HOUSE OF REPRESENTATIVES—*Friday, February 7, 1992*

The House met at 11 a.m. and was called to order by the Speaker pro tempore [Mr. LAUGHLIN].

DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
February 7, 1992.

I hereby designate the Honorable GREG LAUGHLIN to act as Speaker pro tempore on this day.

THOMAS S. FOLEY,
Speaker, House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

In our headlong rush to seize the moment and to make our mark, we reflect this day, O God, not on our tasks, but on the contributions of those people who have gone before us and have shown the way. For those who have graced these Halls and shown the way of peace and justice, we offer our thanks; for those who have spoken to us the words of wisdom and guided toward the light of truth, we offer our praise; and for all those who have had great responsibility and difficult decisions, we express our appreciation. May we, each one, reflect on the gifts of those before us, and inspired by their commitment, may we go about our labors with a sense of humility and renewed dedication. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The gentleman from Florida [Mr. GOSS] is recognized to lead the House in the Pledge of Allegiance.

Mr. GOSS led the Pledge of Allegiance as follows:

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

SYMPATHY AND PRAYERS FOR ALL KILLED IN AIRPLANE CRASH IN EVANSVILLE, IN

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

Mr. MAZZOLI. Mr. Speaker, a terrible tragedy occurred back home in Kentucky and across the river in Indiana yesterday when a C-130B Hercules military transport on a training flight from the 123d Tactical Airlift Wing, which is stationed at Standiford Field in my district, crashed into a motel-hotel restaurant complex which is in the district of the gentleman from Indiana [Mr. MCCLOSKEY]. It killed all five members of the crew, all of whom were from the Louisville area. It killed, unfortunately, 11 people on the ground and injured many more.

It is a terrible tragedy. Words that we and the Kentucky delegation, which is on the floor today, who will speak, will do very little to assuage the human toil and tragedy, but we do want to join and extend on our behalf and on behalf of the gentleman from Indiana [Mr. MCCLOSKEY] and the Indiana delegation our condolences to the families and loved ones of the deceased.

The five members of the crew, all of whom were killed and were from the Louisville area, were: Maj. Richard A. Strang, 39, of Floyds Knobs, IN; Capt. Warren Klingaman, 26, of Louisville; Lt. Vincent D. Yancar, 25, of Louisville; M. Sgt. William Hawkins, 41, of Crestwood, KY; and M. Sgt. John H. Medley, 38, of Louisville.

Once again we extend, Mr. Speaker, our condolences to all the families and loved ones of these brave people.

SYMPATHY AND CONDOLENCES TO VICTIMS OF TRAGEDY IN EVANSVILLE, IN

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

Mr. BUNNING. Mr. Speaker, I would like to join my colleague from the Third District and also from the First District in expressing my deep condolences to those members of the Air National Guard and all others who have had a tragedy occur in Evansville, IN, on the crash of the Kentucky Air National Guard plane today.

No one can explain those things away. No one can explain why things like that happen. That was a routine training flight that had gone on many, many times before.

It is just that everybody in Kentucky and Indiana and around this country want to express our deep sympathy for those people who died in the service of their country.

TRIBUTE TO CLEO N. APPERSON

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

Mr. HUBBARD. Mr. Speaker, I join with my colleagues from Kentucky in expressing my heartfelt sympathy to the families of the victims of yesterday's tragic military plane crash near Dress Regional Airport in Evansville, IN.

This tragedy occurred just across the Ohio River from my congressional district.

The plane was a Kentucky Air National Guard transport plane on a training mission. For 6 years, I was a member of the Kentucky Air National Guard and thus this tragedy has a special meaning to me.

I also take this opportunity to pay tribute to a longtime friend, Cleo N. Apperson of Mayfield, KY, who died at age 87 yesterday at this home.

Cleo Apperson was city clerk for my hometown of Mayfield, KY, for 26 years. He had such a good personality and was so friendly people in my hometown didn't even complain as they paid their city taxes.

Cleo Apperson was an elder of Mayfield's First Christian Church and a member of the local Masonic Lodge. Truly those of us who had the pleasure and privilege of knowing Cleo Apperson realize that this was a wonderful man. He will be greatly missed.

Among the survivors of this dear friend of mine are his lovely and talented wife, Mary Kate Kennedy Apperson, who for 22 years was our Graves County deputy circuit court clerk at Mayfield; three childen—Dr. William Apperson, pastor of the First Christian Church of Meridian, MS; Barbara St. Aubin, a civic and church leader in Bethesda, MD; and Walter Lee Apperson, for many years the editor of the Mayfield Messenger and now the publisher of the Murray, KY, Ledger and Times; a sister, Evelyn Ellington of Temple, TX; nine grandchildren and six great-grandchildren.

My wife Carol and I extend to the Apperson family our sympathy.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

DEMOCRATS SHOULD JOIN IN PASSING THE REPUBLICAN GROWTH PACKAGE

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

Mr. GOSS. Mr. Speaker, since we only have 42 days left until March 20, it is a real treat to hear the leaders over there on the Democratic side of the aisle starting to talk like they were Republicans at heart.

All of a sudden they all want to cut the terrible burden of taxes that lies so heavy on the shoulders of middle-class America.

It would be wonderful if it were true, Mr. Speaker. But the election year conversion among the big spending liberals is mighty suspicious. In 42 days we will find out.

If I recall correctly, many of these folks who are now telling us how dearly they love the middle-class taxpayer and how they would love to cut taxes are the very same people who voted for the largest tax increase in our Nation's history just a year ago.

It is unfortunate that it took a terrible recession to convince the Democrats in this body that Americans are taxed too much.

And I just hope they have learned enough to join us—in 42 days—by passing the Republican growth package of tax incentives to encourage long lasting, long-term growth.

BRING AMERICAN TAX DOLLARS BACK HOME

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

Mr. DORGAN of North Dakota. Mr. Speaker, last year during the defense authorization bill, I offered an amendment which is now law in this country. It established an account in the Department of Defense into which money would be received resulting from negotiations between our President and this administration and other countries for whom we now spend defense dollars.

For example, we spend American tax dollars to defend Japan. We spend American tax dollars to defend Germany, to defend France. We borrow money from them, increase our deficit, and spend money for the defense of other countries.

It is time to tell those countries the free ride is over. Uncle Sam cannot afford it anymore. You have to start paying for your own defense or at least reimbursing us for what we spend.

The President signed that defense authorization bill with my amendment in it and said:

> I intend to treat this as a recommendation, rather than a requirement.

We have written the President this week saying that is unacceptable.

The President has a responsibility to stop having the American taxpayer pay for everybody else's defense. The President and Secretary Baker did a good job in dealing with burden sharing in the gulf war. The President had Secretary Baker shuttling around the Middle East. He collected enormous amounts of commitments and some money coming in to help defray the cost of that war.

We expect this administration to have the will and the interest to do exactly the same thing on a year-to-year basis with Japan, with Germany, with France, and others, to begin relieving the American taxpayer of the tens of billions of dollars that we now spend to defend other countries who can well afford to defend themselves or who can well afford to reimburse us for the money we are spending for that purpose. We do not intend to let the President ignore the law that we passed last year. We have sent him a letter with the majority leadership on the letter saying:

> Mr. President, we expect you to pay attention to this law and to comply with it.

□ 1110

BLUEPRINT FOR ECONOMIC DISASTER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Dakota [Mr. DORGAN] is recognized for 60 minutes.

Mr. DORGAN of North Dakota. Mr. Speaker, I wanted to spend a few minutes addressing my colleagues and the folks listening on the subject of the President's 1992 budget.

This is the 1992 budget the President sent to the U.S. Congress. It is about 10 pounds, about 1,500 pages. It is full of a lot of words, charts, graphs, statistics, data, and I wanted to talk a little about how this relates to this country's future.

Mr. Speaker, this country is going through some awfully tough times. People are wringing their hands wondering about the future, wondering when this recession will end, wondering what caused it, and what could be done to fix it.

As we have seen just this morning, we have a political environment in which there is not only a Presidential campaign going on, but a Congress conducting business as usual.

We have got folks saying, "Oh, it's the liberals' fault," "It's the Democrats' fault," "It's the Republicans' fault." The fact is this country is suffering some very serious economic distress, and the question before us is: What do we do to confront it? What do we do to deal with it?

Now let me start at the outset to say that I think it is everybody's fault. I know that is easy to say, but I really believe we have had terrible leadership, terrible leadership from the White House, for a good long while, and we have had a Congress unable to find its own way. Congress usually responds to good leadership. When we have had no leadership or terrible leadership, this place will be circling around.

Mr. Speaker, the President proposes very large deficits, and he proposes the field of play in his budget, and then Congress is content to quibble about yardlines while the fact is: Everybody is at fault with where we find ourselves, and everybody's responsibility, it seems to me, from the White House to both sides of the aisle here in Congress, is to find a way to join hands and do what is necessary to solve the problems we face.

Now I wanted to talk a little about the President's budget, and then I want to talk about the positive things we have to do to try and set this place right. First, the President's budget:

I want to demonstrate why we are not getting any leadership. Page 25 of the President's budget is the page that describes, after some verbiage and his budget, outlays, revenues and deficits. The President stood at the microphone behind me a couple of weeks ago, and, as has always been the case with Presidents, they come down here, and they say, "You know, the villain is the Federal deficit. We've got to deal with this Federal deficit. It is crippling this country," they say, "and, Congress, get responsible. Start doing something about the Federal deficit."

Well, it is one thing to say it from the microphone behind me in a Presidential address. It is quite another thing to send a plan down to Congress, and let me read the President's plan for deficits. The President says in his 1992 budget book, "Congress, I want you to enact deficits in this budget. If you enact everything that I recommend," now speaking as Mr. Bush, "if you, Congress, enact everything I recommend, here's what I want from you: I want you to enact budget deficits equaling $2.21 trillion in added debt for this country this year and in the 5 succeeding years."

Mr. Speaker, people say, "How can that be? Mr. Bush is a conservative. He surely wouldn't propose that."

Page 25 is available to all Americans, and let me just give my colleagues the first year. It is the year we are in. The President says, "This year our budget deficit," with all of his proposals, "will be $399 billion." But in order to get to only a $399 billion deficit, which itself is a disaster—the largest deficit in the history of America, probably in the history of the world—he had to add in the Social Security surplus that we are accruing this year, which will be $74 billion this year. In other words, $74 billion more will be collected in the Social Security account this year than we need to spend out in Social Security. Why? Because when the folks who are

the baby boomers retire at the end of this century and at the start of the next century, around 2010, 2015, we know we are going to have trouble in Social Security because then we will have the fewest number of workers supporting the largest number of retired people, and that will create maximum financial strain.

So, in 1983 we did one of the few responsible things in a long while. We said, "We're going to save for the future. We're going to start building up some money so we have it when we have that strain on the Social Security system." This year there will be a $74-billion buildup, receipts over expenditures.

Now the President says, "I'm going to take that $74 billion, and I'm going to subtract it from the budget deficit to show you a lower deficit." That means they misuse the Social Security money. That money comes from paychecks of American workers and from businesses, goes into a trust fund and can only be used for Social Security, except on this page, in the President's budget, it is used to reduce the Federal deficit.

THE REAL DEFICIT

Mr. Speaker, the President says the Federal deficit is $399 billion this year. But the $74 billion in Social Security surplus cannot honestly be used to reduce the deficit. So, put that aside, as it must be, and the real budget deficit, the honest deficit this year, the real operating budget deficit, is $473 billion this year. It is a shameful, reckless, and dangerous fiscal policy that is going to break this country.

Now, add up 5 years beyond this year, and we get a proposed budget from a conservative President that says: "I want the Congress to adopt my plan, and my plan says, 'Let's add $2.21 trillion to the Federal debt.'" That is not a plan. That is a blueprint for economic disaster for this country.

Mr. Speaker, this country already has a $3.6 trillion debt load, and the President says, "Let's add to that to the tune of a billion dollars a day, every day, 7 days a week, every week, every month, for 6 years, spending a billion dollars a day that we don't have." That is not a fiscal policy that is going to put this country back on track.

And that anticipates the President getting everything he wants. If we do everything the President suggests, we end up with $2.21 trillion in additional debt in this country.

Well, what should we do? Clearly I am not very impressed with this budget. This is not leadership. This is a document from an administration that is waving the white flag of surrender on economic policy. It is an administration that is saying, "I give up on deficits. We're going to lead in the wrong direction."

And I have said Congress is not much better. This body is not without fault.

□ 1120

The fact is, people say, "The Democrats are at fault," "The Republicans are at fault." If we look honestly at the spending appetites of Republicans and Democrats, we will not see a plugged nickel's worth of difference. There is a difference in what they want to spend money on, but there is no difference in the amount of money they want to spend. They can talk until they are blue in the face and they cannot get rid of the facts. The facts are that the Republicans want to spend as much as the Democrats.

They all want to spend too much. This side wants to spend it on defense, and this side wants to spend it on domestic programs, but the fact is it is clear over the last 10 years both sides want to spend more money than we have, so it is not either side pointing fingers and one is a big spender and the other is not. It is simply not the case.

In fact, this document from a Republican President demonstrates that there is a Republican, at least, that says, "I want my colleagues to join me in adding $2 trillion to the Federal debt." So it is a bipartisan failure, obviously a failure in leadership coming from the White House and obviously, quite obviously, a failure here in Congress to do anything about what I think is dangerous leadership and reckless leadership in fiscal policy.

What should we do? This is a country of instant coffee, fast food, Jiffy Lube, instant credit, and everybody believes "what we have to do now is have an instant fix." The President said:

> Let us just hook up the battery cables here with some incentives here and some jolts here in the Tax Code, and this and that and the other thing, and the American engine will start and get cranking away and we will be just fine again.

However, we are not going to be just fine again. If we move in this way with this budget document, we are confining ourselves to the status of economic losers for a long, long time, and we cannot do that. Nor can we expect an instant fix to terrible problems.

As I have said, we have had irresponsible public policies and fiscal policies coming from the White House, and in Congress we have had equally irresponsible policies.

PRIVATE GREED

There has been equally irresponsible behavior in the private sector. Look at the 1980's. Forty years from now we will read in the history books about the greed and corruption and the unprecedented greed in the 1980's: junk bonds, hostile takeovers, leveraged buyouts, failure, and collapse in the private sector. The crowning glory here, or the crowning shame, is that the U.S. Government ended up owning junk bonds in the Taj Mahal casino.

That is right. Mr. Trump built the Taj Mahal, the biggest, glitziest casino in America, perhaps in the world. He financed it with junk bonds. The junk bonds were bought by S&L's. The S&L's went broke, and the Federal Government ended up with the junk bonds in the Taj Mahal casino. The junk bonds themselves are nonperforming because the Taj Mahal was not doing well. So you have a triple failure here, and who ends up with it? The American taxpayer. So the private sector has not done very well either.

In Japan and Germany and France they are busy building better products, busy building better toasters, tires, television sets, and VCR's. What are we doing? Doubling our defense budget in a cold war. Our scientists and engineers are building F-16's and M-1 tanks to compete against the scientists and engineers of Japan, who are building television sets and Toyotas. And who wins the economic competition? They do, not us.

More than that, to the extent that we have got scientists and engineers in the private sector, the companies that employ them are engaged in greed games, economically cannibalizing each other, a cannibalization of the assets in the private sector, trying to buy and sell each other, not make better products. They spent their days in the eighties trying to figure out how you take over another company or how do you avoid being taken over, instead of learning how to build a better product and sell it at a better price.

The economic hangover that results from a decade of greed and corruption in the private sector, and a decade of incompetence in the public sector, is what we now deal with as Americans.

PUTTING AMERICA BACK ON TRACK

What do we do to put this country back on track? Is it a series of tax breaks? Is it a new American jobs program?

Next Wednesday morning those of us who serve on the Committee on Ways and Means start writing an economic growth package. The President, on the microphone behind me a couple of weeks ago, outlined his blueprint and his version for where we ought to go in economic growth. The fact is, to put this country back on track is going to require much, much more.

I do not object to some of the recommendations made by the President. I intend to support some of them. Some of them are fine. But the issue is not some sort of short-term jump start. The terminology itself suggests that what is wrong is, "The engine has sputtered, and we just need to hook up the cables and the engine will begin purring again and America will move down this yellow brick road and everything will be just fine." That is not at all the case.

We have structural, fundamental problems that go well beyond the short term, that are going to require a national commitment by the American

people to confront them. Do we have a national will to do that? Is there national leadership to call the American to do that? Will Congress have the courage to follow good leadership if it develops? I do not know the answer to that, but I know at least from my perspective what we ought to do.

I put together a pamphlet a couple of months ago. It says, "Putting America back on track: A plan to help the economy grow again," in which I just tried to set out what I thought we had to do. Let me just run down some of the areas that I think we have to address.

First, and I have talked about it now for a short period, the country has to pay its bills. It is a virtue we learn when we are in kindergarten. We have got to pay our bills. A country that has $3.6 trillion in borrowing and is proposing that we add $1 billion a day in borrowing for the next 6 years is not a country that can survive economically and prosper. We have got to pay our bills, as tough as that may sound, one way or another.

The American people and Congress and the President have to decide what they want, answer the questions: Do we need it, can we afford it, and if the answers to both are yes, then let us do it. If the answer to one of them is no, then let us decide that we cannot continue in these areas.

We must make a decision: What do we want, what do we need, and what are we willing and prepared to pay for. If we do not reconcile our appetite for spending with our ability and our responsibility to raise the revenue to meet it, then we cannot put this country back on a sound economic footing for the long term. So first we have to pay our bills.

Second, we have got to put a stop to this fever of greed in this country and this enormous mountain of speculation. Hostile takeovers, junk bonds, leveraged buyouts, that sort of thing, it ought not to go on.

One cannot engage in a hostile takeover in Japan. Do you know why? The Japanese will not allow it. Do you know why they will not allow it? Because they know it is nonproductive and injures the economy. They want their private sector to be paying attention to building better products, not involved in playing these little private greed games. We ought to flat out put a stop to that sort of economic activity.

Third, we ought to stop paying everybody else's defense bills. One way to reduce the deficit is to say to Japan and West Germany and others. "Pay us for the amount of money we spend to keep the sea lanes open so you can ship your Toyotas to Pittsburgh. We cannot continue to ask the American taxpayer to pay everybody else's defense bills in the world. This country cannot afford it."

President Bush and Congress need to join, as we have done in an amendment that I offered last year that is now a law, in saying to other countries, "We are happy to have the aircraft carriers out there to keep the sea lanes open, but you have a responsibility to help pay for the cost of the captains and the crews and the aircraft carriers. We expect you to make a yearly offset payment to this country to begin relieving the taxpayers of this country of the burden to help pay for the entire free world's defense umbrella."

The next step is to insist on fair trade. We cannot win an international trading competition unless the rules are fair. The fact is, we have a lot of people in this town, starting at the White House, and a good many in this Chamber, including some of my party, who are perfectly willing to continue to chant "free trade" and ignore the fundamental issue of fair trade. Trade is not and will not ever be free unless it is fair. To somehow blame America first by suggesting we make inferior products when other markets are closed to us denies the fact that we could not sell if we had the best products in the history of humankind, when we confront a market that is not open.

It is unacceptable to allow other countries to tell us that they want to ship their goods to American consumers in the American marketplace and compete with our goods, but then when we try and sell beef or rice or cars or insurance policies or construction contracts anywhere around the world, we find them saying, "Our market is closed to you."

□ 1130

One of our trading partners shipped half a million cars to this country, and at the same time they went from zero to a half-million imports of those country's cars into the United States, they shut off the entire import of red meat from the United States to that country. And what do we do about it? Nothing. Because nobody has the nerve.

The minute you stand up and talk about this, we have got a bunch of people wearing bow ties whose collars are too tight and who apparently cannot think clearly who say, "These are protectionists; these are protectionists. What they want to do is close our markets in America." That is not so. I do not want to close American markets. I want American markets to be open. I want the American consumer to have access to any product around the world they want to be able to purchase. All I insist is that our employees and our employers that are producing American goods have the same opportunity in other markets, and if they do not, then there is something fundamentally wrong with our trade policy.

If we say, "Yes, ship your cars here, ship your television sets here, we will continue to be a sponge for all of your products, and we accept that you will not open your markets to Americans," then we are about half goofy. That is not a public policy that is acceptable, and it is not a public policy that will allow our concerns, our employees, and our American companies that produce some pretty good products to compete around the rest of the world on a fair basis.

Now, look, I understand that the Japanese make some awfully good products, and I tip my hat to some of them. The fact is that in some areas they have got a significant edge. So a tip of the hat to the Japanese productivity and the Japanese quality.

But the fact is in areas where we have got an edge, we cannot sell in Japan, because the market is closed. I just believe it is time for us to stand up and insist on fair trade, no, not closing our markets, just insist that other countries open theirs. If we do not have fair trade, we cannot compete effectively internationally, and if we cannot compete effectively, then we cannot win.

Now, in concert with that, the other thing we need to do, in my judgment, is develop a national commitment and a national program in which the private sector and the public sector join hands in pursuit of excellence in producing the best products around the world. I want next year, or 5 years or 10 years from now, when somebody around the world looks on the shelf and wants to buy a product and they turn it over and see the label and it says, "Made in the U.S.A.," I want that consumer to say, "I know what this means. This means this is the finest product I can buy." When "Made in the U.S.A." once again is a symbol of value and quality, then we win. But only then if open markets represent opportunities for us to sell around the world.

We need a national commitment to produce the finest products in the world. This country can do it. This country has done it, and this country should do it again.

And I think that Congress and the private sector ought to join together in a national program to try to create a commitment for product quality. The foundation of all progress, in my judgment, is an education system. If we do not have the finest education system, then we do not win either.

I want to tell a story that I have told many times here on the floor, but it is worth telling again. The oldest Member of Congress when I came to Congress was a man named Claude Pepper, a wonderful man. He was here when Franklin Delano Roosevelt was here, in his first term, and he was still here when I came to Congress 11 years ago. When I walked into his office the first time, I saw two pictures behind his desk. He had a room full of memorabilia and pictures. Two that I recalled behind his chair were both autographed to him. One was Orville Wright making his first airplane flight, Orville and

Wilbur flying at Kitty Hawk, and it was autographed to Congressman Claude Pepper "with deep admiration," signed, "Orville Wright." And the other was Neil Armstrong standing on the Moon, autographed to Claude Pepper. It struck, me that here is a Member of Congress who has the autographed pictures to himself, of the first person to fly and the first person to set foot on the Moon.

You know, from lifting off the first time to flying to the Moon, what does that burst of technology and progress in a relatively short period mean? As I looked at those pictures, it occurred to me what it means is the massive commitment that America had made to education. It represented a burst of knowledge and, therefore, a burst of productivity, and in lots of areas, but measured in a most interesting way by flying and then flying to the Moon. It is measured in other ways from the quill pen to the computer, but those two pictures, let me once again understand, the foundation of this country's progress is education.

I worry a lot, you know, our kids go to school 180 days a year. The Japanese kids go to school 240 days a year. Yesterday, driving down the road, on the care radio I heard once again that in math and science skills our students rank behind 90 percent of the other industrialized countries. I worry about that.

This country, in order to get back on track, has to decide that it will have and maintain the finest educational system in the world, and then find a way to run it and operate it in a way that makes it workable for those in it, especially the students.

Here in Washington, DC, the shame is that the school board was recently debating about whether they should have metal detectors at the front door of a school to try to extract from students coming in knives and guns as they entered the schoolroom door for the start of the day. How can children learn and study and grow, how can their minds be nurtured and honed in a school where they wonder if the kid next to them has a gun or a knife?

Well, we have got plenty of challenges in those areas, but my point is that somehow we need to put the system back together at the foundation.

I want to mention crime just for a minute, because it also is part of this dimension. This country has become a manufacturer of crime.

About 2 miles from where I am standing is a hospital called D.C. General Hospital, and I went down to D.C. General here a while back and toured. I heard some statistics that were remarkable to me, very depressing, but remarkable.

Nearly one-third of the women delivering babies at D.C. General Hospital were drug abusers. I went into a room where they had what are called boarder babies. These are babies who are delivered to a woman who comes to the hospital, delivers the baby, there is no husband, no father, the woman delivers the baby, perhaps a drug abuser, and she walks out of the hospital, and there is the baby, no mother, no father, no home, no name, no hope, no future, a room full of children. I held a 4-month-old baby in my arms that had no name, because it had no parents.

The doctor, a remarkable woman, a black woman who had lived in a neighborhood very close to that hospital when she was young, told me that she grew up in that neighborhood and did not have much, but she had a family, and that family lived in a place, and they had neighbors, and they knew each other, and it was a neighborhood. She said she went back, this doctor from D.C. General, went back to the neighborhood where she lived, and there are not any families there any more. There are children and some grandparents and a scattered mom or dad someplace, but there is no functional family unit. They do not know their neighbors. There are no neighbors that know each other and help each other and work with each other, and try to deal with each other's problems. The entire structure is gone.

This doctor at D.C. General said:

> You know, I do not know how you fix this until you fix it at the bottom, somehow deal with that structure, the family structure, the neighborhood structure.

And, you know, this country has got to deal with those problems as well.

Why is it that a country like ours, a country that is urbane, relatively wealthy in assets, sophisticated, our country consumes 50 percent of the world's cocaine? Why? Why would that happen in a country like ours? I do not know the answer to that. I do not know the answer to this enormous burst of crime, violent crime, in our country either.

But we must find innovative ways to deal with it. Part of it is economic. Part of it is putting this country back on track so that people who want jobs can have jobs, but that is not all of it.

To the extent that we can, we need, however, to move forward and provide those opportunities, those jobs.

I went to a feeding center, a shelter, here in Washington, DC, one day at 6 in the morning, and I recall speaking to a 24-year-old woman with three children, husband had abandoned her, and she had no money. She had no home. She lived in a shelter, and she told me, when I asked her what she was doing to try to find work, she said:

> Well, I do find work, but, you know, it is short-term, usually at a hamburger place. I get paid minimum wage. I have no place to put my children, because then if I am not taking care of them, I have to pay day care. You cannot pay day care on $4.35 an hour.
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> Then I lose Medicaid benefits. I lose health care when I go to work. When I go to work and I try to save $25 or $50 so I can get a deposit saved up for an apartment, they tell me that if I save money for a deposit on an apartment, then they reduce the AFDC payments.

She said:

> There isn't any way that I can get ahead. There is no way I can find a place to live. There is no way that I can get training to get a job.

□ 1140

Driving back to Capitol Hill that morning after visiting with that woman, I was wondering what I would do if I were in her position. Is she trapped on one of those circles that she cannot get off? I do not know honestly what I could do to get off. I do not know that I could do anything differently than she is doing.

She looks for work. She finds a little work. She loses money on AFDC. She cannot afford daycare. She loses her health care benefits. I think she is trapped.

Somehow, some way all of us need to deal with a system that is not working, responding to the needs of the people like her.

We will this year deal with another element or part of what is wrong in this country and that is health care. Health care costs too much. There is a lot of sophisticated proposals. The President announced one yesterday in Cleveland to try to respond to the health care crisis.

No proposal will work unless it first responds to the issue of health care costs too much. What do we do to respond to it? How do we impose caps, price caps, price controls in a way that is effective?

If we cannot do that, if we will not do that, if we do not do that, we cannot answer the question of how to make health care affordable for all Americans.

Senator WOFFORD spent a couple of months walking around Pennsylvania asking the question, should not a country where when one is charged with a crime one has the right to see a lawyer, should not then one be able in a country like that when you are sick be able to see a doctor? The answer is, of course. Of course, health care ought to be a right.

The question is, How do we make sure everyone is covered and how do we do that in a manner that is affordable? How do we do it so that those who can afford to pay for their own health insurance do it and do not face 25 and 40 percent insurance premium increases in a year, and those who cannot afford to pay for their insurance are covered by some bare-bones plan that solved their health care problem, and is administered somehow within the confines of a Medicare system or some other delivery system? How do we do all that?

Well, the President and Congress must get their arms around it. It deals not just with the tragedy of the lack of

health care for a lot of people. It is especially that, but it also deals with competitiveness. We have more health care costs in an American car than steel. In other words, it costs more for health care to build a car than it does steel because we have health care benefits paid to the workers who are building the car.

Because we pay much more health care than the Japanese, it means that our cars are less competitive with Japanese from a price standpoint because our health care costs more than the Japanese health care system. So it makes us noncompetitive.

It is not just in cars. It is in a wide range of manufactured goods. Health care costs are injuring our competitiveness.

Let me mention agriculture briefly. We have a system in this country that tries to respond to the needs of family farming, and it does not work. Family farmers are going broke in record numbers. And although farm prices have increased in recent months, we have seen a price collapse for a long period of time that has forced thousands, tens of thousands, hundreds of thousands of farmers off the farm.

We are told by economists and people who think they know that somehow the productive capability of American agriculture is a liability. It is not a liability. It is an enormous asset.

Most of the serious trouble in the world is people who do not have anything to eat. I am chairman of the International Task Force of the Hunger Committee. I can tell my colleagues that I have been in refugee camps in various parts of the world. I have seen a lot of hungry people. There is nothing that represents a greater asset to the country or a society than the ability to produce the kind of foodstuffs we do.

What do the Russians and the people in the Commonwealth need? Food. What do the people in Africa need? Food. We were so successful at sending guns and arms and bombs all around the world to people that needed it and to governments that wanted it. Why can we not be just as successful for much less the cost and at a much greater humanitarian gesture in sending some food to people who are hungry? It ought to be a matter of national will for us to decide we are going to start doing the right thing.

I am mentioning that, we are talking about defense spending these days. The President and others say, we will cut $50 billion out of defense. The cold war is over. It is certainly welcome that we would cut a little out of defense, but $50 billion over 5 years is a small cut in defense; $50 billion over 5 years is somewhere around a 3-percent cut in defense spending.

We doubled defense spending because we had a cold war. Why would we not cut more than 3 percent out of defense spending when the cold war is over?

All of these things, it seems to me, come together in a set of public policy questions that we had better be ready to respond to and answer. The issue is not our next election. The issue is not George Bush's reelection, and the issue is not the reelection of any single Member in this Congress. The issue is this country's ability to compete and prosper and provide jobs and opportunities for its citizens for the next decade and the decades beyond.

If we make the wrong choices now, and I fear that we are on the road to doing that, certainly with this budget submission by the President, if we make the wrong choices now, we cannot soon recover from those choices.

The question is, do we have the courage, the will to decide to start doing what is right? I think the answer is yes, but we will see.

This, I think, is a very pivotal year. We have the opportunity, as my friend the late Claude Pepper used to say before he died, he said:

> An election year is an opportunity for the American people to grab America's steering wheel and decide with their vote which direction they turn this country.

I really feel that the American people deep in their gut all over this country understand the gnawing fear that comes from spending money one does not have on things one does not need and see all the things around one not working as well as they should, and then seeing all the folks who are supposed to see that they work off arguing and debating about other extraneous matters and never quite getting to the center or the core of the issue.

So let us heed their words and work hard to put America back on track.

Mr. SMITH of Florida. Mr. Speaker, will the gentleman yield?

Mr. DORGAN of North Dakota. I yield to the gentleman from Florida.

Mr. SMITH of Florida. Mr. Speaker, I really want to commend the gentleman for not only having presented an enormously cogent and intelligent argument but also in having done something which I think is very important for the public at large to understand, and that is to point out the fallacies in the use of old invalid—proven by the test of the last 23 years—theories that the budget contains for the purpose of guiding the economic future of this country.

I am glad the gentleman brought up the name of Claude Pepper because in addition to talking about guiding the steering wheel of America in the election year, our colleague, Claude, used to say something else. And he said it more eloquently than ever in the same well, in the same spot that the gentleman from North Dakota is standing, just a few years ago, months before his death, when talking about catastrophic health care, as the gentleman will remember.

He said, talking to the colleagues in this Chamber:

> When you go home tonight and you close your eyes, you have to think to yourself, did I do something good for somebody today? Did I make somebody's life a little easier? Did I ease the burden on somebody? If you can say, yes, then you have done your job as a Member of Congress.

That budget can never allow George Bush to answer that question yes. What he is doing here is heaping more misery upon the broad, vast middle class and many other people in this country than has already been heaped upon them.

The gentleman's description of how this is a prescription for failure for the future economic well-being of this country was very apt. What I fail to understand is where are all the economists and all of the smart carping newspaper people who are constantly after the Congress to somehow do what the President is supposed to and that is set an economic footprint and path for this country? Where are they today, saying 3 years ago:

"Mr. President, you promised a balanced budget as did your precedessor 8 years before you. Not only have you not balanced the budget, every budget you send up has been out of balance and this year at a time of great moral crisis around the world, great economic crisis around the world, and a lack of leadership around the world, and at times of great economic crisis in the United States, you have proposed a budget with over $400 billion in deficit, admitting that you want to spend more than we can take in. And your answer is to cut domestic programs in order to finance only a small part of that proposed deficit, but the rest of it is to be borrowed."

□ 1150

Why are people standing up and saying why are you fabricating stories about how this country can be healthy when we know for the last 11 years we have borrowed, and borrowed, and borrowed to finance the defense buildup? I am sure the gentleman in the well would not disagree that the single biggest drain on the economy for the last 11 years in terms of the deficit has been the enormous defense spending we have made. Why are people not asking him how in the face of that 11 years where we have now arrived at after the Reagan-Bush era to the place where we are now economically in bad shape, why are people not asking the question:

"Why are you continuing to use discredited, old Reaganomics? Why did you stand there and tell us you want health care for people and then not tell us that you wanted to cut Medicare $15 billion so that you wanted the elderly to have their health care cut so you could provide health care for the others through tax credits, but only drive the price up because after they cut Medicare what is going to happen?"

As the gentleman in the well knows, they are going to charge more to those

people that have insurance. That drives the premiums up so that those who cannot afford the premiums now will even be less able to afford them later.

"Why don't you give us straight, simple answers to straight, simple questions?" And on the needs of this country, "Why do you publish a budget like that? Why do you tell everybody you hate the deficit and then build out as far as the eye can see," as the gentleman indicated, 2 trillion dollars' worth of debt? "Why are you doing this to us? Why are you not accountable?"

Where are the people asking those questions, I ask the gentleman, because I do not understand. The gentleman said the other day if you laid all of the economists end to end, it would be a good thing. Somebody else said if you laid them all end to end you would never reach a conclusion.

I am tired of listening to the economists, and we could get economists to tell us that is a great budget. We ought to listen to the American people, and the gentleman understands that very well and has talked plain, simple American language to the folks around this country who are hopefully listening. And I hope that the President is listening, because he is the one. I disagree to some degree with the gentleman who said that we are all to blame. The Congress has had its share, yes, I agree. But the gentleman will admit, I believe that we do not really make the economic, philosophical decisions in this Chamber. They are made in the White House. The path is set by the White House. We played on the margins trying to reduce the impact. We told people, and the gentleman knows this. He is on the Ways and Means Committee. He has worked very hard to turn around some of the policies the President wanted.

Why are we going back to them? Why are we going to use more failed policies? The gentleman has laid out a clear, concise message that it is wrong, and I want to commend the gentleman for having done so. And hopefully American anger will increase a little bit in this election year and make more accountability go to the President and others who have promised that this economy would be wonderful, that we were headed in the right direction, that we had enough money to do everything, to build bombs, and to send kids to school, to give them loans, to help the elderly.

The gentleman knows now we are to the breaking point. The biggest single part of the budget that is going to be nondiscretionary soon, beside the entitlements, is going to be the interest payment on that debt. And certainly the gentleman's description of what is being done in the Social Security trust fund by accounting, and I did not hear the gentleman say, but I believe that the gentleman will indicate when he takes back his time, I believe that is illegal, is it not? I believe under the law we cannot use the balance, the surplus in the Social Security trust fund to reduce the deficit.

So the gentleman has told people what is happening. I would hope that people begin to listen and make the President accountable and hold us accountable too. The gentleman is right. We have an obligation.

There was a guest minister here the other day who said, with the glory of becoming a Congressman comes a commensurate obligation. And we have an obligation to the American people. I believe the Democrats are going to meet that obligation in fairness in the Tax Code to middle-class Americans, in the provisioning of health care, and in the provisioning of jobs, and a growth package that will reduce the deficit and put Americans to work, and in the provisioning of a trade policy. That is where we are going this year, a fair trade policy. That, as the gentleman indicates, says to people around the world our markets are open to you, but if you do not open your markets to us, then we are going to have to revisit how you can trade with us and not let us trade with you. That is not protectionism. That is the way fairness has always been in the minds of most Americans.

So I hope that the gentleman's message is heard beyond this Chamber. I hope the gentleman's message is being carried forward by a lot of people in this country and they begin to think about how much further we can go with these failed policies, which are reimplemented and renewed in this President's budget before this country is brought to its knees economically. I thank the gentleman for yielding.

Mr. DORGAN of North Dakota. Mr. Speaker, I appreciate the comments the gentleman has made. As he knows, I walk a narrow board here across this chasm politically because I understand that the people I represent and the people all around this country, the last thing they want to see when they are unemployed and wondering about the future, and have an ache in their gut because they are worried about losing their jobs, they are worried about their families, the last thing they want to see is a bunch of us carping at each other and saying who is at fault and who is to blame. They want answers, and they want jobs, an America that works for the future, and they count on us really and want us to do something and do something constructive for the country.

The gentleman may have heard me in a Democratic caucus the other day stand up and say, "You know, I am flat out sick of listening to economists and pollsters." I don't care what economists and pollsters say anymore, and I do not give a rip what the press says about economists and pollsters.

The people who play pinochle in my hometown of 300 people, the retired folks, know exactly what is wrong with this country. They know that a country that spends $1 billion a day of money that it does not have, often on things it does not need, is going to be in deep, deep trouble. They know that a country that says to its largest businesses, go ahead and have war with each other, just spend a decade trying to buy and sell each other and pasting America with phony financial paper, go ahead and do that, they know that a country that allows that sort of baloney is going to weaken itself internally.

The folks who play pinochle back home know all of that. They know it, and they want to see the Government do something about it.

Why does somebody want to run for President just to be President? I have asked that question of myself: Why run for Congress unless you are able to get something done? And there are days I despair about that, because I care very much about getting something done here. And it is awfully difficult to see in the face of a proposal by the President to add $2 trillion in new debt that we are doing anything that is instrumental or constructive for this country, but instead all of us are going to do something terribly destructive to our future.

It seems to me that the only chance we have to change all of this is to decide there has to be an economic revolution of sorts in which all of us decide we are just not going to put up with any of this.

I am almost tempted to say at least this vote will not vote for anything this year, nothing, zero, until somebody sits down and comes up with a plan that is relatively sane and steers us back away from the cliff. That is not a very constructive thing to be thinking about. But how else do we stop this place in its tracks?

If a train is heading in the wrong direction toward a cliff and going 100 miles an hour, the first thing we have to do is to get it stopped. And then we start thinking about how to turn it around.

We need an economic renaissance of sorts. A part of that is the sort of thing you and I know in our hearts is right, and that is investing in people. This country has enormous human potential.

When I hear people say that the American people are lazy, and slothful, and indolent, and do not do good work, I really despair about that, because I can tell you something. I have met with a lot of folks who are disadvantaged, and down and out and in trouble. Two-thirds of welfare in this country is paid to kids under 16. So I guess the folks that want to criticize, they can go ahead and criticize kids. But I guess I would like to take care of kids.

□ 1200

I have talked to a lot of other people on welfare. Yes, some of them have in-

stitutionalized it and they have abused it, and I happen to be one of those who think we ought not pay welfare to able-bodied people unless they are doing something for it. I believe that.

But I tell you something else. I have not met a welfare person, not one—I am sure they exist, but I have not met them—who would not much prefer a decent job to take care of themselves and their families. They want work.

I have toured plants and factories, and I will tell you something. The American people are people who with the right kind of leadership can do enormously interesting and wonderful things. Gosh, we have gone to the Moon. We have done all these things.

The technology in the Persian Gulf war was breathtaking. America would sit and watch these things, bombs going down ventilator shafts, and gasp at the sheer remarkable technical quality of what American scientists and engineers have done to help defend us.

Why cannot a country that does that sort of remarkable achievement in technology and defense, why cannot a country like that not do the same remarkable things in building an industrial base that provides growth, jobs, and opportunity? Why can it not do the same innovative things in social structure to deal with this crime problem, its welfare problem and other things? I think it can. It is just a matter of deciding what is the most important asset we have in America—the human asset, the American people, the American worker.

So you educate and you train and you motivate, you employ and you produce jobs. That is what you do to put the country back on track.

We have been through a period in which somehow if you have not been selfish, if your motive is not to be selfish for myself, make as much money as you can in as short a time as possible any way you can make it, if that was not your motive, then somehow you were not successful. No notion of shared responsibility, no notion of some combined national commitment that was necessary, and so we started coming apart, falling apart.

Mr. SMITH of Florida. Mr. Speaker, if the gentleman will yield, the gentleman knows where that kind of philosophy emanates.

Mr. DORGAN of North Dakota. Oh, absolutely.

Mr. SMITH of Florida. That is the problem. The gentleman mentioned 1 minute ago the word, the single key word, "leadership," the direction, but to provide the leadership to move us in that direction, this is what it is all about.

Mr. DORGAN of North Dakota. No question about it.

Mr. SMITH of Florida. It is not happening here. In the eighties the leadership did not exist. They let everybody else lead, and where did it lead? Over the cliff.

Mr. DORGAN of North Dakota. Let me give you a small example of that. I watched all this going on in the private sector with junk bonds, hostile takeovers; gosh, I have been on the floor with amendment after amendment to try to shut it down.

Mr. SMITH of Florida. I voted for all those amendments, too.

Mr. DORGAN of North Dakota. And finally, I offered an amendment that says we will not allow S&L's to buy any more junk bonds. We shut down that business. The shenanigans that were going on with the people who are now doing 2 years at hard tennis at all these minimum security prisons, you know, that were flying all this paper around America. We shut it down, and the junk bond market collapsed.

You know why we had to do that? Regulators should have done that 6 years before, but regulators did not regulate. Do you know why? They collected their pay checks and they were appointed to office as regulators, but they did not regulate because Ronald Reagan said that government is evil, government is bad, government is the problem, so we are going to put people in office who are called regulators and we do not want you to regulate. You look the other way and let these folks steal you blind.

The result was this carnage, this economic casino that was built in the private sector in which all these companies and individuals started floating all these assets around with junk bonds. They were not producing a bit of new wealth for America. They were destroying companies that had been around a hundred years. And why? Because regulators did not regulate.

Mr. SMITH of Florida. Mr. Speaker, will the gentleman yield?

Mr. DORGAN of North Dakota. I am happy to yield to the gentleman from Florida.

Mr. SMITH of Florida. Most of the junk bonds and leveraged buyouts that occurred moved money only between people at the top level, incurred greater debt for the companies and most of those leveraged buyouts actually resulted in jobs being lost at the very time the deal was consummated, let alone later on when some of those people went into bankruptcies, big bankruptcies, including the Macy's bankruptcy now, the other problems, the Federated, all these big retail stores; but people lost their jobs then, and now they are going to lose their jobs, what is left of the jobs, because these companies are going out of business, and not a dime was shared with the people on the bottom.

What people in this country think is that people invest in the stock market, that they are investing in those companies. The gentleman and I know they are not. When you buy stock in the stock market, you are making a bet. You are betting the stock goes up. The money that you spend for the stock goes to the former owner. It does not go to General Motors or to Pratt & Whitney or to the little small startup technology companies. That money goes to the people who own the stock.

There is no investment on the stock market that is going to make America grow. The investment you need to make is starting new companies and providing new jobs for people. That did not occur in the 1980's, either. There was no approach that was done that way, and the gentleman has pointed that out.

Mr. DORGAN of North Dakota. Well, Mr. Speaker, our time is about up. I did just want to say, I wanted to come down and talk about this 10-pound book that says let us spend $2.2 trillion that we do not have in the next 6 years, a billion dollars a day for 6 years.

I have a little son who is in school this morning. The President seems to be saying that this is his future.

Well, I only have one vote here, but in my judgment, it is not my future, it is not my son's future. This is a future of despair and of economic decline for this country. We must fight for change. We have got to have an economic revolution of sorts in which we stop this train that is headed in the wrong direction, turn it around and move it back to the virtues all of us learned, the book that Fulghum wrote, "All I Really Need to Know I Learned in Kindergarten."

We know all we really need to know from those basic lessons. You have got to save. You cannot spend what you do not have. You have to save money. You have to pay your bills.

Mr. SMITH of Florida. Mr. Speaker, if the gentleman will yield further, we encouraged that in the 1980's, spend and spend.

Mr. DORGAN of North Dakota. Exactly, that is right. We went through a decade of unprecedented greed.

But my point is that the answers are found not in some new economic theory, some new paradigm, that is all a lot of nonsense. The answers ought to go back to fundamentals. They taught it in my school. I graduated in a high school class of 9 in a town of 300 people. You got to pay your bills. You do not find that out in calculus. You find it in arithmetic, what your bill is and you got to pay it. It is very simple.

If this country gets back to fundamentals, invests in people, pays its bills, insists on fair treatment and trade, pays attention to education, rededicates itself to product quality, decides that it is as great as it can be once again, then this country is going to do fine.

Then my son is going to have a great future. But if we do not change and radically change the policies that we now involved in, we are in very serious

trouble, and at least I do not intend to stay here another day, another month, another hour, unless I am part of a constructive effort to say this has got to stop. We are determined to change it in any way that we can change it, with all the tools at our disposal.

This country must have a chance in its future for growth and opportunity once again, and it is not with this blueprint. It is with the blueprint that says let us invest in the American people. Let us pay our bills. Let us do the things necessary to put America back on track.

Mr. SMITH of Florida. Mr. Speaker, if the gentleman will yield, I think the gentleman's statement speaks for itself.

I think to some degree what happened this morning is indicative of where we are going. We have been besieged in the last few months, as the gentleman knows, by statements from Japanese officials, high officials who should know better, all the bad things about American workers, they are lazy, they are this, they are that, they are not productive, they worry too much about the weekend and come in on Monday unwilling to work, et cetera.

Well, this morning in response to what has been criticism of that attitude, which I believe reflects their real feelings about everybody else, not just Americans, the Japanese Ministry released a report showing that Americans are most productive, American workers are more productive in many ways than Japanese workers.

Is that not amazing? All of a sudden this report which existed at the Ministry of Trade all of a sudden becomes available to the very people who run that Ministry and people who run the Government, where it says that American workers are more productive.

I think Americans who have a huge capacity for wanting to help others around the world are now understanding that it is time to help ourselves a little bit as well.

When a budget like that can continue to contain upwards of $130 billion in payments for the defense of other nations by American troops, at the same time that the unemployment rate has reached the highest level in so many years, so many Americans are out of work, so many Americans are doing without, so many students are missing the ability to go to college, so many elderly are having to do without, then there is something wrong with the people who make up the document.

Look, if we withdrew our $30 billion support for Japan tomorrow and let them protect themselves, would the world crumble? Everybody knows it will not any longer.

There is no threat in Europe. We could reduce our spending on NATO support in Europe from $110 billion to $130 billion down to $10 billion or $20 billion, is the world going to collapse tomorrow? Everybody knows it will not.

Where is that reflected in that document, the reality of today's world and the responsibility that the White House and the whole Government owes to the American people, which is the basis on which it operates in the first place, because without the American people there would be no way to fund the Government.

□ 1210

Mr. DORGAN of North Dakota. It is interesting that 2 years ago I was on the floor with an amendment and I pointed out at that time we had 325,000 American troops stationed in Europe but in addition we also hired 200,000 civilian employees.

Mr. SMITH of Florida. That is correct.

Mr. DORGAN of North Dakota. We had 525,000 people in Western Europe on the American payroll, the biggest jobs program in the world. We had people here at home out of work, could not afford to do this, that, or the other thing for people here at home. That does not make any sense.

I am not suggesting we rearm Japan; I am just suggesting Japan pay us each year for the amount of money we spend for their defense. But what the gentleman says and what I have said just now is we get the people wearing bowties downtown who are the great thinkers and some folks who report on this, and they say, "Well, what we have just heard is xenophobic, protectionist, and isolationist," right?

Mr. SMITH of Florida. I have heard that, too.

Mr. DORGAN of North Dakota. It is all such a bunch of nonsense.

Mr. SMITH of Florida. That is what they say. But it is wrong.

Mr. DORGAN of North Dakota. Right. I am just wondering, when they call us protectionists, they mean it in a pejorative way, suggesting we want to close America's borders. And I do not believe that at all.

Mr. SMITH of Florida. If the gentleman would yield again, I say to the gentleman I do not want to close America's borders either. What has made us great is the ability of the United States to trade.

One of the reasons we went to Europe with the Marshall plan, one of the reasons we went to Japan after the war was not only for the altruistic reason of building their own countries back up but because we wanted to open their markets, to be able to afford the goods that we wanted to ship in to them so that they could buy them and we could put Americans to work.

But after 50 years, almost 50 years since the end of the war, their markets are alive and well, their countries are doing great. Why do we continue to have to pay for their security so they can close their markets to us and then come and beat us over the head with unfair trade practices?

I do not want to close the markets at all. I just want them to open their markets to the extent that we open our markets to them.

I am tired of hearing—well, I do not know what word you would call them, but these people who are screaming that that is xenophobia, it is Japan-bashing or Europe-bashing or protectionism. It is not at all.

Nobody here is calling for higher tariffs, nobody here is calling for nontariff trade barriers, nobody is calling for anything except fair play.

What happened to the leadership in this country that it cannot stand up, look the Japanese or the Europeans or anyone else in the eye, and say "fair trade"? That is what starts today: Fair trade.

Mr. DORGAN of North Dakota. They have lost their nerve, they do not want to do that. You know, it is interesting, there is a notion somehow that if you stand up and say these things you are protectionist and protecting America is somehow unpatriotic. When did it become unpatriotic to be someone who says, "My interest is to protect America, not with closed markets but by insisting on fair trade rules?" If we are not going to protect America, who is? Japan? Germany? Are you kidding me? The journalists? The columnists? Of course not. America needs protection at least in the form of requiring fair trade rules.

Now let me just mention one other thing. The gentleman from Florida asked, "Where is everybody on these issues?" The $2.2 trillion debt? I have seen one article since the President spoke about what he is proposing, and that did not have the $2.2 trillion in it. Where is everybody? Well, they are searching for the giant scandal so they can act like flies around a batch of honey. The fact is——

Mr. SMITH of Florida. The gentleman is being kind calling it honey.

Mr. DORGAN of North Dakota. The fact is we are involved in a period of almost total thoughtlessness in dealing in a public way and also in the press with real debate about real issues: What is the deficit? How do we respond to it? How do we deal with health care in a real way? There is such thoughtlessness at a time when we require and need such thoughtfulness in a national debate about where is this country going and how it is going to get there. My hope is that all of us, and my hope is that especially this year during a Presidential contest and a lot of debates around the country, that we can finally have a responsible, no, not a Willie Horton debate, but a responsible debate about what our hopes and dreams are for the future and what kind of public policies really get us to that kind of future. What do we have to do together? What are our shared responsibilities?

If we can have the public involved in that kind of a public debate, this country will be well served.

This country goes off course from time to time, we veer to the left and veer to the right; but you look at a couple of centuries of history and this country and the common sense of the middle of the American people is what always brings us back to center policies that work.

As Adlai Stevenson said, "Trust the people, trust their good sense, trust their faith and fortitude, and trust them with the important decisions."

I am hopeful that this kind of information debated all around this country this year will put us in a position where we can and will trust the judgment of the American people to lead us to an economic future that this country deserves.

Mr. SMITH of Florida. I thank the gentleman.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. GOSS) to revise and extend his remarks and include extraneous material:)

Mr. SANTORUM, for 60 minutes, on February 19.

(The following Members (at the request of Mr. DORGAN of North Dakota) to revise and extend their remarks and include extraneous material:)

Mr. MORAN, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. DORGAN of North Dakota, for 60 minutes, today and 60 minutes on February 14.

Mr. LIPINSKI, for 5 minutes, on February 18 and 19.

Mr. FRANK of Massachusetts, for 60 minutes, on June 16, 17, and 18.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GOSS) and to include extraneous material:)

Mr. LAGOMARSINO.

Mr. WELDON.

Mr. BLILEY.

Mr. IRELAND.

Mr. SOLOMON.

Mr. MICHEL.

Mr. ZIMMER.

(The following Members (at the request of Mr. DORGAN of North Dakota) and to include extraneous material:)

Mr. LUKEN.

Mr. SKELTON.

Mr. TRAFICANT in two instances.

Mr. WOLPE.

Mr. ALEXANDER.

Mr. PEASE in two instances.

Mr. ASPIN.

Mr. MONTGOMERY.

Mr. MANTON.

Mr. HOYER.

Mr. PANETTA.

Mr. DERRICK.

Mr. VISCLOSKY in two instances.

Mr. FALEOMAVAEGA in two instances.

ADJOURNMENT

Mr. SMITH of Florida. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 25 minutes p.m.), under its previous order, the House adjourned until Tuesday, February 11, 1992, at noon.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. JACOBS (for himself, Mr. LEVIN of Michigan, and Mr. DORGAN of North Dakota):

H.R. 4192. A bill to amend the Congressional Budget Act of 1974 to provide for truth in budgeting with respect to intragovernmental transactions involving trust funds; jointly, to the Committees on Government Operations and Rules.

By Mrs. BENTLEY:

H.R. 4193. A bill to prohibit the President from entering into or carrying out a country-to-country agreement to allow production of the Patriot missile system by another country; to the Committee on Foreign Affairs.

By Mr. BURTON of Indiana (for himself, Mr. TRAXLER, Mr. DINGELL, Mr. LEVIN of Michigan, and Mr. FORD of Michigan):

H.R. 4194. A bill to amend the Internal Revenue Code of 1986 to allow individuals a temporary refundable credit for the purchase of a new domestic passenger vehicle; to the Committee on Ways and Means.

By Mr. DICKINSON:

H.R. 4195. A bill to direct the Secretary of Transportation to carry out a limited access highway project in the vicinity of Dothan, AL; to the Committee on Public Works and Transportation.

By Mr. HARRIS:

H.R. 4196. A bill to prohibit the Secretary of Veterans Affairs from carrying out the rural health care initiative; to the Committee on Veterans' Affairs.

By Mr. IRELAND (for himself and Mr. GUNDERSON):

H.R. 4197. A bill to amend the Small Business Act to provide additional loan assistance to small business, and for other purposes; to the Committee on Small Business.

By Mr. JONES of North Carolina (for himself, Mr. STUDDS, Mr. LENT, Mr. DAVIS, Mr. HORTON, Mr. ANDERSON, Mr. CUNNINGHAM, Mr. DORNAN of California, Mr. AUCOIN, Mr. EVANS, Mr. TALLON, Mr. WALSH, Mr. BATEMAN, Mr. HUTTO, Mr. BLAZ, Mr. HUBBARD, and Mr. HOCHBRUECKNER):

H.R. 4198. A bill to amend the Internal Revenue Service Code of 1986 to exempt vessels of 100 gross tons or less from the tax on transportation of persons by water; to the Committee on Ways and Means.

By Mr. KOLTER:

H.R. 4199. A bill to direct the Administrator of General Services to review existing House of Representatives motor vehicle leases and to require that future leasing be conducted through the General Services Administration; to the Committee on House Administration.

By Mr. MICHEL (for himself and Mr. ARCHER):

H.R. 4200. A bill to create jobs, promote economic growth, and encourage savings, investment, and home ownership; jointly, to the Committees on Ways and Means, Government Operations, Education and Labor, the Judiciary, and Post Office and Civil Service.

By Mr. KOSTMAYER:

H.R. 4201. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain real property under the special estate tax valuation provisions for certain farm and other real property; to the Committee on Ways and Means.

By Mr. HOAGLAND (for himself, Mr. MCCOLLUM, Mr. NEAL of North Carolina, Mr. WYLIE, Mr. KANJORSKI, Mr. RIDGE, Mr. FLAKE, Mr. LAROCCO, Mr. ORTON, Mr. FAZIO, Mr. KYL, Mr. SPRATT, Mr. KOLBE, Mr. PRICE, Mr. KOPETSKI, and Mr. DOOLEY):

H.R. 4202. A bill to provide for nationwide banking and branching; to the Committee on Banking, Finance and Urban Affairs.

By Mr. MARKEY (for himself, Mr. MOAKLEY, Mr. STUDDS, Mr. FRANK of Massachusetts, Mr. KENNEDY, Mr. MAVROULES, Mr. ATKINS, Mr. EARLY, Mr. NEAL of Massachusetts, Mr. OLVER, and Mr. DONNELLY):

H.R. 4203. A bill to amend the Emergency Unemployment Compensation Act of 1991 to correct certain inconsistencies between State and Federal unemployment compensation rules and assure that all eligible individuals will receive full unemployment benefits; to the Committee on Ways and Means.

By Mrs. MEYERS of Kansas:

H.R. 4204. A bill to recognize the organization known as the Shepherd's Centers of America, Inc., to the Committee on the Judiciary.

By Mr. OBERSTAR:

H.R. 4205. A bill to amend title 18, United States Code, to permit Federal firearms licensees to conduct firearms business at out-of-State gun shows; to the Committee on the Judiciary.

By Mr. SANDERS (for himself, Mr. MCDERMOTT, Mrs. MORELLA, Mr. DEFAZIO, Mr. LAFALCE, Mr. MCGRATH, Mrs. JOHNSON of Connecticut, Mr. STAGGERS, Mr. OWENS of New York, Mr. JONES of North Carolina, Mr. PAYNE of New Jersey, Mr. TRAFICANT, Mr. LEHMAN of Florida, Ms. PELOSI, Mr. MFUME, Mr. MURPHY, Mr. MARTINEZ, Mr. FASCELL, Mr. OBERSTAR, Mr. HORTON, Mr. SMITH of New Jersey, Mr. KOLTER, Ms. KAPTUR, Mr. SAVAGE, Mr. EVANS, Mr. ROGERS, Mr. MILLER of California, Mr. ANDREWS of Maine, Mr. DONNELLY, Mr. ANDREWS of New Jersey, Mr. MRAZEK, Mr. TORRES, Ms. OAKAR, Mr. SANGMEISTER, Mr. SCHEUER, Mr. BERMAN, Mr. CONYERS, Mr. LEVINE of California, Ms. WATERS, Mr. PETERSON of Minnesota, Mr. FRANK of Massachusetts, Mr. LEWIS of Georgia, Mr. KANJORSKI, Mr. HAYES of Illinois, Mr. ABERCROMBIE, Mr. KENNEDY, Mr. WISE, Mr. FLAKE, Mr. DELLUMS, Mr. MAZZOLI, Mr. WYDEN, Mr. MATSUI, Mr. SCHUMER, Mr. JEFFERSON, Mr. ROYBAL, Mr. RANGEL, and Mr. FROST):

H.R. 4206. A bill to amend the Public Health Service Act to provide for the estab-

lishment or support by States of registries regarding cancer, to provide for a study regarding the elevated rate of mortality for breast cancer in certain States, and for other purposes; to the Committee on Energy and Commerce.

By Ms. SNOWE (for herself, Mr. RAMSTAD, Mr. FRANK of Massachusetts, Mr. GRANDY, Mr. BOEHNER, and Mr. PALLONE):

H.R. 4207. A bill to amend title 23, United States Code, to repeal a penalty for noncompliance by States with a program requiring the use of safety belts and motorcycle helmets; to the Committee on Public Works and Transportation.

By Mr. STARK (for himself, Mr. JONTZ, and Mr. BROWN):

H.R. 4208. A bill to amend the Internal Revenue Code of 1986 to deny the benefits of certain export subsidies in the case of exports of certain unprocessed timber; to the Committee on Ways and Means.

By Mr. SYNAR (for himself, Mr. BREWSTER, Mr. EDWARDS of Oklahoma, Mr. ENGLISH, Mr. INHOFE, and Mr. MCCURDY):

H.R. 4209. A bill to amend the act entitled "An Act conferring jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma," approved December 23, 1982; jointly, to the Committees on Interior and Insular Affairs and the Judiciary.

By Mr. ASPIN:

H. Res. 351. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Armed Services in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. BROWN:

H. Res. 352. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Science, Space, and Technology in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. DE LA GARZA:

H. Res. 353. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Agriculture in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. DINGELL:

H. Res. 354. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Energy and Commerce in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. HALL of Ohio:

H. Res. 355. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Select Committee on Hunger in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. JONES of North Carolina:

H. Res. 356. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Merchant Marine and Fisheries in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. MONTGOMERY (for himself and Mr. STUMP):

H. Res. 357. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Veterans Affairs in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. ROE

H. Res. 358. Resolution providing amounts from the contingent fund of the House for expenses of investigations and studies by the Committee on Public Works and Transportation in the 2d session of the 102d Congress; to the Committee on House Administration.

By Mr. SANDERS:

H. Res. 359. Resolution to express the sense of the House of Representatives regarding breast cancer; to the Committee on Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 25: Mr. HOAGLAND and Mr. LAROCCO.

H.R. 123: Mr. STEARNS, Mr. KOLTER, and Mr. MARLENEE.

H.R. 875: Ms. WATERS, Mr. MATSUI, Mr. DEFAZIO, Mr. FRANK of Massachusetts, Mr. ANDREWS of Maine, and Mr. JONTZ.

H.R. 1063: Mr. EVANS and Ms. PELOSI.

H.R. 1277: Mr. ALLEN, Mr. FALEOMAVAEGA, and Mr. SHAYS.

H.R. 1546: Mr. HOUGHTON.

H.R. 1547: Mr. HOUGHTON.

H.R. 1633: Mr. MCCOLLUM and Mr. LEVIN of Michigan.

H.R. 1987: Mrs. SCHROEDER, Mr. STALLINGS, Mr. MRAZEK, Mr. BROWN, Mr. STOKES, Mr. LEHMAN of California, and Mr. LUKEN.

H.R. 2258: Mr. ANDERSON, Mr. BLACKWELL, Mr. MILLER of California, Mr. STUDDS, and Mr. TALLON.

H.R. 2437: Mr. STALLINGS, Mr. KOPETSKI, Mr. ESPY, Mr. KILDEE, Mr. GUARINI, Mr. IRELAND, and Mr. LEWIS of Florida.

H.R. 2452: Ms. SNOWE.

H.R. 2485: Mr. HOAGLAND.

H.R. 2646: Mr. FRANKS of Connecticut.

H.R. 2778: Mr. ENGEL.

H.R. 2806: Mr. SUNDQUIST, Mr. COX of Illinois, Mr. WELDON, Mr. FRANK of Massachusetts, and Mrs. LLOYD.

H.R. 2815: Mr. CHANDLER.

H.R. 2867: Mr. HANCOCK and Mr. COBLE.

H.R. 2872: Mr. EMERSON.

H.R. 3130: Mr. MOORHEAD.

H.R. 3211: Mr. PALLONE, Mr. KOLTER, Mr. ATKINS, and Mr. SANTORUM.

H.R. 3221: Mr. SPRATT, Mr. EWING, Mr. HEFLEY, Mr. MORAN, Mr. VOLKMER, and Mr. WOLPE.

H.R. 3360: Mr. FALEOMAVAEGA, Mr. SANDERS, and Mr. HOYER.

H.R. 3429: Mr. PEASE, Mr. ANDREWS of New Jersey, and Mr. BERMAN.

H.R. 3441: Mr. MACHTLEY.

H.R. 3545: Mr. LEHMAN of California.

H.R. 3568: Mr. SYNAR and Mr. MACHTLEY.

H.R. 3612: Mr. HORTON, Mr. VENTO, Mr. KOPETSKI, and Ms. KAPTUR.

H.R. 3654: Mr. ANDREWS of Maine, Mr. ASPIN, Mr. BOEHLERT, Mr. DORGAN of North Dakota, Mr. JOHNSON of South Dakota, Ms. KAPTUR, Mr. KLECZKA, Mr. KOPETSKI, Mr. MCGRATH, Ms. MOLINARI, Mr. MURPHY, Mr. PAXON, Mr. REED, Ms. SNOWE, Mr. VISCLOSKY, Mr. UPTON, Mr. WYDEN, Mr. WOLPE, and Mr. SWETT.

H.R. 3712: Mr. YOUNG of Alaska and Mr. ARMEY.

H.R. 3732: Mr. ANDREWS of Maine, Mr. ATKINS, Mr. SKAGGS, and Mr. ROYBAL.

H.R. 3857: Mrs. JOHNSON of Connecticut.

H.R. 3953: Mr. MCDERMOTT, Mrs. MINK, Mr. PETERSON of Minnesota, and Mr. TORRES.

H.R. 3967: Mr. ATKINS, Mr. OXLEY, and Mr. MCCANDLESS.

H.R. 4051: Mr. WELDON, Mr. BORKSI, and Mr. MARTINEZ.

H.R. 4077: Mr. FRANKS of Connecticut.

H.R. 4080: Mr. WELDON.

H.R. 4089: Mr. PURSELL, Mr. OWENS of New York, Mr. FROST, Mr. ZELIFF, Mr. LANCASTER, and Mr. UPTON.

H.R. 4145: Mr. UPTON and Mr. LEWIS of Florida.

H.R. 4155: Mr. GALLEGLY.

H.R. 4178: Mrs. JOHNSON of Connecticut.

H.J. Res. 19: Mr. GINGRICH.

H.J. Res. 213: Mr. GORDON.

H.J. Res. 237: Mr. JENKINS, Mr. BROWN, and Mr. RICHARDSON.

H.J. Res. 358: Mr. CAMPBELL of Colorado, Mr. MOORHEAD, Mr. TAYLOR of Mississippi, Mr. HOAGLAND, Mr. MAVROULES, Mr. MFUME, Mr. FORD of Michigan, Mr. BERMAN, Mr. KILDEE, Mr. BOUCHER, and Mr. CARDIN.

H. Con. Res. 246: Mr. DELLUMS, Mr. DWYER of New Jersey, Mr. HUNTER, Mrs. BOXER, Mr. OBERSTAR, Mr. KILDEE, Ms. KAPTUR, Mr. JONTZ, Mr. MURPHY, and Mr. CARPER.

SENATE—*Friday, February 7, 1992*

(Legislative day of Thursday, January 30, 1992)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Owe no man any thing, but to love one another; for he that loveth another hath fulfilled the law.—Romans 13:8.

Gracious Father in Heaven, with respect to the commandment to love, we are all debtors. Give us the grace to take our indebtedness seriously and to begin, in obedience to the faith we profess, to satisfy it. Forgive us who say we believe the Bible, who witness to faith in Christ as Saviour and Lord, for ignoring or violating His commandment to love one another, even our enemies—to "do good to those who persecute us." Forgive us, Lord, in the light of God's truth, for running up such an enormous debt of lovelessness, and vindictiveness.

God of love, as the pressures and demands of a national election increase, help us to give our responsibility to love priority over all pragmatic and expedient justifications not to love. Help us, God, to fulfill the law and love one another.

In the name of Jesus, incarnate love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 7, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

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.

The time until 9:45 a.m. shall be under the control of the Senator from Georgia [Mr. NUNN].

The Chair recognizes the Senator from Georgia.

Mr. NUNN. I thank the Chair.

Mr. President, I yield to the Senator from Minnesota.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that a member of my staff, Ms. Ellen R. Shaffer, be accorded the privilege of the floor.

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

REDUCING THE SOVIET MILITARY THREAT

Mr. NUNN. Mr. President, in remarks to the Senate yesterday, I discussed the problem of people in the U.S. Defense Establishment who have lost, or will lose their jobs, as we downsize our military. For me, this is a top priority for our Armed Services Committee and indeed for our Nation. For these dedicated and talented people, winning the cold war is about to be a bittersweet triumph.

We, in Government, have a special responsibility to do everything we can to facilitate the transition of these workers into new jobs and new professions. We in Government, have another responsibility as well; in fact, a primary responsibility. And that is to provide not only for our citizens' welfare or well-being, but also for their safety and security.

This morning, I would like to speak about one way in which we can fulfill this primary Federal responsibility. I want to discuss U.S. efforts to assist the former Soviet Republics in dismantling their nuclear and chemical weapons and in preventing their proliferation, as well as the proliferation of sophisticated conventional weapons.

I know of no more urgent national security challenge confronting our Nation and the world. Nor do I know of any greater opportunity for our Nation to reduce the dangers confronting us now, so as to prevent them from becoming greater dangers in the future. One need look no further than our newspapers each morning to appreciate the immediacy of the problem. For example, Wednesday's Washington Post quotes a Russian nuclear weapons laboratory director as saying that only 500 Soviet experts capable of dismantling tactical nuclear weapons remain on the job and that poor living conditions in the army could contribute to a nuclear accident.

According to this lab director, "It's becoming clear that in the very near future we can expect hundreds of big and small Chernobyls. It's entirely possible for a man worn out by the problems of daily life to make a mistake when carrying out work on nuclear warheads."

At this unique juncture in history, there is great danger as well as great opportunity. We have the opportunity for an unprecedented destruction of the weapons of war. We also have the potential for the greatest proliferation in history of weapons from the world's largest military arsenal to Third World countries, to terrorist groups, and to the Saddam Hussein's of the future. We could also witness the proliferation not only of weapons and materiel but perhaps even more likely of scientific know-how, what I would call human proliferation. What I fear is a bidding war, if you will, by Third World regimes and even terrorist groups for Soviet weapons experts, that would rival the United States-Soviet competition to recruit German scientists after World War II.

To try to get ahead of these problems, the Senate voted last November by an overwhelming margin of 86 to 8 to authorize the use of up to $500 million in defense funds for a program of cooperation with the Republics of the former Soviet Union to facilitate Soviet weapons destruction and to discourage proliferation. The $500 million was subsequently reduced to $400 million by the appropriations committees.

This landmark legislation, which is known as the Soviet Nuclear Threat Reduction Act of 1991, has a threefold purpose: First, to assist the republics in destroying nuclear, chemical, biological, and other sophisticated weapons; second, to assist the republics in transporting, storing, disabling, and safeguarding such weapons in connection with their destruction; and third, to establish verifiable safeguards against the proliferation of these weapons. We specifically intended that portions of this fund go to cooperative

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

United States-Soviet or former Soviet projects that could employ scientists from the republics who formerly made nuclear or chemical weapons in cleaning up and destroying the nuclear and chemical residue of the cold war. An additional $100 million in defense funds was authorized and appropriated to transport, by military or commercial means, food, medical supplies, and other types of humanitarian assistance to the republics.

Senator COHEN and Senator BOREN took an outstanding lead in this respect, as well as Congressman ASPIN and others. And that provision will begin to be implemented, I understand, next week with the transport by C-5 and C-141 aircraft of food and medicine to the republics.

