARL J. JENKINS [redacted]
RUSSELL I. JONES [redacted]
JAMES C. JUMPER, JR [redacted]
JOEL P. KANE [redacted]
MARK M. KAUZLARICH [redacted]
PATRICK A. KELLEHER [redacted]
DAVID A. KELLEY, JR [redacted]
MICHAEL A. KELLEY [redacted]
JAMES A. KESSLER [redacted]
BRUCE R. KIME [redacted]
ROBERT F. KLUBA, JR [redacted]
RALPH H. KOHLMANN [redacted]
LEE KORZAN [redacted]
BRUCE T. KOWALSKI [redacted]
JOHN T. KRAUSE [redacted]
DAVID W. KUEHN [redacted]
DWIGHT S. LADA [redacted]
GARY A. LAMBERTSEN [redacted]
FRANK R. LAWSON [redacted]
ODIN F. LEBERMAN, JR [redacted]
WILLIAM J. LEITHEISER, JR [redacted]
CLARKE R. LETHIN [redacted]
DOARIN R. LEWIS [redacted]
CARL A. LEWKE [redacted]
MICHAEL A. LHEUREUX [redacted]
DENNIS M. LINDBERG [redacted]
THOMAS J. LINDBLAD [redacted]
PHILIP A. LINDEMAN [redacted]
STEPHEN L. LITTLE [redacted]
SCOT D. LLOYD [redacted]
MATTHEW G. LOGSDON [redacted]
EDWARD W. LOUGHRAN [redacted]
JOHN A. LOWE [redacted]
JAMES W. LUKEMAN [redacted]
JEROME M. LYNES [redacted]
WILLIAM R. LYON, JR [redacted]
CHARLES J. MAGILL [redacted]
JEAN T. MALONE [redacted]
RICHARD V. MANCINI [redacted]
BRIAN MANTHE [redacted]
JOEL A. MARQUARDT [redacted]
JONATHAN B. MARTIN [redacted]
KENNETH B. MARTIN [redacted]
STEVEN P. MARTINSON [redacted]
ALEXANDER V. MARTYNENKO [redacted]
DEAN H. MARVIN [redacted]
ROLAND L. MASSEY [redacted]
MICHAEL C. MAYNARD, JR [redacted]
EUGENE T. MCBRIDE [redacted]
PAUL T. MCBRIDE [redacted]
DANIEL C. MCCARRON [redacted]
PETER G. MCCARTHY [redacted]
GARY K. MCCOWEN [redacted]
JAMES E. MCCOWN, III [redacted]
STEPHEN C. MCCULLEY [redacted]
WILLIAM F. MCEVOY [redacted]
DESMOND P. MCGLADE [redacted]
MICHAEL J. MCGRATH [redacted]
STEVEN J. MCGRATH [redacted]
PAUL D. MCGRAW [redacted]
DANIEL E. MCGUINNESS [redacted]
FRANKLIN D. MCKINNEY, JR [redacted]
JOHN D. MCMASTER [redacted]
CHRIS D. MCMENOMY [redacted]
JAMES F. MCNEIVE [redacted]
TIMOTHY L. MECOMBER [redacted]
JAMES E. MEYEN [redacted]
DWAIN A. MEYER [redacted]
STEPHEN N. MIKOLASKI [redacted]
GEORGE F. MILBURN, III [redacted]
WALTER L. MILLER [redacted]
GREGORY K. MISLICK [redacted]
GREGORY T. MITCHELL [redacted]
MARK E. MONROE [redacted]
GARY W. MONTUORI [redacted]
DANIEL E. MOODY [redacted]
CHRISTOPHE M. MOONEY [redacted]
TERRY M. MOORES [redacted]
JOSEPH A. MORTENSEN [redacted]
HUEY D. MOSER, JR [redacted]
BOBBY A. MOSLEY [redacted]
MATHEW D. MULHERN [redacted]
CHRISTOPHE U. MULHOLLAND [redacted]
WILLIAM L. MUNCK [redacted]
DWIGHT A. MUNDY [redacted]
JOHN D. MURPHY, JR [redacted]
JAMES T. MURTHA [redacted]
SCOTT L. NELSON [redacted]
OBRENE L. NEWMAN, JR [redacted]
LAWRENCE D. NICHOLSON [redacted]
DONALD A. NIESEN [redacted]
MARK L. NOBLIT [redacted]
CARLOS I. NORIEGA [redacted]
HERBERT A. OAKES, JR [redacted]
GORDON P. OBERMUELLER [redacted]
PATRICK W. OBRYAN [redacted]
CHRISTOPHE L. OCONNOR [redacted]
ANDREW W. ODONNELL, JR [redacted]
DENNIS P. ODONOGHUE [redacted]
MICHAEL B. OHARA, JR [redacted]
GARY R. OLES [redacted]
MARK T. OLSEN [redacted]
MICHAEL S. ONEIL [redacted]
REUBEN A. PADILLA [redacted]
GUS E. PAPAGOLOS [redacted]
LEON M. PAPPA [redacted]