The Soviet Nuclear Threat Reduction Act of 1991 was signed into law by the President 8 weeks ago. Since then, committees and task forces have been organized in both the Commonwealth of Independent States and in our executive branch to deal with this issue. Several rounds of discussion have been conducted in Washington and the republics. Numerous proposals for spending the money have been floated by governmental and private entities. However, as of yet, none of the $400 million has been transferred from DOD accounts for any of these purposes. In addition, as Wednesday's Washington Post made clear, urgently needed U.S. humanitarian relief sits at U.S. docks, hamstrung by bureaucratic delays. Just yesterday, Russian President Boris Yeltsin warned that unless Western aid starts getting through, his reform effort may fail and thereby usher in a new era of dictatorship. Some may dismiss this as leverage for aid. I do not.

On Wednesday, the Armed Services Committee conducted a hearing with senior Defense and State Department officials to find out why the United States is not moving with more dispatch, with more sense of priority, with more sense of urgency.

As I stated during that hearing, I am not impatient for large expenditures. I know that there are all sorts of con artists out there and people who would like to spend the money in ways that may be wasteful so I am not saying we should spend the money until we figure out what we should be doing with it and figure out an effective way to do it. But I am impatient for a plan.

I believe it is critical—both symbolically and psychologically—we agree on a plan, even if that plan has to be modified as we move along. During the hearing, the committee heard some good and some bad news from Secretary Bartholomew. The good news is that the administration believes it is close to agreement in the next few days on how to use the $400 million authorized in the Nunn-Lugar amendment. This is welcome news and I hope we will hear more about these plans shortly.

During our hearing, Ambassador Bartholomew also discussed the serious problem of former Soviet scientists who might sell their services to countries seeking weapons of mass destruction. Here the good news is that President Bush raised this issue with President Yeltsin during his visit last weekend at Camp David and the administration expects to have concrete proposals in a matter of days. Unfortunately, the hearing also brought out some bad news.

First, it is apparent that the former Soviet Republics have not gotten their act together with regard to the $400 million program.

Different agencies or ministries appear to have different ideas about how to spend the money, each, not coincidentally, tailored to best suit that agency's or ministry's own mandate.

Last week, on this particular subject, I met with Dr. Velikov, the deputy head of the Russian Academy of Scientists, a well-known leader in the scientific field in his country and around the world and a noted physicist, who has been designated just recently by President Yeltsin to chair an advisory task force on these very issues. I emphasized to Dr. Velikov the importance of Russia acting both quickly and decisively and in a coordinated fashion to establish an agreed position on what help it needs, and he certainly pledged to undertake to do exactly that.

The hearing also underscored how many different officials on our side the administration has designated to act in this area. We have one official in charge of discussions on nuclear dismantlement; another in charge of talks of chemical weapons destruction. We have one official in charge of a program to deal with nonproliferation concerns; another to deal with the brain drain problem. We have an on-scene coordinator in Europe, and I am very grateful for that. I have felt for some time this is a tremendous omission. We need someone on the scene to organize the humanitarian relief area. I think having Ambassador Rich Armitage in that position is a real step forward.

Finally, we have another official who is apparently responsible, at least in a very loose way, for what we call Soviet defense conversion matters, at least monitoring those activities from our perspective.

Each of these U.S. officials has important responsibilities in their separate area. The problem, Mr. President, is that none of them has an overall responsibility for a comprehensive, integrated plan and for coordinating between the various components, except for Deputy Secretary of State Lawrence Eagleburger. I have the greatest respect for Secretary Eagleburger and his considerable diplomatic skills and experience. However, you cannot pick out a part of the world that he is not responsible for. He is responsible for every part of the world. Pick out any part of the world where there is trouble and Secretary Eagleburger is in charge. He cannot handle the whole world any more than any person can. With the responsibility of the whole world on his shoulders when Secretary Baker is out of the town—which is a great deal of time, necessarily—plus the day-to-day operations of the State Department, Secretary Eagleburger is clearly overburdened.

Mr. President, this is a unique period in history. In a couple of years we are going to wonder why we did not give this problem more priority. What is needed is one official with Cabinet rank reporting to the President as well as the Secretary of State, and others where required, whose responsibilities are limited to managing this problem in its entirety, putting a halt to turf battles and ensuring that this issue is kept on the front burner.

We also need a different overall coordinator for Eastern Europe. We have spent trillions and trillions of dollars since World War II trying to arrive at this point in history. Here we are; we are not organized; we are not coordinated and we are not seizing the moment. We may wake up in a few months and begin a debate about how democracy was lost in Eastern Europe and some of the former Soviet Republics.

Another deficiency that came to light during the hearing is the absence of any coherent administration plan for engaging U.S. colleges and universities, nonprofit foundations, research institutes and private industry in tackling the Republics' human proliferation problem.

The American response should not be limited to government-to-government programs. All these kinds of outside groups and institutions can help—they can help immensely—by adding Soviet scientists to their research teams or faculties or, in the near term, by sponsoring scientific exchanges.

I have just been informed by some of the people in the Russian Academy of Sciences that they do not have enough money, now that the cost of an airline ticket, even on Aeroflot, is something like seven times the average annual salary of their top scientists. These are people who know how to send rockets into space, who know how to make ballistic missiles, who know how to make chemical weapons, nuclear weapons, and biological weapons. The West needs to be engaging these people. Certainly when they are invited to scientific conferences it is in our best interest for them to have enough funding to be able to get to the conferences.

If we do not begin to understand the scope of this problem, the magnitude of the problem, we will regret it, and our

security interests and the interests of the world will suffer.

We are going to have a lot of C-5 aircraft, C-141's going over and bringing back probably empty planes. As we bring food and medicine in, I hope the administration will take a look at utilizing that extra space and perhaps bringing some scientists and military people for exchange programs back to this country.

This is the moment in history during which we need to expose their intellectual leadership and their leadership in the military and the scientific communities to the West, not just the United States, but certainly including this country. We need to expose them to ideas and to, particularly, the idea of human rights and democracy.

Mr. President, the focus at the committee's hearing Wednesday was on how to implement the programs that are already authorized, but we also discussed what additional programs and authorities are needed. For example, I suggested we establish a much-expanded program of military office of exchange between our military and the armed forces of the Republics. When I have discussed this initiative both with Russians and with top United States officials, everyone's reaction is "let's do it." But nothing has happened.

I also discussed this with top Ukrainian officials and others in other republics. So far, nothing has happened. I hope we can get someone firmly and clearly in charge in the Department of Defense to pull together our efforts to assist the former Soviet Republics in converting their defense industries and defense production into civilian and domestic applications. At present, there is simply no structured U.S. Government effort to help facilitate American private investment and to help those American firms interested in investing in joint ventures with the former Soviet Republics in this area.

I do not in any way believe we ought to be underwriting those efforts with taxpayers' money, but I do believe that the Government can facilitate the private sector in this respect.

I have a couple of suggestions along that line. I have recommended several specific actions we can take in this regard, none of which carry any substantial amount of money as a pricetag. I certainly am not suggesting that taxpayers' money be used to actually convert former Soviet defense industries. What I am suggesting, first and most important, is that President Bush should say clearly, publicly, and unequivocally that it is in the United States' interest for American companies to invest in such joint ventures where former production and defense industry is going to be taken out of defense production and moved into commercial production. It is enormously important that the President himself send this signal to the American business community.

Second, we can ensure that the State Department expedite visa applications by republic officials and republic entrepreneurs who need to travel regularly to the United States to consult with their American partners in these ventures. The same thing is true for American businesses in terms of their visits to the Soviet Republics.

I am told by numerous people that they have trouble getting visas, and every time they want to go it has to be a separate visa. They cannot have any kind of a real carte blanche kind of authority for limited periods of time when the time element here is crucial. At a hearing on Soviet defense conversion last September, the Armed Services Committee was told our State Department is insisting on processing visa applications for each visit one at a time, rather than extending repeat business authority.

Someone in the bureaucracy has to be given the signal that this is a unique moment in history. So far, they have not been given that signal.

Third, we can expedite our procedures for approving export licenses for American goods and technology needed in these ventures. The chairman of the Gulfstream Corp., which is located in my home State of Georgia, has testified before our committee on the delays and bureaucratic redtape he has faced while pursuing a joint aircraft venture in the former Soviet Union. I am not in a rush to change the substance of the Export Control Act, although that, too, needs reviewing, but I am in a rush to expedite our procedures and to make export applications receive top priority when they involve the conversion of a former Soviet defense industry into commercial purposes.

Fourth, I recommend that the Defense Department and the Department of Energy offer to assist the Republics of the former Soviet Union in compiling an inventory of defense industries. The Republics are willing to convert to civilian production. The U.S. Government should then establish offices in each Republic with substantial joint venture potential which could serve as clearinghouses for U.S. firms interested in doing business in the Republics.

We are talking about very small amounts of money here. It may turn out that few Soviet defense plants are appropriate for civilian production. This will have to be a private-sector decision. In that case, the inventory should list managers and scientists who have convertible skills. It is well beyond the capability of most U.S. firms to conduct such an inventory themselves. It may turn out that people within the Republics, rather than plants and equipment, offer the best hope for defense conversion. But in any event, this matter should be explored and our businesses should be given a clear signal that it is in the national security interests of the United States for them to make such examination.

Mr. President, the modest amounts of money I am talking about for these programs is going to come out of the defense budget, not from domestic accounts. I believe the American people understand that by making a very limited, a carefully conditioned investment today, we will clear the way for much larger reductions in defense spending tomorrow.

I think all of us ought to ask ourselves what happens one day if we wake up and President Yeltsin is no longer in charge, there has been some kind of uprising, some kind of take over by extreme nationalists, and all of a sudden you have problems between Russia and the other Republics, the Baltics; you have problems between Russia and Ukraine; you have problems with some of the Moslem Republics, you have breakaways by some of the Moslem Republics, some of them lining up with the Iranians.

You have all of these things going on; Eastern Europe in economic distress; refugees start flooding into Eastern Europe from Russia; refugees from Eastern Europe start flooding into East Germany and West Germany. What happens in that case? Are we then going to say: "Oh, oh, it was not predictable."

Mr. President, I do not predict it, but it could happen. It could happen, and it is our duty at this moment in history to do what we can, even though it may be limited, to foster democracy and human rights in these areas of the world that have been so forsaken for so many years from any element of democracy or human rights or the free enterprise system.

Mr. President, this is a unique moment in history. Never before has the world faced the prospect of thousands of unemployed nuclear scientists, each with the ability to help a Third-World madman realize his ambition of creating weapons of mass destruction, not necessarily simply nuclear but also chemical and biological. Never before have we had a country this heavily armed coming apart at the seams with a danger of massive weapons proliferation. Never before have we had an army willing to sell virtually everything it owns, including its weapons, in order to get money to buy food. Never before has there been a greater danger that terrorists could easily acquire sophisticated hand-held missiles like our Stingers, that can knock down civilian airliners. We are not the only ones that make Stinger missiles—the equivalent of Stinger missiles—and these can fetch a very good price in international arms trafficking.

Mr. President, these are clear and present dangers. We have a tremendous opportunity, but we must not sit on our hands. The American people under-

stand this is an opportunity we must not miss. Any politician, anyone in Government who cannot explain that this is in our security interest to the American people, in my view, should not be in politics.

Mr. President, I yield the floor.

Mr. LEVIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Michigan [Mr. LEVIN].

Mr. LEVIN. Mr. President, I believe the Senator from Georgia is controlling the time, and I ask if he would yield me 10 minutes.

Mr. NUNN. I will be glad to yield the Senator 10 minutes.

Mr. LEVIN. Mr. President, while the Senator from Georgia is on the floor, let me say how critical a role he has played in focusing the attention of this country on this opportunity that we have never had before.

The Senator has just pointed out that we have never before had these kinds of opportunities. We never expected that we would see a Soviet Union disintegrate this quickly right in front of our eyes. He has said with eloquence that we have these opportunities, that this is a historic moment, and he has pointed out that not only has this never happened before but it may never happen again.

I have watched the chairman of the Armed Services Committee, Senator NUNN, address the new priorities of this Nation in terms of defense. He was the leader during the cold war in making sure we addressed the threats we faced then: Nuclear threats from the Soviet Union and the conventional threat in Europe, the possibility of a surprise massive attack against Western Europe by Soviet forces; and then, when that was the threat, when our security need was to defend against those threats, Senator NUNN led the Armed Services Committee and this Senate to defend against those threats.

The threats have now changed. Senator NUNN and the Armed Services Committee have changed so that we can now address not only the new threats but new opportunities. The threat of proliferation of nuclear weapons and the knowledge of how to make nuclear weapons, for instance, is growing, and it is something which has been addressed in hearing after hearing already by the Senate Armed Services Committee.

So I commend Senator NUNN, our chairman, for his determination to not only meet new threats but to address new opportunities which we never dreamed we would have. If we do not address these opportunities, address the threat of nuclear proliferation, take Soviet scientists and have them work in commercial enterprises and in productive enterprises and peaceful enterprises; if we do not promote joint ventures of American businesses with these industries in the former Soviet Union, we will have squandered an opportunity we thought we would never have and may never have again.

I thank my good friend from Georgia for his ability to see what is new and to address what is new. It has been an invaluable effort on his part.

Mr. NUNN. Mr. President, will the Senator yield for a moment. First, I thank him for his kind words, and second and most importantly, I thank him for his leadership, because he has been right at the forefront of everything I have done in this area. Without the Senator from Michigan, it could not have been done. I thank him for his leadership, for his continued guidance, his recent trip to the Republics, and his advice when he got back from his visits.

I also thank the Senator from Minnesota, who is not on our committee but has taken a tremendous interest in this area, has a strong leadership position, and feels deeply about these issues. I thank him very much for his strong leadership.

Mr. LEVIN. I thank my good friend.

ASSISTANCE FOR SOVIET REPUBLICS

Mr. LEVIN. Mr. President, last November, this Senate adopted by an overwhelming 87 to 7 margin a resolution which I and the majority leader, the Republican leader, Senators NUNN and BOREN and many others helped to work on, which urged the President to prepare and send to Congress a comprehensive plan for assistance for the Soviet Republics to avoid social chaos and to achieve economic and political stability.

Members from both sides of the aisle have joined us in calling for this international investment for democracy in those Republics; an investment in our own security, first and foremost. There has been some activity in the last 2 months. Much of that is worthy of praise, but the problems have grown much faster than any steps we have taken, and to put it in a nutshell, we are not getting the Presidential leadership we must have on this issue.

As Senator NUNN has mentioned, I was part of a delegation led by Senator EXON which went to Russia, Ukraine, and Kazakhstan last month. We experienced great openness on the part of military officials and scientists. They showed us a nuclear weapons facility in a closed atomic city that Westerners had never seen. They described in detail their ICBM launch system commands and coding devices—it was unprecedented. But we also saw the lines of people waiting for food and spoke to the nuclear weapons scientists who have no work, who could be tempted to go to work for Libya or Iraq if they do not get some help feeding themselves and their families.

That is why it is so discouraging to see the kind of article that we saw in the Wall Street Journal a few days ago, headlined: "Scientists of Former Soviet Union Find the U.S. Slow in Putting Out the Welcome Mat for Them."

We also heard on our visit to the three Republics about great discontent within the military. I came away pessimistic that democracy can survive.

It is sobering to realize what a collapse would mean, not just for the people who have finally earned their freedom, but for American security, for the American people. That is whose security we have sworn an oath to help protect and defend.

Collapse in the Soviet Republics means more chances of loose nukes which could be aimed at us, more chances of renewed weapons production and modernization, more chances of proliferation of weapons of mass destruction to other countries, more chances of brain drain of weapons scientists to countries such as Libya and Iraq. It would mean an unknown future for the arms control treaties that we have labored to complete, treaties with names like CFE, START, ABM, and the Nuclear Nonproliferation Treaty. Mr. President, it would mean the end of any peace dividend.

Democracy is hanging by a thread in Russia. Yet, this morning, what we read in the Washington Post, as Senator NUNN has said, is that yesterday President Boris Yeltsin, said there is a real threat of new dictatorship in Russia unless Western support is stepped up dramatically.

We ought to listen to his words. If this does not chill us, I do not know what more it will take. He said, "I have faith in these reforms and I believe they are irreversible." But listen to this. He said, "If they fail, I can already feel the breath of the red shirts and the brownshirts on our necks."

That should be a wake-up call to this administration and to all Americans. Many of us are old enough to remember what the brownshirts did. All of us know what the red shirts did because the red shirts were in power in Russia until just a few years ago.

We need urgency. We need a plan. We need a mechanism. I welcome the international coordinating conference on Soviet assistance that Secretary of State Baker and his deputy, Mr. Eagleburger, organized in less than a month. It was a huge undertaking.

Finally, we are going to see the airlift of some humanitarian assistance next week to bring some food and medical supplies to key cities. I believe that Ambassador Armitage is the right person to help direct that effort on the ground in the Republics. But we need a plan to involve Soviet scientists in joint ventures. We need a plan to support American business people who want to work with Russia in joint ventures. We want to help convert those Soviet defense industries, which were producing and still are producing the

weapons of destruction, into producing peaceful, commercial products. We want to work with Russians so that democracy can survive in Russia.

When Ambassador Bartholomew appeared before us a few days ago and said there was no plan yet for spending money that this Congress had appropriated, I was keenly disappointed. I felt like we were having to prod and to push the administration to come up with a plan, to come up with a process, to come up with the steps. It is February. It is cold. It is more than freezing cold; it is bitter cold. And the problems are real and democracy is hanging by a thread in Russia.

Ninety-five percent of the work that has to be done to protect democracy in Russia has to be done by the Russians. At the most, the outside world can supply 5 percent. But it is more than just the small amount of economic support that we are talking about. As Senator NUNN has said, it is the political support to the President of Russia that is very much needed. Already they are under tremendous pressure to back away from the reforms which they have adopted. Those pressures are immense. None of us can appreciate what it is like to have your people, your constituents, waiting hour after hour to buy loaves of bread, whose prices have tripled. That is what Yeltsin is facing.

We are urging him to stay the course. We know that they have to go through an economic wringer. They have to go through it. They are willing to go through it. But what they need is for the outside world to say, "We are going to help you to the extent we can," and to say it clearly and dramatically, and to do it.

This Senate has given the President bipartisan support in resolution after resolution. We will stand by the President. We have made that clear to him. I have made that personally clear to people that surround the President because it is important that he have that assurance if we want him to take these steps. But he has not. We should not have to push and to prod.

The outside world has to tell Russia what we are going to do to support these reforms. What are the prerequisites for our help on currency reform, for instance? Just yesterday one of the people appearing before our Armed Services Committee told us that until the ruble becomes stable we cannot speak about stability in Russia. What do we do? What are we telling the people of Russia? Why aren't we telling the President of Russia clearly what we will do if they are able to take steps A, B, C, and D, that we will be there for step E?

Mr. President, we need to give tangible evidence of support. We need the plan. We need the structure. We need the drive. We need the passion. We need the statement to the people of America that the survival of democracy in Russia is in our security interest and that he, as President, is going to lead us, as Americans, to do not just what is the humanitarian thing to do—Americans will always do that to the extent that we are able—but to do what is in the security interests of the people of the United States.

The President needs to explain to the American people the threat that a collapse of the reformers in Russia or Kazahstan or the other Republics would pose to us. He needs to explain why these investments are investments in our own security, in greater defense savings down the line. Secretary Baker said it well to the Foreign Relations Committee:

> We have spent trillions of U.S. dollars over the past 40-plus years to win the cold war. We are now talking about spending a few billions in order to try and secure the peace. If we don't we're going to find ourselves faced with the expenditure, once again, I'm afraid, of trillions of dollars, because of what might happen over there if they're not successful.

If totalitarian dictators take over, we will never forgive ourselves for doing less then we could to prevent it.

The money Congress approved in November, with strong bipartisan support, happened because of the effort of very statesmenlike Senators NUNN, LUGAR, DOLE, BOREN, WARNER, MITCHELL, BYRD, BRADLEY, BIDEN, and others.

The President sat on his hands then. Now he needs to stand up and speak out for freedom and democracy and American security.

I commend Senator NUNN, Senator LUGAR, Senator MITCHELL, and Senator DOLE—there are so many on both sides of the aisle that have participated in this. We received a letter from the Presiding Officer the other day, who has been deeply involved in these issues, and I want to thank Senator LIEBERMAN for his initiative in this area.

Senator WELLSTONE is on the floor now waiting for me to end, as patiently as he has been waiting for me to go first. He was here on the floor first and was kind enough to let me speak before him. He is a passionate voice in this cause. I want to thank him for that.

I yield the floor.

Mr. NUNN. Mr. President, I thank the Senator from Michigan. I, too, want to thank the Chair for the initiative that the Senator from Connecticut has taken in this respect. I will certainly look forward to working with him in every way that I can help facilitate this proposal, which I think is excellent.

Mr. President, I want to mention something about Senator LUGAR this morning. He flew out last night to attend a conference in Germany, a very important NATO conference. He is a leader in almost every aspect of foreign policy.

Without him, as the cosponsor of this initiative we took last year, it would not have become law. Senator LUGAR is an outstanding leader.

This has been a bipartisan effort, and we have had strong support from the very beginning from Senator WARNER, from Virginia, and from others.

Senator COHEN took the leadership, with Senator BOREN, on humanitarian relief. Congressman ASPIN, of course, and I have worked on this issue together for almost a year now, at least 8 months now. He has been a real stalwart in leadership.

So there are a lot of people involved in this. I think if the President and his people take a good look they will see a broad cross-section of Republicans and Democrats who believe that this is indeed a priority.

Mr. President, I will be glad to yield to the Senator from Minnesota the remainder of my time.

A CRITICAL TIME IN THE HISTORY OF THE WORLD

Mr. WELLSTONE. Mr. President, I thank the Senator from Georgia. A lot of times on the floor of the Senate—at least this is what I have observed in my first year—Senators are thanking Senators, and I think it is sincere, and I think it is part of protocol, and I think it is a good way for us to conduct our business as a body. But then sometimes you thank people because it is really heartfelt, and I thank the occupant of the Chair, Mr. LIEBERMAN, first of all, for his bill, S. 2046. He was ahead of his time when he talked about the need to authorize humanitarian, technical, and enterprise assistance.

And I thank the Senator from Georgia for his leadership. That is a word that is used a lot. My definition of "leadership" is inspiring people to be their own best selves. My definition of leadership is when you are willing sometimes to be ahead of your time, and to call upon people to think deeply about the world they live in, what kind of role we can and must play as a people.

I thank the Senator from Michigan, as well.

Sheila and I visited what used to be the Soviet Union in early December. I am not a member of the Senate Armed Services Committee or the Senate Foreign Relations Committee, and I do not want to be presumptuous on the floor of the Senate, but how I waited for this visit. My dad passed away in 1983. He grew up in Kharobovsk in the Russian Republic. I always wanted to visit his home, but I did not want to go while there was a totalitarian, Communist state.

I wanted to go now because of something Senator NUNN has said more than once. Here we have spent, since World War II, $4 trillion to defend Europe and ourselves, and now we have this opportunity, an incredible opportunity for ourselves, our children, and grandchildren. So I thought what a time to visit. I am a romantic, Mr. President. I

always believe people can write their own history, and I believe people can change the world for the better. And we went to visit the Russian Republic with that in mind. We spent time in St. Petersburg, Moscow, and then flew across seven time zones to Kharobovsk.

When we came back to Minnesota from that trip, I had at least as much despair as hope. The economic disintegration is absolutely unbelievable. And when I spoke with people in the food lines—I did not go as a part of any official delegation—I could not believe the anger.

I guess what I want to say on the floor of the Senate today to reinforce the remarks that have already been made, is that while I would not have a specific dollar sign, and while I think we do have to be careful in what we do, it is so important that we, as a nation, do not sleepwalk through this history.

I argue today that what happens to the people of the new Republics is going to as critically affect our lives and the lives of our children and grandchildren—I have two granddaughters now—as anything you can think of, if the people are successful in the Republics in this struggle, and they are able to build a democratic policy. If they can develop a new economy, which will be a long, painful process, it will be so much a better world for all of us.

If they are not able to get through these difficult times, and we sleepwalk through this history, and we do not help them dismantle nuclear weaponry—something Senator NUNN has talked about many times—and we do not provide humanitarian assistance that reaches people, medical supplies and food assistance, and we do not provide an exchange of human talent, whether it is Senator ROCKEFELLER's management corps, an expanded Peace Corps that I called on in a piece of legislation, and if we do not take steps with the international community and monetary fund to help them stabilize the currency, then I really fear what will happen.

I do not think President Yeltsin was trying to be melodramatic. I think he was trying to sound a warning to all of us.

When Sheila and I came back from our visit, I said to her, "the best-case scenario is this is going to be a new and better world, and the worst-case scenario is we could have some kind of fascist or Communist military dictatorship, and what a dreary world that would be."

Mr. President, I do not think we are going to see evolution in the new republics. It is not going to be linear. It is going to be elliptical. It is going to be episodic. It is going to zig and zag. And the only thing that is constant is change.

But I am absolutely convinced that we have to have a plan as a nation about how we can play a positive role in supporting the people there in their struggle to build a democracy and a new economy. And I am absolutely convinced that it is imperative at this time—even as people talk about it we do not want to have any foreign aid, let me lay this on the line—that there be real leadership. I, for one, would be so pleased to support the President, if he was to take that leadership, and I, for one, would support Democrats and Republicans alike who call for the United States to play this kind of credible role.

Mr. President, I feel like today, as I speak on the floor of the Senate—and I think Senator NUNN said it better than I could—that this is like a critical role in the history of the world, a critical time in the history of the world, and I just do not think that we have recognized that. We are standing on the sideline.

I ask this question today on the floor of the Senate: If we stay on the sideline, if we sleepwalk through this history, and things go badly, what are we going to tell our children and our grandchildren when they say to us: You were in the U.S. Senate, where were you, what did you say, where was the leadership?

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time until 10:30 a.m. is now under the control of the Senator from South Dakota [Mr. DASCHLE].

COMMENDING SENATORS NUNN, WELLSTONE, AND LEVIN

Mr. DASCHLE. I thank the Chair for recognition and I commend the distinguished Senator from Minnesota, the Senator from Georgia, and the Senator from Michigan, for an excellent colloquy this morning about an issue in which we all need to become more involved and certainly more educated. They did an excellent job this morning in discussing the issue, and I feel fortunate to have had the chance to hear them.

HEALTH CARE

Mr. DASCHLE. Mr. President, for the next 45 minutes, some of us will be talking about an issue of great importance, an issue the President addressed yesterday for the first time. I listened intently, along with millions of Americans, as the President unveiled his long-awaited plan for fixing our health care system. And, as so many have said yesterday and today, we are delighted that the President has now decided to enter the debate about how to reform our health care system.

Only with leadership can we attack our problems head on and solve them with the same strength and resolve that the President so ably displayed in Desert Storm.

Unfortunately, the President's health care plan, as he unveiled it for the first time yesterday, does more ducking than attacking. Rather than offering a real cure for our ailing health care system, he covers up the problem with a big Band-Aid—one of the most expensive Band-Aids ever offered to the American people.

Providing tax credits to help a small segment of the population purchase insurance will not provide health security to millions of Americans who fear losing their insurance. Expanding managed care will not solve the problem of double-digit health care cost inflation. Encouraging healthy behavior does not guarantee access to prenatal care, and proposing to pay for this inadequate plan through Medicare cuts just pits the elderly against the uninsured. It shifts the cost instead of controlling it. Instead of proposing a plan that will give Americans what they want—affordable, quality health care—the President fans the flames of health care costs:

In 1980, the average American family spent $2,600 per year on health care;

Today, after 10 years of supply-side health care, that same family pays $6,500 per year; and

The administration estimates that families will spend $14,000 by the end of the decade. The President's plan absolutely guarantees that this will happen.

His ideas are too little, too late. They are a crutch that will allow our weak system to limp along a little longer.

COMPREHENSIVE HEALTH CARE REFORM

This is not leadership.

The Senator from Minnesota described his version of leadership just a moment ago. There are many definitions of leadership.

I view leadership on this issue as finding a means of attacking our health care problems comprehensively, with a bold strategy that tackles all of the ills of our broken system. It does not mean squeezing the health care balloon in one area, so that problems pop up in other areas.

Leadership means tackling the special interests who profit from the status quo.

Leadership means proposing bold new solutions that get at the root of the problem, instead of cosmetically treating the symptoms.

Leadership means proposing new ideas.

FIVE HEALTH CARE PROBLEMS

Last week I discussed what I view to be the five comprehensive problems that we deal within health care today.

I believe that an effective health care reform plan must address all five of these basic problems with our system, and it must tackle these problems at once, comprehensively. The five problems, as I indicated last week, are cost, access, misallocation of health care

dollars, unnecessary care, and the hassle factor in medicine today.

When measured against each of these problems, the President's plan fails on every measure.

(1) COST

The President is fond of saying that when it comes to domestic problems, "We have more will than wallet." On this issue, I think he is dead wrong.

When it comes to health care, we have more wallet than will. We will spend over $800 billion this year on health care. The only thing we lack is the will to close the wallet.

We must tackle health care cost inflation and make health care coverage affordable for American families.

Mr. Bush's plan would spend more tax dollars on all the wrong things: more redtape and lower quality care.

For example, the President proposes tax credits to help low-income individuals buy private insurance. As Robert Ray, the president of Blue Cross of Iowa and the cochair of the National Leadership Coalition for Health Care Reform points out, this will only pump more money into the system, fueling health care inflation.

It does nothing to put a lid on total health care spending.

Similarly, allowing families with incomes up to $80,000 to take income tax deductions for health insurance premiums will continue to fuel inflation.

The President even refused to consider capping the current deduction on health care premiums for upper-income individuals, even though this deduction simply allows the wealthy to buy more expensive Cadillac plans at the taxpayers' expense.

Another one of his ideas—expanding managed care—is still unproven as a cost saver. In fact, as a recent New York Times article points out, many executives have been surprised to find that they have been spending more than they have saved on elaborate managed care programs.

We need a serious plan for putting a lid on health care costs—for closing the wallet.

(2) ACCESS

The second problem that I addressed last week is access. Thirty-five million people, as we have said so many times here on this Senate floor, have no health insurance, and two-thirds of those without coverage are employed people. This is no longer just an issue for the poor and unemployed. Problems financing health care are now hitting the working middle class—the backbone of this country.

Any serious proposal must guarantee access to health insurance for all Americans, the sick and the well, the old and young.

Unfortunately, the President's plan does more to help the rich and healthy purchase overpriced insurance than it does to solve the tough access problems we face.

One of the President's proposals, to provide tax deductions for the purchase of private insurance, is hardly enough to ensure that working men and women can purchase affordable care in the first place.

It may not even do anything to help the tiny fraction of the population to whom it was targeted.

For example, the average family of four in my home State of South Dakota will get a tax deduction of $563. Meanwhile, the cost of a basic health care plan is $3,974, not including all the copayments and deductibles that families incur annually. This tax credit will hardly make a dent in a family's ability to afford health insurance, even if the family is healthy.

For families who must cope with a child with a heart problem or a grandmother with Alzheimer's, the cost of insurance rises dramatically—if a company will take them at all—but the President's tax deduction remains the same.

One of the major concerns of American people is long-term care, and that was not even mentioned by the President yesterday. How many times have we come to the floor to talk about long-term care being one of the most significant problems facing America, facing our generation, facing the people whose partners are now in a very delicate situation, a very tenuous financial situation not knowing how they are going to care for those years at the end of their lives. The President chose to ignore it entirely.

And in perhaps the saddest irony of his plan, President Bush proposes to pay for these tax credits by squeezing down on Medicare and Medicaid. While he would give to one group—low-income individuals without insurance—he would squeeze down on health care for the elderly and the poor. This is hardly a reform of the system.

The fact is we are all only one illness or one job away from losing our health insurance today. A serious reform proposal must reverse this situation.

(3) ALLOCATION

The third problem that I have addressed and that needs to be addressed in any comprehensive health care plan is misallocation.

I talked last week about the fact that all health care systems are very much like a pyramid, and that was the purpose in bringing this chart to the floor this morning.

Every health care delivery system works in much the same way where the primary and preventive care is provided to all people, the greatest number of people at the base of the pyramid, and as you work up that pyramid you find in virtually every country that the amount of service provided to fewer and fewer number of people goes down to the point at which at the top of the pyramid, heart transplants, organ transplants, you have virtually no one receiving health care in many other countries. The reasons for that are pretty obvious. And so all of the care is provided at the primary and preventive levels but the most expensive, the most elaborate and the rarest forms of health care are rarely provided in many other countries. The United Kingdom does that. Canada does that in much the same way. But the United States does just the reverse.

The United States provides the most acute care, the most expensive care to the fewest number of people, and we work our way down the pyramid until we run out of money.

That is the medical system within our country. Those people at the base of the pyramid, just the reverse of what we see in every other country, are not covered. The vast majority of people who ought to receive primary care, preventive care, the least expensive care are not provided that care in this country.

That allocation problem is one of the most significant problems that we face structurally in our system today. And it is a problem that we have to reverse.

We, too, must provide base-of-the-pyramid care and work our way up and determine whether we have enough to go to the very top of this pyramid and provide care for everyone under all circumstances.

Frankly, Mr. President, I do not think that is possible. But nonetheless, this is one of the issues that we have to address if we are going to address comprehensive care in a thoughtful and considerate way.

This is one of the most serious structural problems in our health care system, this allocation of health care on a pyramid as I have described it just now. It is not the only problem we have with regard to allocation. Simply proposing to dump more money into a system that seriously misallocates existing dollars will only exacerbate the situation.

And where is a serious proposal to reduce the 20 to 25 percent of our health care dollars currently allocated to paperwork and administration not even accounted for in this pyramid? Twenty to twenty-five percent of all of the money that we allocate to health care goes to administrative costs today. Mr. President, that is outrageous and it is something that we have to address if we are going to address the problems of cost successfully.

The product of a summit convened by Health and Human Services Secretary Sullivan met the meek goal of reducing by a paltry 10-percent health care paperwork, hardly a bold new proposal to tackle this structural problem.

We need to flip the pyramid and reallocate dollars away from paper and toward health care services that keep people well.

(4) UNNECESSARY CARE

While we willingly relinquish 1 out of every 7 dollars of our GNP to health

care, there is little attention paid to what we get for our money. It is not only what we spend but what we spend it on that troubles me in the current health care system.

Arnold Relman, one of those people to whom many turn for advice and counsel, the former editor of the New England Journal of Medicine, says that 30 percent of all health care services may be inappropriate or ineffective.

Part of the problem is that physicians spend half of their time avoiding lawsuits, and not practicing efficient medicine. The President does attempt to address this aspect of the problem with his malpractice reforms.

But he ignores at least three other factors that drive this problem of unnecessary health care: The fact that our fee-for-service system provides incentives to offer more and more care; the additional fact that a proliferation of technology and physician ownership of this technology and other health care facilities may encourage increased utilization; and finally, that patients are unable to obtain the cost information that allows them to comparison shop for the best prices.

All of these problems must be tackled if we are to get at the problem of unnecessary care.

(5) HASSLE FACTOR

Finally, we must address the fact that America's providers and patients are being strangled in redtape—buried beneath a mound of paperwork and harassed by the Government and other third-party payers at every step of the way.

As I mentioned earlier, some estimate that as much as one in four health care dollars are spent on paperwork, much of it designed to control costs within this fragmented, complex system.

As a result, health care providers are forced to spend too much time getting reimbursed and justifying their decisions, and not enough time doing what they do best—caring for patients. Other countries spend less than one-half of what we do on administrative costs.

What is the President proposing to end the hassles and harassment of patients and providers?

Other countries have addressed this problem. And, frankly I believe America can do better.

CHALLENGE TO THE PRESIDENT

Because these problems are all an integral part of our current system, I do not believe that a viable reform proposal can just scrape at the margins of some of them.

We must deal them all at once, by comprehensively reforming the system, while retaining America's strength in the areas of quality and technology.

President Bush is talking about keeping our current system, but spending more. We need to revamp our system and spend less on health care.

This country badly needs and is calling for a plan that will address all of these problems. Democrats have proposed plans which would reallocate, not add to, our health care dollars.

I will soon be offering a version which I believe best addresses all of these problems in a comprehensive manner. It will simplify our needlessly complex system, reduce the hassle factor in medicine, guarantee that everyone has access to health insurance and significantly reduce costs.

We challenge the President to propose a plan that attempts to achieve these goals. Americans have always strived to be the best. Why accept less with our health care system today?

Mr. President, I yield such time as he may consume to the distinguished Senator from Minnesota.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

First of all, let me thank the Senator from South Dakota. I know that he will be presiding over the Senate shortly. One thing that I think people are really yearning for is a substantive public policy that is real and that will make a difference in the lives of people, and I thank the Senator from South Dakota for his eloquence.

(Mr. DASCHLE assumed the chair.)

HEALTH CARE SYSTEM IN CRITICAL CONDITION

Mr. WELLSTONE. Mr. President, the health care system in this country is in critical condition, so sick that it needs to be in intensive care. And what do we get from the President? Not send the terminally ill patient to intensive care but give the patient a lollipop and send the patient home.

This tax credit proposal is not even a proposal, does not deal with the problem of escalating costs and the concern that people have about whether they can afford health care for themselves or their children.

Mr. President, you are from South Dakota; I am from Minnesota—Midwestern States. I know at the Minnesota State Fair over and over and over again what I heard was "Senator, I can't afford health care," or "Senator, we can't even find a doctor in our small town."

What do we get from the President? We get a tax credit approach, but he does not say how he is going to pay for it. But he suggests he is going to pay for it by taking money out of Medicare treatment for older people.

Well, both my parents had Parkinson's. I saw what the costs of drugs did to them. I saw what happened at the end of their lives when we could no longer take care of them and they were in nursing homes and had those catastrophic expenses.

I will tell you something right now: I will fight that idea all the way. I think it is an idea that will go nowhere. I simply think if the President is talking about supporting tax credits by taking away care for older Americans, he will get nowhere with that nor should he.

Mr. President, there is a focus in his plan on small business insurance reform. But I come from a State where agriculture is important. You do as well.

So if your talking about small business reform, 2 to 50 employees, what about self-employed, what about farmers? If you are talking about small business reform, then let us deal with the insurance companies. Do not sort of suggest there will be something like community rating. Do something about the outrageous premiums they have charged.

Why is the President and the administration so worried about the big insurance companies? Let us talk about some real reform. This health care system needs fundamental change. The people in this country know that. Their experience tells them that.

It is wrong that people should have to worry about a catastrophic expense putting them under, going bankrupt. It is wrong that people should have to worry about whether their parents will receive decent care that they can afford. It is wrong that we do not provide decent health care coverage for our children.

Mr. President, the President today I understand is going to talk about preventive health care, and here is going to be his focus. He is going to say that the real issue here is lifestyle and that Americans should take better care of themselves—people should not smoke, people should exercise, people should be careful about what they eat. Who opposes that?

But, Mr. President, there is not anyone I know—Republican or Democrat, rural or urban—who does not believe that people should take better care of themselves. But what does that have to do with an older person being able to afford nursing home care. What does it have to to do with people being able to afford health insurance premiums? What does it have to do with small businesses going under because of these health insurance premiums?

Well, I think that the President's proposal is not a step forward, it is a great leap backwards or sideways. And I will tell you what he is trying to leap away from—the insurance companies.

This proposal by the President of the United States should be called the Insurance Company Protection Act. That is what it should be called. Insurance companies compete on the basis of experience rating. That sounds pretty technical, does it not? But I will tell you something. People in Minnesota and people across the country know what it means. It means to insurance companies compete to cover healthy people. It means that insurance companies have turned the concept on its head where you almost have to prove

to insurance companies that you will not need health insurance in order to be able to obtain it.

Well, I think if the choice for us in the Senate is between whether or not we enact a universal health care coverage plan that provides high quality, affordable care for every citizen or we protect the insurance companies, I know where I stand. I am going to push for universal health care coverage.

And, Mr. President, just as you have said, I have an intense interest in health care, I am going to introduce a piece of legislation when we get back, and we will have a good debate.

But I think what we do need to do now in the Senate—and I am so pleased to hear about your effort—is to come forward with proposals, talk about how they are going to be structured, delivered, and financed.

For my own part, I think we have to have single payer. I think we need to have real cost control. I think we need to transfer the money which has been going into the bureaucracy and a lot of the insurance companies directly into service to the people. And I think the way to do that is through a simple, equitable, universal health care coverage program that provides health care for people at a price they can afford—all citizens in this country, regardless of income, regardless of employment status, regardless of urban or rural, or age. That is an idea whose time has come.

Mr. President, that is the bill that I am going to introduce. I want to work with you, the Senator from South Dakota [Mr. DASCHLE] and other Senators, to make sure that we make universal health care coverage a reality for citizens in this Nation.

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

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. MCCONNELL. 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. MCCONNELL. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

TAXPAYER FINANCING OF POLITICAL CAMPAIGNS

Mr. MCCONNELL. Mr. President, I would like to make a few observations this morning about taxpayer financing of political campaigns. It is, of course, one of the modern outrages perpetrated on the taxpayers of this country. I think the Wall Street Journal pretty well summed it up in an editorial a couple days ago entitled: "Taxpayer-Funded Cult."

The editorial began, Mr. President, by saying:

> You may never have heard of Lenora B. Fulani, the Presidential candidate of the New Alliance Party, but your tax dollars are paying for her anti-Jewish, pro-Libyan campaign. So far Ms. Fulani's tiny party has collected checks totaling $763,928 in Federal matching funds. The story of the New Alliance Party is a cautionary tale for those who think public financing of elections would invigorate U.S. politics. More likely, it would only make it fringier.

The Wall Street Journal said, in referring to the fringe group that is being lavishly funded by the taxpayers of the United States.

The editorial goes on, Mr. President, to point out in a 1988 event—by the way, this is not the first time Ms. Fulani has been dipping into the public trough to finance her fringe candidacy. She did it in 1988, too. The editorial points out:

> At a 1988 event Ms. Fulani accused Israel of "genocidal policies" and ripped off portions of an Israeli flag. Mr. Newman has said Jews have "sold their souls to the Devil—international capitalism."
>
> In 1987, the Libyans paid for Ms. Fulani and other NAP members to go to Libya and protest "genocidal U.S. bombing" of that country.

Mr. President, the taxpayers of America are funding this outrage. Fortunately, we have a chance once a year to get a sense of how much our people in this country feel about public funding of elections. We have a poll they check off on their income tax returns every year. Less than one in five Americans check "yes" to divert $1 of taxes they already owe; 18 percent of the taxpayers in Kentucky—that is less than the national average of 19 or 20 percent—check "yes."

Lenora Fulani, the person I just described, has received over $2 million of taxpayers' money. Lyndon LaRouche, a little better known to the people of America, has received millions in taxpayers' dollars to run for President. He is sitting this election out this year, Mr. President. Instead, he is sitting in jail serving a 15-year sentence for fraud.

David Duke also will soon be at the taxpayers' trough, Mr. President. The taxpayers of America can look forward to funding David Duke's views, as well.

Also, I think taxpayers would be genuinely outraged to know that public funding pays for the national conventions. Put another way, for booze and balloons. The taxpayers have already been hit with a half-billion-dollar price tag for the conventions. The two parties will get $21 million for the party conventions this summer in tax dollars to put on a big party.

What have we received in return for all this extravagance, Mr. President? Darn little. Spending has continued to spiral out of control; special-interest money is about as prevalent, if not more so, in Presidential races than it is in senatorial races. And in congressional races, where there are no spending limits and no public funding, spending is actually going down; it has gone down each of the last two cycles.

So, Mr. President, I think it is particularly outrageous that the FEC is now running a promotional campaign to encourage people to check off. My own view is, if they told the truth, almost no one would check off.

As a matter of fact, Mr. President, let me just say in conclusion, there was a recent survey done in my State, and I understand similar questions have been asked all across America, asking respondents if they would be more or less likely to vote for a candidate who voted to spend taxpayers' dollars on political campaigns.

Mr. President, I think our colleagues would be interested to know that that was the most unpopular vote you could possibly cast, more unpopular than voting to raise your own pay; more unpopular than voting against authorization for the Persian Gulf war; more unpopular than raising taxes. In fact, Mr. President, you cannot conceive of anything more unpopular than voting to spend taxpayers' dollars on our political campaigns.

So I look forward to debating this issue in the remainder of the year with a good deal of enthusiasm. And as the American people learn more and more of what their previous tax dollars were spent on, such as funding fringe candidates like Lenora Fulani and Lyndon LaRouche, we look forward to the outrage that will be directed to the Congress in the future.

Mr. President, I ask unanimous consent that two newspaper articles, one The Wall Street Journal article I referred to earlier, and a piece that I wrote for the Washington Times, be printed in the RECORD.

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

[From the Wall Street Journal, Feb. 5, 1992]

TAXPAYER-FUNDED CULT

You may never have heard of Lenora B. Fulani, the presidential candidate of the New Alliance Party, but your tax dollars are paying for her anti-Jewish and pro-Libyan campaign. So far Ms. Fulani's tiny party had collected checks totaling $763,928 in federal matching funds. The story of the New Alliance Party is a cautionary tale for those who think public financing of elections would invigorate U.S. politics. More likely it would only make it fringier.

The New Alliance Party's windfall comes from a federal law that requires the government to match dollar-for-dollar up to $250 of contributions to any presidential candidate who can raise $5,000 in each of 20 states. This isn't the first time the NAP has cashed in on the ability of its fanatical followers to raise money door-to-door. In 1988, Ms. Fulani collected nearly $900,000 in federal matching funds.

The New Alliance Party was founded by Fred Newman, a former philosophy professor, who in 1974 joined the conspiracy-ob-

sessed party of Lyndon LaRouche, Mr. Newman broke with LaRouche to form the New Alliance Party. Mr. Newman's 15 "therapy centers" teach that every person is dominated by "a dictatorship of the bourgeois ego" that must be overthrown in a personal revolution so as to liberate the proletarian ego. Patients at the therapy centers often become devoted workers in the New Alliance Party.

At a 1988 event Ms. Fulani accused Israel of "genocidal policies" and ripped off portions of an Israeli flag. Mr. Newman has said Jews have "sold their souls to the devil—international capitalism." in 1987, the Libyans paid for Ms. Fulani and other NAP members to go to Libya and protest "genocidal U.S. bombing" of that country. At the same time NAP members held a pro-Libyan rally in front of the White House.

We seem to be living through a time that breeds groups of people who have marginalized themselves well beyond the norms of American-political and cultural life. While it is in the U.S. tradition to give them a wide berth, it is by no means clear that taxpayers should have to pay for their political campaigns. Mr. LaRouche's many campaigns for President were also lavishly funded by the federal government until his fraud conviction. No one doubts that David Duke, whose campaigns for office are his livelihood, will soon successfully apply for federal matching funds.

The closest thing the U.S. has to a nationwide referendum on public financing of campaigns comes when Americans check a box on their tax form that asks if they want $1 of their taxes to go to a presidential election fund. Even though it's made clear no one's taxes will go up, the results are overwhelming. Every year the number willing to use tax dollars to bankroll political candidates declines; last year only 21% agreed. Despite all this, the Federal Election Commission last month decided to spend $120,000 to hire a PR agency to urge people to send $1 to the same fund from which Ms. Fulani's subsidies flow.

Election reforms are certainly needed to restore competition in politics. It would help if we scraped the $1,000 limit on individual contributions imposed in 1974, or at least raised it to $3,500 to account for inflation since then. Term limits would bring new blood to politics. Offering voters a None of the Above option on the ballot would make many routine elections more meaningful. But outside the Beltway, almost no one believes the public-financing schemes being debated in Congress are any solution.

[From the Washington Times, Feb. 2, 1992]

CHECKOFF TIME APPROACHING

(By Mitch McConnell)

Have you ever written on your 1040 form (or been tempted to) what you really feel about losing one-third of your salary to taxes? Are you fed up with government waste and politicians who do nothing about it? Would you like to do something about it and help send a resounding message to Washington?

If so, read on.

Every year on your tax form, you are presented with the option of checking "yes" or "no" to divert $1 from the U.S. Treasury to go to the Presidential Election Campaign Fund. These tax dollars are then used to pay for campaign ads, consultants, private jets, and booze and balloons at the Democratic and Republican conventions.

In return for your tax dollars, you are supposed to get campaigns in which spending and special interests are limited. This system of taxpayer financing and spending limits was sold to the public in the 1970s as a reformer's dream. Two decades later, it's the taxpayers' nightmare.

The presidential election system, propped up by the checkoff, has been a disaster and a fraud. In the four presidential elections since this "reform" (paid for with your tax dollars), spending has shot up, special interests have flourished and fringe candidates have received millions from the U.S. Treasury to further their agendas.

Ever heard of Lenora Fulani or Lyndon LaRouche? You have been paying for their campaigns. Although LaRouche is sitting this one out while he serves a 15-year jail sentence, Miss Fulani was the first person to qualify for taxpayer matching funds in the 1992 presidential election. Before this election is over, your tax dollars may even help David Duke further his racist agenda.

The vast majority of Americans, who are fed up with taxes and irresponsible government spending, are in no mood to pay for anyone's political campaign and do not support the Presidential Election Campaign Fund. Consequently, the fund is dying, teetering on the brink of bankruptcy.

The fund's founders and cheering squad unwilling to admit failure and let it go broke, are mounting an all-out campaign to revive it by persuading Americans to check off.

They believe that Americans are not so much opposed to the taxpayer funded campaign system as they are "ignorant" about it. They would like to "educate" you on the fund. And get this: They are using more of your tax dollars to do it!

The Federal Election Commission is spending hundreds of thousands of tax dollars to educate you about the checkoff. However, this education program does not explain how much of the money goes to TV ads, consultants and nominating convention extravaganzas. Nor does it mention the tens of millions of dollars in the off-the-books, unlimited and undisclosed special interest "soft money" polluting the system.

Self-proclaimed citizen action groups who support taxpayer financing of campaigns take great care to inform people that checking "yes" does not reduce tax refunds. However, they neglect to mention that this money is diverted from other pressing needs like deficit reduction, health care and child nutrition. Everyone pays for those who check "yes."

As if this were not outrageous enough, some in Congress are working to extend the presidential system of taxpayer-financed elections to 535 congressional races. If they succeed, the Presidential Election Campaign Fund will look like a K-mart blue-light special.

Check "NO" on your 1040 tax form and you will help accomplish two things: (1) kill the Presidential Election Campaign Fund; and (2) send a clear message to senators and representatives that you do not care to pay for their campaigns, either.

EXPORT OF AMERICAN EXPERTISE

Mr. WALLOP. Mr. President, with the fall of the Iron Curtain we have been given the view into Eastern Europe and one of the things we have seen is an electric power industry that is relying on outdated technologies and woefully inadequate environmental control systems; in the case of nuclear power, even woefully dangerous systems.

At the same time other parts of the world are facing an increase in their need for capital and expertise as they expand to replace their own countries' power systems, for example: Kuwait is rebuilding; many countries, such as India and other Far Eastern countries, are faced with explosive population growth, and a need to expand their power systems accordingly. And other countries are privatizing their power delivery systems and will be looking for new partners that can provide expertise as well as equipment and capital.

All of these situations afford an opportunity for American manufacturers, American architects, engineers and construction companies to export American technical expertise and build and own powerplants overseas.

Currently, the Public Utilities Holding Company Act imposes certain unnecessary conditions on the ability of American utilities to participate in this world market and to own these foreign facilities. The language of title 15 embodies the intent of the Senate that we allow all utilities, whether part of registered or exempt holding companies, to engineer, to build, own and operate foreign power systems free of these unneeded constraints.

By ensuring the freedom to compete for U.S. utilities, this proposal will help put American engineers and construction workers to work building state-of-the-art power plants for other nations. Using American technology we will be improving our export capabilities, improving our trade deficit, improving the job picture and, most importantly, will be satisfying a number of the world's clean-air, environmental problems.

In the recent Clean Air Act amendments, the Congress encouraged EPA to assess and encourage these types of activities. Now with S. 2166 we could encourage the very things that this economy needs the most, the creation of jobs and expanded U.S. exports.

Moreover, by fostering close relations in the construction of infrastructure facilities in developing countries, we will be helping establish business relationships as well as the need for a U.S. ancillary imports to support these facilities.

Our competitors, particularly Germany, have long recognized the wisdom of providing developing countries with core industry technology.

It is time, indeed past time, that we encourage our basic industries to be on the ground floor of developing national economies and, I believe, that S. 2166 does just that.

AMERICAN HIGH TECHNOLOGY OUTDOES JAPAN

Mr. WALLOP. Mr. President, there was in the last week a couple of really remarkable news stories that, unfortu-

nately, have gone largely unnoticed by American commentators, both political and media.

The first one I would point out was a story in yesterday's Post that Intelchip outdoes Japan. The first paragraph of it tells it all. In the reverse of the now familiar pattern in high tech industries, an American company, has adapted a Japanese invention and won a dominant position in the booming global market through superior manufacturing and marketing.

It goes on to describe the flash memory clip and what Intelchip has done to develop it, and the fact that Japanese companies were coming to this American company seeking a partnership arrangement, and to build plants and facilities in Japan.

Likewise, the story is in last week that Japan has bet the farm on television technology called high-definition television, HDTV. There were some in this Congress at one time that wanted a massive Government program so that we could compete with the massive Government program of Japan. The Japanese government spent billions and billions and billions of dollars assisting Japanese industry in developing this technology.

Guess what, Mr. President? It is narrow, it is confirmed, it is expensive, and is being blown out of the market by American digital production of high-definition television. They have so committed their industry to that, that for the first time in a long time, American industry is absolutely square one on the front stage of American technology in electronics.

What we have come up with this digital HDTV is endlessly more flexible than the HDTV that the Japanese have developed. Europe, which committed many of its resources in the direction of Japan, is now really rethinking the market because it simply will not be satisfied by that technology.

So while all kinds of politicians are running around bashing the Japanese, there are hardly any politicians saying what we are doing successfully in these world markets.

I am here today to say I am proud of these companies. I do not believe America is a declining nation, and I happen to believe that there is plenty of evidence that our technology, our scientists and our manufacturers are more than able to compete in this world.

So while we spend a lot of time talking about what Japanese politicians say in responding to what American politicians say, let us look at the achievements of American industry. It is exciting. And it merits the attention of politicians and the press.

PROTECTION OF WITNESSES BEFORE THE SENATE SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. KERREY. Mr. President, the Select Committee on POW/MIA Affairs, which the Senate established in Senate Resolution 82, 102d Congress, is currently well into its task for investigating information concerning missing and detained American servicemen from the war in Vietnam.

The committee and its staff have taken testimony in hearings, depositions, and interviews from a number of individuals. In the course of some of the committee's staff interviews, it has come to the attention of the committee that some individuals who may have important testimony to provide are reluctant to step forward and provide information to the committee for fear that they may experience retaliation. In some cases, employees or former employees of our own Government apparently fear that their employing agency may seek to punish them for cooperating with this committee.

Mr. President, it should not even need saying, but I want the record to be absolutely clear that the select committee will not tolerate any intimidation, harassment, or retaliation against witnesses before this committee. I know the distinguished vice chairman, Senator SMITH, and all of the members of this committee join me in this statement.

The Senate has given us an important mission, which the American people expect us to complete. There is simply too much at stake to permit even the possibility that this inquiry will be thwarted by intimidation or harassment of potential witnesses.

The laws of the United States make obstruction of a congressional investigation a criminal offense. In 1982, Congress enacted the Victim and Witness Protection Act to strengthen these criminal provisions.

It is a criminal offense to attempt to intimidate, threaten, or corruptly persuade an individual in order to induce the individual not to testify before a congressional committee, or to withhold information, or to change his or her testimony.

Harassment of an individual to hinder or dissuade the individual from testifying is also criminal conduct.

The criminal penalties for obstructing an investigation or tampering with a witness extend up to 10 years' imprisonment and $250,000 fines in the most serious cases.

These laws are complemented by civil statutes prohibiting interference with or retaliation against Government employees, military or civilian, for providing information to Congress.

The vice chairman and I intend to ensure that no witness is deterred from providing any relevant information to this committee.

Even a hint that any witness is being harassed, intimidated, or threatened in any way will be the basis for an immediate referral of the incident to the appropriate authorities for investigation and, where justified, criminal prosecution. It is my sincere hope, and indeed my expectation, that we will not need to make such a referral.

The committee has not received information as of this date that any intimidation or harassment of prospective witnesses has actually occurred.

However, the mere fact that employees or former employees of the Federal Government have already expressed their reluctance or fear to come forward and provide relevant information to this committee indicates to me that more needs to be done by the relevant executive agencies to communicate to their own employees what Secretary Cheney and other agency heads have assured us: that they intend to cooperate fully with this committee's inquiry and to be as responsible as possible to this committee's needs for information.

Mr. President, I hope that it will not be necessary for me to take the floor to address this matter again. Prospective witnesses before the committee should know that if they are on the receiving end of any intimidation or pressure relative to the issue of providing information to the committee, they should inform the committee staff immediately in order that the committee may initiate the appropriate referral.

Nearly 20 years have passed since Vietnam and the United States said that all prisoners had come home.

The committee's investigation will last only until the end of this year, but I hope that its existence and our pledge to protect witnesses from intimidation and harassment will encourage anybody with information to step forward. If witnesses do not step forward, we cannot protect them. If they do not step forward, we may not find the answers the families and the country deserve.

Thank you, Mr. President.

DEATH OF PAUL FREUND—A CONSTITUTIONAL GIANT

Mr. KENNEDY. Mr. President, with the death of Paul Freund earlier this week, the Nation has lost one of its greatest constitutional scholars and Harvard University has lost one of its greatest teachers.

For years, Paul Freund reigned as the preeminent authority on the Constitution. He was a source of continuing counsel and wisdom to all of us on both sides of the aisle who sought guidance on the complex and all-important constitutional issues that determine our destiny as a nation.

Perhaps his greatest genius was in helping to reconcile the intense clashes of basic principles that are so often at the heart of constitutional debate—fair trial versus free press, for example, or the guarantee of free exercise of religion versus the ban on establishment of religion. As we all know, stating

such principles doesn't reconcile them. As Paul Freund often said, the only absolute is that there are no absolutes. As he liked to put it in a more mundane example, the quality of judgment comes when we are wise enough to know when to choose between "Many hands make light work" and "Too many cooks spoil the broth."

Paul Freund's contributions to our contemporary understanding of the Constitution are immense, and his loss is deeply felt by all of us who were privileged to know him. I ask unanimous consent that obituaries from the Boston Globe, the New York Times, and the Washington Post may be printed in the RECORD.

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

[From the Boston Globe, Feb. 6, 1992]

PAUL A. FREUND, 83, LAW PROFESSOR AT HARVARD, EXPERT ON CONSTITUTION

Paul A. Freund, an expert on the Constitution, Supreme Court scholar and professor emeritus at Harvard Law School, died of cancer yesterday at his home in Cambridge. He was 83.

A professor at Harvard from 1940 to 1976, Mr. Freund was widely regarded during the 1960s as eminently qualified for the high court.

Among those advocating his appointment were his friend and Cambridge neighbor, U.S. District Judge Charles E. Wyzanski Jr., who in 1961 asserted that Mr. Freund was "the wisest, best gifted, most modest interpreter of the Constitution, and the man who by temperament and nobility of character is best gifted to guide the judiciary in troubled times."

Mr. Freund, a clerk to Justice Louis D. Brandeis in 1932–33, was editor in chief of "History of the Supreme Court," the incomplete multivolume work financed by the estate of Justice Oliver Wendell Holmes.

"All of those connected to Harvard Law School feel a loss with the passing of Paul Freund," the school's dean, Robert Clark, said yesterday. "He was an outstanding teacher, to both students and colleagues, about the constitutional framework for our society."

James Vorenberg, Clark's predecessor as dean, said: "Paul Freund was the dominant figure of his time in the field of constitutional law. He combined knowledge, insight and a matchless ability to express himself. His persuasive force came from the depth of his intellectual integrity and from his gentleness."

Mr. Freund was the author of "On Understanding the Supreme Court" (1949), "The Supreme Court of the United States" (1961) and "On Law and Justice" (1968), editor of "Experimentation with Human Subjects" (1970) and a coeditor of casebooks on constitutional law published in 1972 and 1977.

Born in St. Louis, Mr. Freund graduated from Washington University there in 1928 and Harvard Law School in 1931. After his clerkship with Brandeis, he stayed in Washington to serve in the Treasury Department, the Reconstruction Finance Corporation and the solicitor general's office before joining Harvard as a law lecturer in 1939. He returned to the solicitor general's office in 1942–46.

Mr. Freund was a former president of the American Academy of Arts and Sciences, chairman in 1970–72 of the Federal Judicial Center's study group on the Supreme Court caseload, chairman of the Judicial Selection Commission for the U.S. court of Appeals for the First Circuit in 1977–79, a former vice President of the Massachusetts Historical Society, and senior fellow emeritus of the Harvard Society of Fellows.

His awards include the Research Award of the American Bar Foundation in 1973, the Torch of Learning Award of the American Friends of Hebrew University in 1974 and the Roger Baldwin Award of the Civil Liberties Union of Massachusetts in 1982.

He leaves no immediate survivors. A memorial service is planned.

[From the New York Times, Feb. 6, 1992]

PAUL A. FREUND, AUTHORITY ON CONSTITUTION, DIES AT 83

(By Eric Pace)

Paul A. Freund, an authority on constitutional law and the Supreme Court who taught at Harvard Law School for 37 years, died yesterday at his home at Cambridge, Mass. He was 83 years old.

Professor Freund, who retired in 1976 as Carl M. Loeb University Professor, died of cancer of the sinus, a spokesman for the law school, Michael Chmura said.

A former dean of the law school, James Vorenberg, yesterday called Professor Freund "the dominant figure of his time in the field of constitutional law."

In his teaching and writings and as an official of the the United States Solicitor General's office in the 1930's and 1940's, he was a leading exponent of a relatively flexible interpretation of the Constitution in economic and social matters. He favored giving Congress and the states power to deal with the economic crisis of the 1930's and to take measures to prevent a recurrence of the Great Depression and to forestall other crises.

CRUCIAL COURT ROLE ENVISIONED

In Professor Freund's view, the judicial system, with the Supreme Court at its apex, had a crucial role to play. In his 1961 book "The Supreme Court of the United States" (World Publishing Company), he wrote that the role of the courts in maintaining a working federalism was one of "mediation between large principles and particular problems, of interposing intermediate principles" that are "more tentative, experimental and pragmatic."

"The courts," he added, "are the substations that transform the high-tension charge of the philosophers into the reduced voltage of a serviceable current."

Admirers of Professor Freund said yesterday that over the years his teachings and writings had made law students, at Harvard and elsewhere take a more supple view of the Constitution. They said he had played an important role in the movement to read the Constitution more generously in economics, while giving deeper protection to individual liberties of speech and press and racial justice.

TURNED DOWN KENNEDY OFFER

In the 1930's Professor Freund became staunch in his advocacy of reading the Constitution in such a way as to give Congress more freedom to experiment in measures to end the Depression and to provide what later came to be called a safety net against economic and other problems. While he was in the Solicitor General's office, from 1935 to 1939 and again from 1942 to 1946, he argued, or otherwise assisted in, court cases that tested such matters.

Three decades later, Professor Freund figured as a potential appointee as Solicitor General in the Administration of John F. Kennedy.

But as Professor Freund later recalled to friends, when Mr. Kennedy offered the position to him, he turned it down on the ground that he wanted to continue working on a history of the Supreme Court, of which he was the general editor. To that Mr. Kennedy replied, "I'm sorry. I hoped you would prefer making history to writing it."

CONSIDERED FOR HIGH COURT

Then, early in 1962, President Kennedy considered naming Professor Freund to a seat on the Supreme Court but chose Deputy Attorney General Byron R. White for a seat that became vacant then. And when another Supreme Court vacancy arose later that year, the historian Arthur M. Schlesinger Jr. wrote in his 1965 book "A Thousand Days," Mr. Kennedy "inclined at first toward Freund," but eventually chose Arthur Goldberg.

Paul Abraham Freund was born Feb. 16, 1908, in St. Louis, the son of Charles Freund and the former Hulda Arenson. He earned a bachelor's degree from Washington University in St. Louis in 1928, a bachelor of laws degree from Harvard in 1931—serving as president of the Editorial Board of the Harvard Law Review—and a doctorate in Law, also from Harvard, in 1932.

In 1932 and 1933 he was a law clerk to Justice Louis Brandeis. He then was an official of the Treasury Department and the Reconstruction Finance Corporation from 1933 to 1935.

THREE ENDOWED CHAIRS

When the joined the Harvard Law School faculty in 1939 it was first as a lecturer specializing in conflict of laws as well as in constitutional law. He became a Professor of Law in 1940 and then held three endowed chairs in succession: he was Charles Stebbins Fairchild Professor, beginning in 1950; Royall Professor of Law, beginning in 1957; and Carl M. Loeb University Professor, beginning in 1958.

His other writings included the books "On Law and Justice" (Harvard University Press) and "On Understanding the Supreme Court" (Little, Brown).

He was the editor of "Experimentation with Human Subjects" (George Braziller) and co-editor of "Cases on Constitutional Law" (Little, Brown). He was for some years the editor-in-chief of the multivolume "History of the Supreme Court," of which, Mr. Chmura said, additional volumes are planned.

Professor Freund was a fellow and past president of the American Academy of Arts and Sciences.

There are no immediate family survivors.

[From the Washington Post, Feb. 6, 1992]

PAUL FREUND, CONSTITUTIONAL SCHOLAR, DIES

(By Claudia Levy)

Paul A. Freund, 83, a Harvard Law School professor and constitutional scholar who was often suggested as a candidate for associate justice of the U.S. Supreme Court, died of cancer Feb. 5 at his home in Cambridge, Mass.

Cited by former Harvard Law School dean James Vorenberg as "the dominant figure of his time in the field of constitutional law," Dr. Freund taught at Harvard from 1939 to 1976, when he became professor emeritis.

A civil rights adviser to John F. Kennedy while the latter was in the Senate, Dr.

Freund was runner-up in 1962 when Kennedy appointed Byron R. White to the Supreme Court. Dr. Freund turned down the president's subsequent offer to be U.S. solicitor general, as he had when the post was offered a decade earlier during the Truman administration.

Dr. Freund, a former law clerk to Justice Louis D. Brandeis, was not often in the courtroom, choosing to concentrate on teaching, research and the direction of a monumental history of the Supreme Court. In a rare appearance before the high court in 1952, he argued unsuccessfully that a law governing habeas corpus petitions infringed the constitutional rights of federal prisoners.

Dr. Freund was chairman of a study group on the Supreme Court caseload that in 1972 recommended establishment of a new, seven-judge National Court of Appeals to help weed out frivolous cases aimed at the high court. He also was chairman of the judicial selection commission for the First Circuit of the U.S. Court of Appeals and a member of the Commission on Electoral College Reform that studied the issue of presidential succession in the early 1960s.

Born in St. Louis, Dr. Freund was a graduate of Washington University and Harvard Law School, where he was president of the editorial board of the Harvard Law Review.

After clerking for Brandeis, he was a government attorney, working for the Treasury Department, Reconstruction Finance Corp. and the Solicitor General. He returned to Harvard as a visiting lecturer in 1939 and joined the faculty the following year. He specialized in constitutional law and conflict of laws.

He gave his views on public questions in testimony before congressional committees and in lectures and writings. In 1964, he told Congress that a proposed constitutional amendment permitting public school prayer would dislocate a basic provision of the Bill of Rights. In 1975, he predicted that much of what was then punished as obscene would in the future "be adjudged a sin against language or an offense against art" but not a crime.

He said a proposed Equal Rights Amendment would create legal chaos by nullifying all legal distinctions between the sexes.

Dr. Freund was author of three books—"On Law and Justice," "The Supreme Court of the United States" and "On Understanding the Supreme Court"—and editor of two others. He was president of the American Academy of Arts and Sciences, a fellow of the American Bar Association and a corresponding fellow of the British Academy.

Dr. Freund received 21 honorary degrees as well as awards from the American Bar Foundation, the Civil Liberties Union, the American Judicature Society, Harvard and the American Law Institute.

There are no immediate survivors.

THE PRESIDENT'S HEALTH CARE PLAN

Mr. KENNEDY. Mr. President, for 11 years, the American people have been waiting for a health-care plan from the Reagan and Bush administrations. The Senate election in Pennsylvania last November was a wake-up call to the White House, but the plan that has finally been announced is inadequate to meet the challenge.

If the President's health plan was a prescription medicine, the Food and Drug Administration would never allow it to be marketed—because it is unsafe and ineffective.

This country faces a crisis in health care that has been worsening for more than a decade. Exploding health-care costs threaten to price health care out of reach of the average family. Rising costs are eating up wages, harming our competitive position in the world, and denying accessible and affordable health care to large numbers of families.

Thirty-six million people are uninsured, and the number grew by more than a million in the past year alone. Even those who have insurance today cannot be confident that it will be there to protect them tomorrow.

If you lose your job or change jobs, you can lose your coverage. If your employer decides your coverage is too expensive, he can cut it back or eliminate it entirely. If you develop a chronic illness, the insurance company can cancel your coverage when you need it the most.

No health reform is worthy of the name unless it meets two basic tests. It must guarantee coverage for every American, and it must put in place a tough program to control rising costs. The Bush plan does neither—and the reasons are clear.

To have an effective program that meets these tests, the administration must be willing to take on powerful entrenched interests.

Businesses that will not insure their workers have to be told that the free ride is over. Insurance companies must learn that 90 percent markups will not be tolerated. Doctors and hospitals must face up to the fact that they cannot be free to charge whatever the market will bear.

But the administration is not willing to challenge these powerful interest groups. Instead of requiring businesses to ensure their workers or contribute to public coverage, their program squanders billions of dollars on tax deductions that are too small to buy a decent health insurance policy for a family.

Instead of offering a program guaranteeing coverage to the middle class and the poor alike, the President plans to fund coverage for the uninsured poor by taking from the elderly and the Medicaid poor.

Instead of putting reasonable limits on what doctors and hospitals can charge, the President avoids the hard choices necessary to hold costs down. This plan will cost $100 billion more over the next 5 years—yet it will produce no reductions in spending for health care.

Will the President's program guarantee you coverage if you lose your job? No. You will get a tax credit large enough to help you buy coverage—but only if you are destitute.

Will the President's program guarantee you coverage if your employer does not provide it? No. The tax deduction for the average family is only a small fraction of the cost of coverage—about 15 percent of the cost—and you have to wait a year before you can even collect this inadequate help.

Will the President's program guarantee protection if your employer decides to reduce your coverage or cancel it? No. The administration does not believe any business has any obligation to cover its workers—or even make a contribution to public coverage on their behalf.

Will the President's program have a significant impact on exploding health-care costs? No. It is no wonder the administration has provided no estimates of any reductions in health-care spending attributable to their program.

Our Democratic plan in Congress offers a solid alternative that achieves each of these basic goals. The HealthAmerica bill that Majority Leader MITCHELL, Senator RIEGLE, Senator ROCKEFELLER, and I introduced last June will guarantee coverage for every American and put in place a tough, comprehensive program to control health-care costs. It is a plan that builds on the current system but corrects its worst faults. It is a practical, achievable proposal that will get the job done.

Under our plan, every business will be required to provide health insurance coverage for its workers and their families, or contribute to their coverage under a new public program, like Medicare.

Two-thirds of the uninsured are workers and their families. These citizens work hard—most of them 40 hours a week, 52 weeks a year, but all their hard work cannot buy them the insurance they need, because their employers refuse to provide it.

The vast majority of businesses already assume this obligation. More than half a century ago, we required all employers to pay a minimum wage, to contribute to Social Security, and participate in worker's compensation and unemployment insurance. In 1992, the time is long overdue for all employers to provide or contribute to health care.

The unemployed deserve the basic right to health care, too. Our plan will make coverage under the public program available to them, with premiums based on ability to pay.

The plan includes a number of provisions to make it easier for small businesses not currently providing coverage to afford the cost. These provisions include fairer tax treatment. They include insurance reform, so that small businesses will finally be able to buy coverage at a fair price. For all businesses, large or small, with low-wage workers, the opportunity to buy coverage under the public plan by paying a percentage of payroll—perhaps 7 or 8 percent—can offer substantial savings.

These firms will receive an average subsidy equal to almost 40 percent of the cost of coverage. For small firms that choose to buy private coverage, those that might have trouble affording it will be offered tax credits equal to one-quarter of the cost of coverage.

The plan includes the most comprehensive program to control health-care costs ever introduced.

First, the plan includes steps to squeeze unnecessary care out of the system. Studies by the Rand Corp. have concluded that as much as 30 percent of American health care may be unnecessary or counterproductive.

Our program will require practice guidelines, so that unnecessary medical care can be identified and eliminated. Managed care will be encouraged. Outcomes research will be increased so that for many medical procedures whose value is unclear, effectiveness will be established and useless procedures eliminated.

Second, the plan will cut billions of dollars in unnecessary administrative costs. The current system is strangling in redtape that burdens physicians, hospitals, and patients alike. By reforming the health-insurance market, by requiring standardized forms and procedures, and by electronic billing, we can get costs down and make life easier for doctors and patients alike.

Third, the plan will end the blank-check payment policies that have allowed doctors and hospitals to charge whatever they want and have reduced their incentives to practice cost-effective medicine. A new Federal Health Expenditure Board, with the status and independence of the Federal Reserve Board, will be created. The Board will collect, analyze, and publish data on doctors and hospitals in every community in the country, so that patients and insurers can compare costs and quality. The Board will establish tough goals for total spending. Through a negotiation process bringing providers together with business, labor, and consumers, it will establish binding payment rates to achieve national expenditure goals.

Finally, the plan will end the cost-shifting that raises charges to all of us by billions of dollars because some patients are uninsured and cannot pay their fair share.

Our plan has been estimated to save the Nation more than $200 billion in 5 years, even after taking into account the extra costs of covering the uninsured.

In presenting his own plan yesterday, the President took time to say some harsh words about the Health America plan. The same scare tactics were used against Social Security in the 1930's and against Medicare in the 1960's. They did not work then—and they will not work today.

I look forward to debating the President's plan. He is entitled to a vote on the floor of the Senate, and the American people are entitled to a vote on a plan that will truly meet their needs. If health reform is our goal, it is no longer enough to ignore the real problems we face. We must do more, much more, than simply reach for another box of Band-Aids.

GLAXO INC., HOLDS DOWN PRICES

Mr. SANFORD. Glaxo Inc., a North Carolina based pharmaceutical company, is one of the outstanding corporate citizens of the State of North Carolina.

Health care is in crisis. A growing number of Americans can no longer afford health insurance because health care costs are skyrocketing. So I am pleased when I find health care providers and suppliers voluntarily attempting to control health care costs, and am happy to report that Glaxo has agreed to hold down overall price increase for all Glaxo medicines to no more than the rate of inflation. Last year this company was able to keep overall price increase for all its products to 3.7 percent, a full percentage point below the CPI increase of 4.6 percent. And I want to commend Glaxo and its CEO and chairman, Dr. Charles Sanders, for this effort.

Glaxo has also recently decided to provide a 15-percent price discount to public health clinics serving the poor. This is especially important, because these vital health care clinics are serving a growing number of people who have no other access to health care, and their funding has not kept pace with price increases for prescription drugs and other health care products and treatments. So this is especially important to people who depend on these clinics for their health care. This new effort to better serve public health clinics will supplement a program begun in 1984 by Glaxo to provide medicines without charge to patients who cannot afford to pay for them.

The pharmaceutical industry is an important part of health care delivery. Discovering and developing new medicines not only save lives and reduce suffering, but it can also reduce health care costs. Glaxo's commitment to research and development has made it one of the leading pharmaceutical companies in the world.

Glaxo is committed to the search for cost-effective new medicines and will spend nearly $1 billion worldwide on pharmaceutical research and development this year. The development of cost-effective medicines plays a significant role in addressing long-term health care problems. I want to thank Glaxo for this and for voluntarily helping to hold down health care costs.

Mr. President, I would like to submit for the RECORD the attached Durham Herald-Sun article, to be printed following my statement.

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

[From the Durham (NC) Herald Sun, Feb. 5, 1992]

GLAXO INC. TO OFFER MEDICINE DISCOUNTS TO HEALTH CENTERS

(By Myra G. Knight)

Health centers for the homeless, migrant workers and other low-income people will be able to buy medicine from Glaxo Inc. at a 15 percent discount the firm announced Tuesday.

Under the plan the Research Triangle Park based drug company will offer the discounts to qualifying clinics funded under the Public Health Service Act.

The clinics serve about 6 million people annually. Savings to the clinics are expected to be about $10 million a year.

Rising health-care costs—including the cost of prescription drugs—looms as an issue in this year's federal elections.

In a televised debate last week, several Democratic presidential candidates expressed concern that the cost of drugs had far out-stripped growth of the economy as a whole.

But Rick Sluder, a spokesman for Glaxo, said the company's decision to offer discounts was not related specifically to the debate or to other comments by political leaders.

"Certainly, we're aware that concerns about health-care costs have been raised and that they have affected some decisions within the industry," he said.

"This is a way to answer those concerns and at the same time extend our long-held philosophy that access should not be limited by ability to pay."

Sluder said Glaxo started a program in 1984 that provides drugs without charge to patients who cannot afford to pay for them. The new clinic-discount plan will supplement the 1984 program, he said.

The discounts will apply to prescription drugs the clinics buy for outpatient clients not covered by Medicaid or other programs for poor people. They also will not apply to elderly people who already receive discounts from Glaxo.

To qualify for the discounts, clinics are asked to purchase medicines directly from Glaxo and to assure that all Glaxo products are available to patients. The program takes effect May 1.

Glaxo also pledged to keep its price increases in line with the general inflation rate.

The company has maintained such a limitation on price increases since fiscal year 1990-91, it said.

That year, the overall price increase for all Glaxo products was 3.7 percent compared with an increase of 4.6 percent in the general Consumer Price Index.

Including Medicaid rebates in the calculation. Glaxo said its overall increase for fiscal 1990-91 was 1.5 percent.

CRASH OF C-130 IN EVANSVILLE, IN

Mr. MCCONNELL. Mr. President, yesterday a C-130 aircraft crashed in Evansville, IN. This tragic accident hits particularly close to home not only because it occurred in a neighboring State to Kentucky, but also because the five National Guard crew

members who perished were assigned to the 123d Tactical Airlift Wing [TAW] in Louisville.

The 123d TAW and the C-130 aircraft have an impressive record of safety, which makes this accident all the more difficult to comprehend. The crew members were experienced and professional soldiers, and I know the 123d and the Commonwealth will sorely miss its dedicated patriots: Maj. Richard Strang of Floyds Knob, IN; Capt. Warren Klingaman of Louisville; Lt. Vincent Yancar of Louisville; M. Sgt. William Hawkins of Crestwood; and M. Sgt. John Medley of Louisville.

I urge my colleagues to keep in their thoughts and prayers those lost or hurt in this tragedy. My heart particularly goes out to the crew members' families. Their personal loss and grief is shared by the entire Nation.

THE PRESIDENT'S HEALTH CARE REFORM PROPOSAL

Mr. BINGAMAN. Mr. President, yesterday President Bush announced to the Nation his hope—not help—for reforming our ailing health care system. To his Cleveland audience, the President proclaimed that he was "putting health and hope within our reach." Unfortunately, his long-awaited proposal fails to recognize a fundamental, and potentially fatal, fact: The American health care system is devouring our economy. If health care costs continue to triple every decade, as they have for the past three decades, health care will rob American families of the resources they desperately need to live. Mr. President, Americans need leadership, not hope.

Last year, American families spent $738 billion, or $23,000 every second, on health care. Next year, if the Bush plan is adopted, costs will continue to spiral. American families simply cannot afford the increases George Bush is proposing: In 1980, a typical American family paid about $2,600 per year for health insurance. In 1990, the same family paid $6,500. By the year 2000, that family will pay about $14,000 under current projections and the Bush plan. We simply must enact real, comprehensive reform.

From telephone opinion polls to the voting booths, Americans are telling us they want comprehensive reform of the health insurance industry. They want high quality health care. They want the care they need, not the treatment their insurance company deems appropriate. But under the President's plan, insurance companies will continue to be protected. The Bush plan will not require insurance companies to be accountable for the archaic and costly methods they use to manage claims. We now spend four times as much on the administration of medical insurance as we spend on medical research. It is clear the President has decided that protection of this failing industry is more important than the need of Americans to have peace of mind and know they will not be bankrupted paying for medical misfortune.

In 1965, the Medicare Program was enacted; today, its success is largely due to innovations in the management, reimbursement, and administration of health care. Medicare provides older Americans with health care and the peace of mind they deserve. But when it comes to essentials like health, all Americans, young and old, deserve the peace of mind provided by affordable, high quality care. Under the President's plan, there will be no peace of mind, even for older Americans, because his plan could threaten the safety of the Medicare Program. And it will not assure accessible and affordable care to younger Americans. When the President speaks of restricting the ability of States to mandate medical benefits, which benefits will he eliminate? I believe we should respect the decisions of the States' elected representatives. These legislators, not D.C. policymakers, can best ensure the particular needs of their citizens are met.

If the President's plan is enacted, we can expect no improvement in statistics on the uninsured, even 6 years after enactment. Estimates are that in 1998, under the Bush plan, 30 to 45 million Americans—the current population of 23 States—will still be uninsured. This troubles me deeply because my State leads the Nation in the number of uninsured, and Hispanics, who make up the largest segment of New Mexico's diverse citizenry, are the most likely to be uninsured. Many of the uninsured in my State and throughout the country are part of the work force. Currently, EBRI estimates that 85 percent of the uninsured live in families where the head of the household works outside the home. Most work in small companies or are self-employed. The President's proposed voucher and tax credit/deduction plan will do little for these workers and their families.

In my home State of New Mexico, the average family of four will realize about $600 from the tax deduction proposed by the President. When faced with a total insurance bill of approximately $4,000, this small deduction will not ensure access to health insurance. Further, the plan's failure to control escalating health care costs means even the meager benefits some families gain today will be lost tomorrow. The middle class will, once again, absorb most of the costs and bear most of the burden.

For Americans fortunate enough to work for employers who provide health insurance, it is unclear how the President will insure portability of insurance. The President's proposal uses the Cleveland Council of Small Enterprises' [CCSE] effort as a model, which pools workers from hundreds of employers and negotiates with insurance companies as a large group. As was described in a New York Times article yesterday, the CCSE model can help in limited situations; but it fails to reach or help hundreds of workers. The primary failing of the CCSE model is its use of exclusion criteria to deny insurance to individuals at high risk or with preexisting medical conditions. Will the President address this significant problem by mandating that all employers provide health insurance?

It is fairly clear that access to health care will not be guaranteed under the Bush plan. Nor do I believe that the much-touted malpractice reform will solve the problem. Malpractice premiums account for only about 1 percent of our national health spending, and no reliable estimates exist for the cost of defensive medicine. As I indicated during the Labor Committee's recent meeting to mark up the HealthAmerica bill, I believe we need more information on the efficacy of medical procedures and the contribution of medical procedures to the quality of life. Only through systematic analysis will we have enough information to guide health care providers and their patients in decisions about health care. Unlike the President, who yesterday made a veiled appeal to the Congress to work with him to ration health care by fiat, I believe a wiser course is to facilitate a national debate on how we are going to prioritize health care.

Finally, I want to point out that the President's plan to simply cap Government health expenditures, without addressing adequate reimbursement for purchased services under programs like Medicaid, will not save any money. It will increase cost shifting to the private sector, causing greater increases in health insurance prices. I agree that we must recognize limits to Government health spending, and we must do so quickly. However, establishing simple spending limits without recognizing other factors is not the solution.

Despite the inadequacies of the President's proposal, I do not believe we can turn our backs on this chance to begin reforming our ailing health care system. It is clear that our current system of providing health care is deeply flawed. We cannot ignore the fact that 36 million Americans are—and will be—uninsured. We cannot ignore the fact that 15 percent of our children do not—and will not—have health insurance. The President's plan recognizes these serious problems, but falls short of even providing hope for a remedy. Under the President's plan, by the turn of the century the number of uninsured children and families will grow even higher, and we will have failed to give another generation hope.

The President's proposal is at least a starting point. We have a long, long way to go. Thank you.

DEMOCRATIC REPORT ON THE NOMINATIONS PROCESS

Mr. DOLE. Mr. President, the Democrats in the Senate have examined the nominations and confirmation process and pronounced it flawed.

After the spectacle of the Thomas hearings, I think we can all agree with that diagnosis, as well as with a few of the recommendations in their report.

Unfortunately, however, when it comes to Supreme Court nominations, their prescribed cure is much worse than the disease.

The Democratic report chooses to ignore history. President Washington, for instance, filled the Court with staunch supporters of a strong Federal Government.

John Adams likewise sought to appoint Justices with strong federalist sentiments and succeeded in having John Marshall confirmed as Chief Justice.

Marshall authored decisions which have had an enduring effect upon the Nation's political and economic structure consistent with Washington's and Adams' visions.

It was Franklin Roosevelt's objective to fashion a Court sympathetic to New Deal legislation.

Within 4 years of the defeat of his Court packing legislation, President Roosevelt appointed seven new members to the Court. In the short run the effect of the change in Court personnel was immediate and predictable. Social and regulatory legislation was sustained across the board against constitutional challenges that might have prevailed before the old Court.

The seven Roosevelt nominees, who were virtually unanimous on matters of economic and social legislation, divided only when civil liberties issues began to bloom during the post-war period.

Presidential nominations of Judges traditionally have reflected Presidential agendas.

Any precept that a President should not use the appointment process to promote political objectives, or avert their subversion, is irrational and, to the extent that it fosters expectations of executive forebearance, is also unrealistic.

Senator William Proxmire, for example, argued during the 1971 debate on the Rehnquist nomination, that the Senate should confirm a nominee of obvious intellectual capacity without considering his or her substantive views—unless the nominee would not uphold constitutional guarantees.

In 1969, Senator Marlow W. Cook, in defending his support for the Haynsworth nomination, wrote to a constituent that "the ideology of the nominee is the responsibility of the President. The Senate's judgment should be made, therefore, solely upon grounds of qualifications.

When the Democrats suggest that the President immediately begin consulting with the Democratic Senate about the next Supreme Court nominee—at a time there is no vacancy on the Court—they are dreaming of a world that never was and never will be. This is nothing more than a blatant attempt to grab power which the Senate has never had.

It ignores the plain language of the Constitution which excludes the Senate from the nomination process and only involves the Senate in the appointment process. The Constitution separates these two functions and only in the latter case is there Senate action required.

No President before has surrendered the nomination power of Supreme Court Justices to the Senate. It is unlikely that this one can be persuaded to do so.

There is, however, an answer to the Democrats complaint, but it lies in the ballot box, not in process changes.

When and if they elect a Presidential candidate, then they can control the nomination process.

And if they do so, you can bet that any suggestions that the President should consult the Senate on Supreme Court nominations will quickly disappear.

NATIONAL COUNCIL ON THE HUMANITIES

Mr. PELL. Mr. President, the National Council on the Humanities is the 26-member body that advises the Chairman of the National Endowment for the Humanities on policy and program issues and makes recommendations as to which applications should be supported with NEH funds. Each Council member is nominated by the President to serve a 6-year term and Senate confirmation of those nominees is required.

Council members have a very important role to play at the Humanities Endowment. To be most effective as public servants, they should provide the NEH Chairman with informed and independent opinions on policy and program matters and they should be scrupulously fair-minded in their thorough review of grant requests.

The terms of nine members of the National Council on the Humanities expired in January. The statute permits those Council members whose terms have expired to continue to serve until replacements have been confirmed. Since no nominations have yet been made to fill these nine vacancies, the retiring Council members will be allowed to attend the next meeting of the National Council on the Humanities which convenes here in Washington on February 13–14, 1992.

While the Senate awaits these nominations, I believe it is an appropriate time to share a thoughtful statement about the National Council on the Humanities with my colleagues. This statement was prepared by the board of directors of the National Humanities Alliance, a impressive coalition of 72 organizations concerned with the humanities in the United States. The NHA was established in 1981 to encourage public interest in support of the Federal programs in the humanities.

I greatly appreciate the fact that the National Humanities Alliance has set forth such a clear statement regarding the purpose and composition of the National Council on the Humanities. It is a pleasure to share this statement with my colleagues and I ask that it be printed in the RECORD along with the list of NHA member organizations and a roster of the NHA board of directors.

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

STATEMENT OF THE NATIONAL HUMANITIES ALLIANCE[1] ON THE NATIONAL COUNCIL ON THE HUMANITIES

Since its establishment in 1965, the National Endowment for the Humanities [NEH] has become the single most important institution supporting scholarship and other humanities activities in the United States. In the words of William G. Bowen, President of the Andrew W. Mellon Foundation: "It is not an exaggeration to say that the decisions made concerning the budget for NEH . . . and subsequent administration of the funds have an absolutely decisive impact on the health and character of the humanities in America."[2]

For this reason, the National Humanities Alliance (NHA), a coalition of seventy scholarly and other organizations concerned with the humanities in this country, wishes to reiterate its full support for the HEH and to emphasize the importance of the composition of the National Council on the Humanities to the general functioning of the NEH. We do so now because the terms of nine of the twenty-six members of the Council expire in January 1992.

The authorizing legislation[3] assigns the following responsibilities to the National Council on the Humanities: (a) advising the Chairman of the NEH on policies, programs, and procedures for carrying out the Chairman's functions and (b) reviewing and making recommendations to the Chairman on the applications for financial support submitted to the Endowment. These responsibilities call for Council members who bring a range of expertise and breadth of experience to their work on the Council. The diversity of Council members' interests and backgrounds determines the kind of advice they can provide on grant decisions, policies, and procedures.

Scholars, educators, and other citizens working in the humanities view the Council as serving the Endowment and the general humanities community in a way that parallels the leadership provided by the National Science Board, although they recognize that the science panel is vested with far greater authority as well as resources.

The legislation requires that NEH Council members be appointed by the President with

Footnotes at end of article.

the advice and consent of the Senate. The statute requires that Council members must: 1) be private U.S. citizens; 2) be "recognized for their broad knowledge of, expertise in, or commitment to the humanities"; and 3) "have established records of distinguished service and scholarship or creativity." Further, Council members must "provide a comprehensive representation of the views of scholars and professional practitioners in the humanities and of the public throughout the United States." In other words, Council members must bring not only the highest qualifications but also a broad range of perspectives, which is critical to the effectiveness of such a body. We recognize that the legislation calls for representation of the views of both scholars and the public, and, in fact, the Council has included both scholarly and public members since the beginning, although there are no reserved "scholarly" or "public" seats on the Council.

The National Humanities Alliance urges that scholars nominated to serve on the Council have the credentials called for in the legislation. Likewise, individuals nominated from among the general public should have records of strong commitment to the humanities. Further, we urge on-going attention to achieving the comprehensive representation—across disciplines[4] and intellectual viewpoints—that is called for in the legislation.

Finally, the NHA notes the directive in the legislation to consider "recommendations" on Council appointments "by leading national organizations concerned with the humanities." Such organizations, whose primary commitments are to the work of the humanities, can be helpful in identifying individuals representing a range of viewpoints who are actively engaged in scholarship as well as the public humanities.

FOOTNOTES

[1]The National Humanities Alliance (NHA) was formed in 1981 to unify the public interest in support of federal programs in the humanities. The NHA is the only coalition that represents the humanities as a whole: Scholarly and professional associations; organizations of museums, libraries, historical societies, higher education, and state humanities councils; university and independent centers for scholarship; and other organizations concerned with national humanities policies. The Alliance also speaks in behalf of individuals engaged in research, writing, teaching, and public presentations in the humanities.

[2]William G. Bowen's testimony was presented 17 March 1988 on behalf of the National Humanities Alliance before the Interior and Related Agencies Subcommittee at a hearing regarding the Fiscal Year 1989 appropriations for NEH.

[3]The National Foundation on the Arts and Humanities Act of 1965 (P.L. 89-209). All quotations of the legislation are drawn from the compilation of the law through 1986 (the most recent compilation) but with cognizance of changes enacted through the 1990 reauthorization.

[4]The legislation states that "the term 'humanities' includes, but is not limited to, the study and interpretation of the following language, both modern and classical; linguistics; literature; history, jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, and theory of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to reflecting our diverse heritage, traditions, and history and to the relevance of the humanities to the current conditions of national life."

THE NATIONAL HUMANITIES ALLIANCE, JANUARY 1992

ACTIVE MEMBERS OF THE NATIONAL HUMANITIES ALLIANCE

American Academy of Religion.
American Anthropological Association.
American Association of Museums.
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American Political Science Association.
American Society for Aesthetics.
American Society for Eighteenth-Century Studies.
American Society for Legal History.
American Sociological Association.
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Association for Asian Studies.
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Association of American Colleges.
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Association of Research Libraries.
College Art Association.
Shelby Cullom Davis Center for Historical Studies, Princeton University.
Davis Humanities Institute, University of California, Davis.
Federation of State Humanities Councils.
The George Washington University.
History of Science Society.
Independent Research Libraries Association.
Linguistic Society of America.
Medieval Academy of America.
Modern Language Association.
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National Humanities Center.
Renaissance Society of America.
Social Science Research Council.
Society of Biblical Literature.
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THE NATIONAL HUMANITIES ALLIANCE, JUNE 22, 1991

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DAKOTA CARES PROJECT

Mr. CONRAD. Mr. President, several weeks ago, President George Bush while addressing a conference of the Citizens Democracy Corps and United Way International on private sector assistance to the Commonwealth of States, paid tribute to the extraordinary humanitarian efforts currently underway by the North Dakota Grain Growers Association in cooperation with the United States Durum Growers Association to assist families living in St. Petersburg, Russia.

The project, Dakota Cares, was developed last October 1991, when members of both associations decided to donate 100 tons of packaged flour to the people of St. Petersburg, a city with especially great needs as farm regions have dramatically reduced food shipments to urban areas.

The response on behalf of Dakota Cares from North Dakotans, and many other individuals across the region was overwhelming. North Dakota farmers donated grain from this year's harvest. Citizens donated cash to assist with transportation costs. The North Dakota Mill donated milling and bagging costs. Burlington Northern Railroad

and the Sea-Land Corp. donated transportation, and KLM provided two round-trip airline tickets for several members of the North Dakota grain associations to fly to St. Petersburg to oversee the distribution of flour.

In addition, many organizations including the American Committee on United States-Soviet relations, the Ed Benson Co. of Minneapolis, MN, along with members of the Salvation Army, the Red Cross, and American church groups including the Church World Service, contributed significantly to ensure the distribution of flour to St. Petersburg families with the greatest need.

Mr. President, the initial efforts to provide humanitarian food assistance to needy individuals and families in St. Petersburg proved extremely frustrating. Individuals representing the U.S. Durum Growers Association, Charles Rohde, president, and the North Dakota Grain Growers Association, Maynard Satrom, president, and their staffs, worked tirelessly for weeks to overcome the bureaucratic obstacles that prevented the flour from being shipped, and distributed freely to those families with the greatest need.

After considerable hard work and outstanding contributions from many individuals, corporations, and organizations on behalf of Dakota Cares, the first of an estimated three shipments of packaged flour, was delivered early in January to the elderly, disabled, and low-income families in the Kuibeshevsky District of St. Petersburg, one of the areas hardest hit by food shortages. A second shipment is scheduled for distribution today.

Mr. President, I am pleased and very honored to be able to share the reports on this exceptional humanitarian effort, the Dakota Cares project, that is underway for the residents of St. Petersburg, Russia. It is an undertaking and contribution from North Dakotans and many Americans that we can all be very proud of, especially during these most difficult economic times in the United States. As President Bush remarked on January 22, at the conference sponsored by the Citizens Democracy Corps, the Dakota Cares project represents "the American spirit at its very best."

Mr. President, I ask unanimous consent that several articles on the Dakota Cares project from the Christian Science Monitor of Thursday, January 16, 1992, and the Fargo Forum of Tuesday, January 21, 1992, be printed in the RECORD at the conclusion of my remarks.

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

[From the Forum, Jan. 21, 1992]

RUSSIANS GRATEFULLY RECEIVE FLOUR FROM NORTH DAKOTA

(By Mikkel Pates)

North Dakota flour is getting to Russians and it's appreciated—but that's not enough.

That's the message from two North Dakota grain farmers who went to St. Petersburg to monitor the distribution of 43,200 pounds of Dakota Maid bread flour through the Dakota Cares project.

A second shipment is scheduled for Feb. 7.

"These people were so thankful, they had tears in their eyes, and it was hard not to cry with them," said Charlie Rohde, Langdon, president of the U.S. Durum Growers Association.

"They need everything," said Maynard Satrom, Oriska, president of the North Dakota Grain Growers. "They need bread, pasta, beans, sugar, cooking oil; toothpaste."

Grain growers have donated flour with a value of $3,800, though the value of the ocean freight is about equal and was contributed by the E. Benson Co.

At a news conference in Fargo, the two representatives showed a videotape of their house-to-house deliveries of flour to the poor.

The video showed flour deliveries to "pensioners," for the most part elderly widows who live in one-room apartments and share kitchens with four or five others and live on $1.30 or less a month.

The two also visited small, private farmers, many nearly 100 years behind the times.

"If you saw these people it would be easy to make a contribution," Rohde said. "We in the United States don't know what hungry is. Meat is beyond their buying power."

Each 10-pound bag is enough to make about 17 one-pound loaves of bread. Rohde said that since bread flour normally is available only to bakeries—not private citizens—there is no good estimate of its market value.

"They'll make it last for a long, long time," he said, adding, "It becomes a 'hamburger helper' for everything."

St. Petersburg Mayor Pavel Soluyanov wrote a letter to North Dakotans, expressing his thanks.

"We greatly appreciate this first act of private initiative, which appears to become the effective support for our citizens, who found themselves in an extremely hard situation," Soluyanov wrote. "People received flour parcels with sincere gratitude. They are sending their thanks through us to you, all farmers and to all who donated towards this project."

Logistics for the effort have been difficult.

"I truly believe this thing was touched by a higher power," said Dina Butcher, executive director of the North Dakota Grain Growers.

Laurie McMerty, a grain growers staff member who made most of the arrangements, first tried to get help through the U.S. State Department.

"Their first question was, 'Why in the world would you want to do that?'" McMerty said.

Help also came from the U.S. Department of Agriculture, McMerty said, but there are turf battles going on between the two agencies.

This week, Butcher is traveling to Washington, DC, to talk about the flour export success with members of the Citizens Democracy Corps, a national group working with world humanitarian efforts.

President George Bush and Secretary of State James Baker are scheduled to address the group, Butcher said.

McMerty also said although U.S. airlines declined to offer a discount on airline tickets for Rohde and Satrom, KLM Dutch Royal Airlines provided two round-trip tickets and seated the men in the "royal" passenger space.

Rohde said it is disheartening to see how slowly the United States has responded to the food needs of Russians. Current efforts to send grain are too late to help them through this winter and the real need is for processed goods for humans, he said.

Both men said they think the gift of flour could be a harbinger of future sales of wheat products to the Soviets. "I think it would be open now if we could get some people over there to make the contracts," Rohde said. They cited several instances of entrepreneurs from other countries who are in place to start agricultural enterprises.

The grain growers cooperated with a New York lawyer who used techniques from the American Relief Administration in the 1920s as a pattern for getting the food to the Soviets.

St. Petersburg was picked because it is a port city and doesn't have the added layer of bureaucracy of Moscow.

To prevent the flour from being stolen or diverted to the black market, they required private organizations—chiefly the Salvation Army, American students living in St. Petersburg and church groups—be in charge of distribution.

They required the flour clear customs within 24 hours and distributed it to several areas of the city, creating an incentive for good performance.

Those interested in donating can contact the North Dakota Grain Growers Association at 4023 North State St., Bismarck, N.D., 58501, or phone (800) 932-8822.

[From the Christian Science Monitor, Jan. 16, 1992]

NORTH DAKOTA FARMERS SEND AID TO ST. PETERSBURG

(By Linda Feldmann)

WASHINGTON.—This is the story of how North Dakota grain farmers linked up with a New York lawyer with an appreciation for history and succeeded in delivering food aid to the needy of St. Petersburg.

The key, says the lawyer, Matthew Murray, was to follow the lessons of the United States's last humanitarian aid program in Russia: the American Relief Administration, set up in 1921 by then-Commerce Secretary Herbert Hoover to address Russia's devastating famine.

But first things first.

Last October, the North Dakota Grain Growers Association and the US Durum Growers Association decided to donate 100 tons of packaged flour to the people of St. Petersburg. Initial attempts to go through official channels fell flat. Poor telecommunications hindered their efforts to reach St. Petersburg city officials or the US consulate there by phone. And the response from the State Department in Washington left them stunned.

"The first question was, 'Why in the world would you want to do that?'" says Laurie McMerty, projects director for grain growers association. "We're a small state and just used to everybody pitching in when someone needs help."

Mr. McMerty adds that, when dealing with local people to arrange other aspects of the project, "it took no more than five minutes for each phone call" to get support.

Farmers donated grain from this year's good harvest. Citizens donated cash for transportation costs. ND Mill donated milling and bagging costs. Burlington Northern Railroad donated inland transportation. And KLM Dutch Royal Airlines provided two round-trip tickets to St. Petersburg for two association members to oversee the project.

Then the grain growers connected with lawyer Matthew Murray, who travels frequently to Russia as a trade consultant.

Mr. Murray says St. Petersburg was an appealing candidate for aid because it's a large city (the major cities have proved particularly needy, since farming regions have cut back on food shipments), it has a port, and it's not Moscow, with its added layer of government bureaucracy.

But when Murray went to St. Petersburg in November to set up distribution for "Dakota Cares" project, there were no American private voluntary organizations operating there, he says. So he realized he'd have to start from scratch.

Enter Herbert Hoover and the American Relief Association. Through the help of the American Committee on US-Soviet Relations, Murray got copies of ARA documents and a 1943 paper by H. H. Fisher on the ARA to learn how the aid program worked.

Then, as now, a major concern was that aid not be stolen or diverted to the black market. The ARA, in its August 1921 accord with Russia, insisted on provisions to ensure that wouldn't happen: requiring that the ARA be allowed to bring into Russia any personnel it deemed necessary to carry out its work; and requiring the Soviet government to reimburse the ARA in hard currency or in kind for any stolen materials.

The ARA also paid its Russian workers in food, to lower the temptation to steal.

"Stringent conditions placed on the aid and absolute control by the ARA over every part of the distribution process were the keys to its success," writes Janine Ludlam in "New Outlook," a journal of the American Committee on US-Soviet Relations.

Murray adapted but did not duplicate the ARA concept. The North Dakota accord does not call for reimbursement for lost materials, but rather obliges the Russians to hold "accountable under the laws of the Russian Republic" any official party found to be intentionally misusing or selling the flour.

The accord also provides for the involvement of private organizations and individuals, including the Salvation Army, American students in St. Petersburg, and church groups. The flour is to be cleared through customs, duty-free, within 24 hours of its arrival at the port.

"We hit them hard to get it in within 24 hours," says Murray. It was up to the Russian signatures to the deal to ensure that the flour did not languish in the port, as with many other ships bearing foreign aid. The Russians are also in charge of supplying trucks and fuel to transport the flour to its final destination.

It was of paramount importance, Murray says, that good local officials be found on the Russian end. He is happy with his choices: Alexander Minikov of the Departmental Committee for Social Problems at the mayor's office in St. Petersburg (a new city welfare agency) and Mark Grigoriants, who runs the social welfare office for Kuibeshevsky District, one of St. Petersburg's hardest-hit regions.

Instead of threatening to punish the Russians for poor implementation, Murray says he simply made it clear to the area selected that the North Dakotans were under no obligation to keep the deliveries coming if the arrangement was not working. Murray also set up a competitive process for the North Dakota aid, taking bids from separate parts of St. Petersburg, to create an incentive for good performance.

The flour—packaged in 10-pound bags labeled as a gift from North Dakota—is to be distributed free to pensioners, the disabled, single-parent families, and families with more than one child.

The St. Petersburg social welfare department, working with the Salvation Army, is compiling a computerized list of the neediest cases—already 16,000 people in Kuibeshevsky District alone. The bags of flour are being distributed by the Salvation Army, American students, and American church groups, with Russians helping. Also, Red Cross nurses are distributing flour to wards on their regular visits.

Murray says he wants to steer clear of giving away flour to Russian volunteers as much as possible, to foster a sense of altruism. The North Dakotans decided to give flour to the nurses, however, when they learned they were being paid by the Soviet Salvation Army only 100 rubles a month (enough to buy just a few days' worth of food).

For the North Dakotans, the acid test came this week, when two of their grain officials took the KLM trip to St. Petersburg to check on the aid. So far, says Laurie McMerty of the grain growers association, the plan seems to be working. The first shipment of 4,320 10-pound bags had cleared customs and was waiting for the North Dakotans when they got there.

AN UPBEAT VIEW OF U.S. TRADE PROSPECTS

Mr. DOLE. Mr. President, we have heard a lot of talk lately about the President's recent trip to the Far East and America's role in the global economy. Not surprisingly, much of that talk has been negative, coming from the liberal media and the "America Can't Compete" crowd pushing isolationist and protectionist solutions to our Nation's trade challenges.

Well, that is not the refreshing message the Lincoln, NE, Chamber of Commerce recently heard from one of the business leaders who accompanied President Bush on his Far East mission. According to C.J. Silas, chairman and chief executive officer of Phillips Petroleum and chairman of the U.S. Chamber of Commerce, the outlook for American competitiveness is hardly the doom and gloom being forecast by many these days.

Mr. President, I recommend Mr. Silas' remarks to my colleagues, and I ask unanimous consent that the entire text of the speech to the Lincoln Chamber of Commerce be included in the RECORD.

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

FREE TRADE OR COMPETING BLOCS? BUSH'S FAR EAST MISSION AND AMERICA'S ECONOMIC FUTURE

(Remarks by C.J. Silas)

[Introduction by Duane Vicary, precedes.]

Thank you, Duane.

Governor Nelson, distinguished representatives of the business community, ladies & gentlemen:

After 12 hectic days, in four countries, on at least two continents, I'm delighted to be back in America's heartland, especially to a state that's apparently discovered how to immunize itself from recession.

[Pause.]

That's some trick.

I know a certain White House physician who'd like to talk to you about immunizing against intestinal virus.

Despite the President's bout with the flu and despite some pretty down-beat news coverage about the trip, there is upbeat news to report from the Pacific Rim.

By honoring his longstanding commitment to visit our friends in the Far East, I believe the President made the right decision.

Right for him. Right for the country, and right for business.

His mission, actually, was long overdue. But the delay is understandable.

The rest of the world, outside of the Pacific Basin, was a mess for most of 1991.

The Soviet Union ceased to exist.

War broke out in central Europe for the first time in a generation and then there was the small matter of a medium-sized war in the Persian Gulf.

[Importance of Pacific region.]

But even while the rest of the world seemed to be falling apart, the nations surrounding the Pacific basin continued their quiet, relentless pace as the most rapidly growing economic region on earth.

U.S. trade with the Pacific is now greater than with any other region of the world.

Our exports to the tiny nation of Singapore alone, already exceed our total sales of goods and services to Spain or Italy.

Even as the world was focusing its attention on "Europe 1992," the center of gravity of the world economy had already decisively shifted from the Atlantic to the Pacific.

It was therefore imperative that the President demonstrate that this country intends to remain a Pacific Power.

It was also imperative to make clear that we intend to fight unfair barriers to our exports.

[Taking business leaders along.]

A lot has been written about the "symbolism" of this trip.

Most of it was negative—and most of it missed the mark.

This was the first time a President of the United States had asked the nation's business leaders to join him on a major diplomatic mission.

People criticized the President's gracious invitation to us; this was seen as somehow "demeaning," lacking in dignity.

These critics missed the point.

We business people may lack the dignified self-assurance of pin-striped diplomats, or the ramrod bearing of seasoned military commanders.

But the world is changing. What this invitation symbolizes, is the President's realization that economics—rather than clever diplomacy or military power is now the driving force of history.

It also symobilizes that George Bush is willing to roll up his sleeves and get directly involved in the nitty-gitty of trade negotiations.

This was a message our trading partners needed to hear.

[More to trip than Japan talks.]

The media focused most of its attention on our talks with the Japanese.

These talks revealed that a real gap in perceptions has grown up between our two nations, especially with respect to what it means to have an "open market."

But our slow progress with the Japanese should not obliterate the very real accomplishments of the Bush mission.

There was a lot more at stake on the President's trip—than auto-parts.

Our friends in Australia, Singapore and Korea, as well as Japan were asking for reassurance.

All of these countries were worried about America's intentions.

They were afraid that our preoccupation with wars, and rumors of wars in other parts of the world would lead to a "benign neglect" of their concerns.

Our election-year rhetoric also frightens them. We Americans know that all the political talk about isolationism in this country is just that: all talk.

But our friends can't be quite sure.

As our military presence in the Far East inevitably winds down in the aftermath of the Cold War, they want to hear that America's commitments to them remain firm and resolute. They got that reassurance directly from the President of the United States.

[Danger of trade war.]

They are also worried about expert predictions that the greatest era of trade expansion in history may be coming to an end.

Shattered by the rise of three great trading blocs in Europe, North America and Asia, everywhere we went, we heard fears that the proposed North American Free Trade Agreement would cut off trade access to North America.

Again, they got the word directly from the President of the United States: NAFTA is designed to open markets, not to close them.

President Bush is firmly opposed to replacing the military blocs of the Cold War with the trading blocs of an economic war.

Our nation remains firmly committed to "free and fair trade" as a fundamental policy.

After all, we would be seriously hurt by any slowdown in global trade expansion.

In 1990, U.S. export growth accounted for 80 percent of our total economic growth.

In 1991, U.S. exports probably reduced the impact of the recession by half.

This is precisely the reason the U.S. Chamber has historically opposed any kind of adversarial approach to international trade, even if retaliation is justified.

But the President could only go so far toward reassuring our Asian neighbors that a world of hostile trading blocs can be avoided.

America is only one of the key players in this game. If the rising tide of protectionism among the three economic "superpowers" is to be restrained, we're going to need some cooperation.

Even within the Chamber family, resentment against unfair Japanese tactics is rising.

The Japanese use their own play book, rather than abiding by the internationally agreed-upon set of rules.

Japan can no longer justify employing its mercantile practices by pretending it's still a struggling Third World nation, with a marginal economy.

Korea, Singapore and Hong Kong are thriving on practices that put their trade in rough balance with the U.S. "So," it's legitimate to ask, "why can't the Japanese?"

The Chamber should consider this issue.

[Protectionism not the answer.]

But I remain convinced that protectionism is not the answer. Enforcing our rights isn't always in our self-interest.

Sometimes, winning a lawsuit leaves both winner and loser poorer than either would have been with a reasonable compromise. That's why so many companies settle lawsuits out of court, even if the facts are on their side.

As the chief executive of an international energy company, I have to tell you I find the prospects of a global trade war frightening.

It would be an unmitigated disaster for all concerned. All three trading regions are governed by democracies.

If the U.S. starts retaliating against Japan in earnest, just what do you think Japanese politicians are going to do?

Will Tokyo respond in kind? You can bet on it!

If projectionist rhetoric escalates into political action, the present recession could quickly turn into a world-wide depression.

It's happened before. In the 1930's.

We can't afford to repeat that experience in the 1990's. We need each other too much. The movement toward a truly integrated global economy has already gone too far to be reversed.

In the last five years alone, Japanese companies poured some $109 billion into North America to erect factories and buy businesses.

Texas Instruments is now Japan's leading producer of semiconductors; Estee Lauder is Japan's most successful cosmetic manufacturer. In fact, the top 2,000 American companies operating in Japan produce goods & services with a production-value greater than the US-Japan trade deficit.

On the U.S. side of the Pacific basin, General Motors is now the largest shareholder in Isuzu.

Before we start retaliating, we'd better talk to some of the folks who are likely to get caught in the cross-fire.

[Don't sell America short.]

I also happen to believe that American fears about our competitiveness are blown way out of proportion.

America's share of the world economy has held steady at 22 to 23 percent of total global GNP for 10 years straight . . . with no sign of decline whatsoever.

That's roughly the same share we held prior to the Second World War, which temporarily flattened our natural competitors in Europe and Japan.

Even today, with Europe fully recovered, we are running a trade surplus with the 12 members of the European Economic Community.

We've also turned out former deficit with Mexico into a tidy surplus.

In fact, with respect to manufacturing, the U.S. has increased its global market-share over the past few years, primarily at the expense of the Europeans.

Our share of world exports in chemicals, power-generating equipment, computers, electrical machinery, all of these are growing.

Japan, on the other hand, is losing marketshare in autos and steel to South Korea and the other "tigers" of East Asia.

My message is that America is neither helpless, nor in terminal decline.

Our efforts over the past decade to improve productivity and competitiveness are beginning to pay off, perhaps not as fast as we would like, but certainly a lot faster than some commentators would lead you to believe.

[Structural problems are real.]

Having said this, I do not intend to minimize the structural problems American business faces adjusting to this New World Order.

The same forces which have stimulated the greatest era of international trade growth in world history, are also forcing a rationalization in the marketplace. Anywhere you look, you see consolidation.

That's what "globalization" of the economy really means. For business, the implications are very simple—and very painful: even in Lincoln, Nebraska.

Unless you happen to be a very small regional or local company, with a well-defined niche market, you must gear up to compete on a global basis. If you don't, "The Great Consolidation" may swallow you whole.

It's already swallowed half of America's independent oil companies.

If our business enterprises are to thrive in the emerging global economy, there is no alternative to becoming more competitive.

The steel industry saw the handwriting on the wall—and responded. "Big Steel" is gone, but American specialty steel is back—and growing. It didn't come back by hiding behind tariff walls.

[Why economic integration will win.]

Such a strategy is doomed; here's why: Advances in communication and transportation have made it virtually impossible for nations to insulate themselves from the international economy.

The cost of a 10-minute phone call between the U.S. and Britain, for example, has fallen from more than $200 in 1950, to less than $10 today.

The cost of transportation—and the real cost of energy used in transportation—has also dropped in absolute terms.

This means that even a small firm—your firm—can afford to coordinate operations and ship products to a world-wide market.

It also means that a small competitor in Mexico or Turkey may already be plotting your down fall.

The advent of the fax machine and related information technologies, will inevitably undercut any attempt by politicians to insulate domestic producers from the forces of the global marketplace.

Just ask the leaders of "The Late Great, Soviet Empire" what happens, when you try to insulate yourself from the global economy.

There is a lesson here for those who would replace the sterile ideological blocs of the past with the new, competitive economic blocs of tomorrow. Don't even think about it!

With the end of the Cold War, the new fault line in world affairs is no longer ideology. It is the clash of the forces of economic integration versus the forces of ethnic, religious and special interest fragmentation.

Economic integration is going to win, hands down. I am not saying this process will be pretty, uneventful, or without its ups and downs.

What I am saying, in terms of American business, is that protectionism will not save us from the forces of consolidation and rationalization. To survive, we need to be better than the competition. No more—and no less.

That's why the President went to Asia. And that's why he took America's business leaders. He wanted to reassure our friends that we're not going to abandon our historic commitment to their region. He wanted to reassure them of our continued support of free and fair trade, and that we are willing to talk about trade issues on a case-by-case basis, if that's what it takes to work things out.

He wanted to introduce them to some people they can deal with, in real world terms: America's business leaders.

I came away from this trip, feeling more upbeat about America's future than I have in a long time.

I think the President's got our international economic priorities straight.

He's talking to the right people about the right issues at the right time. Clearly, there are some difficult problems to work out.

The world-wide triumph of democracy and the free-market may be a cause for celebration. But we can't expect this New World Order to behave with any more decorum than any other squalling infant.

It's noisy, messy, with a bundle of appetites. It whines a lot. We've got our work cut out for us. But given a choice of problems, I'll take "competing for marketshare" over "Global Thermonuclear War" any day of the week. Thank you.

THE DEATH OF FERGAL CARAHER IN NORTHERN IRELAND—DISTRICT ATTORNEY KEVIN BURKE'S REPORT

Mr. KENNEDY. Mr. President, in December 1990, Fergal Caraher was killed when British Army soldiers opened fire on him in Cullyhanna. The army claimed that Caraher and his brother drove through a checkpoint, but witnesses say that they stopped and spoke with the soldiers, and were shot as they drove away. Because of their dissatisfaction and lack of confidence in the official inquiry, Mr. Caraher's parents initiated an independent international inquiry.

Kevin Burke, district attorney for the Eastern District of Massachusetts and a member of Northern Ireland Justice Watch, took part in that inquiry and submitted an extensive report last October on its findings. Mr. Burke concludes that the British Government is unwilling to expedite investigations of shootings by security forces, is unwilling to provide information on these incidents to the public, and has sacrificed basic principles of justice and human rights in the interest of maintaining order.

Earlier this week, in large part due to the attention this case has received as a result of the widespread outrage about the incident and the work of the international inquiry, two soldiers were charged with the murder of Fergal Caraher. I welcome this long overdue development, but I remain concerned about the continuing lack of confidence in the law enforcement system in Northern Ireland.

Mr. President, I commend Mr. Burke for his excellent report and his conscientious pursuit of justice in this case. I believe that his impressive and disturbing report will be of interest to all of us concerned about human rights in Northern Ireland, and I ask unanimous consent that the report may be printed in the RECORD.

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

FINDINGS OF DISTRICT ATTORNEY KEVIN M. BURKE FROM THE PUBLIC INQUIRY INTO THE SHOOTING OF FERGAL AND MICHAEL CARAHER, CULLYHANA, COUNTY ARMAGH, NORTHERN IRELAND, OCTOBER 1991

INTRODUCTION

As a member of Northern Ireland Justice Watch, a recently formed human rights group, I was invited to participate as a jurist in a public inquiry into the shooting of two citizens of Northern Ireland by British Royal Marines on December 30, 1990, in the village of Cullyhanna, County Armagh. The known circumstances of the killing of Fergal Caraher and the wounding of his brother Michael Caraher by Royal Marines gave rise to very serious public concern regarding the use of deadly force by security forces. This concern, coupled with a failure of the police or the government to provide information concerning the shooting, caused the Caraher family, the Cullyhanna Justice Group, and the Irish National Congress to sponsor a public inquiry into the shooting, on June twenty-second and twenty-third in Cullyhanna, County Armagh, Northern Ireland.

An international panel of jurists chaired by Michael Mansfield, QC of England, and including myself, Judge Andrew Sommers of Wisconsin, Maitre Anne-Carine Jacoby, avocat a la cour, Paris, and Ms. Veronika Arendt-Rojahn, Rechtsawaltin und Notarin, Berlin, was assembled for the inquiry. The panel undertook this tasks having been satisfied as to the independence of the inquiry, and out of a concern as to the use of lethal force in Northern Ireland. We clearly understood that, as an unofficial inquiry, our findings would have a somewhat limited scope, especially given the fact that the army, the government and the police had declined invitations to participate in the inquiry.

The procedures for the inquiry were developed by the jurists and two Irish lawyers, Fergal Kavanaugh, a barrister, and Colm McGeehan, a solicitor. Mr. Kavanaugh and Mr. McGeehan, with the help of others in the sponsoring organizations, prepared the presentation of the evidence to the panel. At the inquiry itself, Mr. Kavanaugh, assisted at counsel table by Mr. McGeehan, examined the witnesses. At the completion of Mr. Kavanaugh's examination of each witness, the panel was allowed to examine the witnesses. There is a stenographic and videotape record of the proceedings, and each panel member was provided with copies of the exhibits presented, which included photographs and maps as well as copies of various correspondence.

The panel adopted a Preamble (Addendum A) which recognizes that the inquiry is not to be seen as the equivalent of a court of law. The Preamble does prescribe, while clearly recognizing the State's right and duty to enforce the law and maintain order, "that there should be a prompt elucidation of the facts surrounding and inquiry into the death of any human being so as to allay the legitimate public concerns and fears."

In addition, and most fundamental to this inquiry, the panel recognized in the Preamble, "that the law must be just and must apply to all equally and must be seen to be just and apply equally."

Finally, the panel adopted Terms of Reference (Addendum B) which in essence frame the issues that each jurist should address in their findings. For the purposes of my findings, I will restate the issues to be examined in a form which combines the purpose and objectives of several terms of reference.

STATEMENT OF FACTS

On Sunday, December 30, 1990, at approximately 3:15 p.m., Michael Caraher and Liam Murphy left McGeeney's Pub at Freeduff Road, Cullyhanna. They entered a red Ford Granada owned by Murphy, and with Murphy driving they drove from Slate Quarry Road into Tullynaval Road. While on Slate Quarry Road just before the intersection with Tullynavel Road, they encountered a vehicle driven by Dr. Donal O'Hanlon of Dublin. As Dr. O'Hanlon turned onto Tullynavel Road, his vehicle, which was not operating properly, stalled. Liam Murphy and Michael Caraher pulled in behind Dr. O'Hanlon's car to see if they could assist with the problem. They spent several minutes unsuccessfully trying to start the car. Subsequently, Oliver McArdle, a neighbor of Caraher's and Murphy's who was driving up Tullynavel Road from Dundalk, pulled in on his right behind Dr. O'Hanlon's car and assisted with the repair of the vehicle. In a matter of about ten minutes through the assistance of Mr. McArdle, Dr. O'Hanlon's car was repaired and the doctor proceeded in the direction of Dundalk. Oliver McArdle departed immediately after Dr. O'Hanlon.

Around the time of Dr. O'Hanlon's departure, Fergal Caraher, who was driving a white Rover, arrived at the scene. Fergal Caraher pulled his car in behind Liam Murphy's vehicle, facing in the same direction (south). The Carahers and Murphy stood talking for a few minutes when they were approached by a foot patrol of four soldiers coming from the direction of Slate Quarry Road. One soldier asked for the names, addresses and purpose of travel of the Carahers and Liam Murphy. In addition, the soldier checked the registration of each vehicle but did not search the cars.

While the Carahers and Murphy were being questioned, a neighbor, Jim McAlistair, drove up from the direction of Dundalk and inquired if they were all right. Fergal Caraher replied that they were. Maeve Murphy, Liam Murphy's wife, who was driving south toward Dundalk in her father-in-law's car, also inquired about them. She too was given assurances by Fergal Caraher that there were no problems.

After the soldiers completed their questioning of the Caraher brothers and Liam Murphy, the soldiers turned towards Slate Quarry Road.

The Carahers and Murphy continued to talk and decided that they would drive to Dundalk. Initially, they decided that they would use Liam Murphy's car and that Fergal Caraher would leave his car at the Lite'n Easy car park just up the Tullynavel Road toward Dundalk. Fergal left first in his car. Liam Murphy with Michael Caraher followed a minute later due to the difficulty in starting Murphy's car.

A short distance up Tullynavel Road and around a slight bend, Fergal Caraher encountered a motor vehicle checkpoint manned by a group of British soldiers at St. Patrick's Chapel Gate. This patrol was entirely different from the group encountered near the intersection of Slate Quarry Road. Fergal Caraher was waved through the road check by a member of the patrol because at that moment the patrol was only checking traffic coming from the direction of Dundalk. Fergal Caraher then turned into the Lite n'Easy Pub car park, which was located just beyond the Chapel gate checkpoint. Mr. Caraher parked his vehicle with the front of the vehicle near the edge of the road.

In the meantime, as Liam Murphy was proceeding is his vehicle with Michael Caraher as his passenger, he decided that he should leave his car with his wife at the Spar shop just beyond the Lite n'Easy pub. Murphy informed Michael Caraher that he would drop him off at Fergal's car in the Lite n'Easy car park. He, Murphy, would then proceed to the Spur shop where he could leave his car with his wife and where Fergal, who would now be driving to Dundalk, could pick him up. Murphy explained to Michael Caraher that his wife, Maeve Murphy, was using Murphy's father's car and the car needed to be returned.

Liam Murphy and Michael Caraher were also waved through the checkpoint near the Lite n'Easy car park and proceeded to the Spar shop. At the time Michael was dropped off, there were at least six cars in a queue at the checkpoint.

Immediately after Fergal Caraher parked his car at the Lite n'Easy he was approached by two soldiers who were manning the checkpoint at the Chapel gate. At that time there were five vehicles queued at the motor vehicle checkpoint with the queue extending from the Chapel gate back toward the Lite n'Easy car park. When Michael Caraher arrived he observed one of the soldiers speaking with Fergal by the side of Fergal's car. As Michael Caraher approached Fergal, it appeared that the conversation with the soldier was ending. Michael then told Fergal that they were taking his car to Dundalk because Liam Murphy was leaving his car with his wife. In addition, Michael said that he would drive. Fergal then turned to the soldier and asked, "Are we right?". The soldier nodded and moved away onto the road, several feet from the Caraher vehicle. Michael got into the driver's seat and Fergal sat in the front passenger seat. Michael started the car, which has a slightly faulty muffler, and proceeded at a normal rate of speed and acceleration along the edge of the car park and onto Tullynavel Road.

At or about the time the Caraher vehicle began moving, one of the two soldiers who had been speaking to Fergal Caraher in the car park shouted something to a third soldier at the checkpoint. This shout, which sounded like "desirack" or "desarow," caused the third soldier to move up the road at a fast pace to join the other two soldiers.

As Michael Caraher proceeded to enter, at a slight angle, Tullynavel Road from the Lite n'Easy car park, the three soldiers, all of whom were within approximately twenty yards of the Caraher vehicle, assumed firing positions (kneeling) on the road. The nearest two soldiers were ten yards to the right and slightly behind the front of the vehicle and positioned on the road. Immediately after assuming firing positions, without warning, the three soldiers began discharging their weapons. The weapons appeared to be standard British army issue with the capacity to fire in an automatic and semi-automatic mode. The soldiers fired their weapons, using both modes, at the Caraher vehicle for several seconds.

The Caraher vehicle was struck instantly by bullets. The driver's side window, which was closest to the center of the road and therefore to the soldiers firing their weapons, was blown out. Almost immediately Fergal Caraher told Michael Caraher, "I'm hit" and collapsed onto Michael. Michael Caraher was confused but decided to continue down the road to get a doctor for Fergal. As the vehicle proceeded down the road several yards, Michael Caraher was also struck by bullets. Once he was wounded, Michael Caraher started to go into shock and could only think of continuing down the road. Michael Caraher also observed the front windshield and dashboard being repeatedly struck by bullets. Michael Caraher only remembers driving up onto the road a short distance before going into shock. The vehicle proceeded down the road, approximately one hundred and fifty yards, briefly faltered, almost to a stop, then continued down Tullynavel Road towards Dundalk nearly one mile before rolling to a stop at the side of the road. The shooting continued until the vehicle passed down the road over a rise and out of sight. The entire incident transpired in a matter of seconds.

The soldiers fired at the vehicle from the static positions with no apparent attempt to follow the vehicle. After the shooting stopped, the soldiers who had done the shooting were asked by another member of the checkpoint patrol, "Did you get a kill?" to which one replied, "Yes, yes I think so." The soldiers involved in the shooting then appeared to be involved in clearing shell casings from the area near the Lite n'Easy car park. None of the soldiers involved in the incident appeared to have been injured. Once the shooting stopped, the vehicles which were queued up the checkpoint, of which there were four, were told to move out.

The vehicle driven by Michael Caraher came to rest on the right hand side of Tullynavel Road approximately one mile from the point where the shooting had started. Fergal Caraher was slumped over the gear stick and Michael Caraher was face down on the steering wheel. The front passenger window had been blown out, there were two bullet holes in the windshield and there were approximately twelve bullet holes in the rear trunk or boot area of the car. An ambulance was notified and arrived to remove the Caraher brothers somewhere between fifteen and thirty minutes after the shooting. Approximately fifteen minutes after the ambulance departed with the Caraher brothers, the Army arrived by helicopter and secured the scene.

Fergal Caraher was pronounced dead on arrival at Daisy Hill Hospital, Newry, by Dr. Mary Allen at 4:50 p.m. on December 30, 1990. The cause of death was listed as bullet wounds to the abdomen. The autopsy revealed that Fergal Caraher had been struck by four bullets or bullet fragments which entered his body from the back. The nature of the wounds indicated that these were high velocity bullets which had likely struck some other object before striking Fergal Caraher.

Michael Caraher suffered a gunshot wound to his left thoracic cavity. The bullet entered Michael Caraher from behind and lodged in his chest, damaging his lung and the left pulmonary artery. Michael Caraher was discharged from the hospital on January 8, 1991.

Whether the use of force by Security Forces against Fergal and Michael Caraher on December 30, 1990, was "reasonable under the circumstances" pursuant to Section 3(1) of the Criminal Law Act (Northern Ireland) 1967?

In the instant case two citizens of Northern Ireland, Fergal and Michael Caraher were shot by members of a British Army patrol who were manning a motor vehicle checkpoint. There were no outstanding warrants for the arrest of the Caraher brothers at the time of the shooting. Nor had the Caraher brothers committed any crime for which they could be arrested. Although there was a public allegation by the police after the shooting that the brothers were shot because they had run down soldiers with their motor vehicles at the checkpoint, eyewitness accounts of the incident do not corroborate this claim.

Section 3(1) of the Criminal Law Act (Northern Ireland) is the statute applied to measure the legality of the use of force against another. Under Section 3(1), "A person may use such force as is reasonable in the circumstances in the prevention of a crime or in effecting or in assisting in the lawful arrest of offenders. . . ." Since there is no evidence of an arrest warrant or of the commission of a crime by the Caraher brothers for which an arrest could be made without a warrant, it can be inferred that the force used by the soldiers was not for the purpose of "effecting or in assisting in the lawful arrest of offenders."

The only remaining legitimate purpose for the use of force under Section 3(1) therefore, would be to prevent the commission of a crime. The question then arises as to what information was possessed by the soldiers which caused them to believe that by the use of force they were preventing a crime? In addition, was the use of such force, deadly force in this instance, "reasonable in the circumstances" known to the soldiers? In answering the above-stated questions, it is necessary to recognize that this inquiry did not receive testimony or written statements from the soldiers involved in the incident. Nor did the government provide the inquiry with any explanation for the use of deadly force by the soldiers. Consequently, it must be determined through the totality of the testimony of the available witnesses whether or not it can be reasonably inferred that the use of deadly force for the purpose of preventing a crime was lawful pursuant to section 3(1).

If the army at any time during the afternoon of December 30, 1990, possessed information that the Caraher brothers, separately or together, were contemplating the commission of a crime, they were uncharacteristically casual in their reaction to such knowledge. To begin with, both Caraher brothers were questioned by an army patrol near the intersection of Tullynavel Road and Slate Quarry Road only minutes before the shooting. This patrol, a different group from the patrol manning the motor vehicle checkpoint, not only questioned the Carahers but also took note of the registration of Fergal Caraher's and Liam Murphy's vehicles. The patrol did not choose, however, to search either vehicle. In addition, it would appear from the testimony of witnesses that the patrol had communications equipment with which they could receive information regarding suspected terrorists. Based on the fact that the patrol took no action against the Caraher brothers or Liam Murphy near the Tullynavel Road and Slate Quarry Road intersection, one could reasonably infer that the soldiers possessed no information to detain these individuals.

In a matter of minutes after the completion of the questioning of the Carahers and Liam Murphy, Fergal Caraher drove through the motor vehicle checkpoint near the chapel gate on Tullynavel Road. According to witnesses, Fergal Caraher, proceeding at an appropriate rate of speed, was waved through the checkpoint by a soldier. Shortly thereafter, Liam Murphy and Michael Caraher traveling in another vehicle were also waved through the same checkpoint. Once again, it would be reasonable to infer that by waving the Carahers and Murphy through the checkpoint the soldiers at the checkpoint possessed no information which would require them to take any action against these individuals.

The penultimate encounter with security forces occurred, again within a matter of minutes from the first encounter, when Fergal Caraher was questioned by a member of the checkpoint patrol while he was waiting for his brother and Liam Murphy in the Lite n'Easy car park. Once more, it can be reasonably inferred from the evidence that Fergal Caraher was dismissed by members of the patrol because they had no reason to detain him.

The final, fatal, encounter occurred within seconds of Fergal Caraher's dismissal by the

soldier in the car park. Since it is reasonable to infer that at every encounter prior to the shooting there was no basis to arrest or detain the Carahers, we are left to examine whether "circumstances" arose in those seconds before the shooting which would make the use of deadly force lawful.

In the moments after the final questioning of Fergal Caraher, there is no evidence that the soldiers who were involved in the shooting received any radio message that would have caused them to attempt to stop the Caraher brothers. Consistent with the inference that no message of suspicion of criminal activity by the Carahers had been relayed to the soldiers doing the shooting, was their conduct after the shooting. Surely if the Carahers were people suspected of committing a crime or planning to commit a crime, the soldiers would have immediately pursued their vehicle down Tullynavel Road. Instead, it was nearly one-third hour after the shooting that the army arrived to secure the vehicle by which time the Carahers had been taken to the hospital. These actions are not the actions of a law enforcement unit concerned with the capture of criminals and the collection of any evidence of criminal activity. Consequently, one must conclude there was no information in possession of the soldiers from which they could reasonably believe that in order to prevent the commission of a crime they were required to use deadly force.

Also, it must be repeated, and emphasized, that none of the more than ten witnesses who observed all or part of the events immediately surrounding the shooting saw any evidence to indicate that soldiers had been struck by the motor vehicle driven by the Carahers.

Even if, for the sake of argument, the word "desirac" or "desirow" heard by a witness being shouted to one of the soldiers could be considered a warning to stop, there is no justification for the use of deadly force. Unlike the McElhone case, the soldiers in the instant case had the opportunity to question the Carahers and therefore could not reasonably believe that the failure to stop indicated that they could be involved in terrorist activity.

Therefore, it is clear from the evidence presented at the inquiry that the use of deadly force against the Caraher brothers on December 30, 1990, was not justified under the law and amounts to a violation of Section 3(1) of the Criminal Law Act (Northern Ireland). As a result, the lawfulness of the actions of the soldiers in shooting the Caraher brothers must be then analyzed absent the legal justification provided by section 3(1). It can be reasonably inferred that when a soldier fires his weapon from a relatively close range at an individual, it is the intention of the soldier to kill or seriously wound his target.

If a person shoots another without justification intending to kill or seriously wound and death results, such action amounts to murder. Given the absence under English law of the possibility of a manslaughter charge in these circumstances, and based on the evidence presented to the inquiry, an indictment of murder is warranted against the soldiers involved in the shooting of Fergal Caraher.

Whether the policies which delay decisions regarding the prosecution of Security Forces for the use of deadly force and which deny the public timely access to information regarding the circumstances of the death or wounding of a person caused by Security Forces are just and in the public interest?

In every free and democratic society there is a constant competition between the public's right to know and the government's right to protect information for security purposes. It is often difficult to draw a bright line separating that information which the public should receive from that information which must remain confidential. While the people recognize that they must provide their government with the authority to hold some information in confidence, they also demand that government offer understandable reasons for limiting access to such knowledge. In the instant case, it is clear that the government has chosen not to supply information regarding the shooting of the Caraher brothers or offer an adequate explanation for their refusal.

Law enforcement officials can often cite legitimate reasons for classifying as privileged, information obtained while an investigation is ongoing. The possibility that public revelation of every shred of evidence could impede the progress of and successful conclusion to a criminal investigation is very real. Withholding evidence allows police investigators to evaluate the statement of witnesses free from the taint of publicity. In addition, the public revelation of the names of witnesses can jeopardize their safety and effect the level of their cooperation.

Having recognized the State's right to limit the dissemination of facts in a criminal investigation, it should also be recognized that the State has a moral responsibility to inform the public, in a general sense, of the progress of any criminal investigation. There is also a more particular moral, and in some countries statutory, obligation to inform the victims or families of victims of the status of an investigation. During the evidence gathering stage of an investigation, informing the public that an investigation is ongoing and if possible, estimating the length of time before the investigation work is completed, should create an adequate balance between the public's right to know and the government's need for confidentiality. After the completion of the investigation and the evaluation of all of the available evidence, the public should be informed of the State's decision regarding prosecution. Obviously, if there is a decision to prosecute, the charges speak for themselves and the facts of the case will be played out in court. However, if the State declines to prosecute, there should be some definitive public statement to that effect.

The requirement of public knowledge of the status of a criminal investigation, and the announcement of a final decision in a case, is particularly important when the State is investigating the actions of its own law enforcement officials. Indeed, it would seem that there is a need for more frequent and more detailed updates on the status of investigations involving law enforcement personnel. In addition, it is critical to provide the public with a complete analysis of why the government chose not to pursue criminal charges against its own agents.

Ordinarily, the requirement that the public be more adequately informed of the investigation into actions of law enforcement personnel comes as a result of political pressure and not from some statutory requirement. One would assume that the political price that a government would have to pay for not providing law-abiding law enforcement personnel would be enormous. Therefore, in most democracies it is the crush of public opinion that speeds an in-depth analysis of accusations against law enforcement personnel. However, in situations where, as in the instant case, the public clamor for information comes from a small minority, governments can and often do ignore the cry, as the British government is doing here.

The death of Fergal Caraher and the wounding of Michael Caraher, as noted in the Statement of Facts, occurred on December 30, 1990. The examination by the police of the civilian witnesses to the incident, with the exception of Michael Caraher, occurred within one week of that date (Transcripts Vol. 1, pg. 21). In addition, Paul Tiernan, solicitor for the Caraher family, believed from his personal contact with the Royal Ulster Constabulary that statements were taken from the soldiers prior to the civilian statements (Transcripts Vol. 1, pg. 20). The autopsy of Fergal Caraher was completed on January 3, 1990. There is no information regarding the date of the forensic examination of the motor vehicle in which the Carahers were driving, but it can be reasonably inferred that the examination was completed within weeks of the incident. Finally, due to his health, Michael Caraher was not examined until March 9, 1991.

Since their initial statements, there has not been additional questioning by the police of the civilian witnesses. In essence then, it appears that this investigation was completed by the middle of March, 1991. Yet on March 11, 1991, Assistant Chief Constable W.G. Monahan indicated to by letter to Solicitor Tiernan (Book 5, pg. 8 of the Public Inquiry Exhibits) that the Constabulary was involved in a full investigation upon the completion of which a report would be submitted to the Director of Public Prosecutors. Finally, on May 16, 1991, after repeated requests for information (see Book 5) from Solicitor Tiernan, Constable Monahan indicated in a letter to Tiernan, "that the investigation was well advanced, and the papers will be sent to the DPP shortly." (Book 5, pg. 14). In fact, the Office of the Director of Public Prosecutions received the police investigation file on June 3, 1991, but indicated "it may be necessary to require further investigations be carried out." As of this writing, it has been nine months since the death of Fergal Caraher and the wounding of Michael Caraher and there still has been no decision by the government whether to prosecute the soldiers involved.

The referral of a case to the Director of Public Prosecution by the police of their investigative findings, and recommendations for possible prosecution, is the regular procedure regarding indictable criminal offenses in Northern Ireland. The police investigative report and recommendations to the DPP remains confidential (Book 5, pg. 15 letter of May 16, 1991 from Constable Monahan). The DPP may order a further investigation of an incident if he desires, but there has been no indication of such action in the Caraher case.

The office of the Director of Public Prosecution is ostensibly an independent entity. The reality is that the DPP, pursuant to Prosecution of Offense Act (Northern Ireland) 1972, is appointed by the Attorney General and is subject to his direction. In fact, according to the testimony of Professor Tom Hadden (Vol. 1, pg. 94 transcript) the DPP does consult with the Attorney General concerning sensitive cases of the kind herein presented. Consultation between government prosecutors on sensitive cases is certainly appropriate. However, when the knowledge of the process is hidden from the public, it lends itself to the suggestion that the process of review with the Attorney General, to the extent it occurs, is more political than

legal. This perception is enhanced given that it appears that investigations involving use of lethal force by Security Forces, as with instant case, take an inordinate amount of time to complete. It is difficult to understand why the government, as represented by the DPP and the Attorney General, if it is truly concerned with those it governs, does not move swiftly, albeit carefully, in assembling the evidence and making charging decisions in lethal force cases. The fact that the DPP does not assume more immediate control over the investigative process of lethal force cases involving the Army and the police, is difficult to understand. By controlling the investigation from the outset, the DPP could avoid the delay caused by review of the original police investigation.

Whether Section 3(1) of the Criminal Law of Northern Ireland as applied to security forces in Northern Ireland is adequate in protecting the life and safety of ordinary citizens whom the security forces have contact with in the performance of their duties?

The use of force, including the use of force by security forces (police and soldiers), in Northern Ireland is governed by both common and statutory law.

The common law allows for a person to defend oneself in manner which is proportionate to the harm feared. *Palmer* v. *R.* (1971) 55 CAR 223. The law also allows an officer to use force pre-emptively in situations where violence is imminent. *Devlin* v. *Armstrong* (1971) NI 13. Not unlike the law in the United States (American Law Institute, Model Penal Code, sections 3.04–3.11), the standard in Northern Ireland to determine the appropriateness of the level of force used in defending oneself is one of reasonableness. Jennings, Anthony, ed., "Justice Under Fire," Pluto Press (1988).