PAUL E. PAQUETTE [redacted]
RICHARD L. PARK [redacted]
THOMAS G. PEERY [redacted]
RICHARD J. PETROFF [redacted]
BUDDY L. PEYTON [redacted]
WILLIAM J. PHILBIN [redacted]
TIMOTHY A. PHILLIPS [redacted]
THEODORE L. PLAUTZ [redacted]
CURTIS J. POWELL [redacted]
THOMAS A. PROGAR [redacted]
CHRISTOPHE F. PSILLAS [redacted]
DONALD J. PUTNAM [redacted]
RAYMOND R. PUTNAM [redacted]
WALTER J. QUINLAN [redacted]
CHARLES H. RADERSTORF [redacted]
CARL K. RADFORD [redacted]
ROBERT W. RALL [redacted]
HENRY G. RAUM [redacted]
DENNIS W. RAY [redacted]
CONSTANCE A. REEP [redacted]
DAVID A. REICHERT [redacted]
DAVID C. REINAMAN, II [redacted]
EDWIN S. RENEGAR [redacted]
BRUCE A. REXROAD [redacted]
WILLIAM E. RIDENOUR, II [redacted]
DAVID A. RIEDEL [redacted]
JAMES E. RILEY, JR [redacted]
NORMAN J. ROBISON [redacted]
JOSEPH C. RODGERS, JR [redacted]
MURRAY O. ROE, JR [redacted]
VICTORIA J. ROSE [redacted]
CRAIG D. ROSS [redacted]
JAMES G. ROUSE [redacted]
WILLIAM A. RUDOLPH [redacted]
MARK J. RUGER [redacted]
JOHN R. RUNNING [redacted]
BEVERLY J. RUNOLFSON [redacted]
TERRY M. RYAN [redacted]
THOMAS M. RYCHLIK [redacted]
DENNIS G. SABAL [redacted]
MICHAEL B. SAGASER [redacted]
CECIL R. SAMSON [redacted]
EMILE E. SANDER, I [redacted]
FRED H. SANFORD [redacted]
JEFFREY M. SANKEY [redacted]
ANTHONY L. SAUNDERS [redacted]
MICHAEL L. SAUNDERS [redacted]
SHEILA M. SCANLON [redacted]
BRET D. SCHOMAKER [redacted]
KEVIN M. SCOTT [redacted]
MICHAEL W. SCOTT [redacted]
STEPHEN M. SHEEHAN [redacted]
CARLYLE E. SHELTON [redacted]
KEITH C. SHULTIS [redacted]
MICHAEL P. SLATER [redacted]
RICHARD S. SLATER [redacted]
DALE M. SMITH [redacted]
DAVID E. SMITH [redacted]
RASLER W. SMITH [redacted]
RICHARD E. SMITH [redacted]
MARCUS SNEED [redacted]
STEPHEN L. SPEHN [redacted]
THOMAS R. SPENCE [redacted]
LEE A. STEBBINS [redacted]
THOMAS G. STEIN [redacted]
JOHN A. STEWART, III [redacted]
PETER K. STINGER [redacted]
JAMES H. STROUP [redacted]
MARK P. STUCKY [redacted]
KEITH M. SWEANEY [redacted]
WILLIAM H. TAGGART [redacted]
JEFFREY G. TAWEEL [redacted]
GARY S. TEPERA [redacted]
CHARLES T. THOMPSON [redacted]
KEITH B. THOMPSON [redacted]
KENNETH J. THOMPSON, JR [redacted]
MARK H. TRIPLETT [redacted]
GREGORY A. TRUBA [redacted]
CRAIG A. TUCKER [redacted]
CECIL G. TURNER [redacted]
THOMAS S. ULLRICH [redacted]
DAVID K. UNDELAND [redacted]
ANTHONY J. VERDUCCI [redacted]
JOHN A. VILLALTA [redacted]
JEFFREY S. VOGEL [redacted]
PATRICIA J. VOGLER [redacted]
RONALD E. VONLEMBKE [redacted]
ROBERT E. WALDEN [redacted]
MICHAEL A. WALLACE [redacted]
JEREMIAH J. WALSH [redacted]
STEVEN L. WALSH [redacted]
STANLEY H. WATKINS [redacted]
WILLIAM J. WEISS, JR [redacted]
FRED WENGER, III [redacted]
MARK E. WHEELER [redacted]
ROBERT F. WHEELER [redacted]
FREDERICK J. WHITTLE [redacted]
WILLIAM W. WIGGINS [redacted]
DAN B. WILLIS [redacted]
MARY P. WILLIS [redacted]
ROBERT E. WILSON, JR [redacted]
SANDRA L. WILSON [redacted]
ERIK M. WOLF [redacted]
MARK F. WOOD [redacted]
MICHAEL D. WYKOFF [redacted]
KAY L. YOUNG [redacted]
WALTER T. ZABICKI [redacted]
ROBERT M. ZEISLER [redacted]