However, the focus of this discussion does not concern the issue of self-defense, but rather than the appropriateness of the use of force against ordinary citizens by security forces in the performance of their duties. By some estimates (Asmal, K., "Shoot to Kill? International Lawyers Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland," Mercier Press, (1985)) a majority of the people killed in Northern Ireland by security forces since 1969 were not members of paramilitary organizations, and at the time of their deaths were not committing acts which threatened the lives of others. The type of incidents have included, for example, innocent civilians caught in a crossfire, joy riders who have been shot and killed, and others who have been shot when it was mistakenly believed they were involved in terrorist activities. Again, in situations such as these, the issue of self-defense does not arise; therefore, the question of lawfulness of the acts of the security force is determined by reference to the law concerning the use of force as a tool of law enforcement. The law which authorizes the use of force by security forces in Northern Ireland in Section 3(1) of the Criminal Law Act (Northern Ireland) which states:

"A person may use such force as is reasonable in the circumstances in the prevention of a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

To have the protection of this statute a police officer or soldier who uses deadly force must either be "effecting or assisting" a lawful arrest or preventing a crime.

A lawful arrest can be accomplished with or without a warrant under the Criminal Law Act (Northern Ireland). To arrest without a warrant one must have reasonable cause to believe that another is in the act of committing an arrestable offense. Criminal Law Act (Northern Ireland) Sections 3(2)–3(4). In addition, a constable may arrest someone without a warrant "who he with, 'reasonable cause' believes is about to commit an arrestable offense." Criminal Law Act (Northern Ireland) Section 3(5). However, the gravest threat that arises from the use of deadly force by security forces against ordinary citizens does not relate to attempts to effectuate arrests. Rather, it concerns the use of deadly force where the alleged purpose for the use of such force is to prevent a crime, which is justifiable under Section 3(1) of the Criminal Law Act if such force is "reasonable in the circumstances". Criminal Law Act (Northern Ireland) Section 3(1).

The issue being addressed then is further limited to incidents where security forces use deadly force for the alleged purpose of preventing crime.

It is the interpretation of Section 3(1) of the Criminal Law Act (Northern Ireland) by the Courts of Northern Ireland and England which has left the ordinary citizens vulnerable to the use of deadly force by security forces. In particular, the phrase "such force as is reasonable in the circumstances" has been construed by the courts in a manner which inhibits effective control over the use of force by police and soldiers.

The decision of the House of Lords in the Attorney General for Northern Ireland's Reference (No. 1 of 1975) [1977] A.C. 105 established a vague and disturbing standard for what force is "reasonable under the circumstances." This Reference related to the acquittal of a soldier from the charge of murder by a court in Northern Ireland. The soldier had been on patrol in Northern Ireland when he approached Patrick McElhone in a field on his own farm to question him. When Mr. McElhone fled, after being told by the soldier to halt, he was shot at a distance of less than twenty yards and killed. Mr. McElhone was unarmed, and in fact during the trial was declared by the court to be an "entirely innocent person who was in no way involved in terrorist activity." Weekly Law Reports (July 30, 1976) 244. The soldier, Lance Corporal Jones, indicated at his trial that when he fired, "he honestly and reasonably believed" he was firing at a member of the Provisional IRA but he had no knowledge that the deceased was involved with or likely to be involved with any immediate act of terrorism. Weekly Law Reports (July 30, 1976) 244.

The House of Lords, in reviewing the decision of the courts in Northern Ireland at the request of the Attorney General, indicated that what force is "reasonable in the circumstances" for the purpose of preventing a crime is a question of fact for the jury and not a 'point of law for the judge.' [1977] A.C. 105, Weekly Law Reports (July 30, 1976) 244. By taking this course, the court refused to provide any precise legal direction to security forces concerning the use of deadly force under Section 3(1) of the Criminal Law Act (Northern Ireland).

On the other hand, Lord Diplock who delivered the leading judgment in the House of Lords, did propose a process a jury should use in the trial of someone accused of shooting another in order to prevent a crime.

"Are we satisfied that no reasonable man (a) with the knowledge of such facts as were known to the accused or reasonably believed by him to exist (b) in the circumstances and time available to him for reflection (c) could be of the opinion that the prevention of the risk of harm to which others might be exposed if the suspect were allowed to escape justified exposing the suspect to the risk of harm that might result from the kind of force that the accused contemplated using?" [1977 A.C. 105, Weekly Law Reports (July 30, 1976) 246.

Lord Diplock felt in the case under review that the jury could conclude that the accused "had reasonable grounds for apprehension of danger to himself and other members of the patrol" if the deceased escaped. The jury was allowed to excuse the accused's use of deadly force if the jury accepted that the accused "honestly and reasonably believed that he was dealing with a member of the Provisional IRA. . . ." [1977] A.C. 105, Weekly Law Reports (July 30, 1976) 244.

In addition, Lord Diplock stated that the jury may find the risk of harm to the deceased insufficient to outweigh the belief of the accused that: "the killing or wounding of members of the patrol by terrorists in ambush and the effect this success by members of the Provisional IRA in encouraging the continuance of the armed insurrection and all the misery and destruction of life and property that terrorist activity in Northern Ireland has entailed." [1977] A.C. 105, 138.

The real effect of Lord Diplock's interpretation of "the circumstances" which may be reasonably considered in using deadly force has been to further endanger the lives of innocent civilians. A soldier or police officer need only report that he "honestly and reasonably" believed that the person he shot was a member of a paramilitary organization and the court would be likely bound to accept the explanation. Further, this interpretation indicates that the danger to be considered extends beyond the particular threat posed by the particular person, to include the general effects of terrorism on the region. The general nature of terrorism is accepted as one of the relevant considerations that can be used by a soldier or police officer in deciding whether to use deadly force. As a result the broad latitude created by the "reasonableness" standard gives an unlimited license to security forces to use deadly force.

In contrast to the broad latitude given to security forces under the law, soldiers and police officers have been provided with stricter, more detailed internal guidelines regarding the use of deadly force. The Army's guidelines are set forth in what is known as the "Yellow Card;" the police guidelines are contained in the Royal Ulster Constabulary Force Instructions. The contents of both the Yellow Card and the R.U.C. instructions are supposedly confidential.

However, the Yellow Card has been allowed as an exhibit in a number of court cases, including *R. V. Bailey and Jones* (1983), where it was admitted as a prosecution exhibit. The 1972 Yellow Card, which was reprinted in Amnesty International's "Shoot to Kill?" (1984) report, included twenty-one different instructions for opening fire in Northern Ireland. Among these rules were general instructions regarding the use of force, including:

"(2) Never use more force than the minimum necessary to enable you to carry out your duties."

In addition, there were specific instructions concerning the warnings to be given before firing (Rules 6, 7), the limits on firing without warning (Rules 13, 14, 15), and the conduct of soldiers at roadblocks, which included the specific warning language to be used before firing a weapon (Rules 16–21).

In 1980 the Yellow Card was simplified. Amnesty International, "Shoot to Kill?"

(1984). The new, current Yellow Card contains only six rules which follow a general statement of principle, that "you are to use the minimum force necessary" and that "Firearms Must Only Be Used As A Last Resort" Amnesty International "Shoot to Kill?" (1984) 75. Rules 3, 4, and 5 are particularly pertinent to this discussion of the circumstances under which a soldier would open fire:

(3) A challenge must be given before opening fire unless:

(a) to do so would increase the risk of death or grave injury to you or any other person; or

(b) you or others in the immediate vicinity are being engaged by terrorist;

(4) You are to challenge by shouting:

"Army. Stop or I fire" or words to the effect;

(5) You may only open fire against a person:

(a) if he is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger. The following are some examples of acts where life could be endangered, dependent always upon the circumstances:

(1) firing or being about to fire a weapon;

(2) planting, detonating or throwing an explosive device (including petrol bomb);

(3) deliberately driving a vehicle at a person and there is no other way of stopping him;

(b) if you know that he has just killed or injured any person by such means and he does not surrender if challenged and there is no other way to make an arrest.

On its face, the Yellow Card would appear to provide clearer direction to soldiers regarding the circumstances under which they may use deadly force than does the rather vague standard established by the Attorney General for Northern Ireland's Reference No. 1 of 1975. The reality is, however, that the Yellow Card rules do not provide additional protection to innocent civilians, and only act to mask the problem by appearing consistent with international standards governing the use of deadly force.

The culprit in rendering Yellow Card rules impotent once again is the courts. The Amnesty International study, "Shoot to Kill?," at page 77 directly addresses the legal effect of the yellow card as follows:

"Beyond the mere wording of these instructions to the security forces, we looked to see what force they have at law. From the following judicial comments, the answer would appear to be that they have no force at all.

"In *R.* v. *McNaughton* (1975) N.I. 203, 206 Lord Chief Justice Lowry held that the 'Yellow Card' was: 'intended to lay down guidelines for the security forces but (did) not define the legal rights and obligations of members of the security forces under statute or common law . . . However, on reading the Yellow Card one may say that in some ways (the security forces) are intended . . . to be more tightly restricted by the instructions they are given than by the ordinary law.'

"As mentioned above, Lord Justice MacDermott criticized the document *R.* v. *Jones* (1975) in Belfast Crown Court: 'For my part, I consider this card to be something which exists for some reason of policy and is intended to lay down guidelines to the forces but in my view it does not define the legal rights of the members of the security forces. No doubt it contains much sound advice, but I can readily understand that to many soldiers and perhaps others too, it is to say the least of it, a difficult document. The basic principles are that the minimum force should be used and firing resorted to as a last resort. No one can gainsay the propriety and good sense of these propositions, but they must be considered in relation to the problem on the ground and though a man who acts dutifully in accordance with the Yellow Card might easily establish his conduct as being justifiable I do not accept the failure to so act means ipso facto that his conduct is unlawful.'

"This judgment comes close to saying that the Yellow Card may well be a useful document in theory but that, in practice, soldiers cannot be expected to keep to it. A number of witnesses informed us that they consider the card a cosmetic device and that breaches of its instructions go unpunished as a matter of routine. Some confirmation of this view is found in a recent memoir of service in Northern Ireland by Captain A.F.N. Clarke, who served in the Third Parachute Regiment in Armagh at the time that regiment shot and killed Liam Prince ...: 'At least the same rules don't necessarily apply down here as they do in Belfast, or a least, people are willing to turn a blind eye to any infringements of the letter of the yellow card. Sure as hell, if I see some bastard with a gun, I'm not about to ask him to surrender. Shoot first then ask questions after. No way am I going to take any chances at all.'"

The paradox presented by the case law on one hand and the Yellow Card and R.U.C. Instructions standards is extraordinary. The Army and the police go to great lengths to create clear standards for the use of deadly force and train their personnel according to these standards, while the courts instruct the security forces that these standards "did not define the legal rights and obligations of members of the security forces under statute of common law". *R.* v. *McNaughton* (1975) N.I. 203, 206. By choosing not to refer to the Yellow Card rules in discussing the application of the Criminal Law Act (Northern Ireland) to the use of deadly force by the security forces, the court continues to lose an opportunity to alleviate the confusion between policy and the law and perhaps save the lives of innocent civilians.

Finally, if the courts are not inclined to deal with the confusion between the policy regarding the use of deadly force and the application of the criminal law in such circumstances, one wonders why the government has not acted? Why does the government accept the police and army standards for the use of deadly force, yet refuse to make the necessary statutory changes to make the law and policy consistent? Surely the experiences of the last fifteen years regarding the use of deadly force in Northern Ireland sufficiently illustrate that change is necessary. The law regarding the use of deadly force by police and soldiers not only fails to provide protection to ordinary citizens but may, in fact, jeapordize their lives and safety.

Whether the laws of the United Kingdom and Northern Ireland as applied to the use of deadly force by security forces in Northern Ireland infringe upon the rights of the people in contravention of the European Convention of Human Rights, the United Nations Covenant on civil and political rights, and other international standards designed to protect lives.

Section 3(1) of the Criminal Law Act (Northern Ireland) 1967 is the codification of the law now applied to the use of deadly force by security forces in Northern Ireland. Its familiar terms provide that "a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large." This statute is paralleled by section 18 of the Northern Ireland (Emergency Provisions) Act 1991, which authorizes soldiers to use reasonable force if necessary to effect the arrest of persons whom the soldier has reasonable cause to suspect is committing, has committed, or is about to commit any offense.

Legal decisions reviewing prosecutions of police or soldiers for the interntional use of lethal force alleged to be unreasonable in the circumstances recognize that a critical element of such improper use of deadly force is the subjective or actual intent of the officer. The unlawful use of deadly force is murder if the officer intended to use such force, if the court found that the use of such force was improper, and if the officer knew the use of such force was improper. Proof that the officer should have realized that use of deadly force was improper, which in some common law jurisdictions would amount to proof of voluntary manslaughter, is immaterial to criminal law applied at trials in Northern Ireland.

The effect of this statutory and case law is to vest virtually unchecked discretion in the officer to decide whether to use deadly force "in the circumstances." Furthermore, there is no statement that recognizes the risk of not using deadly force must outweigh the certain harm to the target of the officer's weapon. Even a cursory examination of leading international standards on the use of deadly force in such circumstances discloses that this statutory statement of public policy is relatively weak.

There has been debates whether the Criminal Law Act provides the protection of the right to life which is intended by Article 2 of the European Convention on Human Rights and Fundamental Freedoms. In its first part Article 2 announces that "everyone's right to life shall be protected by law" from intentional acts to "deprive" one of life. In its second part Article 2 provides that "deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more that absolutely necessary. . . . " On its face absolute necessity is a higher barrier to the use of deadly force than reasonable under the circumstances. The European standard speaks of objective necessity, and provides some indication to the officer that a personal belief that deadly force is needed must have an articulable basis. See, however, *Stewart* v. *United Kingdom*, 7 E.C.H.R. 453, a decision of the European Commission which reviewed the use of force (a plastic bullet) intentionally inflicted, which caused death. This case declared that "absolutely necessary" force may be such force as is "strictly proportionate" to the uncertain risk of not using force. It appears understood nonetheless that the use of deadly force to prevent "unlawful violence" or "escape" of one who lawfully may be detained involves consideration of the risk to those present or some high degree of certainty that the individual targeted, if not shot, will cause serious harm. In this regard, absolute necessity is a much higher standard than "reasonable cause to suspect" the the person "is committing, has committed, or is about to commit any offense," as provided in the Northern Ireland Act 1991.

Among the United Nation's "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" is Principle 9, which declares that "intentional lethal use

of firearms may only be made when strictly unavoidable in order to protect life." This basic principle describes in more explicit terms than may be found in the local law applied in Northern Ireland what "to protect life" means, and sets a strict standard of certainty that use of deadly force is needed. "Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme measures are insufficient to achieve these objectives." Principle 9. There must be clear and present danger, and no possibility of resolution without lethal force. See Principle 4 ("may use force and firearms only if other means reman ineffective or without any promise of achieving the intended result"). Principle 9 does not allow preemptive force to stop inchoate or contemplated crime. Finally, these Basic Principles suggest that the limits placed on voluntary manslaughter by excusing absolutely the officer who kills intentionally, without malice but with an unreasonably mistaken belief that deadly force was necessary fail to "ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under the law." Principle 7.

CONCLUSION

An examination of the facts surrounding the Caraher case and the laws and policies related thereto leads one to the conclusion that the British Government has tacitly adopted a "shoot to kill" policy toward the Catholic community in Northern Ireland. There can be no other explanation for the government's inaction in regard to the courts' interpretation of the criminal law concerning the use of deadly force, as well as the government's unwillingness to expedite criminal investigations of shootings by security forces, or provide the public with information on these incidents. Successive British governments have apparently decided to sacrifice justice and human rights for what they view as "order". This "order" has been particularly imposed on the Catholic community where nearly all of the innocent civilian victims of shootings by security forces reside. What makes this policy even more outrageous is that it has been regularly discussed and condemned for at least the last fifteen years. Incredibly, the government has chosen to ignore the repeated recommendations of a variety of credible organizations including its own Standing Advisory Commission on Human Rights, a body created by statute to change the law controlling the use of deadly force by security forces.

The security policies of the British Government in Northern Ireland, particularly the policy concerning the use of deadly force, can be fairly viewed by the minority Catholic population as oppressive. Unless the government begins to act to control the abuse of individual rights through reforms in the criminal justice system, the cycle of violence that has plagued Northern Ireland will continue. It is critical to create a fair and even handed system of justice in Northern Ireland in order to develop an acceptable political solution for the problems of this region. A continuation of current security policies can only serve to foster terrorism, not prevent it.

HEALTH CARE REFORM

Mr. SIMPSON. Mr. President, for the past several years now we have been listening to and studying various proposals for health care reform.

We have heard shrill and emotional appeals for a nationalized Canadian style health care system—a system which would subject all of United States health care to the budget-driven political system.

We have heard calls for pay-or-play mandates, which, whatever its aesthetic merits and however expedient, is still at root definition a tax on labor, a tax on jobs—a danger we can all perceive with crystaline clarity right now.

We have heard unflinching ideological insistence on privatization of all health care in this country—a proposal too much at odds with our heritage and self conception as a Nation of compassion, with our communitarian ethic.

We have heard from virtually every major health care advocacy and trade association, the insurance industry and employers, organized labor, consumers, and a potpourri of foundations and economic institutes. My staff has a drawer full of bright glossy folders supplied by the stakeholders in this system.

All of these proposals have at heart an earnest desire to fix what is wrong with U.S. health care—to bring the disenfranchised into full and equal participation, to stem the costs, to improve quality. I know that. But each seeks first and above all to protect the interests, the stake of its sponsor. And that has been the problem thus far.

Mr. President, the public is growing very frustrated at our apparent inability to do what they elected us here to do: To find and execute a common ground that is in the best interests of the Nation as a whole; to legislate solutions to pressing national concerns. In this instance, to make some meaningful progress on health care reform.

Today will mark a turning point in that process.

Mr. President, President Bush, and his very able Secretary Louis Sullivan, have consulted with all of the major stakeholders in our massive, $740 billion health care system. With help from the Steeleman Commission and the Horner Task Force and countless others, they have consulted with the providers and the insurers, the ideological purists and the advocates, the academics, the intellectuals, the economists, the taxpayers, and the beneficiaries. And in doing so they posed the question as it should have been posed from the beginning: "The depth and breadth of American health care is unparalleled; for 85 percent of the American people it offers ready access to the best medical care in the world. But it is too expensive, and for some it is inaccessible. How can we address what is wrong with this marvelous system without disrupting what is right?"

I commend the President, Dr. Sullivan, and the hundreds of contributors to this behind-the-scenes dialog, and congratulate them on the proposal released today.

The President's team found, as they spoke with the stakeholders in this world class health care system of ours, that its shortcomings and deficiencies could be readily addressed without dismantling or distorting the whole, without compromising its strengths.

The President's health care reform proposal offers real relief against the high cost of health care, even as it takes steps to ratchet down those costs. It is a comprehensive plan to assure all Americans full and equal access to the best medical care in the world.

As some of my colleagues have already described, President Bush's plan will provide access to all poor families through a fully portable health insurance voucher that will cover the cost of a health insurance policy.

The plan will expand access to workers in small businesses who currently don't have and cannot find affordable health insurance coverage, and do that through significant changes in the small-group insurance market.

The plan will give new help to the middle class by effectively reducing their out-of-pocket cost for health care coverage.

The plan will address the shortcomings in our health care infrastructure by vastly expanding the supply of health professionals and clinics in rural and inner city areas.

And the plan will clamp down on the health care cost spiral at all levels—patient, provider, and payor—that would otherwise undermine any reform effort.

With this proposal, the President has sounded the clear bell which should bring everyone in the room directly to the table. The President's plan contains elements common to virtually all of health care reform proposals that have as yet been seriously offered: Help for employees and employers in small businesses; medical liability reform; cost containment through appropriately managed care; relief for medically underserved areas; critically needed assistance for the middle class with the cost of health insurance, and mainstream access for the poor and near poor.

Mr. President, these are the areas which not only the President but the American people have identified being the chief culprits in the health care crisis. In letters, phone calls, town meetings and committee hearings, the American people have described the flaws in our current health care system with great clarity and precision. The President has responded with a precisely measured proposal for change.

These are the areas in which there is consensus—and that, to my mind,

means that we in Congress now have a mandate—to act. We have been waiting until all cards are on the table, until the President and his advisers could come forward with their own carefully considered plan. We have that now. And we can see that there are many areas of common agreement and understanding among all parties to this debate. There remain profound areas of disagreement, to be sure, between and among those on both sides of the political aisle. Perhaps those differences are even more pronounced now that they are right there in black and white. We will continue to wrestle with those.

But where there is consensus, it would be highly irresponsible of this Congress not to perform in that office which is uniquely ours—to legislate. Those who would attempt to hold these critical policy changes hostage until their own more sweeping and more perfect visions of health care reform are satisfied—they do the American people a grave disservice, and they delay perhaps indefinitely—our sole, obvious, immediate opportunity to provide meaningful relief to millions of American families. Those of us here this afternoon urge our colleagues to put down their bullhorns and tear up their press releases and meet us at the table in the center of the room. There are still seats available.

TREATMENT OF THE BAHA'I FAITH IN IRAN

Mr. DODD. Mr. President, exactly 2 weeks ago, this chamber agreed to by a unanimous vote Senate Concurrent Resolution 43, a resolution I introduced urging the emancipation of the Baha'i faith in Iran. I wish I could say today that the treatment of the Baha'i faith had improved since this resolution was submitted last May. Sadly, Mr. President, that is not the case.

With the release of the American hostages, and the emergence of evidence indicating a Libyan role in the bombing of Pan Am 103, recent events have certainly brought a distinct warming trend to United States-Iran relations. In many ways, Mr. President, I welcome that trend. It is certainly time for Iran to cast off the shackles of intolerance and join the world of civilization and democracy.

However, the treatment of the Baha'i faith—a religious minority that has been persecuted and castigated for 12 long years—suggests that Iran still has quite a long way to go.

Mr. President, since the Iranian revolution of 1979, almost 200 Baha'is have been killed, while 15 others are missing and presumed dead. Many Baha'is have been arbitrarily imprisoned and detained, for no reason other than their faith. And the Baha'is have been on the receiving end of a brazen policy of discrimination: In fact, more than 10,000 Baha'is were dismissed from their positions in government and education in the early 1980's.

The United States and the United Nations have repeatedly passed resolutions calling on Iran to improve its treatment of the Baha'is. The resolution passed by this Chamber last month is only the latest of a series of resolutions which have been supported by the entire U.S. Senate on this issue.

And on December 6, I would note, the German Bundestag unanimously adopted a resolution calling on the German Government to urgently lodge a complaint with the Iranian authorities regarding the issue of the Baha'is. My hope is that our other European allies will soon follow suit.

Make no mistake about it, Mr. President: Those resolutions have had an effect. Thanks in part to international pressure, no Baha'is have been executed since December, 1988. As a result of the efforts of the world community, detentions of Baha'is are only a fraction of their mid-1980 level.

But we have a long way to go. In fact, in only the past month, two rather disturbing events have occurred.

First, I would draw my colleagues' attention to a statement which appeared in an Iranian Government newspaper known as Kayhan Havai, on January 8, 1992. The statement notes that Turkey "has given free rein to Baha'is to rebuild their forces after the destruction of their operations in Iran." This is a direct confirmation of the legacy of intolerance and antagonism Baha'is have endured at the hands of Iranian authorities.

Second, just this month an Iranian diplomat, Cyrus Nasseri, was elected to serve as vice president of the U.N. Human Rights Commission. This certainly cannot help the status of the Baha'i faith, nor any oppressed minority. In fact, The New York Times, in a recent editorial, called it "like choosing a leader of the Medellin cartel to help control narcotics."

Mr. President, in the next few weeks, the U.N. Human Rights Commission will take up the issue of the Baha'i faith. I hope the message that has been sent from the world community, including the U.S. Senate, is loud and clear: The Iranians must improve their treatment of this peaceful and oppressed minority. Anything less would be unacceptable.

I ask unanimous consent that both of these articles be printed in the RECORD.

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

[From the New York Times, Feb. 4, 1992]

WRONGING RIGHTS

Electing an Iranian diplomat, Cyrus Nasseri, to serve as vice president of the United Nations Human Rights Commission is like choosing a leader of the Medellin cartel to help control narcotics.

Thirteen years after Ayatollah Khomeini ousted the Shah, Iran remains gripped by a revolutionary reign of terror. Citizens still face arbitrary arrest, torture and public execution. The ruling mullahs relentlessly persecute members of the Bahai faith and keep a tight muzzle on independent political expression.

Much of this information comes from reports of the Human Rights Commission, which has repeatedly condemned Iranian abuses. Last year the commission noted modest improvement under the new leadership of President Rafsanjani. Teheran hopes the commission will halt annual monitoring altogether. The fact that an Iranian will serve as the commission's vice president won't hurt Teheran's changes.

However, Iran's behavior hasn't improved nearly enough to deserve a whitewash. Ask Salman Rushdie or the survivors of Shahpur Bakhtiar, the murdered former Prime Minister. Mr. Nasseri's election shames a U.N. that has been recovering its evenhandedness. Far worse, it gravely endangers Iran's people.

KAYHAN HAVAI,
January 8, 1992.

At the meeting of the Turkish Prime Minister with the head of the Bahá'is it was stated that: the secular government of Ankara promotes Bahá'ism.

The secular government of Turkey while disclosing its relations with the Bahá'is announced its readiness to resolve their difficulties.

Ardal Inunu, the Turkish Deputy Prime Minister, in the course of his meeting with Ihsan Karakle the head of the Bahá'i group in that country, promised to cooperate in resolving the problems of Bahá'is for the continuation of their activities. He added "Bahá'is residing in Turkey will have no difficulty in expanding their activities."

During the meeting, which constituted the first public and official meeting of Turkish officials with the leaders of the Bahá'i group, while claiming that the Turkish government is democratic Inunu said: "Ankara protects the freedom of conscience, religion and human rights,"

The head of the Bahá'i group in Turkey, whose main headquarters is in Israel, spoke well of Kamal Ataturk the founder of modern Turkey and said: "Bahá'i thinking in connection with political and social issues has many similarities with the principles of Asturk."

The Turkish government, while limiting the sphere of activities of Muslims in the country, prohibiting the Islamic Hijab [vell] in universities, and expelling the Imam of the Iranian Mosque in Istanbul, has given free rein to Bahá'is to rebuild their forces after the destruction of their operations in Iran.

It is noteworthy that Turkey was the first Islamic country, after the formation of the Israeli government, to recognize it and to establish diplomatic relations with Tel Aviv.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair announces that morning business is now closed.

NATIONAL ENERGY SECURITY ACT

The PRESIDING OFFICER. The hour of 10:30 having arrived, the Senate will now resume consideration of S. 2166, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2166) to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NOS. 1610 THROUGH 1616

Mr. JOHNSTON. Mr. President, I send a package of 7 amendments to the desk and ask unanimous consent that they be considered en bloc.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes amendments numbered 1610 through 1616, en bloc.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1610

On page 327, line 22, strike ", including HCFC-22." and insert "."

Mr. CHAFEE. Mr. President, as you know, the original energy bill was reported by the Committee on Energy and Natural Resources on June 5 of this year. As ranking member of the Committee on Environment and Public Works, I have expressed strong jurisdictional interest in the bill. In fact, Senators JOHNSTON and WALLOP wrote to me on February 5 of last year to point out that the energy strategy included several provisions that cut across committee jurisdictional lines. Recognizing the Environment Committee's interest, they requested my views and help refining the bill.

In my statement here on the Senate floor in October I highlighted two provisions of particular concern with regard to chlorofluorocarbons [CFC's]. First, title I states that "the reduction of the generation of chlorofluorocarbons shall be in accordance with the provisions of the Montreal protocol, unless subsequent Federal legislation is enacted establishing new guidelines for the reduction or elimination of the use of chlorofluorocarbons. Mr. President, this provision completely overrides the schedule for CFC reduction that was included in the Clean Air Act Amendments of 1990, moreover it eliminates the EPA administrator's authority to accelerate the schedule in the future. As I understand it, however, this provision has been stricken from the bill in a managers' amendment.

The second provision is related to the expansion of the program for research and development for natural gas and electric heating and cooling technologies. Section 1311 of title XIII specifically recommends research on HCFC-22 as a replacement for CFC's. This is just the approach we should be avoiding. If the Federal Government is going to support research on substitutes, we should focus our resources on pure, safe substitutes, not substances with many of the same environmental hazards as CFC's and substances that we in fact are phasing out at this time. The provision represents nothing less than a step backward in our effort to phase out the use of CFC's.

My amendment is straightforward and would merely strike the reference to HCFC-22. It does not, I might add, preclude an expansion of the R&D program. Certainly, we must develop substitutes but we must also focus our resources on environmentally sound replacements. I urge my colleagues to support this amendment.

AMENDMENT NO. 1611

(Purpose: To expand the definition of electric and electric-hybrid vehicles to specifically include solar assisted vehicles)

On page 33, section 4202(4) strike line 16 and insert in lieu thereof:

"sources of electric current, including, photovoltaic arrays;".

Mr. DOMENICI. Mr. President, this amendment expands the definition of electric and electric-hybrid vehicles to specifically include solar assisted vehicles. A solar assisted electric vehicle would have a greater range than a conventionally charged electric vehicle and require less utility produced power. The solar arrays could be on the vehicle, or at commercial or residential garage roofs. Solar electric filing stations could be set up in more remote areas. DOE's National Laboratories applied solar energy programs and the Department of Transportation's alternative transportation programs together have the expertise to design such vehicles.

AMENDMENT NO. 1612

On page 331, line 3, insert the following new paragraph:

"(3) Hybrid power trains incorporating an electric motor and recyclable battery technology charged by an on-board liquid fuel engine, designed to significantly improve fuel economies while maintaining comparable acceleration characteristics."

On page 331, line 21, after "technology," insert "and optimization of near-term technology."

Mr. KASTEN. This amendment significantly strengthens the program created by section 13113 to conduct a research and development program on electric and electric-hybrid vehicles. It assures competition for the development of batteries and the development of near term and long-term electric vehicle programs.

Two of the critical problems facing the development of electric vehicles are the delivery of power necessary for acceleration and adequate power supplies to drive longer ranges. Critical technological advances are needed in both of these areas.

This amendment will provide for critical research in both near-term vehicles and more advanced vehicles. This provision is necessary to bridge between existing and advanced technologies.

This amendment provides economic incentives for large and small manufacturers and researchers to participate in this cost-shared program. It will improve the success of the near-term program to also help reinforce public support for electric vehicles.

AMENDMENT NO. 1613

(Purpose: To provide for the application of certain provisions regarding building codes to the Congress)

Page 109, line 10, add new subsection (e) as follows "(e) the provisions of this section shall apply to the United States Congress."

Page 109, line 11, between "Federal agency" and "shall adopt" insert, "and the Architect of the Capitol."

AMENDMENT NO. 1614

(Purpose: To ensure that the Federal building energy code and the industry voluntary building energy code take into consideration the need to mitigate the levels of radon and other indoor air pollutants)

On page 108, line 20, strike "code, and" and insert "code;"

On page 108, line 23, strike the period and insert "; and".

On page 108, between lines 23 and 24, insert the following new paragraph:

"(3) consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate contain, measures to mitigate the levels of radon and other indoor air pollutants in cases where such pollutants may exist."

On page 110, line 18, strike "and".

On page 110, between lines 18 and 19, insert the following:

"(4) assistance in identifying appropriate measures to mitigate the levels of radon and other indoor air pollutants; and"

On page 110, line 19, strike "(4)" and insert "(5)".

On page 111, line 4, before the comma, insert the following: "including measures needed to mitigate the levels of radon and other indoor air pollutants in cases where such air pollutants may exist."

AMENDMENT NO. 1615

(Purpose: To provide for the application of certain provisions to the Congress and Executive agencies)

Page 88, line five, after "in the United States" add, "including activities of the United States Government."

AMENDMENT NO. 1616

(Purpose: To encourage energy efficient housing through federally financed mortgages)

On page 109, line 19, amend section 6101(a)(2) by striking "guarantees" and inserting in lieu thereof the following: "expends Federal funds, or guarantees or insures a loan or".

On page 109, line 20, amend section 6101(a)(2) by inserting the following "other than a building covered by subsection (d)," after the word "building".

On page 109, line 22, amend section 6101(a)(2) by inserting after subsection (c), the following new subsections to section 306 of the Energy Conservation and Production Act (Public Law 94-385):

"(d) The head of each Federal agency that expends Federal funds, or guarantees or in-

sures a loan or a mortgage, for a newly constructed residential building shall adopt procedures necessary to assure that, beginning on January 1, 1993, any such residential building meets the standards established in the most recent version of the Model Energy Code of the Council of American Building Officials that is effective on January 1 of the year in which construction of such building commenced.".

Mr. JOHNSTON. Mr. President, the first amendment is the Chafee amendment to strike a provision relating to research and development on HCFC 22, as a replacement for CFC's. This provision was inadvertently included, and because of the recent Clean Air Act legislation, is no longer applicable.

The second amendment by Senator DOMENICI is an amendment to expand the definition of electric vehicles to include solar-assisted vehicles.

The third amendment is by Senator KASTEN, to include research for hybrid power trains incorporating an electric motor and recyclable battery technology charged by an on-board liquid fuel engine.

The fourth amendment is an amendment by Senator MCCAIN to provide for the application of certain provisions regarding building codes to the Congress.

The fifth amendment is a McCain amendment to ensure that the Federal building energy code and the industry voluntary building energy code take into consideration the need to mitigate the level of radon and other indoor air pollutants.

Mr. President, I would like to note that the amendment has been modified from earlier drafts to respond to concerns expressed by the Committee on the Environment and Public Works, and that the Environmental Protection Agency be consulted regarding indoor air pollutants during the development of building energy codes.

The sixth amendment is an amendment by Senator MCCAIN to include the Federal Government in the study provisions on waste minimization.

The seventh amendment is a Wirth amendment to encourage Federal energy-efficient housing through federally financed mortgages.

The PRESIDING OFFICER. Is there further debate on the amendments.

The question is on agreeing to the amendments, en bloc.

The amendments (Nos. 1610 through 1616) were agreed to, en bloc.

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

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

The motion to lay on the table was agreed to.

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

The PRESIDENT OFFICER (Mr. WELLSTONE). Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, last night's unanimous consent agreement inadvertently left off an amendment by Senator HATCH which has now been cleared on radiation exposure compensation.

So I ask unanimous consent that it be in order to submit that amendment on his behalf at this time.

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

AMENDMENT NO. 1617

(Purpose: To make certain provisions for judicial review under the Radiation Exposure Compensation Act)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. HATCH, proposes an amendment numbered 1617.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . RADIATION EXPOSURE COMPENSATION.

Section 6 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended by adding at the end the following new subsection:

"(1) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

Mr. JOHNSTON. Mr. President, RECA, enacted in 1990 to provide compensation to victims of radiation exposure from nuclear weapons development programs, does not specify the appropriate forum for judicial review for claims denied by the Justice Department which administered the program.

The Hatch amendment to this act specifies that the U.S. district court rather than the claims court has jurisdiction over these RECA appeals. Local U.S. district court judges are expected to be more sympathetic to RECA claimants who live in the same State than claims court judges who sit in Washington, DC.

So I ask for approval.

Mr. HATCH. Mr. President, in 1990 Congress enacted the long overdue Radiation Exposure Compensation Act [RECA] to provide compensation for thousands of Americans who were exposed to dangerous radiation by the Government's nuclear weapons development program during the 1940's, 1950's, and early 1960's, and who later developed certain diseases. The Justice Department currently is preparing to issue final regulations for the administration of RECA, and compensation payments may begin within the next few months.

At the request of the Justice Department, myself and Senator SIMPSON are introducing an amendment to the energy bill that would make an important technical amendment to RECA. The amendment provides for exclusive judicial review of Justice Department eligibility determinations in U.S. district court.

At present, RECA contains no provision for judicial review. Because the act is a money-mandating statute, disappointed claimants may challenge the denial of compensation in the U.S. Claims Court in Washington, DC. A recent Supreme Court decision, *Bowen* v. *Massachusetts*, 108 S. Ct. 2722 (1988), however, suggests that disappointed claimants might also be able to obtain review in U.S. district court. In short, because of an oversight in the original legislation, the proper forum for RECA appellate review is unclear. I am very concerned that disappointed claimants would have to pay money to attorneys to research and litigate this very murky area of the law, the jurisdictional division between the Claims Court and U.S. district court. Even accomplished Federal court litigators find this area daunting, and there is a very real risk that individuals appealing adverse claims might file in U.S. district court, only to be dismissed because they did not file in the Claims Court, and vice-versa.

The amendment, by providing for exclusive judicial review in U.S. district court, will eliminate confusion and the inefficiency of having two potential forums for review. Thus, this amendment protects claimants appealing adverse eligibility determinations by the Justice Department from having to pay attorneys to research and litigate the collateral procedural question of the proper forum for appellate review. It would be a tragedy if money appropriated to compensate radiation exposure victims was instead consumed to pay for wasteful litigation over a procedural question. As Justice Scalia said in Bowen, "[N]othing is more wasteful than litigation about where to litigate, particularly when the options are all courts within the same legal system that will apply the same law." 108 S. Ct. at 2750 (dissenting opinion).

Under my amendment, attorneys representing RECA claimants would file their appeals in the more familiar forum of the local U.S. district court rather than the U.S. Claims Court in Washington. I am confident that local U.S. district court judges, who live in the same States as disappointed claimants, will look more favorably upon these claims than their Claims Court counterparts here inside the beltway.

Because of its importance to the efficient administration of the compensation program, I urge quick approval for this measure.

JUDICIAL REVIEW AMENDMENT TO THE RADIATION EXPOSURE COMPENSATION ACT

Mr. DECONCINI. Mr. President, I would like to ask the Senator from Utah [Mr. HATCH] if he would yield for the purpose of a brief colloquy.

Mr. HATCH. I will gladly yield to my friend, the Senator from Arizona.

Mr. DECONCINI. Mr. President, I am proud to have been a cosponsor of the Radiation Exposure Compensation Act, which the Senator from Utah so ably steered to enactment in the last Congress, and to have been a supporter of funding for the program this year.

The Department of Justice is currently adopting final regulations to implement the program. I understand that several groups of constituents have concerns about whether the proposed regulations adequately reflect the congressional intent. I, myself, am particularly concerned about aspects of the proposed regulations which will adversely affect the Navajo miners and their families' claims because they will not allow these claims to be treated with liberality as intended by Congress. The ability to use affidavits as evidence to prove claims is also critical to many claimants. Yet the proposed regulations preclude this option.

Hopefully, these concerns will be addressed through the administrative process and the program will be fairly and efficiently implemented soon. However, if the final regulations are issued without the satisfactory resolution of these concerns, we will need to address them in the next session of Congress.

Mr. HATCH. The Senator from Arizona is correct about the concerns which have been expressed regarding the proposed regulations. I expect that any issues which remain outstanding after the final regulations are published will be raised by my distinguished colleague from Arizona as well as other members who have an interest in these matters. I assure my friend from Arizona that I will be prepared to work with him in the coming session to address his concerns.

Mr. DECONCINI. I would like to thank the Senator from Utah for agreeing to withhold a second amendment on the question of liability for compensation due unidentified survivors of deceased claimants. I do not disagree that the law may need to be clarified with respect to this issue but I believe any move to limit liability must be done only after careful study. Do I understand correctly that my colleague, Mr. HATCH, is agreeable to considering this at a later time, together with any other amendments that may become necessary, once the final regulations are adopted? Is this correct?

Mr. HATCH. Yes; the Senator from Arizona is correct.

Mr. DECONCINI. I would like to thank the Senator for agreeing to allow more time to assess more closely amendments that may be necessary to ensure the fair and equitable implementation of the Radiation Exposure Compensation Act. I look forward to working with the Senator from Utah, as well as other cosponsors, on these amendments in the next session.

NATIVE AMERICAN PROVISION IN THE ATMOSPHERIC NUCLEAR TESTING COMPENSATION ACT

Mr. MCCAIN. Mr. President, I would like to ask the Senator from Utah [Mr. HATCH] if he would yield for the purpose of a brief colloquy.

Mr. HATCH. I will gladly yield to my friend, the Senator from Arizona [Mr. MCCAIN].

Mr. MCCAIN. Mr. President, as the distinguished Senator knows, when the Congress enacted the Radiation Exposure Compensation Act, that act included a native American provision which extends compensation to any former uranium miner who is a member of an Indian tribe and has contracted moderate or severe silicosis or pneumoconiosis, in addition to lung cancer and the other listed serious respiratory diseases. This provision was included because:

The Federal Government has a longstanding special relationship with native Americans—the trust responsibility.

This higher level of responsibility includes a fiduciary duty to protect the health of native Americans and to provide for their health care.

Both the legislative and executive branches had full responsibility for the management of tribal natural resources and the health of the native Americans miners during the time the miners worked in the uranium mines.

The Federal Government knew of the health hazards and that ventilation of the mines would prevent inhalation of radioactive dust particles, but did not warn of the risks or ensure mine safety standards.

In the case of the native Americans, it was recognized that the necessary documentation was unavailable because of the failure of the Indian Health Service to develop and retain adequate records.

Thereofre, the provision recognizes the special situation for native American uranium miners, many of whom were completely dependent upon the Federal Government to provide their health care and protect them from ill effects of employment in the mines.

Such special treatment is not discriminatory; the Federal Government often gives native Americans preferential treatment, which has been upheld by the U.S. Supreme Court as permissible because it is based on a political relationship, and not race.

In keeping with the intent of the act, compensation is limited to those individuals who are severely disabled. It is estimated that this would compensate less than 100 additional victims, at the 200 WLM standard.

I would ask my colleague if he agrees with me that nothing in his amendment is intended to alter the special circumstances of the claims of native American uranium miners, and that such claims should be reviewed with liberality?

Mr. HATCH. Yes, the Senator from Arizona [Mr. MCCAIN] is correct.

Mr. MCCAIN. I thank the Senator. For the benefit of my colleagues, as well as those charged with implementing the act, I ask unanimous consent that the colloquy on the Atmospheric Nuclear Testing Compensation Act between Senators HATCH, MCCAIN, DOMENICI, DECONCINI, and INOUYE be inserted immediately following this colloquy.

Mr. President, I, again, want to thank the distinguished Senator from Utah [Mr. HATCH] for his leadership on this difficult issue, and for his continuing willingness to address the unique circumstances of the native American uranium miners.

I am confident that we will be able to continue to cooperate in the future on additional amendments should they become necessary during the development of the implementing regulations.

Mr. DOMENICI. Mr. President, I would like to ask the Senator from Utah [Mr. HATCH] if he would yield for the purpose of a brief colloquy.

Mr. HATCH. I will gladly yield to my friend, the Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, I became involved in this issue when the problem of lung cancer and other respiratory diseases among uranium miners was brought to my attention 12 years ago and I introduced the first bill to provide compensation to uranium miners. Since then, I have taken an active role in an effort to obtain compensation for the Navajo and other uranium miners. I am proud to be a cosponsor of the Atmospheric Nuclear Testing Compensation Act, which I think is long overdue. I would like to pose a question to my good friend and distinguished colleague, Senator HATCH. Does this legislation address the special circumstances of the Navajo uranium miners and the Federal Government's trust responsibilities to them?

Mr. HATCH. Yes, it does. The legislation recognizes that the Federal Government owes a special fiduciary duty to native Americans, which it breached, and therefore gives them special treatment. Any former uranium miner that meets the requirements of the act, but who is also a member of an Indian tribe, and has developed moderate or severe silicosis of pneumoconiosis will be eligible for compensation under the act.

Mr. DOMENICI. Mr. President, I would like to especially mention the

contribution that this special group of victims had made. Many of the uranium miners were native Americans—primarily members of the Navajo nation—to whom the Federal Government owes a special fiduciary duty of care. The Federal Government has a longstanding trust relationship with native Americans that is based on the treaties and agreements that we, as a nation, have with their tribes. This higher level of responsibility includes a duty to protect the health of native Americans and to provide for their health care. In addition, the Federal Government had responsibility for the management of tribal natural resources and mine safety as well as the health of the miners during the time the miners worked in the uranium mines.

All of the uranium miners performed a service for our Nation, and our Nation owed them a special obligation to protect their health. We did not adequately fulfill that duty, and I believe we must make special efforts to compensate them for that error. I commend the Senator from Utah for amending this legislation to provide compensation to the Navajo for the serious respiratory diseases—moderate or severe silicosis and pneumoconiosis—that they contracted.

Mr. DECONCINI. Would the Senator from New Mexico yield so that I may join in this colloquy?

Mr. DOMENICI. I gladly yield to my good friend, the Senator from Arizona.

Mr. DECONCINI. Mr. President, I also became aware of this issue many years ago and am proud to cosponsor this legislation. The uranium miners labored, and the downwinders unwittingly served, to protect the national security interests of this country. Their case presents a moral question for the Congress: What is the appropriate response when the Federal Government knowingly subjects innocent people to severe health hazards, but the courts lack authority to provide an adequate remedy? The Atmospheric Nuclear Testing Compensation Act is the appropriate compassionate response.

Many of my Navajo constituents worked in uranium mines near Cameron and Tuba City, AZ. From my perspective as a member of the Select Committee on Indian Affairs, the treatment of these native American uranium miners strikes me as a blatant disregard of the trust responsibility.

The Federal Government has a historic and unique legal relationship with native Americans under which it accepted the responsibility to provide for and protect the health of native Americans. Most native Americans are completely dependent upon the Indian Health Service for their health care. The native American miners depended on the IHS doctors to warn them and protect them from the harmful effects of employment in the mines. While it is tragic that the Federal Government placed the national security interests above the health of the miners—native Americans and nonnative Americans—it is shameful that the IHS did not fulfill its special obligations to native Americans by warning them of the risks or effectively implementing mine safety standards.

I agree that this legislation should compensate native Americans for the serious respiratory diseases that stemmed from the Federal Government's negligent acts. As I understand it, the respiratory diseases that are most prevalent among these native American miners are silicosis or pneumoconiosis. There is a requirement in the act that those eligible for compensation have a moderate or severe case because the intent of this legislation is to compensate those individuals with serious respiratory diseases.

These native Americans lived in very remote areas of Utah, New Mexico, and Arizona. Unfortunately, some of these people had great difficulty even getting to the IHS treatment facilities and may therefore have few, if any, medical records. In addition, even if they could reach IHS very few pulmonary specialists have been available to treat them. Consequently, the diagnosis contained in their records are often ambiguous.

In light of the breach of the Federal Government's trust responsibilities to native Americans and the consequent difficulties they and their families will have in proving their claims, I believe those that review these claims should review them liberally. Where there is an ambiguity, evidence should be considered in a light most favorable to the native American claimants. Senator HATCH, is this not the intent of the committee?

Mr. HATCH. Yes it is.

Mr. MCCAIN. Would the Senator from Utah yield so that I may join this colloquy on the issues of the injuries suffered by Indian people?

Mr. HATCH. I am delighted to yield to my friend from Arizona.

Mr. MCCAIN. Mr. President, I rise today in support of the Atmospheric Nuclear Testing Compensation Act. This legislation provides a long overdue remedy to victims who have been denied redress by a judicial system that is not equipped to provide them a remedy. I would like to commend Senator HATCH and Senator KENNEDY for their efforts to provide relief to those who have suffered from mistakes of the Federal Government. I would also like to voice my agreement with Senators HATCH, DOMENICI, and DECONCINI that the claims of native Americans should be reviewed liberally.

The Federal Government does indeed owe special obligations to Indian nations. In exchange for lands ceded to the United States by Indian tribes under the provisions of treaties, executive orders, and various acts of the Congress, the Federal Government has assumed various fidiciary duties. The Snyder Act of 1921 provided the formal legislative authorization for Federal health care for Indians by authorizing the Secretary of the Interior to expend funds for the "relief of distress and conservation of the health of Indians." The Federal Government has provided health care to native Americans since the early 19th century and our most recent declaration regarding Indian health care is in the 1988 amendments to the Indian Health Care Improvement Act of 1976.

As vice chairman of the Select Committee on Indian Affairs, I know what medical care is available to native Americans. Unfortunately, the situation today is not very different from that which gave rise to the Indian Health Care Improvement Act of 1976, where the Congress found, "the unmet health needs of the American Indian people are severe and the health status of the Indians in far below that of the general population of the United States." Some of the reasons cited in the 1976 act included, inadequate, outdated, and undermanned facilities; shortages of personnel; insufficient laboratory and hospital services; lack of access to health services due to remote residences, undeveloped communication and transportation systems; and lack of safe water and sanitary waste disposal services.

Although improvements have been made since 1976, I know that many of these problems still exist. Conditions, for example, on the Navajo Reservation are such that it is often difficult for these very ill people to reach IHS treatment centers. Therefore, Senator DECONCINI is quite right, many of these may have incomplete medical records because of the inaccessibility of treatment centers. Moreover, because medical specialists have not been readily available, the examining physicians may not have had the expertise to diagnose some of the diseases covered in this legislation. I fear that this may unfairly penalize some deserving victims.

The intent of the legislation is to be compassionate. I share the belief of Senator DECONCINI that when the claims of native American uranium miners are reviewed, they should be reviewed with liberality. If there are any grey areas, claims should be reviewed in favor of granting compensation to Indian claimants.

In addition, I believe that Indians should be compensated for other diseases contracted as a result of the Government's breach of its trust responsibilities, namely moderate or severe silicosis and pneumoconiosis. It is my understanding that S. 1994 provides for such compensation and I am therefore pleased to cosponsor this bill.

Mr. INOUYE. Will the Senator from Utah yield so that I might join in this colloquy?

Mr. HATCH. I gladly yield to my distinguished colleague, Mr. INOUYE, the chairman of the Select Committee on Indian Affairs.

Mr. INOUYE. Mr. President, as cosponsor of the Atmospheric Nuclear Testing Compensation Act I am proud that this body is preparing to right a longstanding injustice, and as chairman of the Select Committee on Indian Affairs, I would like to underscore some of the Statements that my colleagues have just made.

The Federal Government certainly has a unique political relationship with native Americans. In this circumstance, the native American miners could not speak English—and as I understand it there is no word in the Navajo language for "radiation"—and thus these miners had no understanding of the dangers presented by their employment. They looked to the only doctors available, the Indian Health Service, who examined them and studied them, to inform and protect them from those hazards. By failing to inform them of the dangers, the Federal Government violated its obligations to them. By failing to ensure mine safety standards, when it knew that ventilation of the mines would alleviate the problem, it violated its obligation to them. I agree that the Federal Government should compensate native American uranium miners for the consequences of its negligent acts.

With the enactment of the Indian Health Care Improvement Act of 1976 the Congress declared "that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to meet the national goal of providing the highest possible health status to Indians and to provide existing Indian health services with all resources necessary to effect that policy." With that act, we recognized that our Nation has fallen short of meeting our obligations to native Americans. As my colleague, Senator MCCAIN, pointed out, although provision of health care to native Americans has improved, problems persist. Because of the inadequacy and inaccessibility of treatment facilities, and shortages of specialists during the time period covered by the act, as well as up to the present, I am sure that native Americans who will be eligible under this act will have difficulties proving their claims. Therefore, I agree that the native American claims should be reviewed with liberality.

Mr. HATCH. I would like to point out that such special treatment of native American claims would not be racially motivated or discriminatory. The relationship between the Federal Government and Indian tribes is a political one and therefore, this would be politically based and not racially based. Is that true?

Mr. MCCAIN. Yes, it is true. The Federal Government accords Indian nations special status because of the government-to-government relationship. The Supreme Court has ruled that such special status is not discriminatory because the classification is based on a political relationship and not race. Examples of our special treatment of Indian and native peoples can be found in the Indian Reorganization Act of 1934 which accords employment preferences for qualified Indians in the Bureau of Indian Affairs, and the Buy Indian Act, enacted in 1910, which provides for Indian preferences in Federal contracting. The Atmospheric Nuclear Testing Compensation Act is, in my view, entirely consistent with 200 years of Federal law and policy relating to Indian and native peoples.

Mr. DOMENICI. Mr. President, I would like to ask the Senator from Utah [Mr. HATCH] if he would yield for the purpose of a brief colloquy.

Mr. HATCH. I will gladly yield to my friend, the Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, I became involved in this issue when the problem of lung cancer and other respiratory diseases among uranium miners was brought to my attention 12 years ago and I introduced the first bill to provide compensation to uranium miners. Since then, I have taken an active role in an effort to obtain compensation for the Navajo and other uranium miners. I am proud to be a cosponsor of the Atmospheric Nuclear Testing Compensation Act, which I think is long overdue. I would like to pose a question to my good friend and distinguished colleague, Senator HATCH. Does this legislation address the special circumstances of the Navajo uranium miners and the Federal Government's trust responsibilities to them?

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

The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

So the amendment (No. 1617) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1618

(Purpose: To require the Secretary of Energy to establish the Midcontinent Energy Research Center at the University of Kansas)

Mr. WALLOP. Mr. President, I send an amendment to the desk on behalf of the Senator from Kansas [Mr. DOLE], the Republican leader.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for Mr. DOLE, proposes an amendment numbered 1618.

Mr. WALLOP. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 344, between lines 18 and 19, insert the following new section:

SEC. 13120. MIDCONTINENT ENERGY RESEARCH CENTER

(a) FINDING.—Congress finds that petroleum resources in the midcontinent region of the United States are very large but are being prematurely abandoned.

(b) PURPOSES.—The purposes of this section are to—

(1) improve the efficiency of petroleum recovery;

(2) increase ultimate petroleum recovery; and

(3) delay the abandonment of resources.

(c) ESTABLISHMENT.—The Secretary shall establish the Midcontinent Energy Research Center at the University of Kansas in Lawrence, Kansas, (referred to in this section as the "Center") to—

(1) conduct research in petroleum geology and engineering focused on improving the recovery of petroleum from existing fields and established plays in the upper midcontinent region of the United States; and

(2) ensure that the results of the research described in paragraph (1) are transferred to users.

(d) RESEARCH.—

(1) IN GENERAL.—In conducting research under this section, the Center shall, to the extent practicable, cooperate with agencies of the Federal Government, the States in the midcontinent region of the United States, and the affected industry.

(2) PROGRAMS.—Research programs conducted by the Center may include—

(A) data base development and transfer of technology;

(B) reservoir management;

(C) reservoir characterization;

(D) advanced recovery methods; and

(E) development of new technology.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Mr. DOLE. Mr. President, today I am bringing before the Senate an amendment to establish a Midcontinent Energy Research Center at the University of Kansas.

It has been estimated that 325 billion barrels of oil remain in existing national oil fields that have been prematurely abandoned. Clearly, any well-balanced national energy strategy must work to end this horrible waste of our natural resources. By improving the efficiency of petroleum recovery and delaying the abandonment of resources, our country can dramatically increase its ultimate petroleum recovery.

The University of Kansas Energy Research Center is uniquely qualified for this task. Operating since 1981, the KU center has a nationally well-regarded program emphasizing technology transfer. Getting the technology to the driller is key because many of the operators in the midcontinent energy area are independents who have almost no research support.

I urge my colleagues to support the establishment of the Midcontinent Energy Research Center at the University of Kansas.

Mr. WALLOP. Mr. President, this amendment has been cleared, to my knowledge, on both sides.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

So the amendment (No. 1618) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. 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. WALLOP. 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. WALLOP. Mr. President, the amendment No. 1614 should be listed with Senator CHAFEE as a cosponsor of the amendment, and I so ask unanimous consent.

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

Mr. WALLOP. 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. JOHNSTON. 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. JOHNSTON. Mr. President, I ask unanimous consent that three amendments be taken off the list as follows: A Riegle amendment on limits on participation by companies; a Riegle amendment on PUHCA books and records, both of those were covered in amendments yesterday; and a Riegle amendment on environmental restoration.

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

Mr. ADAMS. Mr. President, I ask unanimous consent that I may proceed as though in morning business for a period not to exceed 7 minutes.

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

THE BUSH HEALTH CARE PROPOSAL

Mr. ADAMS. Mr. President, in his State of the Union, President Bush called for comprehensive health care reform. But yesterday in Cleveland he offered us only Band-Aids, not real reform. This plan is what I call the "two-too-too" plan. It took 2 years to develop but it is too little, too late.

For 2 years the President's health care task force studied the plan, and they finally agree we face a major health crisis. This major health crisis is in and a part of our health care system. We have all known this for many years and have been trying to do something. We are grateful that this has now been acknowledged because, as Senator CHAFEE said yesterday, maybe with the recognition by the administration that something needs to be done, we can move these health care plans which have already passed out of committee in the Senate and are moving in the Congress, so that we will get a comprehensive health care plan, because costs are out of control and millions of people simply do not have access to health care.

The disappointing truth, however, of the Bush proposal and why I cannot support the proposal that came out in the speech in Cleveland is it will do nothing to change the system. The plan does not match the diagnosis and does not offer a cure.

First, it does not control costs. It is now estimated that $800 billion or 13 percent of our GNP goes for health care costs. It does not ensure access. It does not guarantee choice or quality health care. Tax credits or vouchers just are not enough to help low-income families. These are families that are working full time but there is not enough in this for them to purchase health care. These families do not have the money up front to buy health care when they may receive a tax credit a year later, or they may not pay any taxes on which to apply a credit. Therefore, they will have to go through a complicated process of getting an insured credit.

Income tax deductions will not help middle-class Americans who do not have health care now. What will they deduct if they do not get the medical care they need because they have insurance. Under this plan, we will be asking people to buy more and more expensive care.

I am really surprised at the President because he waited so long to offer us so little. But I am grateful at least we have something with which we can say we are going to start to work with.

He bashed the Medicare Program, a program that provides universal coverage for our elderly, and he threatens to go after it with a hatchet, continuing a 10-year pattern of cutting Medicare. He ignores the long-term health care for which America's elderly and their families are clamoring.

We need health care reform, and we must build on the best of our current system. We need a plan that is not afraid to make serious and meaningful changes. That is the type of plan that I am grateful I had the opportunity to be a part of drafting in the Senate committee during these last 3 weeks.

Health America which has been supported and was started by the majority leader and the task force of the Democratic Party is a responsible approach. It guarantees individuals coverage. It guarantees controls of skyrocketing costs. And it maintains individual choice of doctors, and of hospitals.

This maintains the insurance-type system. It would also reform—and we support this portion of President Bush's proposal—the small insurance market for business to eliminate preexisting medical conditions and other barriers to access. It does not do you any good to have a plan if you are not allowed to participate in it or if members of your family are not allowed to participate in it; and it will enhance our public health care by improving the quality of care for everyone.

Today President Bush tried to use language of health care reform to mask what is really a do-nothing proposal for the American people. The only thing his plan will do at this point—that is why we have to improve it—is to transfer more money out of the pockets of ordinary people and businesses and into the pockets of the insurance industry. That is not health care reform. That is status quo.

The plan that I call for and the plan that has been called for as Health America is a plan that has been developed over many, many years, over many reports, and adopts many of the recommendations of the Pepper Commission.

I also, with Senator SIMON, offered an amendment which is now part of their bill which would control costs up to hundreds of billions of dollars by simply providing that States can opt out of this plan, which is the employer plan, and go to a single-payer plan if they want. That is going to be something that is going to be debated at great length in this Chamber.

The second part is that there be a negotiation between the insurance providers and doctors, the people who are paying and the people who are serving it, on what the basic fee should be under these basic services under Health America. If they cannot agree, it will be done by mandatory arbitration so we get a true control of costs but not an arbitrary one; one that is worked out by the parties who are living and working in the field.

But most important of all, every family will have the opportunity to either belong to the employers' plan or to an insurance plan that the Government will create out of the Medicaid system so that they will have access to basic services.

I just hope—I really go further than that, Mr. President—I pray that the President will work with us and not just be stuck with tax and credits but will go with the true reforms that we have started.

I have also introduced a long-term home health care bill which will be following behind this, I hope, which would be funded by an increase in certain premiums for the higher income that are on Medicare and on the disabled. It can be financed and will, but it has to be taken in slow steps and we recognize that. But it is something that I have put forth so that we can look at it, and begin to talk about it.

But most important of all is that we move forward with this health care plan for the average American citizen who is just a job loss away, or shift of job away, from losing health care benefits.

We have moved on this in the Congress. I hope we pass it. And we are certainly willing to negotiate on points that people may have differences, but if we do not pass this, we fail a duty to the American people.

I thank the President. I thank the committee for their time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ADAMS. 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. Without objection, it is so ordered.

NATIONAL EMERGENCY SECURITY ACT

Mr. GORTON. Mr. President, I intend at this point to speak generally in favor of the bill crafted by the distinguished Senator from Louisiana and the Senator from Wyoming.

Mr. President, though I firmly believe that the Persian Gulf war was fought primarily for reasons and principles other than to preserve this Nation's supply of imported oil, I do not deny that the Nation's energy security was an important factor in our decision to liberate Kuwait. This undeniable fact has led us all to reassess U.S. energy policy and has, I hope, given us the political will to change that policy to incorporate the lessons we learned in the gulf war, and to at least start us on the road toward a greater degree of energy independence.

The bill currently before the Senate is a somewhat diluted representation of that political will. On the one hand, this bill contains a variety of strong provisions that will promote energy efficiency, increase the use of renewable energy, and modify regulations that inhibit the wise use of domestic energy resources. The bill will create job opportunities for many Americans. It will improve the quality of our environment. This country has waited for more than a decade for this opportunity.

On the other hand, this proposal does not include the one provision that would, by itself, do more to enhance our national energy security than all of the other titles of the bill combined. I speak, of course, Mr. President, of the CAFE standards proposals, which I have introduced with the distinguished Senator from Nevada [Mr. BRYAN].

Frankly, Mr. President, I am not certain that it was a good strategic decision on the part of the promoters of CAFE standards not to offer the Bryan-Gorton CAFE bill, S. 279, as an amendment at this point. When fully implemented, S. 279 would reduce our dependence on oil by 2.8 million barrels per day, and would result in a significant improvement in domestic air quality. It seems irrational that we are not at least discussing such a measure or proposing amendments to such a measure within the context of this bill. We will, however, live to fight that battle another day.

As for those measures that are included in S. 2166, many will indeed contribute to our national energy security and environmental quality. I am particularly pleased that the Senate has chosen to endorse a national effort to adopt a least-cost energy planning strategy. The Pacific Northwest has been a national leader in this field for more than a decade, and is proving that such a system is both practicable and in the long-term best interests of the region.

This bill also establishes an aggressive energy efficiency program under which national efficiency standards will be developed for industrial equipment, lighting, windows, showerheads, buildings, and manufactured housing. It will also require State utility commissions to eliminate fiscal disincentives for utility investment in conservation. Again, I am proud to say that these are all fields in which the Northwest has been a pace setter, rather than a follower.

To promote the use of alternative fuels, S. 2166 places Federal, State, municipal, and private vehicle fleets on an aggressive alternative fuel vehicle buying schedule, under which nearly all new fleet vehicles will use alternative fuels by 2000.

Pierce County Transit in my State has gotten a head start on this legislation by purchasing natural gas-powered buses, of which it will have 50 running by the end of this year. The performance of those vehicles has thus far been excellent, and I look forward to similar results across the Nation.

On the production side of the energy equation, S. 2166 will facilitate the production and transportation of clean burning natural gas, and will encourage the development of a variety of innovative and promising renewable energy resources.

The bill will also reform the licensing process for nuclear powerplants in a way that will maintain the Nuclear Regulatory Commission's stringent safety review responsibilities, but at the same time reduce the opportunity for nuclear power opponents to inappropriately delay projects using dilatory tactics. This reform will help revitalize our nuclear power industry and will subsequently reduce domestic emissions of greenhouse gases.

The development of oil and gas resources on the Outer Continental Shelf is also a stated priority in this legislation. I am more skeptical about this section of the bill than most others, because I am unwilling to see the spectacular coastline of Washington State threatened by OCS development.

For this reason, I will offer, at some point in this debate, an amendment that will codify the existing administrative moratorium barring that OCS development off Washington shore until the year 2000.

All in all, this is a good bill—not perfect, not all-encompassing, but very good. Congratulations are due to the Senator from Louisiana and the Senator from Wyoming, together with the members of their committee, on their work. They know better than I how difficult it has been to reach this point.

I express the hope simply that the Senate will work with the House to put a signable energy bill on the President's desk before the end of this Congress.

I yield the floor.

AMENDMENT NO. 1619

(Purpose: To condition company participation in certain programs on nondiscrimination against U.S. manufacturers of vehicle parts)

Mr. JOHNSTON. Mr. President, I send an amendment 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 Louisiana [Mr. JOHNSTON], for Mr. LEVIN, proposes an amendment numbered 1619.

Mr. JOHNSTON. 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 31, line 20, after the period, insert the following new sentence: "The regulations governing compliance with sections 4102, 4103, and 4104 shall be developed in consultation with the Secretary of Commerce and shall require that the procurement practices of manufacturers of alternative fuel vehicles and diesel trucks that are purchased, leased, or otherwise acquired in order to meet the requirements of such sections do not discriminate against United States manufacturers of motor vehicle parts.".

On page 38, between lines 8 and 9, insert the following new paragraph:

(2) the openness of a manufacturer's procurement practices to United States manufacturers of vehicle parts;

On page 38, line 9, strike "(2)" and insert "(3)".

On page 38, line 17, strike "(3)" and insert "(4)".

On page 38, line 22, strike "(4)" and insert "(5)".

On page 39, line 3, strike "(5)" and insert "(6)".

On page 39, line 11, strike "(6)" and insert "(7)".

On page 39, line 14, strike "(7)" and insert "(8)".

On page 39, line 20, strike "(8)" and insert "(9)".

On page 40, between lines 4 and 5, insert the following new paragraph:

(2) the procurement practices of the manufacturer do not discriminate against United States manufacturers of vehicle parts;

On page 40, line 5, strike "(2)" and insert "(3)".

On page 40, line 22, strike "(3)" and insert "(4)".

On page 41, line 3, strike "(4)" and insert "(5)".

On page 334, between lines 13 and 14, insert the following new subsection:

(g) DOMESTIC PARTS MANUFACTURERS.—In carrying out this section, the Secretary, in consultation with the Secretary of Commerce, shall issue regulations to ensure that the procurement practices of participating vehicle and associated equipment manufacturers do not discriminate against United States manufacturers of vehicle parts.

On page 334, line 14, strike "(g)" and insert "(h)".

On page 334, line 22, strike "(h)" and insert "(i)".

On page 335, line 22, strike "(i)" and insert "(j)".

Mr. LEVIN. Mr. President, the amendment I am proposing would condition company participation in various alternative fuel programs on nondiscrimination against U.S. parts suppliers.

United States auto parts suppliers produce top quality parts at competitive prices, but have found it virtually impossible to sell to the Japanese automakers both in Japan and here in the United States. This inability to sell to the Japanese automakers combined with the recession in the auto industry have resulted in record numbers of United States partsmakers going out of business. By one estimate, one U.S. partsmaker goes bankrupt every 16 hours.

We have about a $5 billion auto parts trade surplus excluding Japan. But we have less than 1 percent of the Japanese $102 billion auto parts market, and our $11 billion auto parts trade deficit with Japan is growing. Here at home we have not fared that much better. The Japanese transplant that has been in the United States the longest still only buys about 16 percent of its parts from traditional United States partsmakers, importing the rest or sourcing from transplanted Japanese partsmakers.

This amendment would condition company participation in alternative fuel fleets and electric vehicle research and development and demonstration programs on their not discriminating against U.S. parts suppliers. It sends the message that the Congress is concerned about our domestic parts industry, and makes clear that if a company wants to benefit from Government programs it cannot discriminate against competitive U.S. partsmakers.

Mr. JOHNSTON. Mr. President, this amendment by Senator LEVIN would condition company participation in various alternative fuels programs on nondiscrimination against U.S. parts suppliers.

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

The question is on agreeing to the amendment.

The amendment (No. 1619) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I ask unanimous consent that I might proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. MOYNIHAN. Mr. President, I have important and reassuring news for the Senate. I have read in the New York Times this morning that a secret report at the Central Intelligence Agency has cleared the agency of the charges that earlier secret reports were politically slanted.

The details of this secret report are reported in full by that formidable journalist, Elaine Sciolino, under the heading "C.I.A Panel Rejects View That Reports Were Slanted."

The head of the CIA, Mr. Gates, was evidently not available to comment. The lead story in the New York Times reports that he is in the Middle East arranging the overthrow of the head of the Government of Iraq.

The report is evidently the work of a Mr. Edward W. Proctor who was Deputy Director of Intelligence, DDI, in the 1970's.

It says, and I quote from this secret report as printed in the Times:

Distortion was not perceived as pervasive and had much to do with poor people-management skills and misperceptions arising from the review, coordination and editing of an analyst's work.

We are glad to know that distortion was not pervasive and the psycho-babble about people management skills is reassuring in the sense that the CIA is entering the mainstream of the American bureaucracy and is no longer an organization on the periphery.

But, sir, may I say, as one who raised these issues along with others, that there was never any charge from us of distortion and political slanting. It was simply that an enormous event had been missed, which was the collapse of communism and of the breakup of the U.S.S.R. in the face of the evidence and an analytic argument that it was coming.

In the full issue of Foreign Affairs, Adm. Stansfield Turner, in the open, speaks of the "enormity of the failure" of the intelligence community. It was his community, his watch. This is an admiral. He said "I was there," saying that the standard of living in the U.S.S.R. was about that of the United Kingdom.

In the current issue of Foreign Service Journal they speak of the "gargantuan failure of the Agency to understand the problems of Communist economies."

No one is charging bad faith, and by speaking to the issue of bad faith they avoid the enormity of the failure itself. The economists speak to this. Dale Jorgenson of Harvard said that the failure to understand the coming collapse of the Soviet economy and of these managed economies generally, was comparable to the incapacity of economists to figure out the problems of the 1930's.

There is nothing wrong with being wrong. It is only wrong when you deny it, when you avoid it, when you divert attention from it.

I fear, sir, that the Agency is frittering away its authority with this kind of behavior, to have a secret report and give it to the press immediately—not the Presiding Officer, not to me, not to any Senator that I know of, although you can read about it in the Times.

I fear the secrecy system is out of control because it has no means to correct itself. You know, the secrecy system got us to the point where in 1987, 2 years before the Berlin Wall came down, the Central Intelligence Agency was reporting that per capita income in East Germany was higher than in West Germany. If you believed that, you will believe anything, and we did.

Well, it is not so much a problem that we made a mistake as it is that we are denying the mistake.

In this morning's Washington Post a fine editorial speaks very positively about the proposals by Senator BOREN and Mr. MCCURDY on the reorganization of the intelligence community.

I ask unanimous consent that Ms. Sciolino's article and the Washington Post editorial be printed in the RECORD at this point.

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

CIA PANEL REJECTS VIEW THAT REPORTS WERE SLANTED

(By Elaine Sciolino)

WASHINGTON, February 6.—A Central Intelligence Agency task force appointed in the aftermath of the grueling confirmation hearings of Robert M. Gates as the country's espionage chief rejects the assertion that the

agency has systematically slanted intelligence over the years, C.I.A. officials said today.

The findings, included in a classified report recently submitted to Mr. Gates for his approval, largely blame poor management and the inexperience of some analysts for allowing the perception of purposely slanted intelligence to flourish, a view articulated by Mr. Gates during his confirmation hearing last November.

"Distortion was not perceived as pervasive and had much to do with poor people-management skills and misperceptions arising from the review, coordination and editing of an analyst's work," said an agency official who paraphrased the panel's report. But the official, who spoke on the condition of anonymity, added that the report concluded that a few instances of "modest concern" warranted "remedial action."

As an in-house body, the panel was not expected to criticize the agency harshly or to make drastic recommendations. And the report, which was never intended to be made public, has already been criticized by some former and current intelligence officials for not going far enough.

The panel was established by Mr. Gates as one of a dozen study groups after he was confirmed as Director of Central Intelligence. It was headed by Edward W. Proctor, who was Deputy Director of Intelligence in the 1970's and who now works for the agency on a contract basis.

The panel defined the slanting of intelligence, or "politicization," narrowly, describing it as the alteration, delay or suppression of an assessment to avoid offending a policymaker. At the hearings, critics characterized the problem more broadly, to include the skewing of analysis to influence decision making or to promote the personal views of an analyst or manager. The critics said it even extended to the fostering of an intimidating atmosphere that led to self-censorship among analysts.

The report, which was based on interviews with more than 100 agency analysts and managers and written surveys submitted anonymously by 250 others, did not deny that analysts asserted that intelligence had been tailored. Indeed, the surveys were full of sharp complaints, particularly among less-experienced analysts, that managers had unfairly edited, delayed or rejected reports because they did not conform to what the manager thought they should say.

Many in the agency also complained that their work was unnecessarily edited or changed in the review process in which several analysts examine the reports before they are approved.

MORE TRAINING SUGGESTED

Agency officials say that the surveys accurately reflect the views of the analytical side of the agency. More than 75 percent of those chosen at random to participate returned the surveys.

The report recommended on-the-job training for analysts and managers to better understand the importance of objective intelligence, a reduction in the layers of review, the inclusion of dissenting views in analytical papers, the encouragement of full debate of issues and the publication of internal procedures to deal with accusations of politicization.

The recommendations do not seem to go beyond those made by Mr. Gates at the hearings.

"If that's what the recommendations are, they all sound good, but they aren't as far-reaching as many observers, including myself, feel is necessary," said Harold P. Ford, a former senior analyst who testified against Mr. Gates at the hearings and who still works part-time for the agency as a consultant.

Mr. Ford said that the tailoring of intelligence was never "pervasive" in the agency. But he added, "Where it did exist it was more than just a matter of misperceptions and poor management skills." He continued, "It sounds as though they're treating the matter very gingerly."

TRYING TO EXPLAIN TAILORING

One official who praised the report said that many of the complaints came from younger, less-experienced analysts who might have tailored their papers to please their superiors. Another official noted that analysts at the agency always tended to believe that their work is edited or suppressed because it is politically incorrect, while managers would argue that it may not be good enough or does not reflect the institutional view of the agency.

But other current and former intelligence officials said that the report missed the point.

"To conclude that politicization is not widespread is irrelevant," said one intelligence official. "What's important is that it's happening at all, that people feel too intimidated to write what they believe or that their views get changed by senior managers who want to push the conclusions in one direction."

Another official who had seen the report simply called it "cautious."

Mr. Gates' confirmation as the nation's espionage chief was threatened by accusations by former C.I.A. officials who said that Mr. Gates slanted intelligence during his years as a senior C.I.A. official in the 1980's, either to fit his pessimistic views of the Kremlin or to please his superiors.

GATES' ATTEMPT TO HEAL

But Mr. Gates convinced the majority of the Senate Intelligence Committee that he was not guilty of tailoring intelligence and vowed to remove even the "perception" that intelligence could be slanted or politicized and to be more sensitive to agency employees.

In his closing statement, he admitted that it was "discouraging" to see that old problems about management's role in the analytic process and worries about the tailoring of intelligence "have not diminished in intensity even in the years since I left the agency."

Soon after he assumed the job as director, he moved to heal the wounds opened in the confirmation hearings. In his first message to senior managers, he assured them that he wanted to work with everyone in the agency and told them his door would be open to them. He also made phone calls to the analysts who still work for the agency and who had signed sworn affidavits critical of him, telling them that he would not punish them for their actions.

Another study group recommended the creation of an office to devise a plan for an electronic intelligence network that would transmit classified reports, maps, satellite photographs and graphic designs directly to the computer terminals of senior Administration officials. The agency has already completed a study estimating the cost of the network, which would send reports throughout the day six days a week.

The panel also said that issues like security control and the effect on personnel had to be examined before such a network could be created.

"RIGHT KIND OF INTELLIGENCE"

With everyone agreeing that the passing of the Cold War dictates a review, Congress has proposed a reorganization of the nation's intelligence agencies; the Bush administration's own plan is due soon. A somewhat similar non-legislated initiative was launched in the Carter years. It entailed, as does this one, a challenge to the existing disposition of turf. It succumbed to the weight that the Pentagon was able to wield at a time of prominent Soviet threat. The Defense Department itself may still be immune to the sort of full-scope review of mission and structure that now faces the intelligence community. But with the diffusion of the Soviet threat, it becomes possible and necessary to zero in on the intelligence agencies.

Sen. David Boren and Rep. Dave McCurdy, chairman of the intelligence committees, offer their ideas by way of inviting a dialogue with the executive branch on a matter in which President Bush, a former chief of intelligence with a strong interest in the machinery as well as the substance of policy, is an essential interlocutor. The chairmen do not mean to proceed adversarially, but they do mean to assert a broad reading of the oversight function. By tackling this project together, and with bipartisan support, they strengthen the congressional hand. It adds further to congressional leverage that the CIA is a much battle-worn agency and that its current director, Robert Gates, has incurred heavy obligations to stay on Capitol Hill's good side.

Not that the Boren-McCurdy proposals should be whooped through. They are complex and will require hard scrutiny. Some heavy turf wars are ensured by the fact that the proposals undertake to move around the expensive intelligence assets (satellites, electronics) of the collection agencies. Further controversy is added by the proposal to empower a new director of National Intelligence—a "czar"—to run separate bodies dealing with collection, analysis and clandestine operations; this last function would be reserved for a much-reduced CIA. Pooling the different departments' now-dispersed analysis capabilities is a keen issue: One bureaucrat's streamlining is another's stifling of healthy competitive analysis.

To insiders, the inputs—the flow of resources—may be the crux. To the rest of us, what must matter most are the outputs: the quality, timeliness and policy relevance of intelligence. But intelligence should not only produce "the right kind of intelligence," as Sen. Boren says. The agencies must be open to the outside, and they must respect the law. The world is changing. So should they.

The PRESIDING OFFICER. [Mr. ROCKEFELLER]. The Senator from New York is recognized.

Mr. MOYNIHAN. I thank the Chair.

(The remarks of Mr. MOYNIHAN pertaining to the introduction of Senate Joint Resolution 254 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MOYNIHAN. Mr. President, seeing no Senator seeking recognition, I respectfully suggest the absence of a quorum.

Mr. HELMS. Will the Senator yield?

Mr. MOYNIHAN. The distinguished Senator from North Carolina is on the floor and wishes to speak.

Mr. HELMS. I thank the Senator.

Mr. MOYNIHAN. I look forward to hearing him.

The PRESIDING OFFICER. The Senator from North Carolina.

JENNIFER KNOX SCORES 1,000TH BASKETBALL POINT

Mr. HELMS. Mr. President, I thank you very much and I thank the able Senator from New York.

Mr. President, I am going to get personal. And I hope I will be forgiven for intruding on the Senate's time for a couple minutes while I point with grandfatherly pride to a marvelous moment in the lives of the Helms family. Specifically I want to brag a little bit about Jennifer Knox, even though I subscribe to that age-old axiom that "Bragging ain't bragging if you can prove it."

Now, Jennifer Knox is the oldest of Dot's and my five granddaughters. (We also are blessed with two fine grandsons.) Jennifer is a senior at Hale High School in Raleigh, and years ago, when she was hardly big enough to lift a regulation basketball, she began practicing, practicing the art of free throws. Then she developed considerable skill at jump shots.

Since she is 5 feet 7 inches tall, weighs 110 pounds, I have never seen her slam dunk. She is fast on her feet and executing complex plays is now almost instinctive with her.

As a result, Mr. President, this past Tuesday night, February 4, Jennifer Knox scored the 1,000th point of her high school career. I could not be there to see her do it, but I must confess I became a little misty-eyed when I learned about it on the telephone a few minutes later.

Jennifer will go off to college in September on a full scholarship or, to be precise, two scholarships. One was awarded for her basketball prowess, the other was awarded to Jennifer because of her academic record.

I might mention, proudly, that her SAT score is 1280, which is far better than her grandfather could ever have done. My fellow grandfathers in the U.S. Senate will understand my pride and, as I said at the outset, I hope that I may be forgiven for this bragging.

Mr. President, I thank you and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NATIONAL ENERGY SECURITY ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1620

(Purpose: To amend portions of the bill pertaining to Public Utility Holding Company Act reform)

Mr. JOHNSTON. Mr. President, I am very pleased to say that we have now reached agreement with Senator SANFORD, and Senators BOND and KASSEBAUM, on the very sticky question of capital structures with respect to exempt wholesale generators.

Mr. President, what the amendment says that this law is:

Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations—

Called for in the paragraph.

And the evaluations called for in the paragraph are for them to determine whether or not it is appropriate to require an equity-debt ratio of 35–65, or in other words, some higher percentage of equity. That is the power of State regulators under State law, and we are just clearing up that, we are not affecting that State power.

It does not affect the Narragansett doctrine. It does not affect State law with respect to a State's incorporation law. In other words, a State PUC would not be able to reach out beyond its borders and affect the incorporation laws or another State pursuant to this.

But we did want to make clear that whatever powers PUC's have under State law, which in virtually every case is plenary power, with respect to the capital structures of utilities, that they retain that power. And if, for example, they should make this evaluation and determine that an EWG, an exempt wholesale generator, should have a particular kind of capital structure, then acting under their powers under State law, they could make that order.

And that is what this amendment does, is make that clear.

So, Mr. President, I send the 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 Louisiana [Mr. JOHNSTON], for Mr. SANFORD (for himself, Mr. BOND, and Mrs. KASSEBAUM), proposes an amendment numbered 1620.

Mr. JOHNSTON. 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 392, line 11, strike the quotation marks and the final period.

On page 392, between lines 11 and 12, insert the following:

"(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A).

"(D) Notwithstanding section 124 and paragraphs (1) and (2) of section 112(a), each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph.

"(E) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph.".

On page 391, line 7, before "consider," insert "had a proceeding to".

On page 390, line 12, delete "incremental".

At the end of line 14 on page 390, add the following: ": (A)", and on line 22, after "utilities", add "(B) the impact on consumers arising from the fact that the exempt wholesale generator will own the eligible facility at the end of the term of a power sales contract."

Mr. SANFORD. Mr. President, the amendment relating to the debt/equity provisions has now been cleared on both sides.

First, I would like to comment on the provisions addressing the issue of the appropriate debt/equity ratios for exempt wholesale generators. I think it is no secret that I had sought somewhat different and more stringent standards regarding such a ratio, but in the spirit of compromise, I have agreed to support the provisions contained in this amendment. I would like, however, to note my concerns about this issue.

PUHCA BACKGROUND

Title XV would amend the Public Utility Holding Company Act, which is commonly referred to as PUHCA. Specifically, title XV would provide a blanket exemption from the investor and consumer protection provisions of PUHCA for holding companies owning wholesale electric power generation facilities in an unlimited number of States.

I do not think I am alone, Mr. President, in coming to this floor having heard loud and clear from different constituents in my State who have widely varying views about the wisdom of the massive changes to PUHCA that are embodied in title XV. Indeed, some of my constituents have urged me, as a member of the Banking Committee, to do all I can under the rules of the Senate to object to consideration of this title, since the Public Utility Holding Company Act is and always has been a matter of Banking Committee jurisdiction. Other constituents in my State have urged me to do all I can to see that title XV is enacted exactly as it was reported from the Energy Committee.

This new class of exempt wholesale generators—commonly referred to as EWG's—created by title XV is expected to compete with our Nation's regulated public utilities to construct new electric powerplants. I had initially intended to offer an amendment that would simply provide that these EWG's could not be capitalized with more than 65-percent debt unless the appropriate State regulatory commissions authorized a greater percentage. My reason for doing so relates to my deepseated concerns with the overleveraging of America.

PROBLEMS WITH LEVERAGE

It is widely acknowledged that the beneficiaries of this legislation will finance their powerplant projects with tax-deductible nonrecourse debt in amounts far in excess of the proportion of debt that could be used by a regulated public utility if it built the same powerplant. Some argue that because of an anomaly in our Federal tax laws, EWGs may be able to use their highly leveraged capital structures to tap into the equity base of utilities, one of the few equity bases that survived the 1980s.

At the same time, it is also widely acknowledged that EWGs will receive contracts that both guarantee them a stream of income and assure that our public utilities will continue to bear all the risks of owning and operating the underlying electric power production facilities. Some have described this as a form of the no-risk capitalism that characterized the 1980's. Indeed, many public utility companies and others across the country have urged us to reject PUHCA reform outright on the ground that PUHCA was first enacted in large measure because multistate holding companies were using inordinate amounts of debt that in turn imposed great financial burdens on the Nation's consumers of electricity.

Indeed, as I know most of my colleagues have examined the many ideas for lifting our economy out of the recession, we are constantly being told that the usual tools to address such crisis, including monetary policy stimulants, are limited by the tremendous overleveraging in America. Our consumers have too much debt, our Government has too much debt, and our corporations have too much debt.

Proponents of PUHCA reform see it otherwise. They admit the PUHCA was enacted consciously to protect consumers, as well as investors in securities, and that Congress focused specifically on the risks that excessive leverage presented to both groups. I know some claim, however, that times have changed since 1935 and that PUHCA now stands as nothing more than an anachronistic barrier to the development of multistate enterprises that would provide an alternative supply option to those utilities that wished to purchase electricity for resale rather than continuing to construct all their own generating plants. Many have asserted that PUHCA reform presents no new financial risk in general and that the use of substantial debt by EWG's presents no new financial risk in particular.

UNFAIR ADVANTAGE

Our brief hearings before the Securities Subcommittee did not contain enough specific evidence to convince me that this new class of EWG's necessarily will compete with regulated utilities on the bases of inherently superior technology or operating skills that will bring the increased economic efficiencies promised by supporters of this legislation. However, as I pointed out earlier, the testimony submitted to our subcommittee did demonstrate that EWG's will use levels of nonrecourse debt that approach 90 percent or more of total project cost. In contrast, as a result of regulatory requirements and the constraints imposed by the capital markets, the capital structure of a regulated utility typically consists of approximately 50-percent equity and 50-percent debt.

As the Senate is aware, Mr. President, there is a strong Federal tax bias in favor of debt financing; for example, interest on debt is tax deductible while dividends on equity are not deductible. Because of this, many public utilities and others assert that the more highly leveraged EWG's will have a substantial and taxpayer-subsidized cost of capital advantage over equity intensive utilities. If this artificially induced cost of capital advantage can be maintained, I am afraid it could enable EWG's consistently to underbid utilities for the construction of new generating plants while at the same time paying their equity holders a higher rate of return than permitted for regulated utilities. In short, if this argument is correct, the competition envisioned by the Energy Committee will not occur on a level playing field.

Ordinarily, however, the tax induced cost of capital advantage resulting from excessive leverage could not be maintained. For most businesses, providers of equity and lenders would both demand greater financial returns to compensate them for the added risks of higher leverage. In turn, this additional compensation to the providers of capital would offset most of the tax advantages that would otherwise result from excessive leverage.

Normally, electric power generating plants are subject to this financial market discipline against piling dollar of debt upon dollar of debt. There is a substantial amount of risk associated with utility plant investment. Such plants require a large capital investment, have a single purpose, and cannot be moved. Past history indicates that fuel costs are wholly unpredictable. Finally, there can be no certainty as to whether the projected consumer demand necessary to support the plant will be sustained over the long useful life of the plant. Given these risk factors, prospective lenders to highly leveraged EWG's would ordinarily demand high interest rates—perhaps approaching junk bond levels—in order to compensate them not only for the time value of the money they provide, but also for the greater risk that such a high amount of leverage entails.

But, Mr. President, EWG's expect to avoid the prohibitively high interest rates their high degree of leverage normally would require by shifting the risks associated with operation of the EWG's powerplant to the utility that purchases EWG power through a long term contract. Under these contracts, capacity charges mandatory power purchases, fuel adjustment clauses and similar provisions will assure that the EWG is guaranteed a stream of income from the utility sufficient to assure lenders that the EWG will be able to repay its debts. The utility will of course not be compensated by the EWG for assuming such risks since any such compensation would in effect shift the risk back to highly leveraged EWG and subject it to interest rates that would jeopardize its viability.

If this scenario of high leverage materializes, Mr. President, there can be serious financial consequences for consumers, for taxpayers and for regulated public utilities. For one thing, the substantial levels of equity now invested by utilities in electric generating plants will necessarily be reduced to the extent incremental or replacement capacity is built by highly leveraged EWG's.

Second, regulated utilities could have their cost of capital for their own future projects increased if they rely to any substantial extent on power purchases from highly leveraged EWG's. Private sector rating agencies have already made it plain that utilities with substantial EWG contracts may have the project indebtedness of the EWG attributed them.

In such a case, the imputed debt would reduce the equity to debt ration the utility would be deemed to have when it seeks to finance its own new projects. Faced with such a situation, the utility could be required either to raise new equity at a higher cost than debt under current tax laws or pay an interest rate based on a higher risk premium for new debt, or both. To the extent the utility is required to incur costs to offset the effect of EWG project indebtedness, those costs are passed through to consumers and reduce the savings promised in the first instance by EWG sponsors.

Third, EWG contracts that shift the demand and operational risks of the EWG facility to a utility will increase the financial risks of the system as a whole. The net increase in risk will arise because the utility will still bear

all of the demand and operational risks that it would have borne had it built the plant itself, but in the end it will not own the plant and cannot include the plant in its rate base. In the end, utilities will own far fewer plants and will have a much-reduced asset base.

Mr. President, these are only illustrations of the complex financial issues that are at the heart of the debate over PUHCA reform. I will readily admit, however, that the proponents of PUHCA reform see it otherwise. As I said earlier, they contend that times have changed, that PUHCA has become an anachronism, and that it must be amended to permit competition and the efficiencies that will result from the additional supply options that EWG's will provide. They also contend that, while EWG'S will use proportionately greater debt than utilities, that will not present any financial concerns of the type I have outlined.

This debate over the financial consequences of PUHCA reform has raged for more than a year, Mr. President. Indeed, the report of the Energy Committee states that there is a "significant difference of opinion" on these issues. I am not willing, Mr. President, to assume that either side is 100-percent right.

COMPROMISE AMENDMENT

Mr. President, when I first looked at this issue, I was inclined to place a flat debt limit of 65 percent that could be used in financing powerplants. However, in order to accommodate concerns raised by the independent power producers and constituents in my State who favor PUHCA reform, I decided to modify my amendment to permit State utility commission to waive this debt limit on a project-by-project basis. Then, in order to meet the concerns raised by Senator JOHNSTON and others, the amendment was further modified to give the States more leeway in conducting proceedings, to consider debt-equity ratios under the provisions outlined in section 15107 of the bill.

I am pleased that this compromise amendment has been worked out. While it does not go as far as I would have liked, it does go a long way toward urging the States to consider very carefully the implications of permitting highly leveraging financing of power production. I think this amendment is now completely reasonable to all those involved in this debate and I hope will result in placing a crucial brake on excessive leverage.

This amendment does not flatly prohibit the use of high leverage by EWG's. But, I am equally unwilling to ignore the lessons of the high debt of the 1980's. Examples now litter Bankruptcy Courts from coast to coast. This is particularly true when the current system we are about to replace has worked and worked well. As the Congressional Research Service recently concluded:

Whatever else may be said about the current regulatory system, it has worked. The Nation has enjoyed many decades of available electricity at prices well within the norm for [sic] industrialized world. And, there is every indication that the system will continue to respond to changes in technology, utility structure and consumer needs. The major reason why the system has worked is because of the ingenious scheme of regulation devised at the time of enactment of the Federal Power Act and the Public Utility Holding Company Act. That scheme was forged a half-century ago in an effort to provide a flexible balance between Federal and State regulation for the purpose of assuring competent regulation and reliability of service.

I believe my amendment is a fair compromise. I remain concerned that we may be going too far in deregulating electric power production through enactment of title XV, but I believe I have done what I can to shore up the provisions relating to debt/equity ratios in the bill.

In addition, I am pleased that we will be including further provisions to address additional concerns with PUHCA reform relating to self-dealing and access to books and record. The amendment by my colleague, Mr. RIEGLE, addresses the issue known as self-dealing or affiliate transactions with a parent or utility affiliate. The concern that many independent power producers, consumer groups and others have raised is that the bill provides no safeguards regarding transactions between utilities and their own affiliates. The amendment would prohibit self-dealing between such utilities and their affiliates unless the State has determined that such affiliate transactions will benefit consumers, is in the public interest and does not violate any State law. This is an important safeguard and I am pleased that managers of the bill have agreed to this provision.

I am also pleased that provisions providing state regulators with needed access to the books and records of exempt wholesale generators and utilities have been included.

While the amendment with respect to the debt/equity ratio is not all that I had originally hoped for, I think we have reached an acceptable compromise. I commend the excellent work of Senator RIEGLE and Senator JOHNSTON and their staffs and others in arriving at this compromise.

Finally, I ask unanimous consent that a series of letters I have received outlining concerns with excessive leverage by exempt wholesale generators be printed in the RECORD.

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

CAROLINA POWER & LIGHT CO.,
Raleigh, NC, February 3, 1992.

Hon. TERRY SANFORD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR TERRY: As representative of Carolina Power & Light and the Electric Reliability Coalition, I express strong opposition about proposed changes to the Public Utility Holding Company Act (PUHCA). Amending PUHCA will not represent the best interest of our customers, and it could increase their costs and reduce reliability.

My understanding is that you are sponsoring an amendment to S. 2166 that will limit the debt allowed by Exempt Wholesale Generations (EWGs). The use and abuse of debt leverage in our economy is well documented. I strongly favor such an amendment as you propose for the following reasons:

This can help keep the financial risk from shifting to the host utility where the host assumes the financial risk of the EWG.

This can tend to "level the playing field" by ensuring that EWGs are under similar debt/equity requirements as Investor Owned Utilities.

While I again express strong opposition to PUCHA reform, I support your debt/equity amendment to help minimize the adverse effects of this proposed deregulation.

Sincerely,

SHERWOOD H. SMITH, Jr.

FEBRUARY 5, 1992.

Hon. TERRY SANFORD,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR SANFORD: I understand that the Senate is prepared to begin discussions on S. 2166, the National Energy Strategy bill, once again. I am glad to hear this because this is a very important piece of legislation.

The two municipal power agencies in North Carolina are most concerned about the provisions in the bill which would "reform" the Public Utility Holding Company Act (PUHCA). We firmly believe that wholesale reform will be detrimental to the electric utility industry. We believe PUHCA reform will work only if there are checks and balances regarding self-dealing among subsidiaries of a holding company, cross-subsidization among subsidiaries, and transmission access and pricing safeguards, S. 1220 contains none of these checks and balances as currently drafted.

I understand that you share some of these concerns and plan on offering an amendment to try to provide some financial protection. I believe you will offer an amendment to place a cap on the amount of debt financing that an independent power producer (IPP) may use. As more and more utilities, investor-owned and publicly owned, purchase power from IPPs, the financial security of IPPs becomes an important issue for the stability of the industry. Your amendment should provide an additional layer of protection, which we support.

I hope you are successful with the amendment and that you are able to support additional safeguards that may be offered.

Sincerely,

ALICE GARLAND,
Director, Government Affairs.

NORTH CAROLINA ASSOCIATION OF ELECTRIC COOPERATIVES, INC.,
Raleigh, NC, February 2, 1992.

Senator TERRY SANFORD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR SANFORD: The North Carolina Association of Electric Cooperatives, which represents the 28 rural electric cooperatives in this state that serve approximately 600,000 households, supports your amendment to Title 15 of S. 2166.

We agree with you that a cap of 65 percent on debt to finance IPP's is sufficient. How-

ever, we understand your amendment does allow a state's utility commission to override this cap if they find that the circumstances of a particular project warrant more indebtedness.

Sincerely,

JAMES LEE BURNEY,
Manager of Government Relations.

TEXAS UTILITIES CO.,
Dallas, TX, February 4, 1992.

Hon. TERRY SANFORD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SANFORD: I have been informed that you intend to offer an amendment to S. 2166 which would place limits on the relative amount of debt that a so-called Exempt Wholesale Generator (EWG) would be able to carry in this capital structure. Although I remain opposed to the provisions in the legislation which would amend the Public Utility Holding Company Act (PUHCA), I agree with you on the need for such an amendment.

An EWG is able to obtain debt and equity capital at reasonable rates only because it is able to shift financial risk to the host utility through long-term purchased power contracts. Although the ability to shift risk to the utility lowers the EWG's capital cost, it will raise funding costs for the purchasing utility, and ultimately will result in higher electricity costs for the consumer.

Since they have less equity invested in a project, EWGs with high debt-to-equity ratios may not have the best interests of the electrical consumer in mind when faced with either maintaining service or reducing their financial losses.

Thank you for your willingness to take on such an important, and complex, issue. I firmly believe your amendment will help reduce the detrimental effects these deregulation proposals will have on the consumers of electricity in this country.

Sincerely,

JERRY FARRINGTON.

CENTRAL AND SOUTH WEST SERVICES, INC.,
Washington, DC, February 4, 1992.

Hon. TERRY SANFORD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR: As Director of Federal Affairs for the Central and South West system companies, I wish to express strong opposition to the proposed changes to the Public Utility Holding Company Act (PUHCA) in S. 2166. We believe amending PUHCA in this manner will be detrimental to our industry by creating a privileged class of wholesale power producers with no obligation to serve in the best interest of our customers.

I am writing to encourage you to offer your amendment to S. 2166 that will limit the debt allowed by Exempt Wholesale Generators (EWGS). Abuses of debt leveraging in our economy are well documented. We are very concerned that the introduction of highly leveraged powerplants in our industry will seriously undermine the electric utility industry, an industry that is fundamental to the economic health of this nation.

We applaud your effort and will work to see that it passes.

Respectfully,

FREDERICK C. WENDORF.

PUBLIC SERVICE CO. OF COLORADO,
Denver, CO, February 4, 1992.

Hon. TERRY SANFORD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SANFORD: Public Service Company of Colorado supports your amendment to Title XV of S. 2166. Your amendment would retain some of the protections of the Public Utility Holding Company Act (PUHCA) and prevent abuse of debt leverage by the Exempt Wholesale Generators (EWGS).

Our company supports competition, but we believe it should be on a "level playing field" as provided by your amendment.

Yours very truly,

D.D. HOCK.

Mrs. KASSEBAUM. Mr. President, although there are many parts of this bill I support, I do not support the provisions amending the Public Utility Holding Company Act [PUHCA].

The public power industry was regulated back in 1935 to correct abuses by utility holding companies. The corporate temptation to engage in such abuse has not changed in 50 years. Any attempt to deregulate utility holding companies should be carefully and fully considered.

Deregulating utility holding companies will come back to haunt us. As we stand by and watch one major airline after another file by bankruptcy and cease operations, I believe we all would agree that airline deregulation should have been more carefully considered. As we prepare to give another $30 billion to the Resolution Trust Corporation, we would all agree that savings and loan deregulation and tax reform should have been more carefully considered.

As we spent last week struggling to correct the problems of cable deregulation, we would all agree we were too hasty in deregulating that industry back in 1984.

If we deregulate the public power utilities today, without better understanding of what we are doing, I have no doubt that we will be back here in 6 years trying to correct our action.

I can only hope that it will take fewer bankruptcies than airline deregulation, less taxpayer money than savings and loan deregulation, and less consumer outrage than cable deregulation for us to focus properly on the full impact of what we are doing.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that Senator RIEGLE be added as a cosponsor to the Sanford, et al. amendment.

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

Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1620) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. BURNS. Mr. President, I ask unanimous consent to add Senator WALLOP as a cosponsor of the Hatch amendment No. 1617 we adopted earlier today on radiation exposure compensation.

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

Mr. JOHNSTON. Mr. President, I might add for the edification of such colleagues as are still in town that we have made a lot of progress today, particularly with the last amendment. The Public Utility Holding Company Act provisions of this bill are some of the most far-reaching, some of the most important, and will have some of the most dramatic effects on energy markets, the price consumers pay for energy, the efficiency with which it is generated, and the reliability with which it is delivered. And with the last amendment, we have, I believe, settled the principal question with respect to Public Utility Holding Company Act reform..

There remain some other amendments that have been reserved with respect to that, but the amendment by the Senator from North Carolina [Mr. SANFORD] was the principal one because, frankly, if we had had a requirement for a particular percentage of equity with an exempt wholesale generator, it simply could not work because of the way EWG's are structured, they are structured to have a greater degree of debt than ordinary utilities do, for the reasons which I explained in some detail yesterday.

But with this amendment, we now make it clear that the State PUC must look at that debt-equity ratio, make a determination with respect to it, and that their powers with respect to affecting it or making orders with respect to it under State law remain undiminished.

Mr. President, we will come back on Tuesday. I urge all Senators to be ready to go on Tuesday with their amendments. The present order states that we will begin work on the ANWR amendment, to be followed by a motion to table. But it may be that on Tuesday, the ANWR amendment will go away, which means that the bill will then be open for further amendment.

So Senators should be prepared to put in their amendments early on Tuesday, just in case that goes away.

AMENDMENT NO. 1621

Mr. JOHNSTON. Mr. President, we do have an additional three amendments.

First of all, I will send to the desk a sense-of-the-Senate resolution on the alternative minimum tax, stating that:

It is the sense of the Senate that the Senate Committee on Finance review the impact of the alternative minimum tax on domestic oil and gas producers and domestic oil and gas production and take such action as may be appropriate to promote domestic production.

That is submitted on behalf of Senator NICKLES, and I send it 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 Louisiana [Mr. JOHNSTON], for Mr. NICKLES, proposes an amendment numbered 1621.

Mr. JOHNSTON. 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:

It is the sense of the Senate that the Senate Committee on Finance should review the impact of the alternative minimum tax on domestic oil and gas producers and domestic oil and gas production and take such action as may be appropriate to promote domestic production.

Mr. BURNS. Mr. President, on the adoption of the amendment offered by our chairman, for Mr. NICKLES, I would like this Senator to be added as a cosponsor on that, and also a statement in the RECORD that it is time we started to take action, either through the Tax Code, spurring on domestic production in this country in light of the trade imbalance and our dependence on imported oil and our energy goals.

So I think this is a very good sense-of-the-Senate amendment.

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

If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1621) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 1622 AND 1623, EN BLOC

Mr. JOHNSTON. Mr. President, I send two amendments to the desk and ask unanimous consent they be considered en bloc, and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes amendments en bloc numbered 1622 and 1623.

Mr. JOHNSTON. Mr. President, the first amendment by Senator GLENN and myself establishes Federal Government energy audit teams. And the second amendment, by Senator GLENN, Senator KOHL, and myself, encourages energy efficiency by Federal Government contractors.

Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 1622

At the end of title VI, subtitle B, add the following new section:

SEC. 6305. ENERGY AUDIT TEAMS.

(a) ENERGY AUDIT TEAMS.—The Secretary shall assemble from existing personnel with appropriate expertise, and with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities. Particular attention shall be given to exploiting expertise and resources that are not generally available in the private sector.

(b) MONITORING PROGRAMS.—The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

AMENDMENT NO. 1623

At the end of title VI, subtitle B, add the following new section:

SEC. 6305. GOVERNMENT CONTRACT INCENTIVES.

(a) ESTABLISHMENT OF CRITERIA.—Each agency, in consultation with the Federal Acquisition Regulations Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal government contractors or subcontractors.

(b) UTILIZATION OF CRITERIA.—To encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government. Each agency head shall utilize the criteria developed under subsection (a) in all cost-plus-award-fee contracts.

• Mr. GLENN. Mr. President, this amendment, numbered 1622, will have the effect of formalizing a capability which now exists in a fragmented state in our national laboratories. The national labs have done a lot of work on energy conservation, as well as on new energy sources. They have a number of highly trained and highly experienced personnel who have worked on these problems—including people who specialize in computing heat transfer through building walls, compiling statistics on leaks, determining the efficiency of air-conditioning systems, and the like. The national labs have instruments and techniques, some of them very sophisticated, that have been used for these studies of heating and cooling in buildings.

The intention of this amendment is to create one or more teams composed of these people. Each team would represent all of the different disciplines needed to look at the energy situation in a building or any other facility. These teams will find out where the opportunities for energy improvement exist and they will recommend the most economical changes. This might involve modifications to the physical plant. It could be something as simple as changing the operating procedures of a building.

We will want some assurance that any changes that these teams suggest are really paying dividends. The amendment contains a provision for feedback from the facility managers who have used the team's services. DOE will be directed to keep records on the changes made and on the savings that they bring about. This will let us know just how effective the teams have been. It will also provide selling points for technology transfer in case the labs come up with any really new concepts.

It is well known that efforts to manage energy can pay for themselves many times over. Through this amendment we intend to tap a resource for energy management that is not now available to Government facilities.

Mr. President, I would like to comment briefly on the amendment, numbered 1623, to promote greater energy efficiency at our Government-owned, contractor-operated [GOCO] facilities.

Let me just cite the area I am most familiar with—DOE's own GOCO contracts. According to the General Accounting Office [GAO], in fiscal year 1990, DOE obligated about $13.8 billion to its management and operating [M&O] contractors for the operation, maintenance, or support of DOE-owned research, development, production, and testing facilities. All of DOE's M&O contracts are fully reimbursable, cost-type contracts. In other words, every dollar spent by the contractors to run DOE's facilities is paid back by the Government and, ultimately, the taxpayers.

DOE's Office of Inspector General has reported to Congress, beginning in April 1990, that DOE lacks adequate assurance that the M&O contractors are operating economically, efficiently, and in the Government's best interest. While we cannot hope to provide complete assurance that all DOE contractors, or for that matter, all such Government contractors, are operating in an efficient manner all of the time, it is my hope that this amendment will help ensure that contractors of GOCO facilities operate more efficiently with regard to energy use.

In a cost reimbursable contract, such as a cost-plus-award-fee contract, all of the contractor's operating costs are reimbursed by the contracting agency. Thus, the contractors themselves have little incentive to reduce their energy consumption, since the Government, and ultimately we the taxpayers, will cover the cost.

I have proposed a series of amendments adopted earlier to the national energy bill to improve energy efficiency in the Federal Government, particularly in Federal buildings, which number over 500,000. I think we, rightly, should also go one step further and

encourage the private contractors which operate Government facilities to adopt and utilize energy conservation measures.

This amendment will require agency heads, in consultation with the Federal Acquisition Regulations Council, to establish criteria to be utilized in all cost-plus-award-fee contracts aimed at increasing energy efficiency. Simply put, if the contractor cuts energy costs, the taxpayers save, and we make better use of our resources. For example, the majority of DOE's M&O contracts, 29 out of 52, are cost-plus-award-fee contracts, and for these such contracts a portion of the award-fee pool will be set-aside for energy conservation and awarded to those contractors that meet DOE's established criteria.

I believe this is a prudent step for us to take in crafting a comprehensive national energy strategy. I want to thank the floor managers, Senators JOHNSTON and WALLOP, and their staffs, for working with me on this important amendment.●

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

The amendments (Nos. 1622 and 1623) were agreed to en bloc.

The PRESIDING OFFICER. Without objection, the motion to reconsider is laid on the table.

ACTION VITIATED—AMENDMENT NO. 1616

Mr. BURNS. Mr. President, I ask unanimous consent the Senate vitiate its action earlier on amendment 1616 of Senator WIRTH. It was not possible to reach an agreement on the colloquy.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JOHNSTON. That is agreeable.

TRANSMISSION ACCESS, SAFE HARBOR, AND VOLUNTARY ASSOCIATION

Mr. SEYMOUR. Mr. President, I rise today to voice my concerns about the lack of language in S. 2166 to address the issue of wholesale electric power transmission access. I am hopeful that this oversight will be remedied when the Senate and House energy bills are conferenced.

Suitable transmission access to bring wholesale electric power to all utilities and their customers is a must for my State of California. I support voluntary transmission access legislation that allows parties to agree to wheel power in the public interest through regionally formed associations. I believe that such legislation will not only limit government involvement and save time and money, but also allow the Federal Energy Regulatory Commission [FERC] to exercise its regulatory mandate in a more efficient manner.

I am confident that voluntary transmission associations will allow both public and private entities to join together and address the issue of transmission access in a way that is beneficial to both industry and consumers. I would therefore urge the Senate conferees to carefully consider the voluntary transmission access provisions which will likely be included in the energy bill the House of Representative is currently formulating.

FERC–NEPA AMENDMENT NO. 1608

Mr. LAUTENBERG. Mr. President, last night the Senate adopted amendment No. 1608 which included provisions relating to the Federal Energy Commission's [FERC] implementation of the National Environmental Policy Act [NEPA]. NEPA comes under the jurisdiction of the Subcommittee on Superfund, Ocean, and Water Protection which I chair. Amendment No. 1608 includes provisions to remove the sections in S. 2166 relating to FERC's compliance with NEPA which are inconsistent with established procedures for implementing NEPA. I want to thank the managers of the bill, Senators JOHNSTON and WALLOP, for including my provisions in amendment No. 1608.

As introduced, S. 2166 included a number of provisons which attempted to address problems in FERC's implementation of NEPA. But the problems are not due to NEPA itself. They result from FERC's failure to abide by the Council on Environmental Quality's regulations which implement NEPA.

In 1979, the Council on Environmental Quality issued regulations to implement NEPA. These regulations have reduced time to comply with NEPA while improving the NEPA process which is designed to improve Federal decisionmaking. There simply is no reason to allow FERC to divert from the procedures which every other Federal agency has followed for over a decade.

FERC has argued that, because it is an independent agency, it is not bound by CEQ's regulations. To eliminate this argument, S. 1278, which I introduced, would make clear that FERC is bound by CEQ's regulations. I will continue to work for FERC's full compliance with the CEQ NEPA regulations.

As introduced, S. 2166 included some provisions which are inconsistent with CEQ regulations. I ask unanimous consent that a letter from CEQ Chairman Mike Deland to me describing some of these inconsistencies be included in the RECORD.

S. 2166 would have given FERC unprecedented control over other Federal agencies in the NEPA compliance process. It would:

Establish FERC as the lead agency for projects under its jurisdiction;

Allow FERC to establish time periods for other agencies to participate in the NEPA process;

Allow FERC to proceed if other agencies fail to act within the FERC-established time period; and

Require another Federal agency which makes recommendations on the project or must approve the project to take into account the FERC NEPA document.

The CEQ NEPA regulations establish procedures for determining the lead agency for preparing an environmental impact statement and for agencies to work together cooperatively in the NEPA process. I expect that in most instances involving FERC jurisdiction, FERC would be the lead for NEPA implementation. And I certainly want Federal agencies to work cooperatively in NEPA implementation to reduce delays and develop the best environmental information for Federal decisionmakers. But the CEQ has established procedures for implementing NEPA. The CEQ procedures require Federal agencies to work cooperatively rather than giving any one agency complete control over NEPA implementation. The CEQ procedures are used by every other Federal agency. These are the procedures which FERC should be following.

In addition, for natural gas projects, S. 2166 would have allowed applicants for pipeline approval to choose a contractor to prepare an environmental impact statement. Under the CEQ regulations, agencies choose the contractor. This helps preserve the integrity of the NEPA process.

The bill also would have established a different standard than provided for in the CEQ regulations and existing law concerning the scope of the project under review in the impact statement. It simply makes no sense to have one set of procedures for Federal agencies and another for FERC.

Amendment No. 1608 removes the provisions in S. 2166 which are inconsistent with the requirements of the NEPA regulations and existing law. It allows third parties to prepare impact statements but also requires that FERC and not the applicant choose the contractor as the NEPA regulations allow. It also requires FERC to apply standards for determining the scope of a project under review in the impact statement which are similar to standards adopted by the Corps of Engineers and which have been approved by CEQ.

The amendment also makes two key improvements in the way FERC does business under NEPA. FERC is directed to enter into memoranda of understanding with other Federal agencies respecting compliance. This will foster an improved cooperative understanding between FERC and other agencies toward meeting the requirements of the NEPA process. FERC also is required to inform the licensing applicant, Federal and State agencies, and other interested parties of the issues to be analyzed as part of the NEPA process at the beginning of the licensing procedure. Known as the scoping process under the NEPA regulations, this effort is essential to timely and thorough NEPA compliance.

Mr. President, I intend to continue to pursue the problem of FERC compliance with NEPA to ensure that FERC is fully complying with the National Environmental Policy Act.

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

COUNCIL ON
ENVIRONMENTAL QUALITY,
Washington, DC, September 20, 1991.

Senator FRANK R. LAUTENBERG,
Chairman, Subcommittee on Superfund, Ocean and Water Protection, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are the responses to your questions regarding S. 1278, which you submitted to CEQ following the subcommittee's hearing.

Please do not hesitate to contact me if you are in need of any further information.

With best regards.

Sincerely,

MICHAEL R. DELAND.

CEQ RESPONSES TO QUESTIONS BY SENATOR LAUTENBERG REGARDING S. 1278

1. The National Energy Strategy contains a number of provisions which appear to either duplicate or be inconsistent with provisions in CEQ's NEPA regulations. Please tell the Subcommittee whether each of the provisions addressing the environmental impact statement process in sections 202 and 611 of S. 570, the President's energy bill, and sections 5301 and 11103 of S. 1220, the Senate Energy Committee's energy bill, is consistent with existing NEPA regulations.

A. With one exception, which is discussed below in the answer to Question 3, the relevant provisions of both bills are consistent with the intent of CEQ's implementing regulations which, with respect to every major federal program or project that comes within the ambit of section 102(2)(C) of NEPA, call for:

Fully integrated environmental planning and, insofar as possible, preparation of a single environmental document (40 C.F.R. §§1506.2–1506.4 and 1502.25);

Designation of a suitable lead agency or agencies to coordinate and guide environmental study efforts (40 C.F.R. §1501.5);

A lead agency determination—following a public process—of the appropriate scope of study (40 C.F.R. §1501.7);

Allocation by the lead agency of study assignments among all cooperating agencies (40 C.F.R. §1501.7(a)(4)); and

Establishment by the lead agency of reasonable time limits for the NEPA process (40 C.F.R. §1501.8);

Also, as a side note, there are two provisions which are not clearly consistent or inconsistent.

CEQ regulations allow third-party contracting for preparation of environmental impact statements; section 202(b) of S. 570 is not entirely clear with regard to third-party contracting; and

Section 11103(b) of S. 1220 compels closer cooperation and communication among participation in the EIS process by rejecting the general prohibition against ex parte communications in the context of the NEPA process.

2. If the provisions are consistent with the NEPA regulations, why are they necessary in these bills?

A. To the extent that the bills' provisions mandate preparation of a single environmental impact statement that is intended to satisfy NEPA, as well as any comparable state process, for all agencies that have jurisdiction by law over any aspect of the licensing proposal, they go beyond what is contemplated in the CEQ regulations. Compare 40 C.F.R. §§1502.25 and 1506.2 (calling for consolidated review and documentation "to the fullest extent possible").

3. If they are not consistent, please describe the nature of the inconsistency and the rationale for the provision.

A. New section 7(c)(3)(D) of the Natural Gas Act, proposed to be added by section 11103(a) of S. 1220, provides that FERC "shall not infer any control or responsibility over nonjurisdictional activities for purposes of carrying out its environmental responsibilities under [NEPA]." This provision is apparently intended to delimit the scope of FERC environmental review, eliminating from consideration the effects of activities which, while related to a proposal under study, are not subject to the agency's jurisdiction. Whether or not the effects of those activities would otherwise be subject to review under NEPA is a complicated question that turns primarily on the issue of the foreseeability of those effects. See 40 C.F.R. §1508.8(b) ("Effects" include "[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable"). Under the CEQ regulations, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,027, 18,028 (1981) (Answer to Question No. 2b).

4. One provision found in both bills appears to allow FERC to ignore other Federal and state agency comments if the agencies do not act within time frames established by FERC. Would this be consistent with the NEPA regulations?

A. The pertinent CEQ regulation (40 C.F.R. §1501.8) has never been construed to prohibit an agency to proceed unilaterally to conclude the NEPA process. Section 1501.8 of CEQ's implementing regulations recognizes that time limits must be consistent with both "the purposes of NEPA and other essential considerations of national policy." However, depending upon the nature of the other agency's participation and the substance of that agency's contribution, a lead agency could risk publication of an inadequate NEPA document if it proceeded unilaterally.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the time of 12:30 p.m. having arrived, there will now be a period for the transaction of morning business with Senators permitted to speak therein.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

MICHIGAN SCENIC RIVERS ACT

Mr. EXON. Mr. President, I ask unanimous consent, and I think this is cleared on both sides of the aisle, that the Senate proceed to the immediate consideration of Calendar No. 365, H.R. 476, the Michigan Scenic Rivers Act of 1991; that the committee amendments be agreed to; that the bill be deemed read a third time and passed and the motion to reconsider be laid upon the table; further, that any statements relating to this matter be printed in the RECORD.

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

The Senate proceeded to consider the bill (H.R. 476) to designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 476

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 "Michigan Scenic Rivers Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the State of Michigan possesses many outstanding free-flowing rivers which with their adjacent lands have resource values of national significance, such as outstanding wildlife and fisheries, ecological and recreational values, and historic and prehistoric sites;

(2) many of these rivers have been found to be eligible for inclusion in the National Wild and Scenic Rivers System by the United States Forest Service while others possess outstanding values that make them eligible for wild and scenic river designation; and

(3) the conservation of these river areas and their outstanding natural, cultural, and recreational values is important to the heritage of Michigan and to its tourism and outdoor recreation industry and long-term economic development.

SEC. 3. WILD, SCENIC, AND RECREATIONAL RIVER DESIGNATION.

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

"( ) BEAR CREEK, MICHIGAN.—The 6.5-mile segment from Coates Highway to the Manistee River, to be administered by the Secretary of Agriculture as a scenic river.

"( ) BLACK, MICHIGAN.—The 14-mile segment from the Ottawa National Forest boundary to Lake Superior, to be administered by the Secretary of Agriculture as a scenic river.

"( ) CARP, MICHIGAN.—The 27.8-mile segment from the west section line of section 30, township 43 north, range 5 west, to Lake Huron, to be administered by the Secretary of Agriculture in the following classes:

"(A) The 2.3-mile segment from the west section line of section 30, township 43 north, range 5 west, to Forest Development Road 3458 in section 32, township 43 north, range 5 west, as a scenic river.

"(B) The 6.5-mile segment from the Forest Development Road 3458 in section 32, town-

ship 43 north, range 5 west, to Michigan State Highway 123, as a scenic river.

"(C) The 7.5-mile segment from Michigan State Highway 123 to one quarter of a mile upstream from Forest Development Road 3119, as a wild river.

"(D) The 0.5-mile segment from one quarter of a mile upstream of Forest Development Road 3119 to one quarter mile downstream of Forest Development Road 3119, as a scenic river.

"(E) The 4.9-mile segment from one quarter of a mile downstream of Forest Development Road 3119 to McDonald Rapids, as a wild river.

"(F) The 6.1-mile segment from McDonald Rapids to Lake Huron, as a recreational river.

"( ) INDIAN, MICHIGAN.—The 51-mile segment from Hovey Lake to Indian Lake to be administered by the Secretary of Agriculture in the following classes:

"(A) The 12-mile segment from Hovey Lake to Fish Lake, as a scenic river.

"(B) The 39-mile segment from Fish Lake to Indian Lake, as a recreational river.

"( ) MANISTEE, MICHIGAN.—The 26-mile segment from the Michigan DNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge, to be administered by the Secretary of Agriculture as a recreational river.

"( ) ONTONAGON, MICHIGAN.—Segments of certain tributaries, totaling 157.4 miles, to be administered by the Secretary of Agriculture as follows:

"(A) The 46-mile segment of the East Branch Ontonagon from its origin at Spring Lake to the Ottawa National Forest boundary in the following classes:

"(i) The 20.5-mile segment from its origin at Spring Lake to its confluence with an unnamed stream in section 30, township 48 north, range 37 west, as a recreational river.

"(ii) The 25.5-mile segment from its confluence with an unnamed stream in section 30, township 48 north, range 37 west, to the Ottawa National Forest boundary, as a wild river.

"(B) The 59.4-mile segment of the Middle Branch Ontonagon, from its origin at Crooked Lake to the northern boundary of the Ottawa National Forest in the following classes:

"(i) The 20-mile segment from its origin at Crooked Lake to Burned Dam, as a recreational river.

"(ii) The 8-mile segment from Burned Dam to Bond Falls Flowage, as a scenic river.

"(iii) The 8-mile segment from Bond Falls to Agate Falls, as a recreational river.

"(iv) The 6-mile segment from Agate Falls to Trout Creek, as a scenic river.

"(v) The 17.4-mile segment from Trout Creek to the northern boundary of the Ottawa National Forest, as a wild river.

"(C) The 37-mile segment of the Cisco Branch Ontonagon from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen in the following classes:

"(i) The 10-mile segment from the origin of Cisco Branch Ontonagon at Cisco Lake Dam to the County Road 527 crossing, as a recreational river.

"(ii) The 27-mile segment from the Forest Development Road 527 crossing to the confluence of the Cisco Branch and Ten-Mile Creek, as a scenic river.

"(D) The 15-mile segment of the West Branch Ontonagon from its confluence with Cascade Falls to Victoria Reservoir, in the following classes:

"(i) The 10.5-mile segment from its confluence with Cascade Falls to its confluence with the South Branch Ontonagon, as a recreational river.

"(ii) The 4.5-mile segment from its confluence with the South Branch Ontonagon to Victoria Reservoir, as a recreational river.

Notwithstanding any limitation contained in this Act, the Secretary is authorized to acquire lands and interests in lands which, as of August 1, 1990, were owned by Upper Peninsula Energy Corporation, and notwithstanding any such limitation, such lands shall be retained and managed by the Secretary as part of the Ottawa National Forest, and those lands so acquired which are within the boundaries of any segment designated under this paragraph shall be retained and managed pursuant to this Act.

"( ) PAINT, MICHIGAN.—Segments of the mainstream and certain tributaries, totaling 51 miles, to be administered by the Secretary of Agriculture as follows:

"(A) The 6-mile segment of the main stem from the confluence of the North and South Branches Paint to the Ottawa National Forest boundary, as a recreational river.

"(B) The 17-mile segment of the North Branch Paint from its origin at Mallard Lake to its confluence with the South Branch Paint, as a recreational river.

"(C) The 28-mile segment of the South Branch Paint from its origin at Paint River Springs to its confluence with the North Branch Paint, as a recreational river.

"( ) PINE, MICHIGAN.—The 25-mile segment from Lincoln Bridge to the east 1/16th line of section 16, township 21 north, range 13 west, to be administered by the Secretary of Agricultural as a scenic river.

"( ) PRESQUE ISLE, MICHIGAN.—Segments of the mainstream and certain tributaries, totaling 57 miles, to be administered by the Secretary of Agriculture as follows:

"(A) The 23-mile segment of the mainstream, from the confluence of the East and West Branches of Presque Isle to Minnewawa Falls, to be classified as follows:

"(i) The 17-mile segment from the confluence of the East and West Branches Presque Isle to Michigan State Highway 28, as a recreational river.

"(ii) The 6-mile segment from Michigan State Highway 28 to Minnewawa Falls, as a scenic river.

"(B) The 14-mile segment of the East Branch Presque Isle within the Ottawa National Forest, as a recreational river.

"(C) The 7-mile segment of the South Branch Presque Isle within the Ottawa National Forest, as a recreational river.

"(D) The 13-mile segment of the West Branch Presque Isle within the Ottawa National Forest, as a scenic river.

"( ) STURGEON, HIAWATHA NATIONAL FOREST, MICHIGAN.—The 43.9-mile segment from the north line of section 26, township 43 north, range 19 west, to Lake Michigan, to be administered by the Secretary of Agriculture in the following classes:

"(A) The 21.7-mile segment from the north line of section 26, township 43 north, range 19 west, to Forest Highway 13 as a scenic river.

"(B) The 22.2-mile segment from Forest Highway 13 to Lake Michigan as a recreational river.

"( ) STURGEON, OTTAWA NATIONAL FOREST, MICHIGAN.—The 25-mile segment from its entry into the Ottawa National Forest to the northern boundary of the Ottawa National Forest, to be administered by the Secretary of Agriculture in the following classes:

"(A) The 16.5-mile segment from its entry into the Ottawa National Forest to Prickett Lake, as a wild river.

"(B) The 8.5-mile segment from the outlet of Prickett Lake Dam to the northern boundary of the Ottawa National Forest, as a scenic river.

"( ) EAST BRANCH OF THE TAHQUAMENON, MICHIGAN.—The 13.2-mile segment from its origin in section 8, township 45 north, range 5 west, to the Hiawatha National Forest boundary, to be administered by the Secretary of Agriculture in the following classes:

"(A) The 10-mile segment from its origin in section 8, township 45 north, range 5 west, to the center of section 20, township 46 north, range 6 west, as a recreational river.

"(B) The 3.2-mile segment from the center of section 20, township 46 north, range 6 west, to the boundary of the Hiawatha National Forest, as a wild river.

"( ) WHITEFISH, MICHIGAN.—Segments of the mainstream and certain tributaries, totaling 33.6 miles, to be administered by the Secretary of Agriculture as follows:

"(A) The 11.1-mile segment of the mainstream from its confluence with the East and West Branches of the Whitefish to Lake Michigan in the following classes:

"(i) The 9-mile segment from its confluence with the East and West Branches of the Whitefish to the center of section 16, township 41 north, range 21 west, as a scenic river.

"(ii) The 2.1-mile segment from the center of section 16, township 41 north, range 21 west, to Lake Michigan, as a recreational river.

"(B) The 15-mile segment of the East Branch Whitefish from the crossing of County Road 003 in section 6, township 44 north, range 20 west, to its confluence with the West Branch Whitefish, as a scenic river.

"(C) The 7.5-mile segment of the West Branch Whitefish from County Road 444 to its confluence with the East Branch Whitefish, as a scenic river.

"( ) YELLOW DOG, MICHIGAN.—The 4-mile segment from its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa National Forest, to be administered by the Secretary of Agriculture as a wild [river.] *river.*".

["( ) BRULE, MICHIGAN AND WISCONSIN.—The 33-mile segment from the Brule Lake in the northeast quarter of section 15, township 41 north, range 13 east, to the National Forest boundary at the southeast quarter of section 31, township 41 north, range 17 east, to be administered by the Secretary of Agriculture as a recreational river.".]

SEC. 4. WILD AND SCENIC RIVER STUDIES.

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

"( ) BRULE, MICHIGAN AND WISCONSIN.—The 33-mile segment from Brule Lake in the northeast quarter of section 15, township 41 north, range 13 east, to the National Forest boundary at the southeast quarter of section 31, township 41 north, range 17 east.

"( ) CARP, MICHIGAN.—The 7.6-mile segment from its origin at the confluence of the outlets of Frenchman Lake and Carp Lake in section 26, township 44 north, range 6 west, to the west section line of section 30, township 43 north, range 5 west.

"( ) LITTLE MANISTEE, MICHIGAN.—The 42-mile segment within the Huron-Manistee National Forest.

"( ) WHITE, MICHIGAN.—The 75.4-mile segment within the Huron-Manistee National Forest as follows:

"(A) The 30.8-mile segment of the main stem from U.S. 31 to the Huron-Manistee National Forest boundary at the north line of section 2, township 13 north, range 15 west, 1.5 miles southwest of Hesperia.

"(B) The 18.9-mile segment of the South Branch White from the Huron-Manistee National Forest boundary east of Hesperia at the west line of section 22, township 14 north, range 14 west, to Echo Drive, section 6, township 13 north, range 12 west.

"(C) The 25.7-mile segment of the North Branch White from its confluence with the South Branch White in section 25, township 13 north, range 16 west, to McLaren Lake in section 11, township 14 north, range 15 west.

"( ) ONTONAGON, MICHIGAN.—The 32-mile segment of the Ontonagon as follows:

"(A) The 12-mile segment of the West Branch from the Michigan State Highway 28 crossing to Cascade Falls.

"(B) The 20-mile segment of the South Branch from the confluence of the Cisco Branch and Tenmile Creek to the confluence with the West Branch Ontonagon.

"( ) PAINT, MICHIGAN.—The 70-mile segment as follows:

"(A) 34 miles of the mainstream beginning at the eastern boundary of the Ottawa National Forest in section 1, township 44 north, range 35 west, to the city of Crystal Falls.

"(B) 15 miles of the mainstream of the Net River from its confluence with the east and west branches to its confluence with the mainstream of the Paint River.

"(C) 15 miles of the east branch of the Net River from its source in section 8, township 47 north, range 32 west, to its confluence with the mainstream of the Net River in section 24, township 46 north, range 34 west.

"(D) 14 miles of the west branch of the Net River from its source in section 35, township 48 north, range 34 west, to its confluence with the mainstream of the Net River in section 24, township 46 north, range 34 west.

"( ) PRESQUE ISLE, MICHIGAN.—The 13-mile segment of the mainstream from Minnewawa Falls to Lake Superior.

"( ) STURGEON, OTTAWA NATIONAL FOREST, MICHIGAN.—The 36-mile segment of the mainstream from the source at Wagner Lake in section 13, township 49 north, range 31 west, to the eastern boundary of the Ottawa National Forest in section 12, township 48 north, range 35 west.

"( ) STURGEON, HIAWATHA NATIONAL FOREST, MICHIGAN.—The 18.1-mile segment from Sixteen Mile Lake to the north line of section 26, township 43 north, range 19 west.

"( ) TAHQUAMENON, MICHIGAN.—The 103.5-mile segment as follows—

"(A) the 90-mile segment of the mainstream beginning at the source in section 21, township 47 north, range 12 west, to the mouth at Whitefish Bay; and

"(B) the 13.5-mile segment of the east branch from the western boundary of the Hiawatha National Forest in section 19, township 46 north, range 6 west, to its confluence with the mainstream.

"( ) WHITEFISH, MICHIGAN.—The 26-mile segment of the West Branch Whitefish from its source in section 26, township 46 north, range 23 west, to County Road 444.".

(b) STUDY PROVISIONS.—Section 5(b) of such Act (16 U.S.C. 1276(b)) is amended by adding at the end thereof the following new paragraph:

"(11) The study of segments of the [Carp,] *Brule, Carp,* Little Manistee, White, Paint, Presque Isle, Ontonagon, Sturgeon (Hiawatha), Sturgeon (Ottawa), Whitefish, and Tahquamenon Rivers in Michigan under subsection (a) shall be completed by the Secretary of Agriculture and the report submitted thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph. For purposes of such river studies, the Secretary shall consult with each River Study Committee authorized under section 5 of the Michigan Scenic Rivers Act of 1990, and shall encourage public participation and involvement through hearings, workshops, and such other means as are necessary to be effective.".

SEC. 5. RIVER STUDY COMMITTEES.

(a) ESTABLISHMENT AND MEMBERSHIP.—At the earliest practicable date following the date of the enactment of this Act, the Secretary of Agriculture (hereinafter in this section referred to as the "Secretary"), in consultation with the Michigan Department of Natural Resources, shall establish for each river identified in section 4 a River Study Committee (hereinafter in this section referred to as "Committee"). Membership on each Committee shall consist of members appointed as follows:

(1) Two members appointed by the appropriate Secretary.

(2) Two members appointed by the Secretary from recommendations made by the Governor of the State of Michigan from the Department of Natural Resources.

(3) Two members appointed by the Secretary from among representatives of local or State conservation and environmental groups.

(4) One member appointed by the Secretary from among representatives of each of the towns included in the study area.

(5) Two members appointed by the Secretary from commercial timber interests in the State of Michigan.

(6) One nonvoting member who shall be an employee of the Forest Service.

(b) ADMINISTRATIVE PROVISIONS.—(1) A vacancy in a Committee shall be filled in the manner in which the original appointment was made.

(2) The Chair of a Committee shall be elected by the members of the Committee.

(3) The members of the Committee who are not full-time officers or employees of the United States shall serve without compensation.

(c) TECHNICAL ASSISTANCE FROM THE SECRETARY.—The Secretary shall provide such technical and financial assistance to each such Committee as the Secretary deems necessary.

(d) STATE AND LOCAL SERVICES.—Each such Committee may accept services and other assistance from State and local governments.

(e) STUDY PROCESS.—Each River Study Committee shall advise the Secretary in the preparation of the report to Congress required by section 4 of the Wild and Scenic Rivers Act (16 U.S.C. 1275(a)) for the rivers specified in section 4 of this Act.

(f) TERMINATION.—Each such Committee shall terminate upon submission of the report to Congress referred to in subsection (e) for the river concerned.

(g) BRULE RIVER STUDY COMMITTEE.—For the purposes of the Brule River Study Committee established pursuant to subsection (a), any reference in this section to the State of Michigan shall be deemed to be a reference to the State of Michigan and the State of Wisconsin.

SEC. 6. MISCELLANEOUS.

(a) HUNTING, FISHING, AND TRAPPING.—Consistent with section 13(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287), nothing in this Act shall be construed to enlarge, diminish, or modify the jurisdiction or responsibilities of the State of Michigan with respect to fish and wildlife, including hunting, fishing, and trapping on any lands administered by the Secretary of Agriculture pursuant to this Act.

(b) SEA LAMPREY CONTROL.—Notwithstanding any other provision of law, the installation and operation of facilities or other activities within or outside the boundaries of those river segments designated by this Act for the control of the lamprey eel shall be permitted subject to such restrictions and conditions as the Secretary of Agriculture may prescribe for the protection of water quality and other values of the river, including the wild and scenic characteristics of the river: *Provided,* That the Secretary shall determine in the river management plan for each such designated river that such facilities or activities are necessary for control of the lamprey eel.

(c) ACCESS.—The Secretary shall maintain traditional public access to the river segments designated by this Act, except that the Secretary, in consultation with the Director of the Michigan Department of Natural Resources, shall provide in the river management plan for each designated river segment for maintenance, closure, relocation, stabilization, improvements, or other appropriate adjustments as may be necessary for the management of such river segments.

(d) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed as enlarging, diminishing, or modifying the limitations on the acquisition of lands within a designated river segment contained in section 6(b) of the Wild and Scenic Rivers Act [(16 U.S.C. 1271(b)).] *(16 U.S.C. 1277(b)).*

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

Mr. LEVIN. Mr. President, the bill we are considering will affect many hundreds of miles of river corridors in the State of Michigan. The bill provides resource conservation opportunities and resource management challenges. One of the resources that we in Michigan are particularly proud of is our fisheries. They are important to us economically and ecologically. Over the years, they have been affected by forest management practices, the introduction of nonindigenous species, and pollution. Yet they remain vital and productive to us in Michigan and to the Great Lakes system.

The Michigan Department of Natural Resources has contacted me about its concerns that the language in H.R. 476 does not specifically allow some of the structural and nonstructural techniques of fish restoration underway now and which the department would like to undertake in the future. I have been informed that the Wild and Scenic Rivers Act, which H.R. 476 references, is general enough to accommodate the department's concerns. Is it the understanding of the chairman of the Committee on Energy and Natural Resources that the State of Michigan will be able to conduct stream and fish restoration activities, so long as such activities do not have an adverse impact on the values for which the rivers are designated as components of the National Wild and Scenic Rivers System?

Mr. JOHNSTON. I will be happy to respond to the distinguished Senator from Michigan. The committee has been apprised of the concerns voiced by the Senator and the Michigan Department of Natural Resources. The com-

mittee included language in the committee report which addresses these concerns. It is the committee's view that stream restoration projects, such as those mentioned in the testimony of the Michigan Department of Natural Resources, are not inconsistent with designation as a component of the National Wild and Scenic Rivers System. In addition, the committee report directs the Forest Service to develop a consistent and coordinated policy permitting the implementation of such restoration projects within wild and scenic river segments in order to avoid unnecessary concern and confusion.

Mr. LEVIN. I thank the chairman and appreciate his attention to this matter. I would like to add that my support for this legislation is based on an understanding that the Forest Service will make every possible effort to incorporate the concerns of Michigan landowners in writing management plans and studying rivers. And I expect that the Forest Service will take advantage of the technical and leadership resources of the Michigan Department of Natural Resources in developing management plans, especially where fisheries issues are concerned.

The bill (H.R. 476) was deemed read the third time and passed.

AUTHORITY FOR PRINTING OF S. 2166

Mr. EXON. Mr. President, I ask unanimous consent that S. 2166 be printed as passed.

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

READING OF WASHINGTON'S FAREWELL ADDRESS

Mr. EXON. Mr. President, I ask unanimous consent that, notwithstanding the resolution of the Senate of January 24, 1901, on Wednesday, February 19, 1992, immediately following the prayer and the disposition of the Journal, that the traditional reading of Washington's Farewell Address take place and that the Chair be authorized to appoint a Senator to perform this task.

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

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

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

THE JAPAN THAT CAN SAY TOO MUCH

Mr. EXON. Mr. President, in October 1989, I alerted the Senate to the then-unknown Japanese book entitled "The Japan That Can Say No."

The book was authored by Akio Morita, the founder of the Sony Corp., and Shintaro Ishihara, a Member of the Japanese Parliament. The most controversial statements were from Mr. Ishihara. He wrote, for example, that:

> No matter how much the Americans expand their military, they have come to a point where they can do nothing if Japan were one day to say—we will no longer sell you our chips.

Mr. President, my purpose in exposing "The Japan That Can Say No" was not to bash Japan. It was to rally the President to build America so that our Nation would not become overly dependent on foreign products, capital, and economic policy.

In response to my warnings about Japanese sentiments toward the United States, I was assured by many in and out of Japan that Ishihara represented the fringe of Japanese politics.

Mr. President, the recent reports from Japan indicate that what may have been on the fringe now occupies the center of Japanese politics. My personal view, however, is that those views in 1989 were not on the fringe but simply below the surface. It appears that the President's recent trip to Japan has scratched that surface. If the President's trip failed to succeed in opening the closed Japanese market, it did succeed in exposing to America what Japan really thinks of us.

In recent weeks the Speaker of the Japanese Parliament called the United States "Japan's subcontractor," and stated the "American workers don't work hard enough. They don't work but demand high pay."

After coming to America and apologizing for the Speaker's comments, Japan's Prime Minister yesterday said that "the work ethic is lacking" in America and that America's determination "to produce goods and create value has loosened sharply * * *."

When President Bush was in Japan, the same Prime Minister Miyazawa was patronizing in suggesting that the United States should be given sympathy and over the last several years, high-ranking Japanese officials have expressed outright racist comments about the American work force.

Mr. President, if the recent comments in Japan were bound into a book, perhaps it could be called "The Japan That Can Say Too Much."

I cannot deny that the United States has a great deal of work to do at home. Our society, economy, and competitiveness are not what they could be, but they are not worthy of derision from Japan, of all places.

Our Nation has been so preoccupied protecting the free world for the last 40 years, we have tended to place our economic interests behind our foreign policy and military interests. Mark my words, this will soon change. In spite of our emphasis on the struggle against communism, the United States has emerged from the end of the cold war still, on every count, the greatest Nation on Earth.

Not only are the unfortunate anti-American statements from the Japanese hierarchy offensive, they are just plain wrong. Anyone who doubts the American work ethic needs only to look to the Persian Gulf where man, woman, machine, and management were deployed from a standing start into the world's most advanced and effective fighting force which easily defeated the fourth largest Army in the whole world.

Japan should not forget that America could have survived without gulf oil. Japan could not. Yes, Japan made a financial contribution to the war effort. Sadly, it was given begrudgingly and after victory was apparent. No doubt, Japan gave money. America gave blood.

On the home front, Americans are working harder, longer, and for less pay. American leisure time is contracting, not expanding. Working America's problem is not that they are paid too much, it is that their standards of living are declining. Mom and Dad must work today to bring home as much money as a one-earner family of the 1950's and 1960's.

American wages are not high enough in part because Japanese products have been systematically pumped into the American market at prices below the cost of production or below at least the prices at which the same product is sold in Japan. This targeted dumping wiped out sectors of the American electronic, television, and semiconductor industries. Furthermore, American products are locked out of Japan, the second largest economy in the world.

Mr. President, to emphasize this point, I would like to name a few typical products that are generally well-known in America and cite for the Senate the difference in price of these products in the United States and in Japan and ask how can that be. Why? The first product, Toyota Cressida, an automobile: United States price, $24,000, Japanese price, $16,000 to $28,000; Ford Taurus sedan: United States price, $14,980 to $17,434, Japanese price, $25,625; Sony phone with answering machine: United States price, $120 to $200, Japanese price, $161 to $323; Sony CD player: United States price, $130 to $300, Japanese price, $392; TDK audio cassette: United States price $1, Japanese price $4; Sharp hand-held calculator: United States price, $39, Japanese price, $72 to $112; Panasonic cordless phone: United States price, $100 to $139, Japanese price, $323 to $484; Sony VCR: American price $350, Japanese price, $584; Mitsubishi TV: American price, $380, Japanese price, $472; Honda Civic: United States price, $8,000 to $12,000, Japan price, $10,000 to $17,000; Jeep Cherokee: United States price, $23,800, Japanese price, $35,870; Minolta camera: American price, $65, Japanese price, $152; Canon copier: United States price, $1,995, the same machine in Japan, $2,960.

Mr. President, I hope we can come to the realization that there are underlying, unfair, nonlevel playing fields that we are dealing with in Japan for lots of reasons. Over the years we have heard that American beef, for example, must be kept out of the Japanese market because Japanese intestines were shorter than that of Americans; that American snow skis had to be kept out of Japan because the snow there was different than American snow; and now that American rice and other farm products must be kept out because farming is somehow sacred in Japan.

Reason prevailed over attempts to bar snow skis, and there is a gradual progress in beef being sold in Japan to consumers by which and from which both enjoy benefits.

Perhaps recent comments from Japan are simply another nontariff trade barrier. If American workers and products are derided by the government, Japanese consumers will be afraid to try them.

American products are world class. The February 4th Washington Post points out that microprocessors in Japanese computers are manufactured and designed by American companies, and that American computer software is No. 1 at home and in Japan, and that American culture, clothing, cola, drugs, and diapers are all Japanese favorites.

Most importantly, Mr. President, American workers are also world class. You only need to ask the Japanese companies which have, as some might say, invaded the United States to purchase American companies and plants and build factories in the United States. These very workers are making many Japanese plants in America more productive than plants in Japan.

The huge flow of Japanese investment in the United States in the last decade repudiates all recent unkind statements about American workers. Japanese officials who in the last several years have made thinly veiled racist comments about America's work force suffer from a fundamental misunderstanding of the United States, and certainly their arrogance is dangerous.

American diversity represents our Nation's most brilliant accomplishments, and therein is our hidden strength. America is a Nation defined by ideals, not blood lines. It is a Nation striving for tolerance and equality. The United States is a bold experiment which in 200 years has produced even in its imperfect form, the most advanced, the most enlightened, and most livable society on the planet.

Mr. President, rather than simply badmouthing American workers, Japan should put its money where its mouth is. It is time to clear away all of the barriers of American trade. Let the American farmers sell beef, rice, wheat, and barley in Japan as freely as the Japanese sell automobiles, stereos, and VCR's in America, and allow American auto parts, semiconductors, and electronics manufacturers to compete with their Japanese counterparts. Open the Japanese financial systems to American banks and investment and permit American firms to buy Japanese companies and real estate as easily as Japanese investors buy assets here.

Let us even talk for a moment as an aside about baseball. Baseball is generally called the American pasttime. Now the Japanese are talking about making a major investment, perhaps a controlling investment, in an American baseball team.

As the Presiding Officer, the Chair, knows, this Senator is very much a baseball fan. I must frankly admit, Mr. President, I do not see anything basically wrong or improper about Japanese investments in a baseball team or Japanese investments in other enterprises in America. I think basically that is good.

But herein let me point out an inconsistency which I think is very typical of the Japanese. They want the right, and they will be upset if for whatever reason organized baseball turns down that offer from the Japanese, but let me point out that if an American investor wanted to go into Japan to buy a Japanese baseball team, he could not do it. It is prevented. It is taboo by specific reference under the Japanese system.

While baseball might not be a good example to talk about the unlevel playing field, I think the case in point that I have just made is one that demonstrates how effectively the Japanese outmaneuver us time and time again and do not want to enter into free and open agreements.

And last but far from least, I think the United States should demand a breakup of the keiretsu system, which, of course, is an interlocking corporate and board of directors scheme that locks major Japanese companies together into one giant monopoly or a trust dealing with foreign competition.

We busted up trusts way back in the 1920's in the United States as being anticompetitive. If General Motors, Ford, Chrysler, IBM, General Electric, Xerox, Conagra, Archer Daniels, AT&T, Citicorp, Boeing, and others were all banded together to sell in Japan and effectively keep Japanese products out of America at the same time, they could do to Japan what Japan is doing to us.

Would that be considered fair? I think not. But I suspect few Americans realize this unfairness. Does President Bush?

In short, it is time to let the competition begin. It is time to let the Japanese consumer decide. If American products and services cannot be cut, so be it.

America is the most open market for trade and investment. Japan and other nations, especially Europe should understand this position is unsustainable unless there is reciprocity. President Bush should make it clear that he will use his power under the U.S. trade laws to say no to our trading partners under access that will depend upon our access to their market.

While it is time to get tough on Japan and the newly unified Europe, it is also a time for the United States to get tough on itself.

The eight-point agenda declaring American economic independence, which I urged the President to put forward in 1989 in reaction to the message of "The Japan That Can Say No," is as valid today as it was then. If this plan had been adopted in 1989, our Nation would not be in its current recession.

To recount those eight initiatives; they are:

First, an all out effort to reduce the Federal budget deficit over the long term;

Second, a get tough trade policy to use access to the U.S. market as leverage to open foreign markets;

Third, the full and careful use of the Exon-Florio law to assure that the U.S. does not lose control of its high technologies;

Fourth, the restoration of a long-term orientation for American business away from the leveraged buyouts of the 1980's;

Fifth, new incentives for savings such as the Democratic IRA proposal;

Sixth, the improved marketing of treasury debt to Americans to reduce our Nation's dependence on foreign capital;

Seventh, real reduction of American interest rates—even today, long-term rates remain too high;

Eighth, an effort to make the American education system the best in the world.

For 40 years, the relationship between the United States and Japan has been one of the world's most powerful and important alliances. A careless war of words on both sides of the Pacific is damaging that relationship.

Mr. President, Japan has underestimated the United States before, and it is underestimating the American worker today. If American products are so bad, Japan has nothing to lose by opening its market to American goods and services. Americans do not seek sympathy, gratitude or favors from Japan, we only seek fairness.

Mr. President, I ask unanimous consent that an article from the February 4 Washington Post entitled "Miyazawa: Work Ethic Flags in U.S." by T.R. Reid, and a report on work and income in the 1980's by the Joint Economic Committee be printed in the RECORD.

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

[From the Washington Post, Feb. 4, 1992]

MIYAZAWA: WORK ETHIC FLAGS IN U.S.

(By T. R. Reid)

TOKYO, February 3.—Japan's prime minister said today that Americans' determination "to produce goods and create value has loosened sharply" in recent years, and that "the work ethic is lacking" among U.S. college graduates who take jobs on Wall Street rather than in manufacturing.

Coming at a time when Americans are still angry about another Japanese politician who recently called American workers lazy and illiterate, Prime Minister Kiichi Miyazawa's comments sparked fears here of a further U.S. backlash and prompted governmental efforts at damage control.

On Tuesday morning, at the start of the Diet, or legislature, session, an evidently worried Miyazawa apologized for creating a "misunderstanding." "I had no intention of criticizing American workers," he said.

Government spokesman Koichi Kato said that Miyazawa's comments Monday referred to "money games in both Japan and the U.S." and "made no reference to ordinary American workers."

Miyazawa got into a discussion of the American work ethic during debate in a parliamentary committee that was supposed to deal with Japan's budget. The distraction reflects an obsession with the United States here and a fairly common belief that it is in decline.

Miyazawa and other government leaders tried to calm U.S. anger two weeks ago after House Speaker Yoshio Sakurauchi said the United States had become "Japan's subcontractor" because many American workers "can't read and . . . don't want to work."

That remark was a major reason for the recent wave of "Buy American" campaigns around the United States. President Bush rebuffed Sakurauchi's comments in his State of the Union speech last week.

At the White House today, following the latest outburst, Press Secretary Marlin Fitzwater said the Japanese Embassy sent an immediate "apology," declaring that Miyazawa "regretted" any possible misunderstanding and making the point that no criticism was intended. Bush later characterized that message as "a very clear statement by a very good man."

Fitzwater termed Miyazawa's original comments "probably not helpful" but then added that they could stir "the rages in all of us who want to compete and show who the best work force really is."

Fitzwater added that the remarks were in the same category as those of Senate Majority Leader George J. Mitchell (D-Maine), who has questioned the fairness of Japan's trading policies. The Maine Democrat, for his part, called the prime minister's comments "destructive," showing "no understanding of this country."

The Japanese are highly sensitive these days to anti-Japanese feelings in the United States, this country's largest market and only close ally. The tense state of relations between the two richest nations has become a serious problem for Miyazawa.

Since becoming prime minister three months ago, Miyazawa has alternately praised the United States—"This great nation is the leader of the world." he said that month—and criticized American society because of drugs, the homeless and educational problems.

Today, Miyazawa sounded like U.S. pundits who castigate atitudes of the "Me Generation." "Over the last 10 years," he said, "it seems that America has reached the point that the mindset to produce things and create value has loosened sharply.

"Many people getting out of college have gone to Wall Street for very high salaries, with the result that the number of engineers who produce goods has gone down quickly."

Miyazawa then criticized the "money market" because of its junk bonds, leveraged buyouts and large loans that require big interest payments. "These things, which nobody thought could last long, have gone on for 10 years." Miyazawa continued. "And I have thought for a long time that the work ethic is lacking as far as that area is concerned."

Miyazawa then noted that "in one sense, our country too has this situation in the so-called 'bubble economy.'" The latter is the term here for the speculative financial furor of the late '80s, which led to runaway growth in Japan's stock and real estate markets.

This diversion from the budget debate began when a senior member of Miyazawa's Liberal Democratic Party, Kabun Moto, said that the real problem in the auto market "lies in the management of U.S. plants, doesn't it?"

Moto said that at Japanese-owned auto plants in the United States, "Americans are producing good cars. The question is, how to use American workers skillfully."

Moto said some U.S. consumers try not to buy an American car made on a Friday, because U.S. workers are thinking about the weekend, or on Mondays, "as they played too hard Saturdays and Sundays." It was in response to this comment tha Miyazawa started talking about Americans' commitment to produce goods and the college students' attraction to Wall Street rather than production.

An opinion poll taken by the prime minister's office last fall found that most people in Japan complain of fatigue and emotional stress. The survey, released Sunday—less than 24 hours before Miyazawa took aim at Americans—showed that 64 percent of the people said they usually feel tired, and that 53 percent said they experience emotional stress.

The chief domestic initiative of Miyazawa's government has been what he calls the "lifestyle superpower" project, aimed at helping Japanese people to let up somewhat from their work-oriented life and find ways to enjoy family and free time.

While Japanese politicians continue to say that American manufacturing has weakened, consumers here evidently disagree in many cases. American high-tech products are best-sellers in several key Japanese markets.

Nearly all Japanese personal computers use microprocessors designed and built by the American Intel and Motorola companies. The best-selling computer software in Japan in 1991 was the American-made program Lotus 1-2-3; it seems likely to be passed this year by another American software hit, Microsoft Windows.

Americans make the top-selling product in other Japanese markets ranging from clothing to cola, from prescription drugs to diapers. U.S. movies, records and videos dominate the pop charts. But the Japanese do not have high regard for American cars. Their disdain seems to have increased after three auto company presidents came here last month with Bush and demanded that Japan import more cars.

AMERICAN FAMILIES WORKING LONGER, NOT SEEING IMPROVED LIVING STANDARDS, CONGRESSIONAL STUDY FINDS

A Joint Economic Committee study released today shows that 80 percent of two-parent American families with children were working longer hours in 1989 without realizing any improvement over the standard of living of such families in 1979.

The staff study, "Families on a Treadmill: Work and Income in the 1980s," compares Census Bureau data on income, hours, and employment in two-parent families with children compiled from the Current Population Survey in March 1980 and March 1990, to evaluate the changes in family income over the decade. The JEC study notes that "we chose to focus on two-parent families with children because we were concerned that changes in the economy may be having a negative effect on the welfare of children. Most children live in two-parent families. It is important to know whether such children are growing up under increasing economic hardship."

The study found that for most families in 1989, when compared to families in 1979, increases in income, adjusted for inflation and work-related costs, have come from working more hours, not increases in hourly pay. When the additional costs of increased working hours are taken into account, 80 percent of families increased hours more than their net incomes rose.

Real hourly pay for husbands in 60 percent of the families declined over the decade and remained constant for another 20 percent of families. Only the top 20 percent of families saw a significant rise in the hourly pay of husbands. The analysis also revealed that while the real hourly pay of wives increased for most families, for 60 percent of families the decline in hourly pay of husbands was greater than the increase in wives' hourly pay.

Inequality in both wages and family incomes increased substantially over the decade. But contrary to the notion that increasing inequality stems for the growth of two-earner couples, the study shows that without wives' earnings, disparities in family incomes would have been even greater than they were.

"This report shows a real basis for the growing concern among American families about their deteriorating standards of living," said JEC Chairman Paul Sarbanes. "Fully 80 percent of these families are on a treadmill—they saw their net family income decline over the past decade or grow by a smaller percentage than did their hours of work. To merely maintain their standard of living, or to avoid falling even further behind, they have had to increase their hours of work at the expense of their time with family and community. Only the very top fifth of these families enjoyed clear gains in their standard of living."

"These findings are very troubling, especially when you consider that the families represented in this study are responsible for raising nearly three-quarters of all the children in our country," Senator Sarbanes said. "Too often it is these children who are the real losers from the economic stress which poor economic performance is placing on families."

The study concludes that addressing these problems will require "profound changes in the labor market, raising the rate of growth in wages for both men and women. Without such changes, the most likely forecast is for continued economic stress on a majority of American families."

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER (Mr. WOFFORD). The Senator from West Virginia [Mr. BYRD].

Mr. BYRD. Mr. President, what does the order provide with respect to rec-

ognition of the Senator from West Virginia?

The PRESIDING OFFICER. I understand it provides that the Senator is recognized for 90 minutes.

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

I ask unanimous consent that I may be recognized for such time as I may consume.

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

Mr. BYRD. Mr. President, I understand that the distinguished Senator from Arizona [Mr. DECONCINI] wishes to speak for 5 minutes. I yield to him not to exceed 5 minutes.

SENATOR BYRD'S PRESENTATION

Mr. DECONCINI. Mr. President, I thank the President pro tempore and my friend, ROBERT BYRD. I understand he has a presentation which I might mention may be somewhat similar, I am sure, to what he presented before the Budget Committee a few days ago which I did have a chance to observe. It is outstanding.

I appreciate him giving me a few minutes because I am on my way to Arizona at 2:20 today. I have to leave here shortly. I appreciate it very much.

PRESIDENT BUSH'S FISCAL YEAR 1993 BUDGET PROPOSALS

Mr. DECONCINI. Mr. President, approximately 10 days ago the President outlined his proposals for economic recovery in his long awaited and highly touted State of the Union Message. Now that the dust has settled a bit and I have had time to review the details of the budget the President submitted to Congress the following day, I would like to take a few minutes of the Senate's time to express my reactions to both.

Mr. President, there are many items in the President's proposals that I intend to support, but the President's plan, as a whole, lacks the vision, the sense of urgency and the boldness that the American public was expecting to pull this nation out of recession. I believe my reactions have been validated by subsequent polls. Americans who are out of work coupled with those who fear they may soon join the ranks of the unemployed were not reassured by the President's words. Their confidence in the economy was not restored. Perhaps the expectations raised in the pregame warmup show orchestrated by the administration to the Super Bowl of State of the Union addresses could never be met. Rather than throwing a touchdown pass, the President settled for short yardage. Mr. President, that is not the type of decisive action we need to win the economic battle and the American public appears to recognize that.

The President began his address by reviewing America's great success in the Gulf War. I think we can all agree that it was a monumental victory and a defining moment of the Bush Presidency.

We all give the President great comments and acclamations for that, but you cannot get out of a recession lying just on that product.

It was precisely because President Bush effectively used the power of his office to build an international and domestic coalition of support that his efforts were such a resounding success. Rather than pursuing the same strategy on the domestic front, the President threw down a gauntlet and demanded that Congress pass his package and deliver it to his desk by March 20. That tactic was election-year politics, not a constructive strategy for winning the war on the domestic front.

President Bush was a member of Congress. He knows all too well how the process works. It took President Bush 52 weeks to recognize we were in a recession, but wants Congress to pass his comprehensive economic recovery package in 52 days—nothing more, nothing less. There is something wrong with this picture.

While Congress is a popular target for attack, it is part of the democratic process. It has to be worked with, and the President knows that better than anybody.

Mr. President, the Democrats are not his enemy. We are here to work for the better of the country, just as he is. And it is time that we get together and we show the same solidarity as we did against Saddam Hussein. I challenge the President to do that.

It serves no useful purpose to initiate a unnecessary partisan battle when there is a serious economic war to be won. The economic future of our country is at stake.

Mr. President, the Democrats are not the enemy. The failing economy is the enemy. What I wish the President had done is to forge the same kind of bipartisan coalition on the domestic front that he put together on the international front to fight and defeat Saddam Hussein. Unfortunately, he did not—and the Scud missiles are now flying from both sides of the battle zone along Pennsylvania Avenue.

Mr. President, this battle is unnecessary, it is counterproductive, and it must stop.

Before we can coalesce around any bipartisan economic plan, I believe we must face up to two facts.

First, I believe that there must be an agreement between the administration and Congress to tear down the budget summit prohibitions—the so-called firewalls—which prevent us from using savings in our defense and foreign aid accounts to fund domestic programs.

I introduced a resolution to do just that last November.

While I strongly support removing the budget firewalls, I want to make it perfectly clear that I do not favor increasing overall Government expenditures.

Fiscal responsibility demands that the cap on overall expenditures, as mandated in the budget summit agreement, remain firmly in place.

Second, I believe that a consensus has to be reached to make additional cuts in defense beyond those proposed by the President.

Absent agreement on these two issues, I think it will be extremely difficult to put partisan bickering aside and fashion a truly bipartisan package.

Even with agreement on these two issues, it will not be smooth sledding, there will be strong disagreements and heated debates on individual elements of the President's package.

That should not be viewed as something sinister or cynical, that is what representative Government is all about.

All sides should be fully engaged in the debate.

No side can expect to get everything it wants.

And despite the charged rhetoric that will surely be part of the debate, I still hope and believe we can ultimately work together and create an economic recovery package that will be good for the country and put Americans back to work.

Having said that, I would like to address some of the elements that I believe should be incorporated in the final package.

First, I believe that at least half of any additional savings we achieve in the defense and foreign aid areas must be targeted toward deficit reduction. Deficits are our long term enemy.

If we lose sight of our mounting debt in our rush to achieve short term economic gains, we will have won a battle but lost the war.

I am convinced that we can make additional defense and foreign aid cuts, beyond those proposed by the President, of up to $30 billion dollars.

I think that can be done without sacrificing our security interests and without unduly damaging our military force structure.

I believe we can safely reduce our forces in Europe, Korea, Japan and elsewhere overseas by an additional 100,000 troops.

In addition to the programs already slated for termination, I would add, among others, an immediate cancellation of the B-2 bomber, which would save an additional $2.7 billion this year alone.

I would terminate development of the Air Force's next generation fighter, the F-22, for a saving of $2.2 billion, and I would stop production of the nuclear-powered aircraft carrier for an additional $800 million in savings.

I would cut SDI by more than $2.5 billion and focus its attention on early development of theater missile defenses.

In our foreign aid accounts, I believe we can drastically reduce our foreign military sales and economic support expenditures to better reflect the new world order.

I would exclude Israel and Egypt from these cuts.

On the domestic side, I would halt funding for the superconducting super collider for a savings of $650 million, not because this program may not have merit, but because we have more pressing domestic needs.

I would cancel the space station—a project whose mission has been changed nine times—for savings of $2.25 billion.

Why are we funding a project in search of a mission?

I cannot in good conscience support these big ticket items while one in ten Americans has to resort to food stamps for survival, while millions of Americans are out of work and millions more are turning to the streets for their lodging.

If ever there were a Heartbreak Hotel, this is it.

In addition to deficit reduction, savings should be targeted to highly effective domestic programs such as WIC, Head Start, drug prevention, treatment and interdiction, education, job training and health care.

These are human investments which will pay long-term dividends.

To create jobs quickly, I think we should consider accelerating federal construction projects such as BIA schools, national park projects, low income housing, and Federal courthouses—projects which have been already approved but lack funding.

These projects could begin almost immediately and move people from the unemployment lines to the project sites.

On the tax side, there are numerous incentives with which I agree in concept, although I am not necessarily wedded to the specifics of the President's proposals.

These initiatives include expansion of the IRA, penalty free withdrawal from IRA accounts for medical, educational needs or for the purchase of a first home, the $5,000 credit for first-time home buyers and the R&D tax credit.

I have long supported a reduction in the capital gains tax and am pleased that the President incorporated a proposal in his budget.

Again, I support the concept, not necessarily the specifics of the Bush proposal.

There is one tax proposal which I find irresponsible—the executive action taken on wage withholding.

Not only is it a bad idea, it will cost $14.4 billion.

Changing the tax tables to put an additional $5 or $10 in individual paychecks will not encourage people to go out and buy a car—a meal at McDonald's perhaps—but not a car.

This action will not encourage investment.

But taxpayers could well end up with an unexpected tax liability next April 15 rather than a refund.

Is the President willing to take the angry calls from my constituents next April 15 when they have to go out and borrow money to pay their taxes?

Surely there is a better way to get money into consumers' pockets.

Perhaps the most disappointing aspect of the President's budget is the blatant dishonesty of its financing.

The financing proposals are smoke and mirrors and gimmickry at its worst.

It's as if the ghost of David Stockman is haunting the halls of OMB.

The budget has $60 billion worth of this trickery over 5 years.

Perhaps the worst such trickery occurs by changing accounting rules to make it look like there are savings where none actually exists.

Everybody loses when we cook the books with illusory savings that add to the deficit.

The American people are fed up with this type of behavior.

It has to stop, and it has to stop now.

In conclusion, Mr. President, I look forward to the debate on the various spending and tax proposals that are now on the table.

I hope we can discuss our honest differences without rancor and discord.

And I hope we can develop the type of package the American people need and demand. one that will pull this Nation out of the recession—that will not further burden future generations with additional debt—and that will get this country on the road to greatness once again.

Reordering our Nation's priorities to meet the needs of today's world is a defining moment in our history.

It poses enormous challenges—challenges we must win.

No less that the future of our country is at stake.

INFANT MORTALITY

Mr. DECONCINI. Mr. President, Americans nationwide will open their newspapers this morning and read some very good news. The Center for Disease Control announced yesterday that the United States has recorded its lowest infant mortality ever. I do not want to rain on anyone's parade, but there is really more bad news in the details than good news in the headlines, if you read that story and read these statistics.

Mr. President, this is not the case. We need to bolster up the WIC Program and other programs that will indeed provide preventiveness so that babies are born healthy. The reason there is less mortality now is that we are able to keep very sick children alive. That is very important. But, obviously, we need to do more.

The WIC Program, indeed, supports the good health of women, infants, and children, and we should put more into it.

Mr. President, the latest available international figures show that America is falling behind the rest of the developed world and worse yet, black infant mortality in the United States is now twice the national average—nearly two out of every hundred black babies die. Put in perspective, black infants born in the United States have about the same chance of surviving their first year of life as babies in many undeveloped Third World nations, including Mexico and Malaysia.

Mr. President, we have made considerable progress in reducing infant mortality rates this century. But progress has slowed in the past decade.

More importantly, the little progress we have made has been in keeping sick babies alive, not in ensuring a birth of a healthy baby. While I salute the miracle workers in our children's hospitals and intensive care units, we must remember that most children in America do not have access to this high-tech health care. Even if they do, many of these infants will suffer their entire lives. In short, we are treating some of the right people at the wrong time, and not enough people at the right time.

It is no secret that prenatal nutrition and health care costs less than one thousand times less than the lifetime cost of providing acute care treatment. The Special Supplement Food Program for Women, Infants and Children, commonly referred to as WIC, has been shown to be among the most cost-effective approaches to reducing infant mortality. This program saves two to three times what it costs.

Mr. President, earlier this week I introduced legislation, S. 2182, to immediately create a WIC entitlement in order to serve the over 4 million eligible women, infants and children who are presently turned away. WIC is the very answer to the reduction of low birthweight and premature births. I strongly urge my colleagues to consider cosponsorship of this vital legislation as they search for ways to further reduce the embarrassingly high infant mortality rate.

Mr. President, I ask unanimous consent that an Associated Press article on U.S. infant mortality which appeared in this morning's Washington Post be printed into the RECORD.

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

[From the Washington Post, Feb. 7, 1992]

U.S. INFANT MORTALITY FALLS TO LOWEST LEVEL

ATLANTA, Feb. 6—The United States recorded its lowest infant mortality rate ever, but black babies still die at more than twice the rate of whites, and the nation trails much of the developed world, federal researchers said today.

The rate of 1989, the most recent year for which statistics are available, was 9.8 deaths by age 1 for every 1,000 live births, the federal Centers for Disease Control said. That surpasses the record of 10.0 set the previous year.

Japan has the world's lowest infant mortality rate, 5.0 for 1987, the last year for which complete international statistics have been compiled. Sweden was second at 5.7. The United States that year was 24th at 10.1, just behind New Zealand and just ahead of Israel.

"Our international ranking has slipped," said Marian F. MacDorman of the CDC's National Center for Health Statistics. "In 1980, we were ranked 20th in the world, and now we're 24th."

The CDC said increased use of prenatal care would have the greatest impact on infant deaths from every cause other than birth defects.

The U.S. infant mortality rate has dropped significantly throughout the 20th century, although the decline has slowed in the last decade.

"The simple reason infant mortality rates have gone down is that medical technology has gotten better and better," said Joseph Liu, a senior health associate with the Children's Defense Fund, a nonprofit children's advocacy group.

"We have done absolutely nothing to make sure pregnant women can get prenatal care," he said. "We are relying on the miracle of modern technology to save very sick babies, while failing to provide up-front preventive care to make sure more babies are born healthy."

For 1989, the black infant mortality rate in the United States was 18.6, compared with 8.1 for whites. The leading cause of death for white infants was birth defects; for black infants, it was prematurity or low birthweight.

And the disparity is increasing, the CDC said. The white infant mortality rate dropped 4 percent from 1988–89, while the black rate actually increased slightly.

SENATOR BYRD'S PRESENTATION

Mr. EXON. Mr. President, will the Senator from West Virginia yield for 1 minute?

Mr. BYRD. I gladly yield to my distinguished friend from Nebraska [Mr. EXON].

Mr. EXON. Mr. President, I wanted to take a moment before Senator BYRD started his address. As a member of the Budget Committee, I was very privileged, in fact I was very honored indeed, to hear this whole detailed thoughtful, intelligent, incisive presentation that Senator BYRD is about to make.

The President pro tempore of the Senate is revered on both sides of the aisle. He has given many very outstanding addresses on a whole series of subjects while it has been my privilege to work with him closely in the 13 years that I have had the privilege of serving my constituents in Nebraska here.

I must say that for all of the great speeches I have heard him make, the one that he is about to deliver is, by far, in my opinion, the most thoughtful that I have ever heard him give. It is not only thoughtful, but it hopefully will give the people of America the assurance to move forward, as we can, as a great country, recognizing the proposition that faces us, and the recommendations that ROBERT BYRD has to correct that.

I can only pay you the highest tribute, Senator BYRD. After the Budget Committee adjourned, after listening to the Senator's presentation, a hardcore member of the Washington press, came to me and said, "Was that not the most thoughtful presentation that you have ever heard in front of the Budget Committee?" I said, "It certainly was. It was the most thoughtful, considerate message that I have ever seen or heard from Senator BYRD, or anyone else, during my service in the U.S. Senate."

I highly recommend careful attention to what he will say. I listened to every word of it before. It is extremely timely, and I salute my leader and my friend, ROBERT BYRD, once again for his dedicated service to the U.S. Senate and, more importantly, to America.

Mr. BYRD. Mr. President, I can live for 2 months on a good compliment. I deeply appreciate the Senator's charitable compliments.

Does the Senator from Michigan wish me to yield?

COMPLIMENTING SENATOR BYRD ON HIS SPEECH

Mr. LEVIN. Mr. President, I thank the President pro tempore for his courtesy. I actually was going to make some comments on a totally different subject. I understand that the Senator from West Virginia has the floor, and I just want to add something to what Senator EXON said. I did not see the full presentation, but I have had an opportunity to chat with our dear friend, Senator BYRD, about the subject he is going to talk about. Indeed, I saw some of the charts.

We spent some time yesterday with a number of Senators talking about this subject and I, too, simply add my thanks in advance, because I know what the subject is and something about the charts he is going to present. I add my thanks, as a Senator from Michigan, for one of the most thoughtful and compelling presentations and proposals that I have seen.

Again, I will not be able to be here for the entire time, but we talked about this yesterday. I would commend any viewer to stay tuned to hear what ROBERT C. BYRD is going to be saying, because it is courageous, pivotal, accurate, it is right on point, and it says volumes about what we need to do in this country.

Senator BYRD reads volumes, probably more than anybody in the Senate, and most of us combined, perhaps, but this afternoon he is going to be saying volumes about something which has to be spoken about. I thank him on behalf of many of us who will not be able to be here as he makes the presentation.

Mr. BYRD. Mr. President, I thank my friend, and I will not take the time this afternoon to return compliments. But I have stated it before, and I will have the opportunity, Lord willing, in the future to say some things about Senator CARL LEVIN.

A DEFINING MOMENT FOR THE UNITED STATES ECONOMY

Mr. BYRD. Mr. President, I do not wish to be interrupted, and I do not wish to yield until I have completed my statement. It will be very difficult to live up to these advance billings, but, nevertheless, I am grateful to my colleagues.

Mr. President:

This is a defining moment for the U.S. economy. There is a fairly broad consensus that the economy is suffering from neglect and needs fixing. Even the President concedes that something is seriously wrong and is searching for a new economic policy.

At the same time, the end of the cold war has freed resources needed to attack our economic problems. The charge that America does not know how to revamp its economy is nonsense. The cold war was won through the investment of vast sums of money and patience. The same kind of persistent, long-term approach will be needed to fix the economy, and it won't take the 45 years it took to beat back Communism. But it will take what President Bush describes as the "vision thing."

Here is our vision thing: Productivity growth, and productivity growth alone, is key to international competition and a sustainable rise in our living standard. That suggests a clear test for each new policy initiative: Does it have a reasonable chance of making Americans more productive?

We need to inject billions of new investment into the economy; not to cut taxes to raise consumer spending. The U.S. has an investment deficit, not a consumption deficit; a shortage of human capital, not of consumer durables. Both private and public investment need help.

Higher productivity growth requires two kinds of public investment. The first is physical investment in revamping the Nation's crumbling infrastructure. Public funds would flow directly into the domestic economy—in contrast to tax cuts which import-prone consumers would partly spend abroad. The second is investment in human capital. We know that some kinds of education expenditures, ranging from the Head Start program for preschool children to apprenticeship programs for high school graduates, are effective. We should not be afraid to fund them generously.

Mr. President, if the press is inclined to quote me, I hope that it will not quote me on what I have just said, because the paragraphs I have just read were not written by ROBERT BYRD. They were excerpted from an editorial which appeared in the February 3 issue of Business Week magazine. However, the views articulated in that Business Week piece, to which I have just referred, aptly express my view about the right course for the economy in the

short run, and for our Nation in the long run. That is why I believe that the domestic discretionary portion of the budget—the portion that funds America's investment in itself and in its economic well-being—must take a high priority and should receive a substantially greater portion of each year's budget than has been the case in the past decade.

The domestic discretionary portion of the budget provides the dollars for our Nation's infrastructure: our roads and bridges, airports, mass transit, rivers and harbors, public housing, water and sewage facilities, programs for the elderly, education, programs for children, the FBI, the Justice Department, the war on crime, the war on drugs, National Institutes of Health, civilian research, environmental cleanup, agriculture, medical care for veterans; programs to provide assistance to State and local governments, such as community development block grants, EDA, EPA, and programs to assist those who are unable to provide for themselves and their families.

And I could go on and on and on. But those programs that I have enumerated are sufficient to make one realize that this portion of the annual budget—domestic discretionary—is the very backbone, the very marrow of the backbone, of this Nation's economy and this Nation's well-being.

But over the past 11 years, that vital portion of our budget has been steadily shrinking. We have made deliberate policy decisions to disinvest—to disinvest—in America, to starve our own economic engine of the fuel that it needs to run efficiently.

Here beside me is a chart. It shows the cumulative increase or decrease in outlays for entitlements, defense, international, and domestic discretionary spending for the fiscal years 1981–1991.

As we can see, entitlement and mandatory spending had real increases. The horizontal line is what we call the baseline, in budget terminology. In other words, that is zero inflation. And for entitlements and mandatory spending, those who look at this chart will see that for the years 1981–1991, entitlements grew $776 billion over inflation, over baseline, during those 11 years.

Defense grew over baseline, over inflation, $624 billion during that period.

But domestic discretionary, as we can see, suffered real cuts, totaling $395 billion below inflation, over this 11-year period.

I like to refer to this bar on the chart, domestic discretionary, as the runt puppy, and it is easy for anyone, from an observation of the charts, to understand why, as we see the two pit bull terriers, entitlements and defense, soaring above the baseline, above inflation.

But the poor little runt puppy, domestic discretionary, which means so much to every American looking through that television camera there today, that little runt puppy had a difficult time even making its way up to the feeding pan. You can see that it is emaciated, scrawny, and it looks like it has the scratches. It is underfed, and it has an extremely hard time making its way to that feeding pan because of the pit bulls that have been pushing it away.

The Nation's budget is a reflection of the Nation's goals and priorities. If we track budget decisions over a period of time, we can get a pretty clear picture of the policies that the Nation has chosen to emphasize. It is obvious that for a decade the political leadership of this Nation has robbed vital domestic programs in order to pump up defense and to fund entitlements.

The next chart displays the year-by-year increase for defense and entitlements, as well as the year-by-year cuts below baseline for domestic discretionaries. Again, the horizontal line is representative of baseline, zero inflation.

This chart shows in dramatic fashion what the priorities of this Nation have been during the years 1981–1991.

The defense line, which is the blue line, grew by leaps and bounds in the first half of the 1980's, and it stayed there through the balance of the 1980's. Entitlements, the green line, grew substantially through the mid-1980's, and then rose rapidly in 1987, 1988, and 1989. And from 1989 through 1991, entitlements went through the roof, headed straight for the hole in the ozone layer, while domestic discretionary spending, the red line, declined steadily under inflation throughout the early 1980's, and has continued at about the same level below inflation from 1987 through 1991.

The next chart represents domestic discretionary's share of Federal spending in fiscal years 1981 and 1993. The circle on the left represents the total budget for fiscal year 1981. And it will be noted that the segment which represents domestic discretionary spending consumed about one-fourth of the total budget in that year, 1981.

The large circle on the viewer's right represents the total budget in 1993, and the domestic discretionary outlays, represented by the green piece of pie in the chart, consumed only one-eighth of the total budget. Therefore, during those 11 years, the percentage of the total budget dropped from one-fourth for domestic discretionary in 1981 to about one-eighth of the total budget in 1993.

Now, the next chart shows where we are today. This is a snapshot, a quick picture, of where we are now. This is the composition of the 1993 CBO January baseline in budget authority in billions of dollars. At the 1 o'clock position, Senators will note that net interest will require 13.2 percent of the budget, $212.6 billion. Then, as we proceed clockwise, Medicare will consume 5.4 percent; Social Security, 22.9 percent; deposit insurance, 3.2 percent—that is, deposit insurance on savings and loans, which, on this chart, represents $50 billion out of the $51.1 billion.

The next item is "all other." That represents such items as unemployment insurance, the Civil Service Retirement Disability Trust Fund, the Highway Trust Fund, and so on.

The next item is mandatory and entitlements. That represents 15.2 percent of the budget. What are we talking about there? We are talking about child nutrition, food stamps, Medicaid, Commodity Credit Corporation, veterans' pensions, veterans' compensation, and so on. These are mandatory. We have to pay them. They are decided by basic law. The Appropriations Committee has no jurisdiction over that law.

The next item is "defense/international," which, combined, represents 19.2 percent of the total budget.

The last item, at the 11 o'clock position on the chart, is that little runt puppy entitled "domestic discretionary," and it will consume only 12.7 percent of the budget; in other words, $205.1 billion.

Now, that is "domestic discretionary" which, as I have already indicated, represents the manifold programs that mean so much to the American economy and to the everyday lives of American citizens—it is only 12.7 percent, one-eighth of the total budget.

I should comment in passing, that the semicircular black line represents the total nonappropriated portion of the budget. In other words, there is 52.9 percent—more than half—of the total budget for which the Appropriations Committee does not appropriate moneys. Those checks are written by computers. Social Security checks, for example, do not go through the Appropriations Committee. The mandatory and entitlements, even though they go through the Appropriations Committee, we have to pay them; we cannot cut them because they can only be reduced by law. They make up an additional 15.2 percent, thus comprising 68.1 percent of the total budget, that we on the Appropriations Committee cannot do anything about. And that leaves only the 19.2 percent for defense plus the 12.7 percent for domestic discretionary; in other words, 31.9 percent of the budget is defense and domestic discretionary—which, in reality, is all that is controllable by the Appropriations Committee.

Again, I say, the poor little runt puppy—domestic discretionary—has been on the operating table for the last 11 years, and the administration's doctors have cut on it and cut on it and cut on it until they have cut to the very marrow of the bone.

The next chart shows domestic discretionary budget authority, starting with fiscal year 1990 on the left. This is

a very interesting chart, and I hope that for Senators who are not here today, I hope that their staffs will be able to see this on their TV channel and I hope that they will be taping it, because this is an extremely fascinating chart and it tells a very sobering story.

For the year 1990, domestic discretionary budget authority was $169.3 billion. As Senators can see, we had growth for 1991, up $20.2 billion to $189.5 billion. For 1992, domestic discretionary rose to $202.8 billion, a further increase of $13.3 billion.

That growth, Mr. President, is what I fought for at the summit. Senators will recall that I sought substantial increases for domestic discretionary spending at the summit. And I had some good help there—Senator SASSER, Senator BENTSEN, Senator FOWLER, and the joint leadership. But I led that fight at the 1990 budget summit. I did it because of the devastation of critical programs that had taken place since 1981—devastation.

Someone once said that the difference between the right word and the almost right word is the difference between the lightning and the lightning bug.

Well, "devastation" is the right word—devastation of critical programs.

And, ultimately, at the summit we settled on total increases in budget authority for domestic discretionary of $40 billion above the August 1990 baseline for fiscal years 1991 through 1993. That was $80 billion higher than the administration wanted it at the start of the negotiations. It was not nearly enough, of course, to reverse the damage caused by the cuts between 1981 and 1990, but it represented real growth of $40 billion.

Mr. President, Napoleon said that "men should be firm in heart and purpose, or they should have nothing to do with war and government." So, Mr. President, I have been firm in heart and purpose. What I was saying at the summit, I am still saying; namely, that this country has an investment deficit, not just a Federal funds deficit, not just a trade deficit, but also an investment deficit, an infrastructure deficit.

Now, let us go back to the chart. The green line that goes up on the chart is baseline, as computed by the Congressional Budget Office. For fiscal year 1993, the baseline for domestic discretionary rises to $211.3 billion. That is how much it rises because of inflation. In other words, we need $211.3 billion just to stay even with last year, just to keep up with inflation over last year. But the administration has requested only $202.9 billion, a cut of $8.4 billion below inflation.

Now, that is this year—now. We have not run our budget resolution before this Senate yet. It has not been reported out of the Budget Committee. We have not started the appropriations bills yet. We have not started the allocations process. But we can see that we are going to have a tough time, because we will not even have the budget authority that we had last year for domestic discretionary if we follow the administration's budget.

For fiscal year 1994, the baseline for domestic discretionary is $217 billion; yet, the administration's request is $203.5 billion, a cut of $13.5 billion below inflation. For fiscal year 1995, the baseline is $227.1 billion for domestic discretionary—just keeping up with inflation. But the President drops back to $202.9 billion, which is $24.2 billion below inflation.

I do not know how many Senators have operated a cash register. I have had to do that, and a good many Senators here have had that experience. And we all know that it does not pay to come up short at the end of the day.

But look at this chart. The American people are going to come up short if the President's recommendations are followed. The horizontal line is the freeze line. That is the line showing the President's requests. As one can see, the farther the line goes, the greater the shortfall in domestic discretionary spending under inflation.

In total, then, for the next 3 fiscal years, the administration is requesting real cuts of $46.1 billion in budget authority below inflation for domestic discretionary—for programs that mean so much to you and your children and America's future. I have already read the litany, a partial litany. I will not read it again. But it is America's bread and butter.

Now, if we look at the chart which shows the budget impact of the administration's proposed defense savings on a year-by-year basis, we see that the administration intends to impose $6.6 billion in budget authority rescissions for fiscal year 1992. As best we know at this point, these proposed rescissions will probably be cuts of congressional priorities, and Congress may or may not agree to any or all of them, or Congress may add some of its own. For fiscal year 1993, the proposed budget authority defense cut is $7.9 billion; for 1994 it is $8 billion, and for 1995 it is $8.4 billion.

Therefore, if we total up the administration's proposed defense cuts for fiscal year 1992 through fiscal year 1995, that total comes to $30.9 billion. That is $15.2 billion short of the administration's proposed domestic discretionary cuts of $46.1 billion, for fiscal years 1993–1995.

This means, Mr. President, that if we agree to the administration's budget authority defense cuts for fiscal years 1992 through 1995—I include 1992 because, as I say, the President has certain rescissions in his budget—if we agree to the administration's budget authority in defense cuts for fiscal years 1992 through 1995, and if we were to apply all of those defense cuts—there are a lot of grandiose ideas around here about how we ought to spend all of those defense savings, that pot of gold out there at the end of the rainbow, there are lots of plans—if we agree to the administration's budget authority for defense cuts for fiscal years 1992 through 1995, and if we were to apply every single dollar of those defense cuts to domestic discretionary, we would still suffer real cuts totaling $15.2 billion in budget authority for domestic discretionary over the 1993–1995 period.

So, it is plain that there is not enough money cuts in defense spending over that period to cover the shortfall in domestic discretionary, below inflation—it falls short by $15.2 billion.

For outlays, the picture is just as serious. The administration's defense outlay cuts for fiscal years 1992–1995 total $14.5 billion. But the administration's outlay cuts for domestic discretionary over fiscal years 1993–1995 total $44.6 billion below the CBO baseline.

This means that domestic discretionary outlays will have to be cut $30.1 billion below inflation over the 1993–1995 period, unless we find additional defense outlay savings above those proposed by the administration and apply the additional defense savings to domestic discretionary.

Mr. President, "you ain't seen nothin yet." The next chart shows the administration's budget authority and outlay requests for domestic discretionary for fiscal years 1993 through 1997. These are not shown in the budget document. Here on the desk is the budget document. I can scarcely lift it with one hand—this is the budget document. It shows the domestic discretionary cuts from 1993 through 1995. It does not show the administration's budget authority and outlay requests for domestic discretionary spending for fiscal years 1996 and 1997. We have heard the tune, "The Wreck of the Old 97"? Well, take a look at this wreck!

For the fiscal years 1996 and 1997, we were able to get these figures from the Office of Management and Budget only yesterday. They are not in that budget document. This chart shows the administration's budget authority and outlay requests for domestic discretionary for fiscal years 1993 through 1997 compared to CBO's baseline for each of those years. The "difference" column at the bottom of the chart shows the year-by-year budget authority and outlay cuts below inflation that are proposed by the administration.

In other words, the administration is saying that in FY1993, domestic discretionary budget authority, based on the President's request, comes up $8.4 billion short; FY1994, $13.5 billion; FY1995, $24.2 billion.

Now, as I say, we get into the figures that are not in this budget document.

FY1996, $36.1 billion; FY1997, $40.4 billion—short!

Friends, Senators, Countrymen, lend me your ears! In total, the President's budget would cut domestic discretionary budget authority by a total of $122.6 billion over this period, fiscal years 1993 through 1997, below inflation.

I do not know how many have read "Dante's Inferno" lately, but those who remember will recall that the first circle in hell was Limbo. That is where people went who neglected and were indifferent to their religious duties—Limbo. So we can see that that domestic discretionary line, based on the administration's request, is headed for Limbo—the first circle in the economic Sheol; the first circle of Hell.

For that 5-year period, the Administration cuts outlays by a total of $106.9 billion. Now, can anyone wonder why I am saying, why I am remaining firm of heart and purpose, in saying that the peace dividend should be put into domestic discretionary initiatives? Can anyone wonder why? Can anyone wonder why, when we see that, in that 5-year period, 1993 through 1997, the domestic discretionary budget authority needed to keep up with inflation amounts to $122.6 billion more than the President is recommending?

I do not believe that the President really knows that. This President who has so often spoken of a "thousand points of light," who has so often spoken of a kinder, gentler Nation. I do not believe that the President is aware of the figures on that chart which are representative of his administration's recommendations. I do not believe he is aware of it.

And I do not believe that Senators are aware of it, but they are going to be aware of it. They are going to be aware of it, because I am going to say it, over and over and over again. It shall not stand!

I do not know how far I will get. I may get run over. But Senators are going to know what they are doing, and, in my feeble way, the American people are going to know what we are talking about here.

We have all of these glowing reports about how much of a peace dividend is out there. And there are many who take the view that we must not spend defense cuts on domestic discretionary, and that we must not cut defense below $50 billion over the next 5 years. The President is recommending a $50 billion cut in defense over a period of 5 years. On the other hand, look at what he is recommending as a cut in domestic discretionary: $122 billion over 5 years.

Looking back at the chart showing proposed defense cuts, we see that the administration is proposing cuts totaling $50 billion in budget authority and only $27.4 billion in outlays for defense through 1997. If we were to cut defense only to the level proposed by the administration, and if we were to apply every dollar of those savings to domestic discretionary, we would still fall $72.2 billion short in budget authority and $79.5 billion in outlays below inflation for domestic discretionary over the 5-year period.

Mr. President, we should not accept such an evisceration. As an old meat cutter, I know what evisceration means. We should not accept such an evisceration of this Nation's vital domestic needs.

For too long, we have chosen to ignore our own economic and human needs. We have chosen to ignore the needs of our children, and we have chosen to ignore the needs of our grandchildren, and their children. We have chosen to ignore the needs of my country, your country, our children's country. We should know that it is through domestic discretionary appropriations that we make the investments in our physical and human resources that so strongly influence our long-term economic and productivity growth.

We seem to be the only major industrialized nation in the world that does not understand the connection between public investment and productivity growth. Our competitors certainly understand it, because, while we have been ignoring our public investment needs in this country, they have been paying attention to the investment needs in their countries. Our competitors have been investing, and, as a result, they have been enjoying higher rates of productivity growth.

The chart to my immediate left is an interesting one. Look at the nondefense public investment in the United States and our rate of productivity growth versus the public investment and productivity growth of other nations between 1973 and 1985. Over this 12-year period, starting on the viewer's left, we see that Japan invested 5.1 percent of its gross domestic product [GDP] and increased productivity by 3 percent. Italy invested 2.7 percent of GDP and increased its productivity by 1.8 percent. The then Federal Republic of Germany invested 2.5 percent and increased its productivity 2.4 percent. France invested 2 percent and increased its productivity 2.3 percent. The United Kingdom invested 1.8 percent and increased its productivity 1.8 percent. Canada, our neighbor to the north, invested 1.5 percent and increased its productivity 1.3 percent.

The United States invested a paltry three-tenths of 1 percent of its gross domestic product and had a likewise paltry productivity growth of only six-tenths of 1 percent.

Hence, we can clearly see the relationship between nondefense public investment and productivity growth. Increased public investment clearly translates into increased productivity, and increased productivity translates into increased economic growth and more jobs, a higher standard of living, the ability to better compete internationally, and enhanced national security.

So, it just stands to reason—in law, we talk about the reasonable man—it just stands to reason that this should be the case. It is just plain common sense. Any boy on any farm in this country knows that.

In the late 1920's, I was a boy living on a little hillside farm in Mercer County, West Virginia. On that farm—I can see it now, two steep hills coming down in the shape of a V—at the bottom of the V we lived in a four-room frame house with no running water, no electricity. We did not have a radio, and had never even heard of television, and we lived 3.1 miles from what we called the "hard road." We attempted to eke out a bare existence on that hillside farm. We had one old horse named George, a couple of cows, a few chickens, and some guineas. Now and then my mom would take her .32 Smith & Wesson and shoot a ground hog.

Life was hard, but I learned on that little old farm that the more fertilizer, the bigger the tomatoes and the taller the rhubarb. My wife, with whom I have lived now for almost 55 years, knows that if she puts fertilizer around her rosebushes, they will grow taller and the roses will be rosier and more beautiful, the fragrance will be more lasting, the petals will be softer, and the colors will be brighter. The more the fertilizer, the greater the return.

And so it is the same when we invest in our country—the more we invest, the greater the return on the investment.

This Nation cannot expect to be able to compete in the coming decades if we fall further and further behind on our public investments versus other nations. If our competitors outinvest us, they will outperform us, and if they outperform us, we will be driven out of business.

Look at what the other industrialized countries are doing to connect cities that are close to each other. The Japanese have their Bullet train that speeds along at the rate of 120 miles per hour. The French have their TGV, their *Train de Grande Vitesse*, which has been tested at 170 miles per hour. The Germans have tested their high-speed train at 240 miles an hour. The British and the French have worked together to excavate a tunnel beneath the channel to bring their two countries and their cities together.

What do we have to show for our high-tech infrastructure that is exciting?

We do not have to reinvent the wheel, but we at least have to have as good a wheel as the other fellows.

The Interstate Highway System, which is comprised of 44,849 miles of concrete and asphalt ribbon, was a good example of how public investment stimulated private investment. The

Interstate Highway System encouraged private investment, private productivity, and private employment growth.

I was in the House of Representatives when President Eisenhower and the Congress worked together to begin this magnificent interstate system which spreads from coast to coast and from the northern border to the southern gulf. I have supported the funding over the years.

The 20th century has been a century of military warfare, Mr. President. The 21st century will be a century of economic warfare among the great powers, and we are already losing.

Chancellor Kohl says that the decade of the 1990's will be the decade of the Europeans and not the Japanese. Did Senators hear what I said? President Kohl said the 1990's would be the decade of the Europeans and not the Japanese. He did not even mention us. Apparently, the United States will not even be a major player. It remains to be seen whether or not we will be able to even get onto the ball field.

We have gone from an era of little competition into an era of head-to-head, eyeball-to-eyeball competition in which the best industries will be microelectronics, biotechnology, telecommunications, civil aviation, robotics, machine tools, computers and software, and the new material science industries, and these are brain power—brain power industries. If we are really going to play a global competitive game, we are going to have to lead, or let us at least be strong in these industries.

Benjamin Franklin said, "If a man empties his purse into his head, no one can take it away from him. An investment in knowledge always pays the best interest."

We are talking about brain power. This is another reason why we need to increase the quality of education in this country so that the students of the future, the leaders of the future, in our industries and our workshops, on our farms, in the mines, in the offices, and in the factories will be better prepared for the challenges they will face. The brain power will be there that is necessary to lead in these brain power industries.

The budget decisions we have made over the last decade represent a formula for economic failure.

What happens to a business that does not adequately invest in new capital equipment and the education and training of its work force? Eventually, that business falls further and further behind its competitors and eventually has to close down.

That is the path that we are on as a nation, Mr. President. It is the path that leads to second-rate status in the international marketplace and a declining standard of living for our people.

But we have a chance now to reverse that trend. The demise of the Soviet Union has given us a window of opportunity that we must not squander.

Mr. President, the world has changed dramatically since the budget summit. The cartographers of this country have been kept busy making new maps. They have been kept busier than a one-armed paperhanger with the itch. Every day there is a new map because there is a new country or another country has slipped away from behind the Iron Curtain.

As a boy back there in that two-room schoolhouse in Mercer County, West Virginia, I studied geography. I was talking with my wife just the other evening. What was that geography that we studied? I said to her, I believe it was Frye's geography. That was the geography I studied. That was the geography she studied.

Now they have a new math these days. I was taught the old math. I do not know anything about the new math. But the old math is still good. But the old geography is not still good. The new geography and the new maps have taken over. We would not recognize the old maps anymore.

The Soviet Union has dissolved. Plato and Pliny wrote about the legendary island of Atlantis, located somewhere to the west of the Pillars of Hercules. Because of an earthquake, we are told by the ancient writers, it sank beneath the ocean waves. It simply disappeared. And the same thing can be said with regard to the Soviet empire.

The President has recognized that fact and has recommended Department of Defense cuts of some $50 billion in budget authority over the next 6 years. But ask your wife, ask your husband, ask your neighbor, ask your constituent on the telephone, and you will find that there is a growing consensus that the military can safely be cut significantly more than that modest cut in 1993 of $7.9 billion in budget authority and $5.2 billion in outlays proposed by the administration.

Those are just window-dressing cuts. They avoid the kind of systematic review that a 5-year projected $1.4 trillion expenditure cries out for.

Fifty-seven years ago I became a meat cutter in a coal mining community company store. Some things change. Some things never change. I used to cut the salami. I could go back into the meat market today and cut that same cooked salami, the same hard salami, the some old slices.

The proposed reductions of a few strategic systems and a bit of force structure are altogether too conservative, and amount to just a slice off the same old salami.

The changed circumstances require a top-to-bottom and bottom-to-top review of the security needs of this country, and a refashioning of the appropriate roles, missions, and forces that reflect our new circumstances. The lack of any credible threat from the vanished Soviet empire requires a thorough reexamination of the presence of U.S. forces in the European theater and elsewhere.

Further reductions in SDI, in bombers, and in other strategic systems are certainly in order.

In addition, recent reports of tremendous waste and bloated inventories in the Department of Defense demand immediate attention.

Mr. President, I do not know how many other Senators watched, but I am sure that millions of Americans watched Lesley Stahl's recent interview on "60 Minutes" which focused attention on this problem of bloated inventories of defense stocks. Senator LEVIN has been leading the way in calling attention to these massive warehouses across this country that are filled with bloated inventories of military stocks.

The setting on "60 Minutes" depicted Ms. Stahl introducing her subject against the background of a gigantic complex of Government warehouses. Another scene depicted an inventory of thousands of vehicle tires, piled high, and exposed to the elements.

Well, that particular part of the show did not overly impress me. But a third scene depicted a warehouse of dusty crates full of military inventories, and she reached over and gingerly touched one of those dusty boxes and found the dust on her finger. She said, "How long has this been here? When was this box put here?" They looked on the box and saw that the crate was filled in 1952. That is the year that I first ran for the House of Representatives.

There sat those boxes. They had been sitting there. They had apparently been untouched since the 1950's. Imagine that.

And then we hear that the defense budget cannot be cut more than $50 billion over the next 5 years. How ridiculous. How long will the American people stand still for such a ridiculosity?

Lesley Stahl on "60 Minutes" commented as follows. Here is what she said.

"The world's biggest shopping spree, that's what the Pentagon has been on almost since the day they opened the building. One hundred billion dollars' worth of everything from nuts and bolts to sliced ham and"—believe it or not—Maalox, all gathering dust in military depots; $100 billion worth. That is a lot of money. That is a $100 bill for every minute since Jesus Christ was born.

I will go back to what she said.

"The General Accounting Office says $35 billion—billion—of that $100 billion is stuff that's of little use to anybody * * *."

That is the General Accounting Office. That is an arm of the Congress. That is the watchdog arm of the Congress "* * * least of all the military, and in the next 10 years," said Lesley

Stahl, "they'll spend another $35 billion just to store the stuff."

What a comedy of errors. Can you believe it? This is an old hawk talking. I spell my name B-Y-R-D, but I have been a hawk a good many years, during my service in the Congress.

It just does not make sense, but it sure adds up. She said over $1 billion. Back to what she said: "That may not sound like a lot to a general, but to a teacher that's about $10 billion more than the entire budget of the Department of Education. To the Governor of Texas, that's twice her annual budget."

Mr. President, waste such as this ought not to be tolerated; I should say, "must not" be tolerated. But we have said "must not" for so long, and it never seems to happen. But it ought not to be tolerated. I am sure that many more dollars could be found if somebody took a hard look at the elephantine military budget.

Senator LEVIN says that not only is there that $100 billion in the military storage depots, but he says there is also another $100 billion in supplies at the various bases and military sites around the world. He says there is an additional $50 billion at the locations of the defense contractors. I sat right up there in that chair just the other day and heard him say it. My ears did not deceive me.

The defense elephant of the 1980's was force fed—and I helped to feed it—with trillions of dollars, and transformed into a giant, woolly mammoth by the 1990's. And today, it is eating us out of house and home. Now that the time has come for a massive diet program, the administration has become so fond of this woolly, big beast that it will only agree to give it a haircut and a shave.

Well, all of us are sensitive to the particular problems created by the coming reductions in military personnel. Senator NUNN has been addressing the Senate for several days on that subject. He has been making what I think are worthwhile suggestions, and certainly worthy of consideration. Coming from him, they demand our attention. We need to formulate a plan for the men and women, he says—and I agree—who will be retiring from our active forces, as well as the civilians who will be affected by cuts in the military budget. Comprehensive programs to ease their transition into the civilian work force are needed.

But, Mr. President, the Defense Department is not a job corps. The Defense Department is not an employment agency. Undoubtedly, there are going to be some men and women losing their jobs. But that is nothing new to this Senator from West Virginia.

When I came to the Congress of the United States, there were 125,000 coal miners in West Virginia, where my old dad worked during the pick-and-shovel days in the mines; 125,000. Today in West Virginia, there are few more than 20,000 coal miners. The progress of machines came and wiped away the jobs. We have lost population because of it. So I know something about the loss of jobs.

Yet, we have to face the inevitable fact that there is precious little need in the real world today for the size and type of military establishment that we have maintained during the cold war years.

Plutarch said, "it is a true proverb, if you live with a lame man, you will learn to limp."

We have battled our international adversary for so long that we are now more like him than we know. He, too, has a huge military establishment. What is going to happen to his soldiers, as that establishment becomes smaller? For too long, he has wanted to keep his military establishment in order to keep his people occupied. And now we want to do the same.

He has been a lame man, and we are learning to limp. The Soviet Union could not reverse its course in time to avoid the total collapse of its economy. But our own Nation still has the flexibility, fortunately, to correct our course, in light of our own changed circumstances. The question is: Do we have the brains and the willpower to look ahead and correct our course?

The military establishment, as we know it, cannot substitute—it cannot substitute—for a vital job-producing, growing economy. We have to make decisions now that will foster a growing economy. Let us adjust to the new world, the new maps of the world that we face today.

Those who want to cut defense and use the savings for tax cuts need to recognize what we are facing in these next 5 years, and what we are facing even this year, just to keep up with inflation in our domestic discretionary initiatives.

Defense cuts are vitally needed, beginning now, beginning in fiscal year 1993, to put our infrastructure house in order. The President has proposed a modest reduction in defense for 1993, as I have already pointed out. But he has not proposed that those savings be used to prevent the reductions in domestic discretionary that I have described.

To repeat, we will suffer baseline cuts in domestic discretionary of $8.4 billion in budget authority and $8.2 billion in outlays in 1993; in other words, now, looking ahead to the appropriations for fiscal year 1993, under the President's budget.

I support a change in the Budget Act. I wrote a letter to the President in December suggesting—recommending—to the President that we modify that budget agreement that we all signed in 1990 when we went to Andrews Air Base.

I could see that we would have to modify that agreement if we hoped to keep up with inflation in domestic discretionary spending.

I wrote the President a letter, suggested that we do that, and offered my cooperation in doing it. I never heard from the President. I never got any answer. I do not blame the President for that. He is a much busier man than I am, and he was particularly busy at the time. I do not blame him for that.

But I believe that a change in the Budget Act is necessary, and, as I say again, I will support a change that will allow defense savings to be used for domestic discretionary increases in 1993 and beyond. While I believe that this change is necessary, there are many provisions in the Budget Enforcement Act that I will continue to support. One is the provision that holds the Appropriations Committees harmless for changes in technical and economic miscalculations. Another is the so-called pay-as-you-go or pay-go provision which requires committees of jurisdiction to pay for new entitlements or tax cuts; failure to do so causes sequesters against entitlements, not against discretionary spending, as was the case prior to the budget summit agreement. That pay-go provision is critical to the success of the enforcement provisions of the Budget Enforcement Act. No longer can new entitlements or revenue-losing measures be enacted and be paid for by reductions in discretionary appropriations. I will not support elimination of those key provisions.

Mr. President, it was dismaying to read the introduction to the fiscal 1993 budget, wherein it is essentially said that changes in the rules of the game are OK as long as the new rules are the administration's rules.

Let me read a portion of that statement. In effect, while the President was not able to respond to my letter which I wrote in December, I have the answer now right here in this big, big book, the budget of the United States Government, FY 1993. I have the answer now to my letter. Here it is. And I shall read from page 12 of part one:

> The President's strong and responsible agenda for growth can be fully enacted without abandoning the budget discipline of the Budget Enforcement Act.
>
> It is clear, however, that some in Congress do not wish to stay within the Budget Enforcement Act. Some wish to abandon its discipline entirely. Others wish to amend the Act in order to re-allocate defense savings for other purposes.
>
> With these Congressional interests in view, the President's proposed defense savings are displayed at Table 2-2.
>
> The defense outlay savings are roughly sufficient to offset the President's proposed $500 per child increase in the personal exemption. Such an offset is not now possible under the Budget Enforcement Act; nor is it necessary under the President's program. But if the Congress were unwilling to accept fully the President's proposed pay-as-you-go financing of tax initiatives, the President would be prepared to consider modifying the Budget Enforcement Act to allow the projected defense outlay savings to offset the proposed increase in the personal exemption.

The President would be prepared to consider modifying the Budget Enforcement Act to allow the projected defense outlay savings. They will amount to something like $27.4 billion for the next 3 years. He would allow them to be used to offset the proposed increase in the personal exemption, which is estimated to be $23.9 billion. In other words, domestic discretionary initiatives can go straight to Limbo—in other words, in Dante's divine comedy, "The Inferno"—to the first circle of Hell.

(At this point, Mr. WIRTH assumed the chair.)

Mr. BYRD. Mr. President, that statement is a direct assault on a basic principle of the budget summit agreement. The administration has offered very graciously to amend the Budget Enforcement Act and to abandon the pay-as-you-go requirements of that act in order to allow projected defense outlay savings to be used to offset the President's proposed increase in the personal exemption. That was not—not—what was agreed to at the summit. It was very clear at the summit that defense savings would be needed in 1994 and 1995 in order to avoid major cuts in domestic discretionary spending.

Events have now made it possible and necessary to cut defense in 1993 and to use those savings to prevent further devastation of our Nation's infrastructure. We simply cannot afford to waste this opportunity to plow the peace dividend into infrastructure investments that will enhance our productivity, our standard of living, our ability to compete in the international marketplace, and our long-term economic security. And, of course, economic security translates into national security. Defense savings should not be squandered for tax cuts that will neither really address the Nation's economic problems nor provide substantial tax relief for working families.

A recent Times Mirror poll says that 52 percent of the American people want more public spending as a first choice solution to our economic woes, 52 percent. In that same poll, only 8 percent said that they thought a one-time $300 tax rebate would be the best way to help the economy. Put simply, the American people have said that the size of the proposed tax cuts will not help them as much as jobs, jobs, jobs and a growing economy.

Moreover, if we cut Federal taxes and fail to provide Federal moneys to the State and local governments to assist them in providing essential services, those State and local governments will simply raise their taxes, as Virginia is contemplating, as Maryland is contemplating, and as the District of Columbia government is contemplating in the newspaper today. They will simply raise their taxes, and this piddling, measly Federal tax cut for working families will just be gobbled up. The American taxpayer will be saying, "Where's the beef?" when it is gobbled up.

Economists have pointed out that only about one-third of Federal tax cuts would be spent and much of that to purchase imported goods from other countries. The other two-thirds would likely go toward reducing debts, say the economists, or would be saved. The middle-class working families of this Nation certainly need some tax relief. But if it is done, it should be done by shifting the burden within the Tax Code to the higher income taxpayers. There are a lot of economists in this country today and business people in this country today who are even saying that there should not be any tax cut at this time. As a matter of fact, they are saying there should be a tax increase. I believe I read that in the New York Times just the other day. But with all the critical unmet needs that we are facing—from increasing our investments in education and infrastructure to affordable health care for all Americans—this is not the time to reduce revenues through tax cuts.

The President of the United States and the Democratic candidates are saying we need a national health care plan, and we all know that it is going to be costly.

This is not the time certainly to reduce revenues through tax cuts.

Economists further suggest that cutting taxes in an effort to stimulate the economy is ill-advised and would likely have adverse long-term economic consequences, thus diminishing prospects for robust long-term economic growth.

I also want to be clear—and to use an old Nixonian phrase, I want to be "perfectly clear"—that I shall oppose any attempt to use defense savings to pay for tax cuts. I will oppose it. The wagon might run over me. My Senate colleagues may help it to run over me. But "I ain't gettin' on that wagon."

The stakes are too high to play politics with the economic future of this Nation. And those stakes are nothing less than the continuance of our superpower status in the world. I reject the notion out of hand that the solution to our economic woes lies in the tax-cut fever that has been sweeping Capitol Hill and this Capital City.

Now, I do not find fault with those who disagree with me. They have a right to their view. I am telling it as I see it.

Like the flu epidemic which has weakened the health of so many Americans in recent months, this tax-cut fever will only serve to weaken our resolve to put the peace dividend where it will do the most good.

Mr. President, we have a real chance here to make substantial investments in this Nation and its people. I do not believe that that opportunity should be squandered in a legislative poker game or a political bidding war between the White House and the Congress, or between Republicans and Democrats, as to who can cut taxes the most. It is pure election year politics. And the American people know that it is election year politics.

I do believe that action is needed in the short term to jump start the sagging economy. Congress should enact legislation that will provide not only a short-term job stimulus but will also address our long-term public investment needs, both physical and human.

Even aside from a recession at this point, even aside from the need for a temporary or immediate jump start, even aside from all of that, the fact remains that this country has been underinvesting in itself and in its people. It needs to invest in itself and its people, and it needs to invest at a higher rate than that of just keeping up with inflation.

Such action would create hundreds of thousands of jobs—between 40,000 and 60,000 jobs per $1 billion of investment in physical infrastructure—in public works projects that are ready right now to start.

Any Senator may call his State highway department or the mayors of his big or little cities and they will say to him, "We have plans. We can go right now. We have taken care of the rights-of-way problems. We have taken care of the environmental impact studies. We have got the plans all tied up in a nice little ribbon right here on the shelf." The plans are gathering the kind of dust that was on the boxes in those military storage depots that Lesley Stahl talked about on "60 Minutes." If she will go to those cities and touch those plans on the highway departments' shelves, she will get the same kind of dust on her fingers. The mayors and highway commissioners will tell her, "We have got the plans. We are ready to go. Give us the money, and the dirt will start flying."

We need also to appropriate additional funds for job training and retraining. All of these investments have a short-term payoff, but they are also the kinds of investments that can improve our economic performance over the long term. I am told that each 1 percent increase in unemployment costs the Federal Government between $35 and $45 billion.

I believe I heard Senator SASSER, the chairman of the Senate Budget Committee, recently say that the combination of increased State and local taxes and layoffs of State and local employees has created a drag on the economy in excess of $35 billion. Well, what do we do about it? What do we do about it?

Franklin D. Roosevelt said, "There are as many opinions as there are experts." And he was right. I have been reading the hearings conducted by Senator PAUL SARBANES, the chairman of the Joint Economic Committee, and

the hearings held by Senator SASSER and Senator PETE DOMENICI, the chairman and ranking member, and other members of the Budget Committee. I note that all kinds of experts came before those committees. And I am going to invite a few of those experts to come before the Appropriations Committee beginning the week after the break. I want to hear those experts. Yes, F.D.R. was right: "There are as many opinions as their are experts." I am no expert, but I have an opinion. And I have a vote. Here is my opinion. We could invoke the emergency provisions of the Budget Enforcement Act in order to fund a job stimulus appropriation bill. However, that would result in an increase in the deficit. I do not want to see that. I would prefer to work within the budget agreement, which now calls for discretionary spending to be merged in 1994 and 1995.

I would, however, propose that we break the wall between defense and domestic discretionary spending now while otherwise retaining the enforcement and all other elements of the budget summit agreement. In other words, I am saying today what I said last December in my letter to the President.

I believe that we must seriously contemplate the long-range ramifications for our country of a failure to make dramatic changes in our national priorities. Circumstances have changed, as I have already indicated, in many ways from what they were when we were at the budget summit. Nobody realized when we were at that budget summit in 1990 that unemployment in this country would be 7.1 percent today; that there would be 8.9 million Americans out of work, with an additional 1.1 million Americans who have become so discouraged that they are no longer seeking work; and an additional 6.3 million Americans on part-time employment, who want full-time employment, making a total of over 16 million Americans who are either jobless or are underemployed today.

13 percent—13 percent.

Nobody at the budget summit foresaw that 1 out of every 10 Americans would be on food stamps in January 1992. Nobody foresaw at the budget summit that business bankruptcies last year would amount to 73,500. Nobody at the summit realized that personal bankruptcies filed would amount to 919,988 last year. Nobody could possibly foresee such developments.

There are some other things we could not foresee. I am reading from a document by the Wall Street Journal titled "Plant Closings Or Mass Layoffs," November 1–December 31, 1991. I will not read all of this but I will just select a few of the items.

Beginning in November 1991:

Deere & Company, 2,100 employees; May Department Stores Company, plans to consolidate its Hecht's and Thalhimer department store divisions, resulting in eliminating 750 Thalhimer's employees.

Ford, GM, and Chrysler. Plant shutdowns because of slow sales will idle more than 24,000 hourly workers for 1 or 2 weeks.

That was on November 15.

Nynex Co., which is a telecommunications computer industry, "Restructuring initiative to cut the work force, consolidate or shut down some units." The number of employees affected, 3,400.

International Paper Co., 1,000 employees affected.

IBM, "Job reductions to take place in 1992 on top of the more than 20,000 jobs eliminated in 1991. Twenty thousand, the number of employees affected."

Tenneco, Inc.—"Tenneco's JI Case unit, which makes farm and construction equipment, plans to lay off 4,000 more workers. It has already eliminated 5,000 jobs since 1990."

Philip Morris Food Processing "will discontinue operations at a turkey processing plant in California in May. The number of employees affected, 1,440."

Union Carbide, 7,500. General Motors, 74,000. Digital Equipment Corp., 10,000. Ameritech Corp., 2,300. McCrory Corp., 2,000. Zale Corp., 2,500.

Then, Mr. President, from another memo I now read the following. These are corporation layoffs that were announced in January. Last month.

January 7, 1992: Sears, Roebuck & Co. announces a revamping of its customer service and catalog department, eliminating 1,000 full-time jobs and 5,900 part-time jobs.

January 8, Woolworth Corp. announces it will close, sell, or change format of 900 stores causing the elimination of 4,700 full-time jobs and 5,300 part-time jobs.

January 9, 1992, USX Corp. says it plans to close its century-old South Works steel plant in Chicago affecting 690 employees.

Chevron Corp. announces employee reductions of at least 2,500 as a part of an effort to cut out high overhead and operating expenses.

United Technologies Corp. announces a restructuring which will eliminate 13,900 jobs.

Bethlehem Steel Corp. announces it will end its participation in the light structural steel industry which will slash its employment by 25 percent, or 6,500 workers.

And so on and so on.

The disturbing day-to-day news concerning layoffs and shutdowns reminds us of Malcolm's words to Macduff as they contemplated retaking the throne of Scotland from Macbeth, who had murdered King Duncan, the father of Malcolm:

I think our country sinks beneath the yoke; It weeps, it bleeds; and each new day a gash Is added to her wounds. . .

Each new day, Mr. President, we read of the deepening wounds to our country and its economy.

Mr. President, we have all lived through the cold war together.

I was born in 1917, the year in which Vladimir Ilyich Ulyanov, who preferred to call himself Lenin, led the revolt against the czar. Lenin died in 1924, when I was 7 years old. But his specter stalked the world stage even after his death. In 1948, Stalin seized Czechoslovakia. I think it was in February. In June of that year he imposed a blockade on West Berlin.

I remember that very well. That is one of the reasons why Harry Truman is one of my idols, insofar as Presidents are concerned. The French and the British and the Americans ran those corridors into Berlin. And to just keep Berliners alive there had to be 4,000 tons a day of food and fuel flown into Berlin.

The pilots called it "Operation Vittles." And it lasted 15 months. There were not very many airfields. There was one airfield in the British sector and one airfield in the United States sector. Eventually an airfield was added in the French sector. But over those 15 months, the allies flew 277,000 flights into Berlin. A C–47 had to take off or land every 3½ minutes around the clock.

When the Soviets backed down, the allies had flown 2.3 million tons of fuel and food and clothing and medicine into Berlin—almost a ton for every Berliner. Those were tense days for all of us during the 1948–1949 Berlin airlift.

Then in 1955, the Warsaw Pact was announced. In November 1956, the Soviets put down the Hungarian revolt and the streets of Budapest were carpeted with the bodies of the Hungarian martyrs.

In 1957—I was a Member of the House of Representatives at the time—the Tass news agency came out with a startling statement saying that they were announcing an item that would be of great interest to the American public; that for the first time an artificial Earth satellite was launched successfully in the U.S.S.R. Since the days of Cain and before, there has always been an Earth satellite, the Moon, but the Soviets had launched an artificial Earth satellite, the size of a beach ball, circling the Earth, making 1 revolution every 96 minutes, traveling at the speed of 18,000 miles an hour, meanwhile emitting beep, beep, beep signals. It came as a shock to the American people.

In 1962, we went through the Cuban crisis which lasted 13 days. We had our briefings of Senators and we were told where to go and what to do in the event of an attack. Really, there wasn't much that could be done for Soviet missiles launched from Cuba would have wiped out 80 million Americans in a matter of a few minutes. After 13 days Khrushchev backed down.

Then in December 1979, the Soviets invaded Afghanistan.

And so it went during the cold war. Now, things have changed. We have not seen the decline and fall of the Roman Empire, which Gibbon wrote about. But we have witnessed the decline and

fall of the Soviet empire. That will be a matter for the history books in the days to come. The Red menace, like Attila the Hun, is gone.

In the year 451, Attila, king of the Huns, the "Scourge of God," the "dread of the world" invaded the Gothic heartland and the last Roman general, Aetius, joined forces with Theodoric, the king of the Visigoths, and turned back Attila and his savage horde of 700,000, on the Plains of Chalons. The next year Attila invaded Italy.

There is a saying that is worthy of the ferocious pride of Attila that the grass never grew on the spot where his horse had trod. Yet, the pressing eloquence, the majestic aspect and sacerdotal robes of Leo I, the saintly father of the Christians, excited the veneration of Attila, and he retreated from Italy to his wooden palace beyond the Danube. The next year, in 453, Attila married the beautiful Ildico. There on the plains of Hungary occurred a sumptuous banquet with all of its pomp and festivities, after which, oppressed by the wine and the need for sleep, he retired to his nuptial bed. The next morning he did not rise. The attendants waited until late in the day when they became alarmed and broke into the royal apartment and found Attila, their king, dead, with the beautiful Ildico, or Hilda as she is called by Gibbon, kneeling by the bedside, frightened and weeping at the loss of the king. The remains of Attila were enclosed within three coffins of gold, of silver, and of iron and privately buried in the night. The spoils of nations were thrown into his grave, and the captives who had opened the ground were massacred.

Nobody today knows where Attila is buried. He is gone. So, too, the Red menace is gone. The New York Times of August 27, 1991, had this headline: "Gorbachev Pleads, But Breakaway Areas Defy Him, Putting Fate Of Union In Doubt," "Collapse of an Empire."

The Washington Post, August 28, carried this headline: "Gorbachev Says U.S.S.R. on Verge of Collapse."

The Washington Post, September 1, headline was, "Two Central Asian Republics Quit U.S.S.R." "Departures Bring Total to 10."

The Washington Post of September 6 carried the headline, "Soviets Transfer Power to Republics, Create New Transitional Government."

U.S. News & World Report on its cover carried the historic words, "The End Of Communism," "Russia Reborn."

Inside the magazine, "Following the failed coup, a new age has dawned in the Soviet Union. The Communist Party is effectively dead"—effectively dead.

And so, Lenin, who had said, "We shall destroy everything, and on the ruins we shall build our temple," is gone forever and the temple about which he so proudly spoke, is gone. No longer is the Red menace the chief danger to our country. The menace that faces Americans today is the pink slip.

Mr. President, I have lived a long time, more than the 70 years promised by the Psalmist. I was born during the administration of Woodrow Wilson, in World War I. My mother died on Armistice Day 1918. I lived through World War II, the Korean war, the Vietnam war, the war in the Persian Gulf. I saw the Great Depression. It is more than just a faint memory to me. It is not something that I have just read about in the history books. It is not something that I have just heard about from parents or uncles or aunts or grandparents. It is something I saw, something I felt, something I knew, something I suffered.

But even in the Depression, even in the dark night of despair, we saw the bright star of hope. I have seen recessions come and go. I have seen this country in hard times and in prosperity. But there has always been hope. There was hope in those little shanties, in those coal mining towns, when millions of Americans walked the streets and the back roads of the country seeking work, and lining up in the soup kitchens. There was hope when a crippled man became President of the United States and said, "All that we have to fear is fear itself." There was still hope to keep us going.

Never before have I felt like I feel about what is going on in this country today. There is something fundamental happening in this country. There is a fundamental bedrock change going on in this country. Our country is not like it was. It is slipping.

A few days ago, the President gave the State of the Union Message, his fourth. But it was not the whole State of the Union. Much remains to be said. There is a spiritual State of the Union that needs to be addressed. We do not speak of the Bible anymore. Anything goes. Watch TV, and you will hear any kind of language. I have heard it—profanity, God's name spoken in vain, nonchalantly. Hear it on the streets, hear it in the schoolhouses, hear it anywhere, all kinds of filthy language. God's name is never spoken except in a profane way. In many of the schools, there is almost a total lack of discipline. George Washington said that "discipline is the soul of an army;" DANIEL PATRICK MOYNIHAN once said that "discipline is the glue that holds societies together." How can teachers teach when they have to spend their full time trying to impose discipline, and putting their lives and their limbs at risk in so doing? Discipline. Anything goes.

I do not know that we can put full credence in everything we hear about Head Start. We hear a lot of good things about it. Undoubtedly, the program does some good. Twenty-five years from today, when I probably will not be around, I do not know what people will be saying about the expenditures for Head Start, but I am willing to keep trying.

We must spend more money on education, but money is not the sole remedy. As far as I am concerned, we ought to build some buildings and put the roughnecks, the troublemakers, in those buildings and let the students who want to study have some peace. Can we imagine students being able to concentrate on difficult math problems or teachers being able to teach difficult math problems, or science problems, physics problems, or English, or history with all the noise and clamor and cursing and ripping and tearing going on in the schoolroom and out in the halls?

I agree with Senator NUNN. We ought to put some of the Marines in the schools and let them try to at least impose discipline. I was brought up in a school where there was discipline. My old coal miner father did not say, "If you get a whipping in school, I will whip the teacher." He said, instead, "If you ever get a whipping, in school, I will whip you again when you get home." And I knew he meant it.

So we have to do something. The tide is going out. It is time we politicians started telling people the truth. Everything is not "Good morning in America." The American people were told that too long. They were told only the good news. The idea was to make them feel good.

Mine is not a "feel good" message. It is not good morning in America. There is not a free lunch. Remember David Stockman and the "magic asterisk"? He said that Reagan was not up to it. He said that President Reagan did not know what was going on in that budget.

We were fed a lot of that good morning in America. But the American people know it is not good morning in America. We have to give them credit. They were told, "If it ain't broke, don't fix it." Well, it is broke. Look at the national debt; it is well on its way to $4 trillion. How long does it take to count $1 trillion at the rate of $1 per second? Thirty-two thousand years.

Our steel furnaces have closed; factories have shut down. Assembly lines have dwindled. Workers dream of the pink slips.

That is what is wrong with consumer confidence. The thing is "broke," and if we do not face up to it, we will not fix it.

The outlook is pretty gloomy, is it not? But we can fix it. Let's just tell the American people the truth. Forget politics once in a while.

What I have said here today, I have not said in the interest of politics. I have not recommended increased domestic discretionary funding for political reasons and increased cuts in de-

fense. I have not urged them on behalf of the Democratic Party. I have not urged them on behalf of the Republican Party. I have not urged them on behalf of the Democratic candidates. I have made the case for domestic discretionary increases because these are my convictions; they were my convictions at the summit.

We have to tell the people the truth.

I do believe that there can be good morning in America if we make the right decisions. A great Frenchman, de Tocqueville, referred to the "incredible" American who "believes that if something has not yet been accomplished it is because he—that incredible American—has not yet attempted it."

We Americans can do it again—we have the resources—if we but have the brains and the willpower to face up to the truth and to act; to stop playing politics; and get away from the silly notion that we cannot cut the Defense Department budget more. It is silly. My little dog, Billy, knows better than that.

Mr. President, I still believe in the future of America. I believe it needs leadership, and it can have leadership. Both parties can give that leadership. We have to quit kidding ourselves. It won't be easy to straighten the country out. We are going to need the President's help.

I close with an inscription that appears on a monument to Benjamin Hill in Atlanta, Georgia, a former United States Senator:

Who saves his country saves all things, saves himself,
And all things saved do bless him.
Who lets his country die, lets all things die,
Dies himself ignobly,
And all things dying curse him.

Let us save our country.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

TVA'S NATIONAL FERTILIZER AND ENVIRONMENTAL RESEARCH CENTER

Mr. HEFLIN. Mr. President, I rise today to express my strong opposition to the administration's plan to eliminate funding for the Tennessee Valley Authority's National Fertilizer and Environmental Research Center, located in Muscle Shoals, AL.

TVA's Fertilizer Research Center is the major fertilizer development center for the country, and in fact, it is the only fertilizer development center in the country. It is the Nation's only institution for creating new fertilizers and production technology and introducing that technology to farmers and industry. Since its organization in 1933, the center has patented about 250 fertilizer process innovations which have been injected into the economy by granting nearly 700 patent licenses for use in over 600 plants located in 39 States around the country. This diffuse base has provided a very broad foundation for generating benefits from this public investment, and supports the observation that three-fourths of the fertilizer used annually in the United States is made with technology pioneered by TVA scientists at TVA's Muscle Shoals center.

The center's achievements have affected every American. Breakthroughs in fertilizer technology at the center have been a driving force behind the advancements in modern agriculture. Without the concentration of plant food that only chemical fertilizers can provide, American agriculture could never have become the most efficient and productive in the world. Indeed, the use of chemical fertilizers accounts for about 40 percent of all U.S. crop production. As a result, Americans have more food available to them at a lower cost than any other nation on Earth—U.S. food expenditures as a percent of disposable income is the lowest in the world.

Modern agriculture is one of the success stories of the benefits of applied science and technology. Due largely to the work at TVA's fertilizer center, U.S. agriculture is a model of productivity and efficiency. Our farmers make up only one-tenth of 1 percent of the world's population, yet they produce 25 percent of the world's food supply. This productivity has permitted the United States to become the world's leading producer of agricultural goods, exporting more than 40 billion dollars' worth of agricultural products each year. Since 40 percent of agricultural production is due to fertilizers, fertilizer makes a significant contribution to our trade balance, and directly accounts for an average of 15 billion dollars' worth of exports annually. With the global trade war that we are engaged in, and the deficiency the United States has in its balance of trade, if we were to eliminate the positive aspects of agricultural exports, we would be in a much worse condition today than we are in.

In my judgment, it would be unwise to terminate this valuable national resource. We should cut wasteful Government spending, not productive investment that produces a twentyfold, yes twentyfold, return on the dollar, as this center does. The TVA National Fertilizer and Environmental Research Center is an investment in agricultural research and in economic growth that America cannot afford to lose.

Thank you, Mr. President.

TRIBUTE TO ELMUS E. "RED" COX

Mr. HEFLIN. Mr. President, there is an old saying that, when we pass from this life, if we have made just two or three really close friends, we then have indeed been blessed. If that is the case, then we can say that Elmus Edward "Red" Cox was blessed a hundredfold. Red Cox left us on January 10, 1992, after a long, happy, and successful life of bringing happiness to others. Red was a true public servant in the best sense of the word and left behind hundreds of dear friends as a marvelous testament to his life and career.

I first came to know Red when he was serving as administrative assistant to the late, great Congressman from Alabama, Albert Rains. He served on the Congressman's Capitol Hill staff from 1945 through 1965, playing a prominent role in getting passed some of the most sweeping housing legislation of that time. Since Rains served on the House Banking and Currency Committee, Red also became known for his expertise in the complicated fields of banking and financial management.

Red Cox came to Washington during the depths of the Great Depression. President Roosevelt had just declared the "bank holiday" and Red cleared a final loan for $20 from the First National Bank of Attalla, AL, which was soon forced to close. He bought a one-way ticket to Washington, arriving here in March 1933.

Although Red was flat broke, he did have the promise of a job. With the help of then-Congressman Miles Allgood, the young Mr. Cox landed a job as a file clerk with the Office of the Comptroller of the Currency. A few years later, Red moved to a position with the Federal Housing Administration, where he stayed until joining newly-elected Congressman Rains' staff.

While working with Albert Rains, Red became friends with then-Congressmen and future Chief Executives Lyndon Johnson and John F. Kennedy, as well as many other influential national legislators. Recently, a book entitled "A Conversation With Red Cox" was published privately for his family and many friends. It details many fascinating stories that took place during his time on the Hill, including several about Johnson and Kennedy.

Red recounts the story of the afternoon Lyndon Johnson, then a young Congressman fresh out of the Navy, learned that he had signed on with Albert Rains. Lyndon said, "Boy, you've sure picked a dandy. He's loved by everybody up here. He's great. You'll go places with him." And so he did.

When Congressman Rains retired to private law practice in 1965, Red had a number of job offers, one of the best coming from Aerojet General, one of the reputed giants in the space program at the time. Instead, he chose to go back to where he had started—the

Office of the Comptroller of the Currency, figuring "it would be easier to work with banks than to get a man on the Moon."

After 39 years of Government service, Red retired in 1972, returning to his home in Cox Gap, AL. Until his death, he remained active in the community by attending civic meetings, advising local officials on issues of the day, and serving as director of the First National Bank of Attalla.

Mr. President, Red Cox has often been described by friends and family as someone who could get things done, and done right. A large part of his success in the public arena was due to his extraordinary ability to get along with people and cultivate lasting friendships. He never failed, despite the hectic schedule he kept throughout his life, to find quality time for his family. One of his sons even followed in his father's legendary footsteps: I am proud to have Lee Cox currently serving with distinction on my own staff.

Red Cox, the quintessential conversationalist, humorist, politician, and public servant, will be missed by those of us who knew and loved him. However, we can take solace in the fact that he lived his years to their fullest and left something of himself with those fortunate to have been a part of his life.

Mr. President, great wisdom can be found in a passage from Proverbs 22, which reads, "A good name is rather to be chosen than great riches." Perhaps no better epitaph could be found for Red, for his good name will be long-remembered as the one of a man who made friends by being honest and kept them by being steadfast.

I extend my sincerest condolences to Red Cox's lovely wife Jo, and to her entire family. Lee Cox gave a eulogy to his father at the funeral service, and I ask unanimous consent that it be printed in the RECORD following my remarks.

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

EULOGY TO E.E. "RED" COX, JANUARY 12, 1992

(By Lee S. Cox)

To our friends and loved ones, I want to express appreciation on behalf of our family for each of you being here today. We appreciate so much your coming, some of you from a great distance, to honor the man we all loved so dearly.

About three and a half years ago, my wife, Mary, lost her beloved father, Joe Gielarowski. I am so pleased that Mary's mother, Martha, could join us today from Pensacola, Florida. Anyway, I gave the eulogy at Joe's funeral and later sent a copy of my remarks to my dad. Well, after reading it over, he called me and said "Lee, when my time comes, would you speak at my funeral, too? If you do half as good a job for me, folks might think I was a pretty good feller!" What a sense of humor he had.

We all know he was much more than just a pretty good feller. How would you describe Red Cox? Statesman, politician, public servant, true friend, conversationalist, humorist, devoted husband and father * * * He was all this and much more. But mostly to me, he was my example. And the older I get, the more of my father I see in me.

So, for these few moments, I would like to share with you some of my feelings and some of the relationship I had with my father, Elmus Edward "Red" Cox. We were very close and our relationship was very special. So, I don't apologize for the grief that overhelms me in this hour. I have no regrets, no feelings of remorse. Nor should any of us. Only happy memories of a man who influenced by life more than anyone and in who's footsteps I have tried to follow.

Most of us are familiar with the story of this home-town-boy's rise to success in the political arena. Just before the Alabama Bank was forced to close in the "Bank Holiday" declared by President Roosevelt in the depths of the economic depression, the First National Bank of Attalla cleared a final loan—for 20 dollars. With this small but hard to get stake, my dad bought a one way ticket to Washington, DC, and arrived there flat broke on a blustery March day in 1933.

Dad considered himself lucky and relatively rich, for he had the promise of something that millions of able-bodied adults needed at the time—a job! Sounds a lot like today, doesn't it?

The promise came through a relationship he had with former Congressman Miles Allgood who got to know dad when he stayed at a local hotel when Congress was in recess. Dad was a room clerk at the hotel. Congressman Allgood liked Dad and promised to help him land a job in Washington. He kept the promise and dad soon latched on to a position as file clerk in the Office of the Comptroller of the Currency where he stayed for about 3 years.

The next step on the ladder of success brought my dad to a position as an auditor with the Federal Housing Administration. When he wrote back home with the news of his new job, his father got worried and went around telling everybody, "Elmus got a job up there as an auditor when he couldn't even figure the cost of a bale of cotton! My Lord, no wonder the government is in such a mess."

He stayed there until January, 1945, when he went to Capitol Hill to join newly elected Congressman Albert Rains as his administrative assistant. I am especially pleased and proud to recognize Albert's dear wife, Alison, who is here with us today.

To say that dad was dedicated to Albert is an understatement. Albert Rains was his boss, his mentor, but more than that, he was my dad's true friend and the two were inseparable even to the end of Albert's distinguished career and life.

Having worked on Capitol Hill a number of years myself, I know a little bit about politics, too. And, I know that behind every successful Congressman stands a good administrative assistant. It's kind of like, behind every successful man, stands a good wife, and there's mine right over there.

Anyone who worked with my dad will tell you that one of his most outstanding qualities was that he was a man who could get things done. And, to get things done, and done right, you must have friends. He had literally hundreds of friends of my dad's favorite writings was the last letter to Andrew Jackson from Jackson's mother which I shall read from now.

Andrew, if I should not see you again, I wish you to remember and treasure up some things I have already said to you. In this world, you will have to make your own way. To do that, you must have friends. You can make friends by being honest, and you can keep them by being steadfast. You must keep in mind that friends worth having will in the long run expect as much from you as they give to you. To forget an obligation or be ungrateful for a kindness is a base crime—not merely a fault or a sin, but an actual crime.

I can truly say that dad was never guilty of this crime and his many friends can attest to this. My dad's mother, Dora, had a profound influence on his life and Christian faith. Here is an excerpt from an article which appeared in the Anniston Star on December, 8, 1984. Entitled "Son Experienced His Mother's Prayers."

Although dad's time was very much in demand on Capitol Hill, he always seemed to find time for his family. He instilled in me and Barry a great love for the outdoors and sports that can only come through those special times of being alone with him in the woods or on the water. Those memories are clearly etched upon my mind. Like the times we would go into the woods and sit and wait until daybreak revealed the activity of nature all around us. I must admit that I turned out to be more of a fisherman, while Barry turned out to be the expert hunter.

I have much to thank my dad for, and several years ago, I tried to express my gratitude in a Father's Day card by saying these words.

Thank you, Lord, for my dad. Who took me fishing on warm summer days. Who taught me how to put a squirming worm on the hook without poking myself. Who taught me how to fool that ol' fish right into the boat. Who took me hunting on breezy fall mornings and taught me how to patiently wait for the squirrel to show himself up in the trees. Who made a can of corned beef, crackers, and Vienna sausages seem like a banquet fit for kings under a shady tree. Who took me skeet shooting and taught me how to shoot straight. Who taught me how to give a firm handshake and look a person in the eye. Who gave me a strong self image and told me that I was somebody. Who inspired me to learn the music styles of the jazz greats and to carry on the tradition of Gershwin, Porter, Cole, Crosby and many others. But, most of all for planting the seed of faith in me. I can still picture you at the First Baptist Church, leaning way forward when the pastor said, "Let us pray." This is the manner which I have copied.

My dad had another outstanding quality that I must mention and that was his excellent memory. He could recall stories, names, and past events so well. He was the best storyteller I ever heard and even if you had heard it before, it didn't matter because he made each telling seem like the first. He was gifted in many ways, but one gift he was well known for was his gift of conversation. You didn't need a TV or radio to be entertained when Red Cox was around, just have a conversation with him and listen to the stories he would tell.

Two Christmases ago, dad surprised us with something we had been asking him to do for years. He presented us with a book he had written entitled "A Conversation with Red Cox." Folks, it is priceless and I can't tell you how glad I am that he did this. I'll read you just a sample of it which tells how he got the name "Elmus."

"I was going to tell you about my name, Elmus Edward 'Red' Cox. I was named after Dr. Elmus Hamby in Attalla. The morning when I was born, Dr. Hamby said to my fa-

ther, 'well, you got another boy.' Papa was all delighted and said, 'How much do I owe you?' And, Dr. Hamby said, 'Oh nothing, Lee. Just give me a bushel of those potatoes out there and name your boy after me. So, that was payment for by birth. When I went to Washington, I was placed in a group of fellows, all of them wild and really crazy, I thought at the time. We were in a file room, about forty of us with the insolvent National Bank Division, and I was a file clerk. The second day that I was there, a fellow who was dressed up came over to me and said, 'You look pretty sharp. You've got white shoes. What's your name?' I said, 'Elmus Cox.' He started snickering and said, 'Hey, fellas, do you know what this boy's name is?' And he said, 'Elmus—Elmus! Did you all ever hear of a name like that?' And before he got it out a second time, I had hit him and knocked him into a freight elevator. So, we fell all over the floor and had a rough time. But, he's eighty-two now and lives in Oklahoma City. We talk to each other a lot about our old times."

Time does not allow for me to elaborate and recall all the stories I would like to. And, I'm sure many of you have your own wonderful memories and experiences with my dad that you could share as well. We'll have to get together sometime and swap stories.

So, where do we go from here? do we leave this place in despair and discouragement? Of course not. Although our sorrow is immeasurable, my dad is not in that casket before us. He is alive. And, we will soon see him again. He has achieved the crown of eternal life, which is our heritage, too.

We need to understand that his death is not an isolated tragedy that happened to one man and his family. In a real sense, this is the human condition which affects us all. Life will soon be over for everyone in this room and for everyone we love.

Therefore, let's determine to live each day as the Lord would have us, keeping in mind the temporary nature of everything which now seems so permanent.

We are all sinners and my dad was no exception. He wasn't perfect. And, it would be wrong to eulogize him in a way that would embarrass him if he were sitting here among us. He had his flaws, even as you and I. But, I loved him. Perhaps, as much as any son ever loved his father. We all loved him, and I know I speak for you all, too.

I leave you with a quote from an anonymous author who wrote, "A sudden death is God's kiss upon the soul." Truly, God has embraced the soul and spirit of my father and to him we are all eternally grateful.

[From the Anniston Star, Dec. 8, 1984]

SON EXPERIENCED HIS MOTHER'S PRAYERS

(By Frances Smith)

"This little book will keep you from sin or sin will keep you from this little book."

"Those words are still legible in the Bible my mother gave me years ago," writes E.E. "Red" Cox of Attalla. "I was embarking on life's journey into the adult world when my mother gave me the Bible. She was standing in my room with tears in her eyes watching me pack my suitcase."

"Special passages are noted in the front of the Bible in my mother's handwriting: 'Whoso keepeth his mouth and his tongue, keepeth his soul from troubles.' (Proverbs 21:23) and 'A good name is rather to be chosen than great riches'. (Proverbs 22:1).

"My mother was a very devout Christian woman. She admonished me 'be good and trust God' and reminded me to write her and go to church and Sunday school.

"I know my mother never ceased to pray for me. I actually experienced the effects and results of her interceding for me in prayer. Just as with others who leave home to pursue career goals, I had days when I plummeted into the very depths of despair and depression covered me like a suffocating blanket. I survived by the grace of God because of my mother's prayers.

"Once during a severe drought when the ground was so dry there were no crops, the people of the community gathered at the church and asked my mother to pray for rain. Believe me, it poured rain! In fact, one of the men of the church asked the pastor to stop her from praying before all the mules were washed away.

"Those who remember my mother remember her as one who would go up and down the streets to witness to people about Jesus. She ministered to the poor and was a leader in the community and the church.

"My mother served as Sunday school superintendent at Cox Gap Church. At a meeting held at the First Baptist Church in Gadsden; she was called on to pray. My mother's prayer was the first prayer prayed in the First Baptist Church at Gadsden.

"I've heard my mother pray and I've heard her shout. Her prayers have sustained me not only during the time that she lived here on earth when I could hear her pray, but the memory of those prayers have had a lasting effect on me. I will never get over losing my mother."

Thank you so much, Mr. Cox, for sharing your memories of your faithful, dedicated Christian mother.

Mr. Cox has retired from Washington, D.C., where he served as administrative assistant to the retired Albert Rains, congressman from Alabama. Mr. Cox and his wife, Jo, are now living at Cox Gap in Attalla.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, appoints the Senator from Pennsylvania [Mr. WOFFORD] to read Washington's Farewell Address on February 19, 1992.

Mr. HEFLIN. 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. LOTT. 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. LOTT. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is conducting morning business with Senators being allowed to speak therein.

Mr. LOTT. Mr. President, I would like to speak about the economic growth package.

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

THE ECONOMIC GROWTH PACKAGE

Mr. LOTT. Mr. President, we have 43 days left until we will reach the March 20 deadline the President has asked us to meet. Actually, we have 42 days after today in which to get our work done.

I think the President was absolutely right when he called upon the Congress to act within a specified period of time. The people that I have talked to in my State, and from other States, feel that we should act quickly. The economy needs a boost now. It is incumbent upon the Congress to act quickly. So I think it is commendable that the leadership on both sides, Republican and Democrat, have indicated that they will meet that target. It is essential that we do this job so that we can get a quick boost to the economy.

Now the way to do that is to focus on the proposals the President made in his State of the Union Address. Some people have said: "Oh, it is not enough. It will not take effect quick enough; we should do other things."

But I think we should take a minute to look at what we are talking about. I would like to ask my colleagues here in the Senate which of these proposals do they disagree with?

First, let's talk about a first-time home buyer tax credit of $5,000. Clearly, homebuilding and real estate will play an important part in leading us out of the recession we are in. The American dream is still a very important part of what we look for in the future in America. Owning our own home, that is the American dream. This credit will help young Americans and, frankly, a lot of older Americans, come up with the money they need to buy that first-time home. The tax credit for first-time homeowners is a good idea, and it will have a quick impact.

Next, I want to address penalty-free IRA withdrawals. When you ask people out in the real world what they think about the individual retirement account, they say, "It is a great idea." In fact, they ask me: "Why did you change it? It was working well."

It was working well. Now I acknowledge one of the reasons we changed it was that some people at the Treasury Department said it was actually costing revenue.

It was doing what it was supposed to do. It was encouraging people to set up these IRA's. It was encouraging savings. It was contributing to the capital pool. I believe these proposed IRA's, which would allow penalty-free withdrawals for education and housing, are a great idea. Who amongst us is opposed to that? We could do it quickly, and it would have an impact quickly.

Now, let's discuss capital gains tax rate reduction. There are all kinds of tax cuts proposed for the middle class and for others that we could support, that would be good. But if you want to do something to create jobs—jobs—a capital gains rate reduction would do it.

I was on a panel 2 days ago, I guess, and some of my colleagues from the

other side of the aisle were also on the panel. They said what we need are tax increases. You do not hear that when you go out in the real world. But when pressed: "Would you support a capital gains rate reduction?" They said, "Well, yes, but we would also like some tax increases to offset the benefits."

Look, what is the goal here? Is the goal to have more tax fairness? That is a worthy one. But our goal right now should be to do what we can to give the economy a quick boost and create jobs. A capital gains rate reduction will do that.

Let's focus on the investment tax allowable. We need to encourage people as quickly as possible, perhaps on a temporary basis—although I would like to make it permanent—to buy some more equipment, to buy the things that they have been putting off buying because the Tax Code does not encourage people to invest in future technology or development. Clearly, that is a good proposal.

Next, allowing more pension fund real estate investment and passive loss relief would clearly help the real estate industry. We made mistakes—many mistakes—in the 1986 tax bill. We ought to correct them. We made mistakes in the 1990 budget agreement. We ought to correct some of those. We cannot do it all in 42 more days. But we could make a step in that direction.

We should certainly consider simplifying the AMT, alternative minimum tax depreciation. This could help the economy in many ways.

Again, I ask my colleagues to look down this list and tell me what it is you do not approve of. If there are one or two that we could maybe improve, fine. But let us focus on the ones that have been suggested. Let us keep it simple. Let us make it quick. Let us get the job done in the next 42 days.

I do not think the House should be out in February. They ought to work on the economic growth package. I do not think they ought to just have pro forma sessions. They ought to be working. I think it is a good idea that the Senate be here in March so we can get this job done by March 20. I certainly will support that effort in every way possible.

When I listened to some of the speeches that I heard in the Senate earlier today, and consider what I am sure we are going to hear, I keep wanting to say: Here we go again. The idea is, let the Federal Government create jobs. When was the last time the Federal Government did a good job of doing that? Maybe it did work back in the twenties and thirties, but this is the nineties.

And in testimony before the Budget Committee, the so-called experts will tell you that one of the problems with the so-called public works jobs bills is that there is always a lag time.

Should we make a contribution to infrastructure—both physical and human? Yes. But should we do it in such a way that would increase the deficit even more and would take months to go into effect?

Yes, if I call the Highway Department in Mississippi, or if I call the mayors, and say, "Do you have some public works projects you could get going quickly?", they will say, "Absolutely. Send us the money. We'll find it."

But, in truth, it does not work that way. There is always a lag of not just weeks, probably not even just months. Most of these projects would not even get started until the end of this year, or sometime next year. At that time, they would have an exacerbating effect on the economy, making it, I think, worse and adding to the deficit.

So the solution is not more Government spending. That is what Congress loves best. Oh, yes, let the Federal Government fix it. The Federal Government caused the problem.

We cannot fix it by just spending more on domestic discretionary programs, foreign aid, entitlements, and so on right down the line.

The problem is that the Federal Government is still soaking up too much money. As I understand it in the next fiscal year, the revenue projected to come into the Federal Government will be approximately $1.076 trillion. How much is enough? That seems like it ought to be enough.

Well, the problem is that the Federal Government would propose to spend approximately $1.5 trillion for a deficit of around $399 billion. And, there are those that say: "Well, we need to spend even more."

The truth of the matter is we need to be cutting spending in almost every account and returning the freedom dividend to the American people.

I have heard proposals that various State governments and the District of Columbia government are going to raise taxes. Great. In the proposal I saw this morning they are going to raise taxes on health care providers. At the very time we are trying to find ways to cut back on health care costs, the suggestion has been made in the District of Columbia: Let us raise taxes and fees on hospitals and medical providers. Who do you think is going to pay for that? The people are going to pay higher health costs.

Others say: Well, let us raise taxes on the wealthy. Well, actually people do not mind Congress raising taxes as long as it affects everybody else but them. We are destroying the incentive to work. The people are not undertaxed. They are overtaxed. It is their money in the first place.

Are we going to go to a socialized system where we say: "OK, everybody work as hard as you can. But, if you make over $30,000 we are going to take it and redistribute it to those who are not working for whatever reason and everybody will live on $20,000 to $30,000, whatever the magic number is." It is totally ridiculous.

If you go out there and talk to the people that are working and carrying their share of the weight and paying taxes, they say: "Don't tax me any more." And yet, here on the floor of the Senate, the solution offered by some is to raise more taxes and spend more money. That is what caused the problems.

People wonder why we are having difficulty competing in the world market. The major reasons are the tax burden, the ridiculous tax policy we have and the regulations that we in this body, have imposed on business, industry, and workers in America. We put all these regulations on how they have to pay their taxes, enforce all these reporting requirements, and place all kinds of restrictions on environment and safety—many of them good and well meaning. But, they drive up the cost of every product we produce. Then we tell American workers you have to produce more, and you have to carry all this Federal bureaucracy on your back.

So, Mr. President, I hope we do not lose a grip on things this year. There are those who say, "Oh, it is an election year. Surely, you want to cut taxes." Yes, I want to cut taxes this year, last year, and next year. The Government is too big, too bloated, too overrun by bureaucrats.

What we need to do is free America, free the people to make investments and create small businesses, to get jobs and keep their own money and pay for their children's education.

The President's proposal to allow the deduction of interest on loans for students to go to college is a great idea that is long overdue. I believe we should also allow for the deduction of all medical costs.

The bureaucrats down at the Treasury Department call these tax expenditures; that is where we take money from the Treasury, and let the people keep it. That is a misnomer in itself. When people work hard and pay taxes, why is it a bad idea for us to give them some way to better educate their children, to own a home with the first-time home buyer tax credit, to keep their hard-earned money?

Others say we could pay for all this by cutting defense. I heard a list read here earlier today of the many jobs lost at IBM, the many jobs lost at Zale's, and so on. Everybody worries about those jobs we are losing. Who is worrying about people that work in the military industry in America? What about their jobs?

We are not talking about 74,000. Look at GM. You are talking about 150,000. If we cut $100 or $150 billion more out of defense, as some of my colleagues have proposed, we are talking about 400,000 or 500,000 jobs. What happens to those

people? We cannot just put them out on the streets. They will not even be able to stay in the National Guard. We have to have something for them to do.

I have some ideas. I would like them to get jobs as policemen and teachers and see if we can find a way to facilitate the bridge over from the military into the private sector.

Still, my question, in the defense area is how much can we cut and still keep our military base? How much can we cut without causing a hollow force like we had after World War II and after Korea and after Vietnam?

We can reduce spending. But we should be careful. We should do it over a period of time. We should know what is really happening in Russia.

I do not think we can just go in and have a grab bag out of the defense budget, moving it all over to programs in domestic discretionary spending or even entitlements. What we need to do is reduce the deficit and have a defense that is adequate but not bloated. We should reform entitlement programs so we get more money to the people in a way they really can use it and will be benefited. And, we should continue to find ways to control domestic discretionary spending.

We have budget-speak in this city. You come in the Budget Committee. What is in your budget? "Well, we have a freeze." What is your freeze? "We will not allow it to go up more than inflation would drive it up."

In the real world, what that means is a significant increase. If you look at what has happened, spending has been going up every year. Revenues are going up every year but we keep spending more than the revenues that are coming in.

There is going to be a lot of hot air, a lot of rhetoric this year about what we ought to do on the budget. I think we should do some very simple things:

No. 1, pass an economic growth plan like the President proposed, and do it quickly, in the next 42 days.

No. 2, reduce the deficit, rather than letting it go up another $399 billion. We must find a way to reduce it.

No. 3, we should not be taking money from defense and moving it over into Government-created jobs that are temporary. That will not really help the economy, and, in many ways, will actually hurt the people. Let us let the private sector create the jobs, and then they will be good jobs that will last.

Mr. President, I yield the floor at this time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. LOTT. I will withhold.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I am very pleased that my colleague from Mississippi took the floor because I very much wanted to have the opportunity to talk about the economic situation because there were two hearings held, one yesterday morning and one this morning, which underscore the seriousness of the economic situation.

This morning the Joint Economic Committee received the unemployment rate for the month of January. The January unemployment rate was 7.1 percent, the same as it was in December. This is the highest unemployment figure since the recession began in July 1990. This recession, which has continued for 19 months, is now the longest of any recession since the Great Depression.

Mr. President, 576 days passed before President Bush announced an economic plan. My colleague has come out here on the floor, because he wants to count the days from when President Bush announced the plan to the arbitrary date of March 20, which President Bush set for action on his plan. President Bush announced his plan on January 28, at the State of the Union, and he set a March 20 date for the enactment. He said to the Congress, "Here is my plan. I want you to act on it in 52 days."

President Bush took 576 days from the beginning of the recession until he announced an economic plan. That is more than 10 times the number of days that he now says the Congress ought to take to act on his plan.

We are going to act on an economic plan. We are going to act expeditiously. The Congress was already acting on the unemployment insurance benefits proposal when the President came and spoke and included it in his State of the Union Address.

The President, who twice last year rejected extending unemployment benefits, finally signed it at Thanksgiving, but the Congress first urged him to act in August. In the interim, hundreds of thousands of Americans suffered incalculable and unremediable harm. People lost their apartments, their cars, and their homes.

We have 576 days of the recession before the President announced an economic plan. For most of this period of time, the President would not even admit there was a recession. People kept saying to the President, and to the members of his administration: "There is a problem. There is a problem. The economy is suffering."

The Bush administration said "no problem." People said, we know there is a problem. We live on Main Street and we know what has happened. No problem, says the President and his advisers. Even as late as—November 13, 1991, the President said, in an interview with a TV station in St. Louis, "I do not believe this country is in a recession."

Can you believe it? We are experiencing the longest recession in the post-World-War II period and the President says "I do not believe this country is in a recession." Finally, in December of last year the administration finally began admitting that there was a recession. They had to because the American people were increasingly asking, if the President and his advisers really know what is happening in the country? How can they be saying there is no recession when we have had this economic downturn, when unemployment is up, when income is not growing, when businesses are facing bankruptcy, when individuals are unable to meet their payments to keep their homes and keep their cars and keep other important durable goods?

Finally, on the 28th of January, just 10 days ago, the President announced an economic plan. Finally, 576 days after the recession began.

Mr. President, I want to talk a little bit about the economic situation in which we find ourselves, and I want to talk about the administration's proposal to try to deal with it. We have had two back-to-back hearings this week. This morning we had a hearing on the current economic situation and the unemployment rate, and yesterday we received testimony from the President's chief economic adviser, the Chairman of the Council of Economic Advisers, on the administration's proposal and their economic projections for 1992.

On the state of the economy, it is very important to understand that there is the official unemployment rate, which are people who are out of work and looking for a job; there is the comprehensive unemployment rate which includes not only the people out of work and looking for a job, but people who are so discouraged they have dropped out of the work force, and people who are working part time but want to work full time.

In the second quarter of 1990, which was before the recession began, the official unemployment rate was 5.3 percent; the comprehensive rate was 8 percent. The recession then began in July 1990, and the unemployment rate started to rise. The rates increased to 5.6 percent, 5.9 percent, 6.5 percent, 6.7 percent, 6.8 percent, 6.9 percent, and the rate this morning is 7.1 percent.

The comprehensive rate, which started at 8 percent and rose, as the recession continued into the high 9's, and went into double figures, 10.1, 10.4 is now estimated to be at 10.8 percent.

Let me just read from the statement of the Deputy Commissioner of the Bureau of Labor Statistics who presented the employment situation at this morning's hearings:

> The Nation's unemployment rate remained at 7.1 percent in January. Nonfarm payroll employment fell by 91,000 on a seasonally adjusted basis as large cutbacks occurred in manufacturing and retail trade.

Then he goes on to say:

> As is typical well into a recession, the number of unemployed persons who have been jobless for relatively long periods of time continues to rise.

So what has happened is the number of long-term unemployed has risen, and that is illustrated in this chart which shows the number of persons unemployed 27 weeks or longer. In June 1990, just before this recession began, that figure was slightly over 600,000 persons. It then moved on this path through the recession into 1991, and then toward the end of 1991, it has taken off at a precipitous rate.

In fact, we did not anticipate it rising as it has done and, therefore, did not have a chart long enough or tall enough to plot the figures received this morning which are now well in excess of 1.5 million persons. We started at almost 600,000. It has now risen very dramatically in recent months at a very sharp incline, and it is now well over 1.5 million persons unemployed for 27 weeks or more.

The second very disturbing thing that was reported this morning in the release on the unemployment situation was an increase in the number of people working part time who preferred full-time jobs. That increased from 6.3 million people to 6.7 million people, a jump of 400,000 people who are now working part time and want to work full time.

If you take the part-time people, those who are discouraged, and the unemployed, the unemployment rate is 10.8 percent. This is the highest it has been in this recession.

That gives some notion of the severity of the problem with which we are confronted. The Bureau of Labor Statistics went on to report: "In the goods-producing industry, manufacturing lost 52,000 jobs marking the fifth consecutive month of substantial job losses." These are your most recent figures, and come from this morning's report. In addition:

> Construction employment was flat over the month on a seasonally adjusted basis. Since May 1990, construction has lost 615,000 jobs.

So both construction and manufacturing, two of our key economic sectors, have experienced significant job loss over the course of the last year.

Even the services sector, which had been growing, has now gone flat. The report says:

> Job growth in the services industry virtually ceased in the last 3 months.

It is no wonder that Merrill Lynch, in their weekly economic and financial commentary just last week, said:

> Yet, except for some pickup in housing activity, evidence of a recovery is still completely lacking. Confidence is at rock bottom. Layoffs remain high, and the economy is going nowhere at the moment.

Confidence is at rock bottom, Mr. President.

The Conference Board issues an index called the consumer confidence index. Tracing it from 1985, treating 1985 as 100 in the consumer confidence index, we see this kind of movement with respect to consumer confidence, and you will note that we had a very sharp and precipitous drop which took place at the end of 1990 and the beginning of 1991.

Then it began to recover somewhat in the first few months of 1991, and now it has simply plunged to a level lower than anything experienced in this recession. It is now below the level to which consumer confidence dropped back in March of this year, which was heretofore recorded as the trough of the recession. It is now lower.

In fact, this level of consumer confidence has only been exceeded once in terms of the lack of confidence since the Conference Board has kept this figure.

So Merrill Lynch is absolutely right when they say in this newsletter, confidence is at rock bottom.

Mr. President, there is one other report from this morning. I am now going to quote from the Bureau of Labor Statistics:

> The factory workweek declined by three-tenths of an hour in January, after holding at high levels in recent months, despite employment losses.

The factory workweek declined.

Mr. President, the significance of that is that when you are trying to come out of a recession, one of the first signs that perhaps is happening is that the factory workweek gets longer. What happens is orders pick up, and factories have to respond. Rather than going out and hiring more people, they extend the workweek of the people they already have on the payroll.

So you see it as a progression. The workweek will get longer, and then at some point the orders increase enough that instead of extending the workweek even further, companies start bringing their people back, hiring new people, and therefore the number of people on their payroll begins to expand.

What has now happened is that the factory workweek declined. So we are moving in just the opposite direction. Even those working are getting shorter hours, and the prospect that others will be called back is diminished even further than it already was.

These are very grim figures. The report this morning was a very grim report about where the economy now is and what the outlook is.

The comprehensive unemployment rate is now 10.8 percent. You have 6,700,000 people working part time who want to work full time. You have 9 million people who want a job and do not have a job, and you have another 1.1 million people who have become so discouraged they have stopped looking for work.

If you add all of that up, those who are unemployed, 9 million, those who have become so discouraged they have dropped out of the work force, 1.1 million, and those who are working part time but want to work full time, 6.7 million, that gives you 16.8 million people, almost 17 million people who have been affected by unemployment, either totally or partially.

We have a work force in this country of 126 million people. We have almost 17 million people currently either unemployed or partially unemployed. That is about 13.5 percent of the work force currently being impacted by the unemployment situation.

Of course, not everyone is unemployed at the same time. People move in and out of that status. Last year, in 1991, it is estimated that somewhere between 20 to 25 percent of Americans experienced unemployment at some point during the year.

This recession has characteristics that have not marked previous recessions. First of all, it is still very much a blue-collar recession because it is the blue-collar people, generally speaking, who are impacted by recession in this country. Unfortunately, it is the people who do the hard labor who get impacted by recession. They are not cushioned from it.

But this recession has a white-collar dimension to it as well. It has reached beyond the traditional economic sectors that experience an economic downturn and has reached people who have never experienced an unemployment problem in the past.

For instance, white-collar people working in the financial industry, have never encountered this before. Now they are experiencing unemployment for the first time. The problem has really come home to hit them as well.

Second, the ratio of people in this recession being laid off as opposed to those being terminated has shifted significantly. Fewer people in this recession, compared with past recessions, are being laid off, and more people in this recession, compared with past recessions, are being terminated. What that means is that a worker, when he is given his slip telling him not to come to work, is not being told, "This is a layoff and as soon as economic conditions improve we hope to call you back in, and you can resume working."

What is happening in this recession is very different. It is that more and more workers are being called in and told that they are terminated. There is no more work opportunity at that company, not only now under the pressure of economic circumstance, but even if conditions improve; there is no job. The company is downsizing, the worker is being terminated, and that worker then no longer has even the expectation that he will be called back by his own company and can resume his job. That worker then has to go out into a job market and begin to look anew, just like a fresh entrant into the work force.

Another factor that has contributed in this recession to the economic hurt

that is being felt is that real income has declined for most people. Even those people that are working are not improving their economic situation once you adjust it for inflation.

So the improvement in their income is less than the rise in inflation, and, therefore, their real standard of living drops. That is for people who are fortunate enough to continue to hold their jobs but feel this economic constraint that is taking place with respect to this recession.

So it is no wonder, when you consider all of these factors, that you have this very precipitous drop in consumer confidence.

You might say that is all important information and it demonstrates clearly that we are in a difficult economic circumstance. How are we going to address it? As I indicated, it took the President 576 days after this recession began to even come forward with a plan.

I want to just talk a bit about the plan that he has come forward with. Yesterday, the chairman of the President's Council of Economic Advisers came before the Joint Economic Committee to present the President's economic report. Here is what he said in that report: The administration is predicting that the gross domestic product will grow 2.2 percent in 1992. The administration predicts that the economy, even if nothing were done in terms of the program they have submitted, would grow 1.6 percent.

So, the program that the administration has submitted about which my colleagues on the other side are making such a to-do, by the administration's own calculations, will contribute six-tenths of 1 percent. That is if you accept the administration's own calculations. There are critics of the administration who do not think it will do even what they say it will do. But I am not going to get into all of that.

I am going to accept for the moment the administration's predictions of what this program will do. The administration's prediction is that the enactment of this program will contribute six-tenths of 1 percent to economic growth in 1992. They say that, without it, the economy will grow 1.6 percent; with it, it will grow 1.2 percent.

Mr. President, this is a very small vision for the economic situation in which we find ourselves. It is in marked contrast with what has happened in previous recessions. In effect, what the administration is telling us is that even if we manage to make it out of the recession, we are going to have a weak, anemic, stumbling economy which will continue to present us with a full range of problems about which we have been talking here this afternoon.

This chart shows the percent of change in output, in gross domestic output, from the bottom of the recession, coming out of the recession.

These blue lines represent the increases that occurred in previous recessions in the postwar period. In other words, this increase here is how it moved when we came out of the 1961–63. This increase was 1975, 1977, 1982–84. That was the recession under Ronald Reagan, a very deep recession. And this is the increase for 1970–72; and 1954–56.

Now, I want you to look at what the administration is projecting in terms of moving out of this recession. These are the administration's own figures which are far below that of any of the other recessions. There are critics who think that they are not going to achieve even this level, that it is going to be flatter than that. But, for the sake of this discussion, I am going to take their projection.

If you want to evaluate their package, look at what their package produces in terms of a projection in the growth of real gross domestic product, compare it and contrast it with what has occurred in the previous recessions that we have experienced in this postwar period.

In many respects, I am sure my colleagues on the other side of the aisle, the Republican Members of the Senate, hopefully, would be as concerned and as distressed as I am about the inadequacy of the proposals to address the economic situation in which we find ourselves.

The administration projects that the average unemployment rate for 1992 under their program, will be 6.9 percent. Mr. President, it is almost beyond belief that an economic package, which is so inept that it will only reduce the unemployment rate from 7.1 percent to an average of 6.9 percent for 1992, can be portrayed as a significant initiative. Look how it contrasts with past recessions.

This shows the change in the unemployment rate from the peak of the unemployment, 1 year and 2 years out. We can see in 1982 to 1984, as we came out of that recession, the unemployment rate moved down in quite an aggressive way over the 2-year period. In 1975 to 1977, it moved down, although not as successfully as in 1982 to 1984.

Look at the small improvement the administration is projecting for 1992 to 1994. So what has happened is we have a very serious and severe economic situation on our hands, and we have the administration offering a package to address it that is not adequate to the challenge. Even if the administration's program were fully accepted, their own projections say that average unemployment rate for 1992, will be 6.9 percent. It is now 7.1 percent.

In fact, their estimate of the difference between employment in the administration's plan, and their estimate of employment of business as usual, is just under 400,000 jobs. We are talking about 9 million people unemployed. We are talking about another 1.1 million who are so discouraged that they have dropped out of the labor force, and we are talking about another 6.7 million people working part time, who want to work full time.

Mr. President, I am not going to go into each of the administration's proposals. The Finance Committee is going to be holding hearings on those next week, as is the House Ways and Means Committee. But what I do want to show is one final observation, because a great deal is being made of the President's proposals, which essentially give tax breaks to the very wealthy. And it is asserted that that money will be put to work to produce jobs.

Maybe it will and maybe it will not. The President's proposals have no guarantee that in order to obtain a tax advantage, you must make an investment and produce jobs. It is simply asserted that if you give this money to the very wealthy, they will create jobs. The capital gains tax proposal of the President would give 70 percent of the financial benefit to people making over $100,000 a year.

They are the very same people who have benefited so greatly by the significant cut in tax rates which have taken place over the last decade. Yet, there is no clear evidence that that tremendous financial windfall which they received was put into investment that would produce jobs. In fact, much of the speculation which has taken place in our financial markets is a trading of paper in order to make money; but there is no job production underlying that speculative activity.

Let me just leave you with one final thought. This shows how real household incomes have moved since 1979 for the top fifth. These are what are called quintiles, the top fifth, the middle fifth, and the lowest fifth of the population, real household income.

We take 1979 as 100. You get a drop as we went into an economic turn down in the 1982 recession. Then we started coming out of the 1982 recession. Hopefully, as you come out of a recession, incomes rise generally for everyone. But what happened was you got an incredible rise for the highest fifth of the population, compared to the rise for the middle fifth and for the lowest fifth.

Now, because of the economic downturn we are experiencing, real household income is declining. You can see the highest quintile has declined, but the decline that has taken place here for the middle and the lowest quintile has been much more significant.

So what this shows is an immense movement over the last decade to concentrating income at the top of the income scale. Much of the President's program now is to give even more to those who have much, and pay no attention to the middle-income people in this country.

Mr. President, obviously, we face a critical situation. I have a list of confidence in the Finance Committee and the Ways and Means Committee to move forward with a proposal. I am relieved that the President finally recognized that there was a recession. It does not do the country any good. It does not do anyone any good, politically or in any other way, for the President to be out of touch with reality in terms of what is happening in the Nation.

Mr. President, I close on the observation that 576 days passed from the beginning of the recession until the President announced an economic plan. I have suggested here today that the economic plan which the President has suggested, a plan that produces six-tenths of 1 percent additional economic growth is inadequate. We have come out of other recessions growing at a rate of 4, 5, or 6 percent. The administration's own prediction is that we will come out of this recession growing at the rate of 2.2 percent, and that 1.6 of that 2.2 would occur if none of their proposals were enacted. So their proposals are adding six-tenths of 1 percent to the growth, and by their own predictions their proposals would lower the unemployment rate from 7.1 percent to an average for 1992 of 6.9 percent.

Mr. President, that is going to leave us still confronting the very severe economic problems which we are now facing. It took the President 576 days to get to the point where he could even put this small plan before us. The economy has worsened on the basis of this month's figures and the gap between the economic circumstances that exist across the country and what the President has offered to try to address it becomes more obvious with each passing day.

Mr. President, I think the Congress will move in a more expeditious, a more realistic, and in a more substantive fashion to address the economic circumstances in which we find ourselves. The Congress moved last year on unemployment insurance benefits. The President rejected it. The President took 576 days to have an economic plan. Then, he says to the Congress: I want you to act on it in 52 days. The Congress in fact was already acting on part of it, has passed it and sent it to him with the further extension of the unemployment benefits.

The committees are now meeting on his tax proposals and other tax measures that are before us. The very able Senator from West Virginia spoke earlier in the day about the necessity for an infrastructure investment.

My colleague from Mississippi earlier said that you could not do infrastructure quickly, that if you try to move in that direction it would be the end of the year or next year before projects could happen. The mayors and Governors have told us in public that they have been forced to shelve projects which are right now sitting on the shelf and they could move them tomorrow morning if they had the resources with which to do it, and jobs would be there in a matter of weeks.

Those are contracts to the private sector to carry out infrastructure projects, to repair our transportation network, to repair our water and sewer systems, things that must be done. They need to be done. They must be done. They are essential. They can be done right now. They will provide jobs immediately. There is no question whether the jobs will be forthcoming.

This notion of giving another infusion of tax breaks to the very wealthy and then counting on it somehow to trickling down is ridiculous. Who knows whether it will happen or not?

That is why, for instance, amongst the various tax incentives I always favored the investment tax credit which you do not get unless you make the investment in new plant and equipment. You do not simply get the money and then everyone hopes you are going to do something productive with it. You only get the tax break if you do something productive.

I think those are the kinds of tough questions that should be asked. But as my colleagues keep counting down the number of days the President has given us, I just want to remind you it took us 576 days of the recession before President Bush announced an economic plan to the Nation. The economic plan which he has announced is inadequate to the economic challenge which we face.

Mr. President, I yield the floor.

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

NATIONAL ENERGY STRATEGY

Mr. ROBB. Mr. President, last night the Senate adopted a resolution expressing the sense of the Senate that as part of the Nation's energy strategy, the Senate Finance and House Ways and Means Committees should study the possibility of legislation to shift some amount of taxation from the income tax to the motor fuels tax to encourage conservation and the use of alternative fuels.

The resolution further provided that the tax shifting package should be revenue-neutral, should not represent a net tax increase on the average American family, should be at least as progressive as the current Tax Code, should not become effective at the earliest until the current recession is over, and should be phased in gradually to allow consumers and industry to adjust.

I am very pleased that, with the cooperation of the chairman of the Senate Finance Committee, and the managers of the energy bill, the Senate saw fit to adopt this amendment.

For the record, I would simply like to take a few minutes to outline the rationale behind the amendment.

Mr. President, most of us in this body agree that conservation must be at the heart of any national energy strategy. Conservation of oil, in particular, reduces our reliance on foreign sources of energy, it is good for the environment, and it makes us more competitive as a nation.

But the recent energy debate had, until last night, largely ignored one of the most potent tools for encouraging conservation and that is tax shifting.

Through the U.S. Tax Code, the Congress has enormous power to forge a bold and forward looking energy policy.

By shifting the existing burden of taxation from income to the motor fuels pump, we can encourage Americans to buy more fuel efficient cars, to car pool, and to use alternative forms of transportation.

Shifting the tax from income to motor fuels would save millions of barrels of oil, unleash investment into alternative fuels, and reduce the risk of global warming.

And yet, none of us has ventured to talk about the idea of raising the gas tax.

I fully understand why people have shied away from this idea.

Last month, I gave a speech at the College of William and Mary, where I proposed imposing a conservation tax of 40 cents a gallon, phased in over 3 years, with revenue rebated to taxpayers in the form of a refundable tax credit.

The banner headline in the local newspaper, of course, did not get into nuances; it declared: "Robb favors 40-cent gasoline tax hike." The headline, contained no mention of the 3-year phasein. Nor did it make reference to the fact that I proposed returning every penny of the revenue through a tax credit. It just read: "Robb favors 40-cent gasoline tax hike."

The reaction has been, as I expected, fairly negative from some corners.

The Petroleum Marketers Association of America is opposed, as is AAA and the American Petroleum Institute.

Of course, all this led to another wonderful headline: "Robb's gas tax idea, blasted."

But I also detect an openness to the proposal, which I think, stems in large part from the realization that, following the Persian Gulf war, we are a different nation than we were before it.

The American public is now all too aware that our reliance on oil, Middle Eastern oil in particular, has certain very real costs associated with it.

Our intervention in the Persian Gulf was not predicated specifically on oil, it was about defending the victims of aggression and upholding international law.

But oil was always a major factor in that involvement, and those supporters

of the war who denied it helped foster an equally false backlash which said the war was only about oil.

The truth, of course, is that we fought Saddam Hussein because both our principles and our national interests were at stake.

The Carter doctrine recognized that because oil lubricates the economies of the Western World, we have a national interest in protecting its free flow.

Those who opposed the war were correct when they said that we would not have put 500,000 troops in the gulf if Saudia Arabia's main export were kiwis.

And I do not think the public will stand for attempts to gloss over our energy dependence.

The pending energy legislation will move us in the right direction. But I think we need to do even more, especially in the area of conservation. That is why I introduced this sense of the Senate resolution. For constitutional and jurisdictional reasons, I could not, of course, have offered an actual tax amendment to the energy bill, but I did want to raise the issue here and now because I don't think it makes sense for us to be talking about forging a comprehensive energy policy without saying a word about what many observers believe is the single most important step available to reduce our reliance on imported oil: increasing the motor fuels tax.

In my William and Mary speech, I talked about increasing the tax 40 cents over a 3-year period: a nickel increase in the first month followed by a penny a month thereafter.

My resolution adopted last night does not specify an amount, but urges the relevant congressional committees to look into the matter to see what an appropriate increase might be.

The resolution stipulates that any increase in the gas tax should be offset by an across-the-board tax cut.

I personally would prefer that the money generated by a conservation tax be used to reduce our Federal deficit, to rebuild our infrastructure, and to boost the earned income credit for the poor, to counteract the regressive nature of the gas tax.

But that approach, would have meant a net tax increase on the American public.

And as the recent experience in the House of Representatives suggests, a gas tax increase without a corresponding rebate is dead on arrival.

The tax credit could be fairly significant after 3 years, depending on the size of the conservation tax. If the Finance Committee chose a 40-cent-per-gallon increase, for example, that would mean a tax credit of $215 for individuals and $431 for married couples filing jointly—according to Joint Tax Committee estimates.

To repeat, the resolution, simply urges shifting the place where Americans pay their taxes—at the pump rather than through the income tax.

It is a tax on energy, as Congressman JOHN DINGELL has said, not a tax on people.

Because the wealthy consume more gasoline per household than the poor, a program which rebates an equal amount to all taxpayers would actually be more progressive than the current tax structure. And unlike the proposal to boost national security by drilling in the Arctic National Wildlife Refuge, the gas tax, unites environmental and national security interests: Conserving energy and moving toward alternatives to oil means less pollution and greater security.

In particular, increasing the motor fuels tax would result in a sharp reduction in carbon dioxide emissions, a major contributor to global warming.

It is my hope that the Senate Finance Committee will seriously look at this issue. I realize that shifting taxation from income to motor fuels will be seen by some as risky politics.

I have been told that the American people will not be able to understand the proposal—that they will hear gas tax but will not hear about the offsetting rebate.

That they will talk about patriotism but will not want to do anything to prevent threats to our national security.

But I give the American people more credit than that.

They know the ultimate sacrifice paid by those in the Persian Gulf war—by the soldiers and their families.

They know that we should not continue to send dollars to the likes of Saddam Hussein, so that war machines and nuclear capabilities can be built and resurrected.

They know that we have had three energy crises in the past 15 years, and that each time, there has been a brief flurry of activity, but that only the easy options have been pursued.

I realize that the Congress has in the past rejected attempts to significantly increase the motor fuels tax.

In 1979, you will remember Representative John Anderson proposed increasing the tax by 50 cents and rebating the revenue through the Social Security system.

In that same year, the distinguished manager of the Energy bill introduced legislation to increase the motor fuels tax by 50 cents over 5 years and directed the States to rebate the revenue in reduced sales, property or income taxes, or to use the money for mass transit.

Neither proposal was adopted.

In the past, rather than increase the gasoline tax, the Congress has chosen other alternatives, such as increasing corporate average fuel economy.

Because CAFE legislation provides an incentive for automakers to design more fuel efficient vehicles, I am, in fact, a cosponsor of the Bryan bill.

But boosting the fuel economy of cars and trucks only gets you so far. CAFE standards affect only new vehicles, which account for 10 percent of fuel consumption, whereas a gas tax increase encourages conservation among all drivers, whether their cars are new or old.

And by increasing fuel economy, CAFE standards actually made it cheaper for drivers to drive more, which dilutes the effect of the measure.

Nevertheless, the CAFE alternative was pursued over proposals to impose a conservation tax because the conventional wisdom precludes having anything to do with a gas tax—and I confess it is hard to see how there is any political mileage in the approach I am advocating.

Still, it is clearly right as a matter of public policy, and I think the political climate may have changed somewhat since the earlier attempts to raise the gas tax—for three reasons.

First, as I have mentioned, the American public knows the cost of oil dependence now that we have gone to war in large part over oil. There had always been warnings that given the strategic importance, and scarcity of oil and its concentration in the most volatile part of the world, that nations would one day go to war over oil.

In the late 1970's, our dependency cost us jobs; in the early 1990's, it cost us lives.

Second, gasoline prices in real terms are now at their lowest point in decades.

Oil is selling as low as $17 a barrel.

Adding a conservation tax now would not be a piling on on top of natural price increases, as it was in the late 1970's.

Third, environmental awareness is much greater today than it was a decade and a half ago.

We now know much more about the dangers of global warming.

Each gallon of gasoline used produces 18 pounds of carbon dioxide, a key greenhouse gas.

We now know that more than 100 of our cities violate Federal clean air health guidelines.

Pollution problems have grown worse, and the American public has awakened to the dangers.

The environmental community is now a political force to be reckoned with as we saw when the Senate failed to invoke cloture last year on an earlier version of this energy bill.

But even if the politics are against the idea, I believe strongly that we need to seriously consider it.

Repeatedly, when I discussed the pending energy legislation with individuals, whether they came from the environmental community or the business community, they told me that the best thing we can do to address our dependence on foreign oil is to increase the gas tax.

While there are no true silver bullets for our energy problem, I have been told that adding a conservation tax was the closest thing we will ever come to one.

And then, in the next breath, they invariably told me that, of course, the gas tax alternative will never pass the Congress.

I find that very disturbing.

I realize that opponents of the conservation tax have many concerns.

Opponents could say it is regressive, and unfairly hits those in the West; that it interferes with the free market, will hurt our competitiveness, and will hurt growth.

But I think that the Finance Committee's exploration of this issue will show that there are very good answers to each of these objections.

In closing, Mr. President, I think the Senate took a step forward last night.

The resolution put the Senate on record as supporting a thorough exploration of an issue which many had previously sought to avoid.

I look forward to working with members of the Senate Finance Committee on this important issue in the coming months.

As someone who represents a State which disproportionately provides troops in times of war, I cannot in good conscience—ignore a sound proposal which is seen by so many as a key to addressing our overreliance on imported oil.

MESSAGES FROM THE HOUSE

At 1:16 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 343. Joint resolution to designate March 12, 1992, as "Girl Scouts of the United States of America 80th Anniversary Day";

H.J. Res. 350. Joint resolution designating March 1992 as "Irish-American Heritage Month"; and

H.J. Res. 395. Joint resolution designating February 6, 1992 as "National Women and Girls in Sports Day."

MEASURES REFERRED

The following joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 343. Joint resolution to designate March 12, 1992, as "Girl Scouts of the United States of America 80th Anniversary Day"; to the Committee on the Judiciary.

H.J. Res. 350. Joint resolution designating March 1992 as "Irish-American Heritage Month"; to the Committee on the Judiciary.

H.J. Res. 395. Joint resolution designating February 6, 1992, as "National Women and Girls in Sports Day"; to the Committee on the Judiciary.

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-2560. A communication from the Comptroller General, Department of Defense, transmitting, pursuant to law, a report concerning the Bell-Boeing joint venture currently performing under a fixed price contract for development of the V 22; to the Committee on Armed Services.

EC-2561. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report covering certain properties to be transferred to the Republic of Panama; to the Committee on Armed Services.

EC-2562. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on the Administration's legislative proposal to provide further funding to the Resolution Trust Corporation and an analysis of the proposal; to the Committee on Banking, Housing and Urban Affairs.

EC-2563. A communication from the Assistant Secretary of Interior, transmitting, a draft of proposed legislation to enhance the law enforcement authority of the Secretary of the Interior on public lands, and for other purposes; to the Committee on Energy and Natural Resources.

EC-2565. A communication from the Secretary of Energy, transmitting, pursuant to law, an annual report regarding the viability of the domestic uranium mining and milling industry; to the Committee on Energy and Natural Resources.

EC-2566. A communication from the Secretary of Energy, transmitting, pursuant to law, an annual update of the Comprehensive Program Management Plan for the Federal Ocean Thermal Energy Conversion Program; to the Committee on Energy and Natural Resources.

EC-2567. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on procedures for overseeing the expenditure by States and Territories of Stripper Well and Exxon Funds and the status of pending enforcement actions intitiated during the fourth quarter of FY 1991 and previous quarters with regard to the expenditure of petroleum violation escrow funds; to the Committee on Energy and Natural Resources.

EC-2568. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a copy of a prospectus for the proposed construction of a computer facility for the Department of Commerce, Bureau of the Census; to the Committee on Environment and Public Works.

EC-2569. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report on the nondisclosure of Safeguards Information for the quarter ending December 31, 1991; to the Committee on Environment and Public Works.

EC-2570. A communication from the Inspector General, Department of the Interior, transmitting, pursuant to law, a final audit report entitled "Accounting for Fiscal Year 1989 and 1990 Reimbursable Expenditures of Environmental Protection Agency Superfund Money, U.S. Fish and Wildlife Service"; to the Committee on Environment and Public Works.

EC-2571. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, prospectuses for the Fiscal Year 1993 General Services Administration's Public Buildings Service Capital Improvement Program; to the Committee on Environment and Public Works.

EC-2572. A communication from the President of the United States, transmitting, pursuant to law, notice of his intent to add Estonia, Latvia, and Lithuania to the list of beneficiary developing countries under the Generalized System of Preferences; to the Committee on Finance.

EC-2573. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the assistance related to international terrorism which was provided to foreign countries by the United States Government during the preceding fiscal year; to the Committee on Foreign Relations.

EC-2574. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, copies of certain documents related to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, signed at Moscow July 31, 1991; to the Committee on Foreign Relations.

EC-2575. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the President's authorization of up to $7,000,000 in assistance from the Emergency Refugee and Migration Assistance Fund to meet unexpected urgent needs of refugees and other displaced persons resulting from the civil conflict in Yugoslavia; to the Committee on Foreign Relations.

EC-2576. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report of those Foreign Military Sales customers with approved cash flow financing in excess of $100 million as of 1 October 1991; to the Committee on Foreign Relations.

EC-2577. A communication from the Assistant Legal Adviser for Treaty Affairs Department of State, transmitting, pursuant to law, a report on international agreements other than treaties entered into by the United States in the sixty day period prior to January 30, 1992; to the Committee on Foreign Relations.

EC-2578. A communication from the Chairman of the Merits Systems Protection Board, transmitting, pursuant to law, the annual report of the Board under the Government in the Sunshine Act for calendar year 1991; to the Committee on Governmental Affairs.

EC-2579. A communication from the Chairman of the Arctic Research Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1991; to the Committee on Governmental Affairs.

EC-2580. A communication from the Comptroller General of the General Accounting Office, trasmitting, pursuant to law, a report on the results of the audit of the Export-Import Bank of the United States' financial statements as of September 30, 1990 and 1989; to the Committee on Governmental Affairs.

EC-2581. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the annual report on the Federal Equal Opportunity Recruitment Program for fiscal year 1991; to the Committee on Governmental Affairs.

EC-2582. A communication from the Acting Chairman of the Administrative Conference of the United States, transmitting, a report on the internal control and financial systems

in place during fiscal year 1991; to the Committee on Governmental Affairs.

EC-2583. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Agriculture, for the six month period ended September 30, 1991; to the Committee on Governmental Affairs.

EC-2584. A communication from the Executive Director of the Interstate Commission on the Potomac River Basin, transmitting, pursuant to law, a report on the audited statements of the Commission for the period October 1, 1990 through September 30, 1991; to the Committee on Governmental Affairs.

EC-2585. A communication from the Director of the Administrative Office of the United States Court, transmitting, pursuant to law, actuarial reports on the Judicial Retirement System, the Judicial Officers' Retirement Fund, and the Judicial Survivors' Annuities System for the calendar year ending December 31, 1990; to the Committee on Governmental Affairs.

EC-2586. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-150 adopted by the Council on January 7, 1992; to the Committee on Governmental Affairs.

EC-2587. A communication from the Executive Director of the Office of Navajo and Hopi Indian Relocation, transmitting, pursuant to law, a report on internal controls for all agency departments in effect for fiscal year 1991; to the Committee on Governmental Affairs.

EC-2588. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the assignment of General Accounting Office employees to congressional committees as of January 10, 1992; to the Committee on Governmental Affairs.

EC-2589. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report titled "To Meet the Needs of the Nations: Staffing the U.S. Civil Service and the Public Service of Canada"; to the Committee on Governmental Affairs.

EC-2590. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, a report on the operation of the Senior Executive Service; to the Committee on Governmental Affairs.

EC-2591. A communication from the Assistant Secretary of the Interior, transmitting, a draft of proposed legislation to correct an error in Public Law 100-425 relating to the establishment of a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes; to the Select Committee on Indian Affairs.

EC-2592. A communication from the Deputy Director of the Peace Corps, transmitting, pursuant to law, the annual report of the Peace Corps under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

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. WELLSTONE:

S. 2213. A bill to amend the Internal Revenue Code of 1986 to require the participation in general election debates of certain candidates who receive public campaign financing; to the Committee on Rules and Administration.

By Mr. MOYNIHAN:

S. 2214. A bill to authorize the Administrator of the Environmental Protection Agency to make grants to the States of New York and Connecticut for the purpose of demonstrating methods of improving water quality in Long Island Sound; to the Committee on Environment and Public Works.

S. 2215. A bill to clarify the provisions relating to the construction of additional court space in Brooklyn, New York; to the Committee on Environment and Public Works.

By Mr. SARBANES:

S. 2216. A bill for the relief of Maria Manzano; to the Committee on the Judiciary.

By Mr. DOLE (for himself and Mr. DOMENICI) (by request):

S. 2217. A bill to create jobs, promote economic growth, assist families, and promote health, education, savings, and home ownership; to the Committee on Finance.

By Mr. COATS (for himself and Mr. D'AMATO):

S. 2218. A bill to amend section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 to authorize local governments that have financed a housing project that has been provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 to use 50 percent of any recaptured amounts available from refinancing of the project for housing activities; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KASTEN:

S. 2219. A bill to make amendments to the Liability Risk Retention Act, as amended, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LAUTENBERG (for himself, Mr. BOREN, and Mr. RIEGLE):

S. 2220. A bill to amend the Internal Revenue Code of 1986 to make the targeted jobs tax credit available for a 1-year period to employers who hire long-term unemployed individuals; to the Committee on Finance.

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 2221. A bill to amend the Emergency Unemployment Compensation Act of 1991 to correct certain inconsistencies between State and Federal unemployment compensation rules and assure that all eligible individuals will receive full unemployment benefits; to the Committee on Finance.

By Mr. BREAUX:

S. 2222. A bill to amend the Internal Revenue Code of 1986 to encourage the formation of, and donation of contributions to, apprenticeship education organizations; to the Committee on Finance.

Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S.J. Res. 254. A joint resolution commending the New York Stock Exchange on the occasion of its bicentennial; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KASTEN (for himself, Mr. LEAHY, Mr. KOHL, Mr. HEFLIN, Mr. D'AMATO, Mr. DURENBERGER, Mr. JEFFORDS, Mr. WOFFORD, and Mr. GRASSLEY):

S. Res. 256. A resolution urging the United States Government to provide, expeditiously and prudently, dairy products and other humanitarian assistance to the republics of the former Soviet Union; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. D'AMATO (for himself, Mr. DOLE, and Mr. PELL):

S. Res. 257. A resolution calling attention to the plight of the Albanian population in the former Yugoslav Republic of Kosova; to the Committee on Foreign Relations.

By Mr. SIMON (for himself, Mrs. KASSEBAUM, Mr. WOFFORD, Mr. WELLSTONE, Mr. LEAHY, and Mr. LUGAR):

S. Res. 258. A resolution expressing the sense of the Senate regarding needed action to address the continuing state of war and chaos and the emergency humanitarian situation in Somalia; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 2213. A bill to amend the Internal Revenue Code of 1986 to require the participation in general election debates of certain candidates who receive public campaign financing; to the Committee on Rules and Administration.

PRESIDENTIAL DEBATES ACT

Mr. WELLSTONE. Mr. President, today I am introducing the Presidential Debates Act of 1992, to require Presidential debates designed to rekindle interest and encourage participation in our Presidential elections. Similar legislation has been introduced in the House by Representative TIM PENNY, who has worked hard in developing his legislation, in consultation with outside organizations, to make our Presidential debates fairer, more vigorous, and more informative.

The 1988 Presidential elections were troubling—even for Republicans who won. Filled with photo-ops in tanks or flag factories; 10-second sound-bites and attack ads; lifeless, scripted debates carefully crafted to protect participants from surprises; radio, TV, and print reporting that focused for many months on the horse race and to top it all off Willie Horton, Boston Harbor, and flag burning.

Day after day, the American political discourse was trivialized, ironically at a time when our democracy should be serving as a beacon of hope and a model for emerging democracies worldwide. Americans want serious, sustained, substantive debates on the issues of the day and the direction of our country.

This trivialization has taken a devastating toll on our democracy. Only 50 percent of the eligible electorate voted in the 1988 Presidential elections. In the 1990 midterm elections, an estimated 36 percent of the eligible electorate voted. While an estimated 160 million people watched the 1988 Presi-

dential debates, large numbers of viewers and commentators expressed dismay at the lack of substantive discussion of the important economic, social, and political issues of concern to the American people.

Now in this election year, differing proposals for Presidential debates have been put forward by a commission formed by the two major parties, the presidents of the four major national television networks, a group of distinguished press and public policy specialists at the Shorenstein-Barone Center at Harvard University, and others. Many of these proposals are worthy of serious consideration, but they do not in my view go far enough.

We must act now to reclaim the faith and interest of a cynical electorate. I believe that one of the most effective ways to address this problem is to require open, fair, and informative Presidential debates. The primary debates we have had thus far this season have served as important fora for airing the ideas and views of the candidates, and an opportunity for them to define their programs for the American people. Yet they too were limited to only the major Democratic candidates.

The Presidential Debates Act of 1992 has three essential elements. First, it requires all candidates who have been nominated by their party and who are eligible to receive Federal matching funds to participate in at least three Presidential general election debates.

Second, the legislation requires the sponsor of the debate to be a nonpartisan entity, thereby preventing undue party influence on the format and structure of the debate.

Third, the legislation sets objective criteria for the inclusion of significant national independent and minor party candidates. Historically, such candidates have been fertile sources of new ideas and new programs, and have provided opportunities for the American public to enter into a diverse and open dialogue on the critical issues of the day. In the interests of fairness and free and open dialogue, all significant candidates who meet the stringent criteria set forth in this legislation must be included in the debates.

The need to institutionalize U.S. Presidential debates, to designate the sponsor as a nonpartisan entity, and to set objective criteria for including significant independent and minor party candidates is clear. As we look toward the 1992 elections and beyond, we must continue to identify ways to increase voter participation and strengthen the American Democratic discourse. I believe this bill will take a modest step in that direction.

While I recognize the complexity of this issue, and the institutional and party loyalties felt by many politicians who would prefer to carefully circumscribe the sponsor, format, and participants in Presidential debates, I urge my colleagues to join me in this effort. I believe this legislation is a fair, balanced means of helping restore the confidence of the American people and boost historically low voter participation in Presidential elections.

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

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

S. 2213

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 "Presidential Debates Act of 1992".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) American voters are increasingly frustrated with the lack of significant political debate in presidential elections in the United States, and voter participation in the United States is lower than in any other advanced industrialized country, due in part to such frustration;

(2) the right of eligible citizens to participate in the election process as informed voters, provided in and derived from the first and fourteenth amendments to the Constitution, has consistently been protected and promoted by the Federal Government;

(3) United States presidential debates sponsored by nonpartisan organizations offer important fora for free, open, and substantive exchanges of candidates' ideas, and should include all significant candidates, including non-major and independent candidates; and

(4) throughout United States history, significant minor party and independent candidates have often been a source for new ideas and new programs, offering American voters an opportunity to engage in a diverse and open political discourse on critical issues of the day.

(b) PURPOSES.—The purposes of this Act are to make participation in presidential debates a requirement for receipt of Federal general election campaign funds and to allow all candidates who meet the criteria outlined in this Act to participate in such debates.

SEC. 3. PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATE DEBATES.

Section 9003 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection;

"(e) PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATE DEBATES.—

"(1) AGREEMENT TO DEBATE.—In addition to meeting the requirements of subsection (a), (b), or (c), in order to be eligible to receive any payments under section 9006, the candidates for the office of President and Vice President in a Presidential election shall agree in writing that—

"(A) the Presidential candidate, if eligible under paragraph (3), will participate in not less than 3 Presidential candidate debates, which shall be held in the September and October preceding a Presidential general election at least 2 weeks before the election; and

"(B) the Vice Presidential candidate, if eligible under paragraph (3), will participate in not less than 1 Vice Presidential candidate debate, which shall be held prior to the third Presidential candidate debate.

"(2) DEBATE REQUIREMENTS.—

"(A) IN GENERAL.—Each debate under paragraph (1) shall—

"(i) be sponsored by a nonpartisan organization having no affiliation with any political party;

"(ii) include all candidates that meet the criteria stated in paragraph (3) (except any such candidate who elects not to receive payments under section 9006), who shall appear and participate in a regulated exchange of questions and answers on political, social, economic, and other issues; and

"(iii) be of at least 90 minutes' duration, of which not less than 30 minutes are devoted to questions and answers or discussion directly between the candidates, as determined by the sponsor of the debate.

"(B) ANNOUNCEMENT OF TIME, LOCATION, AND FORMAT.—The sponsor of debates shall announce the time, location, and format of each debate prior to the first Monday in September before the Presidential election.

"(3) CRITERIA FOR PARTICIPATION IN PRESIDENTIAL CANDIDATES DEBATES.—A candidate is eligible to participate in a debate under paragraph (1) if—

"(A) the candidate has qualified for the election ballot as the candidate of a political party or as an independent candidate to the office of President or Vice President in not less than 40 States;

"(B) the candidate met the requirements of section 9033(b) (3) and (4); or

"(C) the candidate raised not less than $500,000 on or after January 1 of the calendar year immediately preceding the calendar year of the Presidential election, as disclosed in a report filed pursuant to section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434).

"(4) ENFORCEMENT.—If the Commission, acting on its own or at the complaint of any person, determines that a Presidential or Vice Presidential candidate who is eligible to participate failed to participate in a debate under paragraph (1) and was responsible at least in part for that failure, the candidate shall pay to the Secretary an amount equal to the amount of the payments made to the candidate under section 9006.".

By Mr. MOYNIHAN:

S. 2214. A bill to authorize the Administrator of the Environmental Protection Agency to make grants to the States of New York and Connecticut for the purpose of demonstrating methods of improving water quality in Long Island Sound; to the Committee on Environment and Public Works.

LONG ISLAND SOUND RESTORATION ACT

Mr. MOYNIHAN. Mr. President, I rise today to introduce the Long Island Sound Restoration Act. This important legislation was originally introduced in the House of Representatives by my colleague, Representative ROBERT MRAZEK.

The Long Island Sound Restoration Act is a straightforward approach to addressing the severe water quality problems now facing the sound. The bill authorizes the Administrator of the Environmental Protection Agency to make grants totaling $50,000,000 in each of the next 5 fiscal years to the States of New York and Connecticut to carry out demonstration projects designed to address water quality problems in the sound.

I do hope that the bill will receive the Senate's fullest consideration.

Mr. President, I ask unanimous consent that the full 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. 2214

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 Island Sound Restoration Act."

SEC. 2. LONG ISLAND SOUND DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Administrator shall carry out a demonstration program under which the Administrator may make grants on an annual basis to the States of New York and Connecticut in accordance with this section.

(b) PURPOSES.—The Administrator shall carry out the program under subsection (a)—

(1) to demonstrate methods of restoring and maintaining the water quality of designated bays and harbors of Long Island Sound at which water quality standards adopted pursuant to section 303 of the Federal Water Pollution Control Act have not been achieved or at which other significant water quality degradation gas occurred;

(2) to demonstrate the importance of controlling nonpoint sources of pollution in restoring and maintaining water quality;

(3) to enhance opportunities for water-dependent recreational activities, maintain a healthy ecosystem, protect and enhance marine life, minimize health risks associated with human consumption of shellfish and finfish, and ensure that social and economic benefits to the general public associated with Long Island Sound are advanced; and

(4) to advance goals and recommendations contained in the Comprehensive Conservation and Management Plan of the Long Island Sound Study developed pursuant to section 320 of the Federal Water Pollution Control Act.

(c) DESIGNATION OF BAYS AND HARBORS.—

(1) IN GENERAL.—In order to be eligible to receive grants under subsection (a), the States of New York and Connecticut shall each designate in accordance with paragraphs (2) and (3) bays and harbors of Long Island Sound at which the State plans to carry out eligible activities with amounts of such grants and transmit such designations to the Administrator.

(2) DESIGNATIONS BY STATE OF NEW YORK.—The State of New York shall designate pursuant to paragraph (1) one bay or harbor in each of the following 4 political subdivisions of the State of New York: Westchester County, Nassau County, Suffolk County, and New York City.

(3) DESIGNATIONS BY STATE OF CONNECTICUT.—The State of Connecticut shall designate pursuant to paragraph (1) one bay or harbor in 2 of the following 4 political subdivisions of the State of Connecticut; Fairfield County, New Haven County, Middlesex County, and New London County.

(4) PARTICIPATION OF MANAGEMENT COMMITTEE.—The States of New York and Connecticut shall each make designations pursuant to paragraph (1) in cooperation with the Management Committee of the Long Island Sound Study established pursuant to section 320 of the Federal Water Pollution Control Act.

(5) PARTICIPATION OF NEW YORK CITY.—The State of New York shall designate a bay or harbor in New York City pursuant to paragraph (1) in cooperation with the Mayor of New York City (or the designee of the Mayor).

(d) TERMS AND CONDITIONS.—The Administrator may make a grant to a State under subsection (a) only if the State enters into an agreement with the Administrator which contains the following terms and conditions for receipt of the grant:

(1) USE OF GRANT.—Except as provided in paragraph (3), all amounts of the grant shall be used by the State—

(A) to carry out eligible activities and a monitoring program pursuant to paragraph (4) at bays and harbors designated by the State pursuant to subsection (c); and

(B) to educate the public, in coordination with the office established pursuant to section 119 of the Federal Water Pollution Control Act, on the implementation and results of such eligible activities.

(2) DISTRIBUTION OF GRANTS AMOUNTS.—Equal amounts of the grant shall be used by the State for conducting eligible activities at each bay and harbor designated pursuant to subsection (c).

(3) ADMINISTRATIVE EXPENSES.—Not to exceed 1.5 percent of the amount of the grant may be used by the State for staff salaries and other administrative expenses incurred by the State in carrying out activities with the grant.

(4) MONITORING.—The State shall design and carry out a program for monitoring water quality at bays and harbors designated pursuant to paragraph (c) in order to determine the effectiveness of eligible activities being conducted by the State using amounts of the grant. Activities under such program shall be reviewed and evaluated by the Long Island Sound Study Scientific and Technical Advisory Committee and by the Long Island Sound Monitoring Work Group.

(5) REPORTING.—The State shall comply with reporting requirements contained in subsection (f).

(e) DISTRIBUTION OF GRANTS.—The Administrator shall use ⅔ of the amounts appropriated in a fiscal year to carry out this Act for making grants to the State of New York under subsection (a) and ⅓ of such amounts for making grants to the State of Connecticut under subsection (a).

(f) REPORTS.—

(1) REPORTS TO THE ADMINISTRATOR.—A State receiving a grant under subsection (a) shall transmit to the Administrator, not later than 18 months after the date of receipt of the grant and biennially thereafter for the term of the program under subsection (a), a report on eligible activities carried out by the State using amounts of the grant and on the results of the monitoring program carried out by the State pursuant to subsection (d)(4), including a summary of evaluations conducted pursuant to subsection (d)(4). Any such report may be transmitted as part of a report submitted by the State pursuant to section 320(h) of the Federal Water Pollution Control Act.

(2) REPORT TO CONGRESS.—On or before the last day of the 5th fiscal year beginning after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the program conducted under subsection (a), together with an analysis on the extent to which the purposes described in subsection (b)(3) have been realized and recommendations for appropriate administrative and legislative actions.

(g) NON-FEDERAL SHARE.—The non-Federal share of the cost of activities carried out with amounts from grants under subsection (a) in a fiscal year shall be 30 percent. One-sixth of such non-Federal share shall be provided by sources in the locality in which such activities are carried out.

(h) DEFINITIONS.—For the purposes of this Act, the following definitions apply:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) ELIGIBLE ACTIVITY.—The term "eligible activity" means an activity conducted for the purpose of addressing one or more of the following problems:

(A) POLLUTANTS FROM NONPOINT SOURCES.—Urban and suburban runoff of pollutants into Long Island Sound from forestry, agriculture, and other land uses. Such pollutants include sediments associated with logging, pesticides, fertilizers, animal waste, litter, overflows from failing septic systems, leaching of contaminants from landfills, and discharges from coastal development and construction sites.

(B) WASTE FROM RECREATIONAL BOATS.—The discharge of waste into Long Island Sound from recreational boats and the leaching of antifouling paints.

(C) POLLUTANTS CARRIED BY RIVERS.—Pollutants which are carried by rivers into Long Island Sound.

(D) AIRBORNE POLLUTANTS.—Airborne pollutants which are emitted and attached to or absorbed by moisture and particles in the environment and which enter Long Island Sound.

(E) WETLANDS DEGRADATION.—The deterioration of tidal wetlands of Long Island Sound from their natural state and the adverse effects of such deterioration on near-shore habitat.

(F) POLLUTANTS FROM POINT SOURCES.—Pollutants discharged into Long Island Sound from a discharge pipe, sewage treatment plan, or industrial facility.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $50,000,000 per fiscal year for each of the first 5 fiscal years beginning after the date of the enactment of this Act.

By Mr. MOYNIHAN:

S. 2215. A bill to clarify the provisions relating to the construction of additional court space in Brooklyn, NY; to the Committee on Environment and Public Works.

CONSTRUCTION OF ADDITIONAL COURT SPACE IN BROOKLYN

Mr. MOYNIHAN. Mr. President, might I spend a few minutes explaining the background of the Brooklyn courthouse project. Much has been made of this courthouse. And it should. But first some background.

The eastern district of New York, which includes Brooklyn, has one of the highest drug case loads in the Nation, as its jurisdiction covers LaGuardia and JFK Airports and the New York coastline. In 1989, the Judicial Conference of the United States, headed by Chief Justice Rehnquist, declared the Federal court in Brooklyn a "judicial space emergency." Not long thereafter, Senator D'AMATO and I wrote to the Administrator of the General Services Administration requesting that something be done.

The Administrator responded that he indeed had a plan. He would lease the Brooklyn Post Office in Cadman Plaza from the U.S. Postal Service and, while preserving the existing facade, reconstruct it as a new courthouse directly

across the street from the court's present location. The Brooklyn Post Office is a spectacular building not unlike our old post office here on Pennsylvania Avenue.

This was a grand idea, and the judges approved. And, according to GSA, because it was a lease arrangement, it would not require an authorization or an appropriation.

But, all of a sudden, it was not to be so. I was notified by GSA on the day following the Appropriations Committee markup of the fiscal year 1992 Treasury, Postal Service and independent agencies appropriations bill, June 27, 1991, that the courthouse project did, after all, require an authorization and an appropriation.

Despite the late date, $10 million for the Brooklyn courthouse was included in the fiscal year 1992 appropriations bill through a manager's amendment offered on the Senate floor.

Once the appropriations bill was signed into law, I requested GSA to detail for me how they would spend the $10 million. As you know Mr. President, the first year of a building project is spent on design drawings before pick ever touches dirt. This $10 million could be used to keep the Brooklyn courthouse project moving forward. They are out of space in Brooklyn. Delay cannot be tolerated.

Representatives of Mr. Austin, the Administrator of the GSA, assured me that indeed the $10 million would be used this year to keep the Brooklyn project moving forward. But, they asked, would I introduce an amendment to help them move the project along? They drafted the amendment for inclusion in the Surface Transportation Act, which was passed.

Following passage of the act, OMB took the surprising action of scoring the cost of the courthouse against the highway program. As chairman of the Water Resources, Transportation and Infrastructure Subcommittee, with jurisdiction over GSA's public buildings program, I have authorized dozens of these projects and never, never have they been so scored before. But under our budget agreement, OMB is a court of no appeal. And in an act of true lunacy, the courthouse was scored not at its $400 million cost, but at $1 billion. The mind reels.

As the author of the Surface Transportation Program, I have no interest in reducing the highway program. And I said so. I wrote the administration on December 11, 1991, and told them of my intention.

Mr. President, let me summarize. The administration was, after repeated assurances to the contrary, ultimately unwilling to build the project as a lease arrangement. The administration then asked for the amendment on the Brooklyn courthouse, and it was included in the Surface Transportation Act. The administration drafted the amendment. The administration then scored the amendment as no building project has ever been scored before and at over twice the cost of the project.

Therefore, Mr. President, I am today introducing a bill to repeal the Brooklyn courthouse provision included in the 1991 Surface Transportation Act. It does not, however, ignore the emergency in Brooklyn. The bill continues to authorize funding for the courthouse through the normal appropriations process. The Brooklyn courthouse will be built, but not at the expense of the highway program. Mr. President, 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. 2215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the obligation authority authorized by section 1095 of the Intermodal Surface Transportation Efficiency Act of 1991 shall not be treated as obligation authority established under the Act for purposes of section 1004 of such Act. Any reduction in obligation authority authorized in the Intermodal Surface Transportation Efficiency Act of 1991 resulting from the enactment of section 1095 is restored.

(b) Section 1095 of the Intermodal Surface Transportation Efficiency Act of 1991 is amended in the first sentence by inserting ", subject to appropriations," after "is authorized".

By Mr. DOLE (for himself and Mr. DOMENICI) (by request):

S. 2217. A bill to create jobs, promote economic growth, assist families, and promote health, education, savings, and home ownerships; to the Committee on Finance.

ECONOMIC GROWTH ACT

Mr. DOLE. Mr. President, Wednesday, I introduced the President's short-term growth package; today at the request of the President, Senator DOMENICI and I are proud to introduce the President's total budget package, including his pay-as-you-go initiatives totaling $98 billion in budget savings.

Without a doubt, one of the major successes of the 1990 budget agreement was the enactment of the pay-as-you-go concept. Pay-as-you-go budgeting was a fundamental change in the way Congress does business. For the first time in its history, Congress was forced to pay for—that's right—pay for new mandatory spending programs.

For the big spending crowd, the new discipline has been bitter medicine. On a number of occasions—including the extension of unemployment insurance—Congress tried to evade pay as you go by designating new spending an emergency. But, the President has hung tough, insisting that Congress live up to the 1990 budget agreement by offsetting new spending with spending cuts or new receipts.

Maybe Congress has gotten a little tired of being called to task by the President, because now the shrill voices inside the Washington beltway are calling the President's proposed pay-as-you-go offsets fuzzy and gimmicks. Well, the President's pay-as-you-go proposals are very real and represent tough choices. Let me assure you that if the cuts were truly smoke and mirrors, you would hear much less moaning from the big spenders in Washington.

Many of the President's proposals aren't just money raisers, they are good public policy, too. For example, the President's proposals to reform the banking system and shore up the Pension Guarantee Corporation are intended to prevent fiscal problems before they happen.

Other proposals, such as the reforms in Medicare and the Student Loan Program, are designed to shift entitlement benefits to those in greatest need away from those who can more than afford to pay their own way. I encourage all Democrats, who are so fond of grousing about fairness, to sit down and take a good hard look at these reforms.

The President has also proposed some innovative measures to permanently restrain spending through reform of the budget process. One of the most important is President Bush's proposed cap on mandatory spending. As the distinguished chairman of the Appropriations Committee has pointed out, domestic discretionary spending—as compared to entitlement spending—has been the runt of the Federal budget during the past two decades. If that imbalance is to change, Congress needs to adopt the President's plan to cap entitlement programs.

According to my calendar, Congress has 42 more days before the President's March 20 deadline. Today, February 7, 1992, we have both the President's short term growth plan and his total plan before us.

Let's quit our partisan bickering and get the job done. The President's growth initiative and budget will move the economy forward. His program will create jobs. And it is paid for with real pay-as-you-go discipline.

So, the President was right to challenge Congress. The American people are waiting for action. Frankly, they're getting a little tired of all the speeches and endless criticism they're hearing from Capitol Hill. They know talk is always cheaper than action; and they also know that another day is passing and we are 1 day further toward the President's deadline; one less day to make a difference.

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. 2217

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 "Economic Growth Act of 1992".

SEC. 2. TABLE OF TITLES.

TITLE I—ENHANCED ECONOMIC RECOVERY ACT OF 1992
TITLE II—TAX RELIEF FOR FAMILIES ACT OF 1992
TITLE III—LONG TERM GROWTH ACT OF 1992
TITLE IV—FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1992
TITLE V—PENSION SECURITY ACT
TITLE VI—FEDERAL INSURANCE ACCOUNTING ACT OF 1992
TITLE VII—MEDICARE PREMIUM EQUITY AMENDMENTS OF 1992
TITLE VIII—MEDICARE BUDGET AMENDMENTS OF 1992
TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN SAVINGS SET-ASIDE AMENDMENTS OF 1992
TITLE X—FOOD STAMP AMENDMENTS OF 1992
TITLE XI—CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1992
TITLE XII—INCENTIVES FOR FAMILIES WITH ABSENT PARENTS TO COOPERATE WITH STATE AGENCIES UNDER THE SOCIAL SECURITY ACT IN SECURING CHILD SUPPORT FOR DEPENDENTS
TITLE XIII—PURPOSES AND DURATION OF EMERGENCY ASSISTANCE UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM
TITLE XIV—ENHANCE HEALTH INSURANCE COVERAGE FOR CHILDREN UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM
TITLE XV—CHILD NUTRITION AMENDMENTS OF 1992
TITLE XVI—SOCIAL SECURITY CROSS PROGRAM RECOVERY AMENDMENTS OF 1992
TITLE XVII—AMERICA 2000 EXCELLENCE IN EDUCATION ACT
TITLE XVIII—STUDENT FINANCIAL ASSISTANCE IMPROVEMENTS ACT OF 1992
TITLE XIX—NATIONAL ENERGY STRATEGY ACT
TITLE XX—ARCTIC COASTAL PLAIN COMPETITIVE OIL AND GAS LEASING ACT
TITLE XXI—COASTAL COMMUNITIES IMPACT ASSISTANCE ACT OF 1992
TITLE XXII—ALASKA POWER ADMINISTRATION SALE AUTHORIZATION ACT
TITLE XXIII—THE ACCESS TO JUSTICE ACT OF 1992
TITLE XXIV—HEALTH CARE LIABILITY REFORM AND QUALITY OF CARE IMPROVEMENT ACT
TITLE XXV—PRODUCT LIABILITY FAIRNESS ACT
TITLE XXVI—CIVIL LIBERTIES ACT AMENDMENTS OF 1992
TITLE XXVII—FEDERAL CREDIT AND DEBT MANAGEMENT ACT OF 1992
TITLE XXVIII—REDUCE CERTAIN COMMODITY CREDIT CORPORATION SUBSIDIES OF THOSE WITH OFF-FARM INCOME OF $100,000 OR MORE
TITLE XXIX—FARM CREDIT SYSTEM FINANCIAL ASSISTANCE CORPORATION REPAYMENT ACT OF 1992
TITLE XXX—RECOVER COSTS OF CARRYING OUT FEDERAL MARKETING AGREEMENTS AND ORDERS
TITLE XXXI—ELIMINATE PROVISIONS FOR PERMANENT ANNUAL APPROPRIATIONS TO SUPPORT LAND GRANT UNIVERSITIES
TITLE XXXII—POWER MARKETING ADMINISTRATION TIMELY PAYMENT ACT
TITLE XXXIII—EMERGING TELECOMMUNICATIONS TECHNOLOGIES ACT OF 1992
TITLE XXXIV—ENTERPRISE FOR THE AMERICAS ACT OF 1992
TITLE XXXV—REPEAL THE TRADE ADJUSTMENT ASSISTANCE PROGRAM
TITLE XXXVI—VA MEDICAL CARE COST RECOVERY AMENDMENT OF 1992
TITLE XXXVII—VETERANS' HOME LOAN IMPROVEMENT ACT OF 1992
TITLE XXXVIII—PERMANENT EXTENSION OF CERTAIN VETERANS-RELATED INCOME VERIFICATION AND PENSION PROVISIONS IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990
TITLE XXXIX—TARGET ENTITLEMENT FOR VOCATIONAL REHABILITATION BENEFITS TO VETERANS WITH SERVICE-CONNECTED DISABILITIES RATED 30 PERCENT OR MORE; AND ADJUST MILITARY PAY REDUCTION FOR MONTGOMERY GI BILL PARTICIPANTS
TITLE XL—RETIREMENT MODIFICATION ACT OF 1992
TITLE XLI—CONFORM THE DEFINITION OF COMPENSATION UNDER THE RAILROAD RETIREMENT TAX ACT TO THAT UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT
TITLE XLII—EXTEND THE DURATION OF THE PATENT AND TRADEMARK OFFICE USER FEE SURCHARGE THROUGH 1997
TITLE XLIII—EXPAND EXISTING ARMY CORPS OF ENGINEERS USER FEES FOR USE OF DEVELOPED RECREATIONAL SITES
TITLE XLIV—EXTEND AUTHORITY TO COLLECT ABANDONED MINE RECLAMATION FEES
TITLE XLV—FCC USER FEE
TITLE XLVI—LIMITATION ON MANDATORY SPENDING
TITLE XLVII—EXTENSION OF BUDGET ENFORCEMENT ACT AND APPLICATION TO CREDIT PROGRAMS
TITLE XLVIII—CONGRESSIONAL BUDGET REFORM ACT OF 1992
TITLE XLIX—LEGISLATIVE LINE ITEM VETO ACT OF 1992

TITLE I—ENHANCED ECONOMIC RECOVERY

SECTION 101. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the "Enhanced Economic Recovery Act of 1992".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly 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 Internal Revenue Code of 1986.

(c) SECTION 15 SHALL NOT APPLY.—Except as otherwise expressly provided, no amendment made by this title shall be treated as a change in rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

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Subtitle A—Provisions Relating to Capital Gains

SEC. 111. REDUCTION IN CAPITAL GAINS TAX FOR NONCORPORATE TAXPAYERS.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by adding at the end thereof the following new section:

"SEC. 1202. REDUCTION IN CAPITAL GAINS TAX FOR NONCORPORATE TAXPAYERS.

"(a) DEDUCTION ALLOWED FOR CAPITAL GAINS.—

"(1) IN GENERAL.—If, for any taxable year, a taxpayer other than a corporation has a net capital gain, an amount equal to the sum of the applicable percentages of the applicable capital gain shall be allowed as a deduction.

"(2) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under paragraph (1) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under section 652 and 662 (relating to inclusion of amounts in gross income of beneficiaries of trusts), is includible by income beneficiaries (other than corporations) as gain derived from the sale or exchange of capital assets.

"(b) APPLICABLE PERCENTAGES.—For purposes of this subsection, the applicable percentages shall be the percentages determined in accordance with the following table:

"In the case of:	The applicable percentage is:
1-year gain	15
2-year gain	30
3-year gain	45

"(c) GAIN TO WHICH DEDUCTION APPLIES.—For purposes of this section—

"(1) APPLICABLE CAPITAL GAIN.—The term 'applicable capital gain' means 1-year gain, 2-year gain, or 3-year gain determined by taking into account only gain which is properly taken into account on or after February 1, 1992.

"(2) 3-YEAR GAIN.—The term '3-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, or

"(B) the long-term capital gain determined by taking into account only gain from the sale or exchange of qualified assets held more than 3 years.

"(3) 2-YEAR GAIN.—The term '2-year gain' means the lesser of—

"(A) the net capital gain for the taxable year, reduced by 3-year gain, or

"(B) the long-term capital gain determined by taking into account only gain from the

sale or exchange of qualified assets held more than 2 years but not more than 3 years.

"(4) 1-YEAR GAIN.—The term '1-year gain' means the net capital gain for the taxable year determined by taking into account only—

"(A) gain from the sale or exchange of assets held more than 1 year but not more than 2 years, and

"(B) losses from the sale or exchange of assets held more than 1 year.

"(5) SPECIAL RULES FOR GAIN ALLOCABLE TO PERIODS BEFORE 1994.—For purposes of this section—

"(A) GAIN ALLOCABLE TO PERIODS BEGINNING ON OR AFTER FEBRUARY 1, 1992 AND BEFORE 1993.—In the case of any gain from any sale or exchange which is properly taken into account for the period beginning on February 1, 1992 and ending on December 31, 1992, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 3-year gain.

"(B) GAIN ALLOCABLE TO 1993.—In the case of any gain from any sale or exchange which is properly taken into account for periods during 1993, gain which is 1-year gain or 2-year gain (without regard to this subparagraph) shall be treated as 2-year gain and 3-year gain, respectively.

"(6) SPECIAL RULES FOR PASS-THROUGH ENTITIES.—

"(A) IN GENERAL.—In applying this subsection with respect to any pass-through entity, the determination of when a sale or exchange has occurred shall be made at the entity level.

"(B) PASS-THROUGH ENTITY DEFINED.—For purposes of subparagraph (A), the term 'passthorough entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund.

"(7) RECAPTURE OF NET ORDINARY LOSS UNDER SECTION 1231.—For purposes of this subsection, if any amount is treated as ordinary income under section 1231(C) for any taxable year—

"(A) the amount so treated shall be allocated proportionately among the section 1231 gains (as defined in section 1231(a)) for such taxable year, and

"(B) the amount so allocated to any such gain shall reduce the amount of such gain."

(b) TREATMENT OF COLLECTIBLES.—

(1) IN GENERAL.—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) SPECIAL RULE FOR COLLECTIBLES.—

"(A) IN GENERAL.—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) COLLECTIBLE.—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) CHARITABLE DEDUCTION NOT AFFECTED.—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) MINIMUM TAX.—Section 56(b)(1) is amended by adding at the end thereof the following new subparagraph:

"(G) CAPITAL GAINS DEDUCTION DISALLOWANCE.—Except with respect to gains realized on the sale, exchange, or other disposition of a direct or indirect interest in real estate or in a closely-held business, the deduction under section 1202 shall not be allowed."

(d) CONFORMING AMENDMENTS.—

(1) Section 62(a) is amended by inserting after paragraph (13) the following new paragraph:

"(14) CAPITAL GAINS DEDUCTION.—The deduction allowed by section 1202."

(2) Clause (ii) of section 163(d)(4)(B) is amended by inserting ", reduced by the amount of any deduction allowable under section 1202 attributable to gain from such property" after "investment".

(3)(A) Subparagraph (B) of section 170(e)(1) is amended by inserting "the nondeductible percentage" before "the amount of gain".

(B) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), the term 'nondeductible percentage' means 100 percent minus the applicable percentage with respect to such property under section 1202(b), or, in the case of a corporation, 100 percent."

(4)(A) Paragraph (2) of section 172(d) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

"(B) the deduction provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(5)(A) Section 221 (as redesignated by section 224(a) of this Act) is amended to read as follows:

"SEC. 221. CROSS REFERENCES.

"(1) For deductions for net capital gains in the case of a taxpayer other than a corporation, see section 1202.

"(2) For deductions in respect of a decedent, see section 691."

(B) The table of sections for part VII of subchapter B of chapter 1 (as amended by section 224(c) of this Act) is amended by striking "reference" in the item relating to section 221 and inserting "references".

(6) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for net capital gain). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income."

(7) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The deduction under section 1202 (relating to deduction for net capital gain) shall not be taken into account."

(8) Subparagraph (C) of section 643(a)(6) is amended—

(A) by inserting "(i)" before "there", and

(B) by inserting ", and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account" before the period at the end thereof.

(9) Paragraph (4) of section 691(c) is amended by striking "1202, and 1211" and inserting "1201, 1202, and 1211".

(10) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 (relating to deduction for net capital gain) and" after "except that".

(11) Paragraph (1) of section 1402(i) is amended to read as follows:

"(1) IN GENERAL.—In determining the net earnings from self-employment of any options dealer or commodities dealer—

"(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

"(B) the deduction provided by section 1202 shall not apply."

(12)(A) Subparagraph (A) of section 7518(g)(6) is amended by striking the last sentence.

(B) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act of 1936, is amended by striking the last sentence.

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1202. Reduction in capital gains tax for noncorporate taxpayers.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending on or after February 1, 1992.

(2) TREATMENT OF COLLECTIBLES.—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning on or after February 1, 1993.

(B) SPECIAL RULE FOR 1992 TAXABLE YEAR.—In the case of any taxable year which includes February 1, 1992, for purposes of section 1202 of the Internal Revenue Code of 1986 and section 1(g) of such Code, any gain or loss from the sale or exchange of a collectible (within the meaning of section 1222(12) of such Code) shall be treated as gain or loss from a sale or exchange occurring before such date.

SEC. 112. RECAPTURE UNDER SECTION 1250 OF TOTAL AMOUNT OF DEPRECIATION.

(a) GENERAL RULE.—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) GENERAL RULE.—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect to such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property, shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) DEPRECIATION ADJUSTMENTS.—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1968, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188, 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) LIMITATION IN CASE OF INSTALLMENT SALES.—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on the day before the date of enactment of the Enhanced Economic Recovery Act of 1992)", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) DEPRECIATION ADJUSTMENTS.—In respect of any property described in subparagraph (A), the amount of depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subjection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subsection (d) of section 1250 is amended by striking paragraph (10).

(4) Section 1250 is amended by striking subsections (e) and (f) and by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(5) Paragraph (5) of section 48(q) is amended to read as follows:

"(5) RECAPTURE OF REDUCTION.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(6) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on the day before the date of enactment of the Enhanced Economic Recovery Act of 1992)".

(7)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5), as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subjection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(1)(B)(ii)".

(10) Subsection (d) of section 1017 is amended to read as follows:

"(d) RECAPTURE OF DEDUCTIONS.—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(11) Paragragh (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on the day before the date of enactment of the Enhanced Economic Recovery Act of 1992)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions made on or after February 1, 1992, in taxable years ending on or after such date.

Subtitle B—Provisions Relating to Passive Losses and Depreciation

SEC. 121. PASSIVE LOSS RELIEF FOR REAL ESTATE DEVELOPERS.

(a) TREATMENT OF REAL ESTATE DEVELOPMENT ACTIVITIES.—Subsection (c) of section 469 (relating to the limitation on passive activity losses and credits) is amended by adding at the end the following new paragraph:

"(7) REAL ESTATE DEVELOPMENT ACTIVITY.—The real estate development activity of a taxpayer shall be treated as a single trade or business activity that is not a rental activity."

(b) DEFINITION.—Subsection (j) of section 469 is amended by adding at the end thereof the following new paragraph:

"(13) REAL ESTATE DEVELOPMENT ACTIVITY.—

"(A) IN GENERAL.—The real estate development activity of a taxpayer shall include all activities of the taxpayer (determined without regard to subsection (c)(7) and this paragraph) in which the taxpayer actively participates and that consist of the performance of real estate development services and the rental of any qualified real property.

"(B) REAL ESTATE DEVELOPMENT SERVICES.—For purposes of this paragraph, real estate development sevices include only the construction, substantial renovation, and management of real property and the lease-up and sale of real property in which the taxpayer holds an interest of not less than 10 percent.

"(C) QUALIFIED REAL PROPERTY.—For purposes of this paragraph, the term "qualified real property" means any real property that was constructed substantially renovated in an activity of the taxpayer at a time when the taxpayer materially participated in such activity.

(c) EFFECTIVE DATE.—The amendments made by this section are effective for taxable years ending on or after December 31, 1992.

SEC. 122. SPECIAL ALLOWANCE FOR EQUIPMENT ACQUIRED IN 1992.

(A) IN GENERAL.—Section 168 is amended by adding at the end thereof the following new subsection:

"(j) SPECIAL RULE FOR EQUIPMENT ACQUIRED IN 1992.—

"(1) ADDITIONAL ALLOWANCE.—There shall be allowed, in addition to the reasonable allowance provided for by section 167(a), a depreciation deduction determined under paragraph (2) with respect to qualified equipment.

"(2) DETERMINATION OF ADDITIONAL ALLOWANCE.—

"(A) IN GENERAL.—The additional allowance shall equal 15 percent of the purchase price of the qualified equipment.

"(B) PURCHASE PRICE.—For purposes of paragraph (A), the purchase price of qualified equipment shall equal its cost to the taxpayer. In the case of self-constructed property that is qualified equipment under paragraph (4)(D), cost is determined on the date the property is placed in service.

"(3) WHEN ADDITIONAL ALLOWANCE MAY BE CLAIMED.—The additional allowance may be claimed in the tax year in which the qualified equipment is placed in service.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) QUALIFIED EQUIPMENT.—For purposes of this subsection, the term 'qualified equipment' means property that—.

"(i) is new property,

"(ii) is section 1245 property (within the meaning of section 1245(a)(3)),

"(iii) is—

"(I) acquired on or after February 1, 1992, but only if no binding contract for the acquisition was in effect before that date, or

"(II) acquired pursuant to a binding contract entered into on or after February 1, 1992, and before January 1, 1993,

"(iv) is placed in service before July 1, 1993, and

"(v) is not defined as disqualified property in regulations prescribed by the Secretary.

"(B) NEW PROPERTY.—For purposes of this paragraph, property is new property if the original use of the property commences with the taxpayer and commences on or after February 1, 1992. Except as otherwise provided in regulations, repaired or reconstructed property is not new property, regardless of the extent of the repairs or reconstruction.

"(C) ACQUIRE.—For purposes of this paragraph, a taxpayer is considered to 'acquire' property on the date the taxpayer obtains physical control or possession of the property, or on such other date as the Secretary may prescribe by regulations.

"(D) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—If a taxpayer manufactures, constructs, or produces property for the taxpayer's own use, the property shall be treated as 'qualified equipment' only if—

"(i) the property meets the requirements of clauses (i), (ii), (iv), and (v) of paragraph (4)(A), and

"(ii) the taxpayer begins manufacturing, constructing, or producing the property on or after February 1, 1992, and before January 1, 1993.

"(E) COORDINATION WITH SECTION 280F.—In the case of a passenger automobile (within the meaning of section 280F(d)(5)) that is qualified equipment under this subsection, the Commissioner shall adjust the limitations of section 280F(a)(1) to take into account the additional allowance under this subsection. Consistent with the overall purpose of section 280F, such adjustments shall be based on the threshold cost at which the section 280F(a)(1) limitations begin to apply.

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be nec-

essary to carry out the purposes of this subsection."

(b) BASIS ADJUSTMENTS.—Subsection (c) of section 167 is amended by adding at the end thereof the following new sentence: "If a taxpayer claims the additional allowance provided by section 168(j) with respect to qualified equipment in a taxable year, the basis of the qualified equipment is reduced under section 1016 by the amount of the additional allowance before the depreciation deduction under paragraph (a) is determined for that taxable year."

(c) ALTERNATIVE MINIMUM TAX.—Paragraph (1) of section 56(a) is amended—

(1) by inserting "or (iii)" after "(ii)" in subparagraph (A)(i), and

(2) by adding at the end thereof the following new clause:

"(iii) The additional allowance provided by section 168(j) for certain equipment shall apply in determining the amount of alternative minimum taxable income. The basis adjustment required for the additional allowance provided by section 168(j) shall be made before the depreciation deduction allowable in determining alternative minimum taxable income under this paragraph is determined."

(d) CROSS REFERENCE.—Subsection (e) of section 1016 is amended by adding at the end thereof the following new paragraph:

"(3) For the order in which basis adjustments should be made for depreciation in the case of property with respect to which the special additional allowance is claimed under section 168(j), see section 167(c)."

(e) EFFECTIVE DATE.—The amendments made by this section are effective February 1, 1992.

SEC. 123. ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.

(a) GENERAL RULE.—Clause (i) of section 56(g)(4)(A) is amended to read as follows:

"(i) PROPERTY PLACED IN SERVICE AFTER 1989 AND PRIOR TO FEBRUARY 1, 1992.—The depreciation deduction with respect to any property placed in service—

"(I) in a taxable year beginning after 1989, and

"(II) prior to February 1, 1992, shall be determined under the alternative system of section 168(g).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply for property placed in service on or after February 1, 1992.

Subtitle C—Provisions Relating to Real Estate Investments by Pension Funds

SEC. 131. REAL PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) INTERESTS IN MORTGAGES.—The last sentence of subparagraph (B) of section 514(c)(9) is hereby transferred to subparagraph (A) of section 514(c)(9) and added at the end thereof.

(b) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) is amended by adding at the end thereof the following new subparagraph:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTION.—For purposes of section 514(c)(9)(B), except as otherwise provided by regulations, the following additional rules apply—

"(i) IN GENERAL.—

"(I) For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in clause (iii) or (iv) shall be disregarded if no more than 10 percent of the leasable floor space in a building is covered by the lease and if the lease is on commercially reasonable terms.

"(II) Clause (v) of subparagraph (B) shall not apply to the extent the financing is commercially reasonable and is on substantially the same terms as loans involving unrelated persons; for this purpose, standards for determining a commercially reasonable interest rate shall be provided by the Secretary.

"(ii) QUALIFYING SALES OUT OF FORECLOSURE BY FINANCIAL INSTITUTIONS.—In the case of a qualifying sale out of foreclosure by a financial institution, clauses (i) and (ii) of subparagraph (B) shall not apply. For this purpose, a 'qualifying sale out of foreclosure by a financial institution' exists where—

"(I) a qualified organization acquires real property from a person (a 'financial institution') described in sections 581 or 591(a) (including a person in receivership) and the financial institution acquired the property pursuant to a bid at foreclosure or by operation of an agreement or of process of law after a default on indebtedness which the property secured ('foreclosure'), and the financial institution treats any income realized from the sale or exchange of the property as ordinary income,

"(II) the amount of the financing provided by the financial institution does not exceed the amount of the financial institution's outstanding indebtedness (determined without regard to accrued but unpaid interest) with respect to the property at the time of foreclosure,

"(III) the financing provided by the financial institution is commercially reasonable and is on substantially the same terms as loans between unrelated persons for sales of foreclosed property (for this purpose, standards for determining a commercially reasonable interest rate shall be provided by the Secretary), and

"(IV) the amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property ('participation feature') does not exceed 25 percent of the principal amount of the financing provided by the financial institution, and the participation feature is payable no later than the earlier of satisfaction of the financing or disposition of the property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt-financed acquisitions of real estate made on or after February 1, 1992.

SEC. 132. SPECIAL RULES FOR INVESTMENTS IN PARTNERSHIPS.

(a) MODIFICATION TO ANTI-ABUSE RULES.—Paragraph (9) of section 514(c) (as amended by section 131 of this Act) is amended by adding at the end thereof the following new subparagraph:

"(H) PARTNERSHIPS NOT INVOLVING TAX AVOIDANCE.—

"(i) DE MINIMIS RULE FOR CERTAIN LARGE PARTNERSHIPS.—The provisions of subparagraph (B) shall not apply to an investment in a partnership having at least 250 partners if—

"(I) investments in the partnership are organized into units that are marketed primarily to individuals expected to be taxed at the maximum rate prescribed for individuals under section 1,

"(II) at least 50 percent of each class of interests is owned by such individuals,

"(III) the partners that are qualified organizations owning interests in a class participate on substantially the same terms as other partners owning interests in that class, and

"(IV) the principal purpose of partnership allocations is not tax avoidance.

"(ii) EXCEPTION WHERE TAXABLE PERSONS OWN A SIGNIFICANT PERCENTAGE.—In the case of any partnership, other than a partnership to which clause (i) applies, in which persons who are expected (under the regulations to be prescribed by the Secretary), at the time the partnership is formed, to pay tax at the maximum rate prescribed in section 1 or 11 (whichever is applicable) throughout the term of the partnership own at least a 25 percent interest, the provisions of subparagraph (B) shall not apply if the partnership satisfies the requirements of subparagraph (E)."

(b) PUBLICLY TRADED PARTNERSHIPS; UNRELATED BUSINESS INCOME FROM PARTNERSHIPS.—Subsection (c) of section 512 is amended by striking paragraph (2) (relating to publicly traded partnerships), by redesignating paragraph (3) as paragraph (2), and by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership interests acquired on or after February 1, 1992.

Subtitle D—Provisions Affecting Homebuyers

Sec. 141. CREDIT FOR FIRST-TIME HOMEBUYERS.

(a) IN GENERAL.—Subpart A of part IV of chapter 1 is amended by inserting after section 22 the following new section:

"SEC. 23. PURCHASE OF PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

"(a) ALLOWANCE OF CREDIT.—If an individual who is a first-time homebuyer purchases a principal residence (within the meaning of section 1034), there shall be allowed to such individual as a credit against the tax imposed by this subtitle an amount equal to 10 percent of the purchase price of the principal residence.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed $5,000.

"(2) LIMITATION TO ONE RESIDENCE.—The credit under this section shall be allowed with respect to only one residence of the taxpayer.

"(3) MARRIED INDIVIDUALS FILING JOINTLY.—In the case of a husband and wife who file a joint return under section 6013, the credit under this section is allowable only if both the husband and wife are first-time homebuyers, and the amount specified under paragraph (1) shall apply to the joint return.

"(4) OTHER TAXPAYERS.—In the case of individuals to whom paragraph (3) does not apply who together purchase the same new principal residence for use as their principal residence, the credit under this section is allowable only if each of the individuals is a first-time homebuyer, and the sum of the amount of credit allowed to such individuals shall not exceed the lesser of $5,000 or 10 percent of the total purchase price of the residence. The amount of any credit allowable under this section shall be apportioned among such individuals under regulations to be prescribed by the Secretary.

"(5) APPLICATION WITH OTHER CREDITS.—

"(A) GENERAL RULE.—The credit allowed by subsection (a) for any taxable year shall not exceed the amount of the tax imposed by this chapter for the taxable year, reduced by the sum of any other credits allowable under this chapter.

"(B) CARRYFORWARD OF UNUSED CREDITS.—Any credit that is not allowed for the taxable year solely by reason of subparagraph (A) shall be carried forward to the succeeding taxable year and allowed as a credit for that taxable year. However, the credit shall not be carried forward more than 5 taxable years after the taxable year in which the residence is purchased.

"(6) YEAR FOR WHICH CREDIT ALLOWED.—Fifty percent of the credit allowed by sub-

section (a) shall be allowed in the taxable year in which the residence is purchased and the remaining fifty percent of the credit shall be allowed in the succeeding taxable year.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date of the acquisition thereof.

"(2) FIRST-TIME HOMEBUYER.—

"(A) IN GENERAL.—The term 'first-time homebuyer' means any individual if such individual has not had a present ownership interest in any residence (including an interest in a housing cooperative) at any time within the 36-month period ending on the date of acquisition of the residence on which the credit allowed under subsection (a) is to be claimed. An interest in a partnership, S corporation, or trust that owns an interest in a residence is not considered an interest in a residence for purposes of this paragraph except as may be provided in regulations.

"(B) CERTAIN INDIVIDUALS.—Notwithstanding subparagraph (A), an individual is not a first-time homebuyer on the date of purchase of a residence if on that date the running of any period of time specified in section 1034 is suspended under subsection (h) or (k) of section 1034 with respect to that individual.

"(3) SPECIAL RULES FOR CERTAIN ACQUISITIONS.—No credit is allowable under this section if—

"(A) the residence is acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b), or

"(B) the basis of the residence in the hands of the person acquiring it is determined—

"(i) in whole or in part by reference to the adjusted basis of such residence in the hands of the person from whom it is acquired, or

"(ii) under section 1014(a) (relating to property acquired from a decedent).

"(d) RECAPTURE FOR CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if the taxpayer disposes of property with respect to the purchase of which a credit was allowed under subsection (a) at any time within 36 months after the date the taxpayer acquired the property as his principal residence, then the tax imposed under this chapter for the taxable year in which the disposition occurs is increased by an amount equal to the amount allowed as a credit for the purchase of such property.

"(2) ACQUISITION OF NEW RESIDENCE.—If, in connection with a disposition described in paragraph (1) and within the applicable period prescribed in section 1034, the taxpayer purchases a new principal residence, then the provisions of paragraph (1) shall not apply and the tax imposed by this chapter for the taxable year in which the new principal residence is purchased is increased to the extent the amount of the credit that could be claimed under this section on the purchase of the new residence (determined without regard to subsection (e)) is less than the amount of credit claimed by the taxpayer under this section.

"(3) DEATH OF OWNER; CASUALTY LOSS; INVOLUNTARY CONVERSION; ETC.—The provisions of paragraph (1) do not apply to—

"(A) a disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36-month period to which reference is made under paragraph (1),

"(B) a disposition of the old residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3) or compulsorily or involuntarily converted (within the meaning of section 1033(a)), or

"(C) a disposition pursuant to a settlement in a divorce or legal separation proceeding where the residence is sold or the other spouse retains the residence as a principal residence.

"(e) PROPERTY TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—The provisions of this section apply to a principal residence if—

"(A) the taxpayer acquires the residence on or after February 1, 1992, and before January 1, 1993, or

"(B) the taxpayer enters into, on or after February 1, 1992, and before January 1, 1993, a binding contract to acquire the residence, and acquires and occupies the residence before July 1, 1993."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of chapter 1 is amended by inserting after section 22 the following new item:

"Sec. 23. Purchase of principal residence by first-time homebuyer."

(c) EFFECTIVE DATE.—The amendments made by this section are effective on February 1, 1992.

SEC. 142. PENALTY-FREE WITHDRAWALS FOR FIRST HOME PURCHASE.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 213 of the Act, is further amended by adding at the end thereof the following new subparagraph:

"(E) DISTRIBUTION FROM INDIVIDUAL RETIREMENT PLAN FOR FIRST HOME PURCHASE.—A distribution to an individual from an individual retirement plan with respect to which the requirements of paragraph (7) are met."

(b) DEFINITIONS.—Subsection (t) of section 72 is amended by adding at the end thereof the following new paragraph:

(6) REQUIREMENTS APPLICABLE TO FIRST HOME PURCHASE DISTRIBUTION.—For purposes of paragraph (2)(E)—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to a distribution if—

"(i) DOLLAR LIMIT.—The amount of the distribution does not exceed the excess (if any) of—

"(I) $10,000, over

"(II) the sum of the distributions to which paragraph (2)(E) previously applied with respect to the individual who is the owner of the individual retirement plan.

"(ii) USE OF DISTRIBUTION.—The distribution—

"(I) is made to or on behalf of a qualified first home purchaser, and

"(II) is applied within 60 days of the date of distribution to the purchase or construction of a principal residence of such purchaser.

"(iii) ELIGIBLE PLANS.—The distribution is not made from an individual retirement plan which—

"(I) is an inherited individual retirement plan (within the meaning of section 408(d)(3)(C)(ii)), or

"(II) any part of the contributions to which were excludable from income under section 402(c), 402(a)(7), 403(a)(4), or 403(b)(8).

"(B) QUALIFIED FIRST HOME PURCHASER.—For purposes of this paragraph, the term 'qualified first home purchaser' means the individual who is the owner of the individual retirement plan, but only if—

"(i) such individual (and, if married, such individual's spouse) had no present ownership interest in a residence at any time within the 36-month period ending on the date for which the distribution is applied pursuant to subparagraph (A)(ii), and

"(ii) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A)(ii).

"(C) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from an individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account—

"(I) in determining whether section 408(d)(3)(A)(i) applies to any other amount, or

"(II) for purposes of subclause (II) of subparagraph (A)(i).

"(D) PRINCIPAL RESIDENCE.—For purposes of this paragraph, the term 'principal residence' has the meaning given such term by section 1034.

"(E) OWNER.—For purposes of this paragraph, the term 'owner' means, with respect to any individual retirement plan, the individual with respect to whom such plan was established."

(c) EFFECTIVE DATE.—the amendments made by this section shall apply to distributions on or after February 1, 1992.

TITLE II—TAX RELIEF FOR FAMILIES ACT OF 1992

SEC. 201. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the "Tax Relief for Families Act of 1992".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly 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 Internal Revenue Code of 1986.

(c) SECTION 15 SHALL NOT APPLY.—Except as otherwise expressly provided, no amendment made by this title shall be treated as a change in rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

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TITLE II—TAX RELIEF FOR FAMILIES

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Subtitle A—Provisions Relating to Education and Savings

SEC. 211. DEDUCTION FOR INTEREST ON CERTAIN EDUCATIONAL LOANS.

(a) IN GENERAL.—Paragraph (2) of section 163(h) is amended by striking "and" at the

end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

"(E) any qualified educational interest (within the meaning of paragraph (5)), and".

(b) QUALIFIED EDUCATIONAL INTEREST DEFINED.—Subsection (h) of section 163 is amended by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) For purposes of this subsection—

"(A) QUALIFIED EDUCATIONAL INTEREST.—The term "qualified educational interest" means interest which is paid during the taxable year on qualified educational indebtedness.

"(B) QUALIFIED EDUCATIONAL INDEBTEDNESS.—The term "qualified educational indebtedness" means any loan—

"(i) which is provided—

"(I) pursuant to a Federal, State, or State-based guarantee program or insurance program,

"(II) by an organization described in section 501(c)(3) and exempt from tax under section 501(a),

"(III) by a financial institution under a supplemental education program which requires that payments be made to the educational institution referred to in subparagraph (C)(i), or

"(IV) by an institution that is an eligible educational institution (defined in subparagraph (E)) on the date the loan is provided, and

"(ii) which is incurred to pay qualified educational expenses which are paid or incurred at a time that is reasonably contemporaneous (as defined in regulations prescribed by the Secretary) with the time the loan proceeds are received.

"(C) QUALIFIED EDUCATIONAL EXPENSES.—

"(i) IN GENERAL.—The term 'qualified educational expenses' means qualified tuition and related expenses of the taxpayer, the taxpayer's spouse or child (as defined in section 151(c)(3)) for attendance at an institution that is an eligible educational institution (as defined in subparagraph (E)) at the time of attendance, provided that the person in attendance at such institution is a qualified individual.

"(ii) QUALIFIED TUITION AND RELATED EXPENSES.—The term 'qualified tuition and related expenses' has the meaning given such term by section 117(b), except that such term shall include any reasonable living expenses of the qualified individual while living away from home and attending the educational institution referred to in clause (i).

"(iii) EXCLUSION OF REIMBURSED EXPENSES.—If the taxpayer, or the taxpayer's spouse or child, is reimbursed for tuition or a related expense by someone other than the taxpayer or the taxpayer's spouse or child, the tuition or related expense shall not be 'qualified tuition and related expenses' to the extent of the reimbursement.

"(iv) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified tuition and related expenses for any taxable year shall be reduced by any amount excludable from gross income for that year under section 135.

"(D) QUALIFIED INDIVIDUAL.—An individual is a 'qualified individual' if the individual—

"(i) is either—

"(I) a high school graduate, or

"(II) over 18 years of age, and

"(ii) is enrolled in a course of study—

"(I) leading to a degree or certificate, or

"(II) related to existing or future full-time employment.

"(E) ELIGIBLE EDUCATIONAL INSTITUTION.—An institution is an 'eligible educational institution' if it is described in section 481(a) of the Higher Education Act of 1965 and is eligible to participate in programs under title IV of such Act.

"(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations—

"(i) precluding treatment of artificial loan arrangements as qualified educational indebtedness,

"(ii) specifying reasonable repayment terms for qualified educational indebtedness, and

"(iii) providing rules for the application of this paragraph to loans incurred before February 1, 1992."

(c) COORDINATION WITH QUALIFIED RESIDENCE INTEREST PROVISION.—

(1) LIMITATION.—Clause (ii) of section 163(h)(3)(C) is amended—

(i) by striking "(ii) LIMITATION.—The" and inserting the following:

"(ii) LIMITATIONS.—"

"(I) The",

(ii) by moving the text of such clause 2 ems to the right, and

(iii) by adding at the end thereof the following new subclause:

"(II) Except as provided in clause (iii), the aggregate amount treated as home equity indebtedness for any period (after the application of subclause (I)) shall be reduced by any amount treated by the taxpayer as qualified educational indebtedness under subsection (h)(5)."

(2) ELECTION.—Subparagraph (C) of section 163(h)(3) is amended by adding at the end thereof the following new clause:

"(iii) If the taxpayer elects not to treat otherwise qualified educational indebtedness as qualified educational indebtedness, the reduction required by subparagraph (C)(ii)(II) shall not apply for that taxable year."

(d) EXCLUSION FROM DEFINITION OF INVESTMENT INTEREST.—Subparagraph (B) of section 163(d)(3) (defining investment interest) is amended by striking "or" at the end of clause (i), striking the period at the end of clause (ii) and inserting ", or", and inserting after clause (ii) the following new clause:

"(iii) any qualified educational interest (as defined in subsection (h)(5)."

(e) INFORMATION REPORTING.—

(1) REPORTING REQUIREMENT.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new section:

"SEC. 60500. RETURNS RELATING TO EDUCATIONAL INTEREST.

"(a) EDUCATIONAL INTEREST OF $10 OR MORE.—Any person who receives from any individual interest aggregating $10 or more for any calendar year on an educational loan described in section 163(h)(5)(B) shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe,

"(2) contains—

"(A) the name and address of the individual from whom the interest described in subsection (a) was received,

"(B) the amount of such interest received for the calendar year, and

"(C) such other information as the Secretary may prescribe.

"(c) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of interest described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made."

(2) CLERICAL AMENDMENT.—The table of sections for such subpart B is amended by adding at the end thereof the following:

Sec. 60500. Returns regarding educational interest."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to interest paid on or after July 1, 1992.

SEC. 212. FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subchapter B of chapter 1 (relating to computation of taxable income) is amended by adding at the end thereof the following new part:

"PART XII—FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS

"Sec. 292. Special rules for flexible individual retirement accounts.

"SEC. 292. SPECIAL RULES FOR FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—For purposes of this title, in the case of a flexible individual retirement account—

"(1) the taxation of such account shall be determined under subsection (d), and

"(2) the taxation of any distributions from such account shall be determined under subsection (e).

"(b) FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNT DEFINED.—For purposes of this section, the term 'flexible individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual and the individual's beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) No contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of $2,500.

"(2) The trustee is a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

"(3) No part of the trust assets will be invested in insurance contracts or collectibles (within the meaning of section 408(m)).

"(4) The interest of the individual in the balance in such individual's account is nonforfeitable.

"(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(c) CONTRIBUTIONS TO FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS.—

"(1) FORM OF CONTRIBUTION.—No amount may be contributed to a flexible individual retirement account unless such amount is paid in cash by or on behalf of the individual for whom such account is maintained.

"(2) CONTRIBUTION LIMITS.—

"(A) IN GENERAL.—Except as provided in this subsection, the aggregate amount of contributions for any taxable year to all flexible individual retirement accounts maintained for the benefit of an individual shall not exceed the lesser of—

"(i) $2,500, or

"(ii) an amount equal to the compensation includible in the individual's gross income for such taxable year.

"(B) MARRIED INDIVIDUALS FILING JOINT RETURNS.—For purposes of subparagraph (A)(ii), in the case of married individuals filing a joint return under section 6013 for the taxable year, the compensation of each of such individuals for such taxable year shall be treated as equal to one-half of the aggregate compensation of both individuals.

"(C) COMPENSATION.—For purposes of this paragraph, the term 'compensation' has the meaning given such term by section 219(f)(1).

"(3) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

"(A) IN GENERAL.—No contribution may be made during a taxable year to a flexible individual retirement account maintained for the benefit of the taxpayer if the taxpayer's adjusted gross income exceeds the applicable dollar amount.

"(B) APPLICABLE DOLLAR AMOUNT.—For purposes of this paragraph, the term 'applicable dollar amount' means—

"(i) in the case of a taxpayer filing a joint return, $120,000,

"(ii) in the case of a taxpayer who is a surviving spouse (as defined in section 2(a)) or who is a head of a household (as defined in section 2(b)), $100,000, or

"(iii) in the case of any other taxpayer, $60,000.

"(C) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a married individual filing a separate return whose adjusted gross income does not exceed the applicable dollar limit, such individual's adjusted gross income shall be treated as exceeding such limit if the aggregate adjusted gross income of such individual and the individual's spouse exceeds $120,000.

"(D) MARITAL STATUS.—Subparagraph (C) shall not apply to any individual who is not treated as married under the rules of section 219(g)(4).

"(E) ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'adjusted gross income' has the meaning given such term by section 219(g)(3)(A).

"(4) NO CONTRIBUTION IN CASE OF DEPENDENTS.—No contribution may be made during a taxable year to a flexible individual retirement account maintained for the benefit of an individual with respect to whom a deduction under section 151(c) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins.

"(5) TRANSFERS PERMITTED.—

"(A) IN GENERAL.—In the case of a transfer by a trustee of a flexible individual retirement account maintained for the benefit of an individual to a trustee of another flexible individual retirement account maintained for the benefit of such individual, such transfer shall not be treated as a contribution for purposes of this section.

"(B) INFORMATION PROVIDED.—A trustee making a transfer described in subparagraph (A) shall provide to the other trustee such information as the Secretary requires to carry out the purposes of this section.

"(d) TAX TREATMENT OF ACCOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a flexible individual retirement account is exempt from taxation under this subtitle.

"(2) UNRELATED BUSINESS INCOME.—A flexible individual retirement account shall be subject to the tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

"(3) POOLING ARRANGEMENTS PERMITTED.—A common trust fund or common investment fund consisting of flexible individual retirement accounts assets which is exempt from taxation under this subtitle shall not be treated as failing to be exempt from taxation under this subtitle solely by reason of the participation or inclusion in such fund of assets of—

"(A) a trust exempt from taxation under section 501(a) which is part of a plan described in section 401(a), or

"(B) an individual retirement plan exempt from taxation under section 408(e)(1).

"(4) CESSATION OF TREATMENT AS ACCOUNT.—

"(A) IN GENERAL.—If during any taxable year of an individual for whom a flexible individual retirement account is maintained the requirements of subsection (b) are not met with respect to such account, the account shall cease to be a flexible individual retirement account as of the first day of such taxable year.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be a flexible individual retirement account by reason of subparagraph (A) on the first day of any taxable year, subsection (e) shall apply as if there were a distribution immediately before the account ceased to be a flexible individual retirement account in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(e) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a flexible individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 7 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a flexible individual retirement account which consists of earnings allocable to contributions made to the account during the 7-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) 10-PERCENT ADDITIONAL TAX ON EARNINGS ON CONTRIBUTIONS HELD LESS THAN 3 YEARS.—

"(i) IN GENERAL.—If any amount described in subparagraph (A) consists of earnings allocable to contributions made during the 3-year period ending on the day before the distribution, the tax imposed by this chapter on the distributee for the taxable year in which such distribution occurs shall be increased by an amount equal to 10 percent of such earnings.

"(ii) EXCEPTION FOR DISTRIBUTIONS ON DEATH.—Clause (i) shall not apply to distributions made to a beneficiary (or the estate of the individual) on the death of the individual.

"(C) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a flexible individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN THE SAME YEAR.—Under regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(3) OTHER AMOUNTS TREATED AS DISTRIBUTIONS.—For purposes of this subsection—

"(A) IN GENERAL.—In the case of any distributable event—

"(i) there shall be treated as distributed during the taxable year in which the event occurs to the individual for whom the flexible individual retirement account is maintained an amount equal to the distributable amount, and

"(ii) any earnings after the date of the distributable event which (as determined under regulations) are allocable to the distributable amount shall be treated as distributed to such individual in the taxable year in which earned.

"(B) TAX TREATMENT OF AMOUNTS.—

"(i) IN GENERAL.—Except as provided in this subparagraph, paragraph (2) shall apply to any amount treated as distributed under subparagraph (A).

"(ii) SUBSEQUENT EARNINGS.—Notwithstanding paragraph (2), any earnings treated as distributed under subparagraph (A)(ii)—

"(I) shall be included in gross income in the taxable year in which treated as distributed, and

"(II) shall be subject to the additional tax under paragraph (2)(B) for such taxable year, except that paragraph (2)(B) shall be applied by substituting '20 percent' for '10 percent'.

"(iii) EXCEPTION FOR EXCESS CONTRIBUTIONS.—In the case of a distributable event described in subparagraph (C)(ii) (relating to excess contributions) which occurs by reason of a contribution not permitted under subsection (c)(4), any amount required to be included in gross income (or any additional tax imposed) by reason of this paragraph shall be included in the gross income of (or imposed on) the taxpayer entitled to the deduction under section 151(c) for the individual for whom the account is maintained.

"(iv) ACTUAL DISTRIBUTIONS.—If any portion of any distributable amount and any earnings allocable to such amount are actually distributed from the account during any taxable year, this paragraph shall cease to apply to any earnings attributable to such portion for periods following such distribution.

"(C) DISTRIBUTABLE EVENT.—For purposes of this paragraph, the following are distributable events:

"(i) The use of a flexible individual retirement account (or any portion thereof) as security for a loan.

"(ii) Except as provided in paragraph (4), a contribution to a flexible individual retirement account in excess of the amount allowed under subsection (c).

"(iii) Any other event to the extent, and subject to such terms and conditions, as the Secretary may prescribe by regulations in order to accomplish the purposes of, or to prevent abuse of, this section.

"(D) DISTRIBUTABLE AMOUNT.—For purposes of this paragraph, the term 'distributable amount' means the following:

"(i) In the case of a distributable event described in subparagraph (C)(i), the amount in the account used as security for a loan.

"(ii) In the case of a distributable event described in subparagraph (C)(ii), the amount of the excess contribution.

"(iii) In any other case, the amount determined under regulations.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to the distribution of any contribution paid during a taxable year to a flexible individual retirement account to the extent that such contribution exceeds the amount allowable under subsection (c) by reason of paragraphs (3) or (4) thereof if—

"(i) at the time of making such contribution, the taxpayer in good faith believed that—

"(I) in any case to which subsection (c)(3) applies, the taxpayer's adjusted gross income would not exceed the applicable dollar limit under subsection (c)(3), or

"(II) in any case to which subsection (c)(4) applies, the individual for whom the account is maintained would not be the dependent of any individual for purposes of section 151(c),

"(ii) such distribution is received on or before the last day of the taxable year following such taxable year, and

"(iii) such distribution is accompanied by the amount of earnings actually attributable to such excess contribution.

"(B) LIMITATION ON AMOUNT.—Subparagraph (A) shall apply only to that portion of the amount of the distributions which does not exceed the limitation under subsection (c)(2) (and earnings actually attributable to such portion).

"(C) EARNINGS.—Any earnings described in subparagraph (A)(iii) shall be included in the gross income of the individual for whom the account is established (or in the case described in subclause (II) of subparagraph (A)(i), the taxpayer entitled to the deduction under section 151(c)) for the taxable year in which it is received.

"(5) TRANSFERS.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is a transfer to which subsection (c)(5) applies.

"(B) CONTRIBUTION PERIOD FOR AMOUNTS TRANSFERRED.—For purposes of paragraph (2), the flexible individual retirement account to which any amounts are transferred in a transfer to which subsection (c)(5) applies shall be treated as having held such amounts during any period such amounts were held (or treated as held under this subparagraph) by the account from which transferred.

"(6) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—Rules similar to the rules of section 408(d)(6) shall apply to a flexible individual retirement account.

"(f) OTHER RULES.—

"(1) DISALLOWANCE OF LOSSES.—No loss shall be allowed in connection with a contribution to, or distribution from, a flexible individual retirement account.

"(2) DISTRIBUTION INCLUDES PAYMENT.—For purposes of this section, the term 'distribution' includes any payment, and the term 'distributee' includes any payee.

"(3) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(4) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if—

"(A) The assets of such account are held by a bank (as defined in section 408(n)) or such other person who demonstrates, to the satisfaction of the Secretary, that the manner in which such other person will administer the account will be consistent with the requirements of this section, and

"(B) the custodial account would, except for the fact that it is not a trust, constitute a flexible individual retirement account described in subsection (b).

For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(g) REPORTS.—The trustee of a flexible individual retirement account shall make such reports regarding such account to the Secretary and to the individual for whose benefit the account is maintained with respect to contributions (and the years to which such contributions relate), distributions and such other matters as the Secretary may require under regulations. Such reports shall be filed with the Secretary and furnish to such individuals at such time and in such manner as the Secretary may prescribe.

"(h) CERTAIN TRANSFERS FROM INDIVIDUAL RETIREMENT PLANS.—

"(1) QUALIFIED TRANSFERS NOT TREATED AS CONTRIBUTIONS.—A qualified transfer from an individual retirement plan to a flexible individual retirement account shall not be treated as a contribution for purposes of this section.

"(2) TAX TREATMENT OF AMOUNTS TRANSFERRED.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—Any amount includible in gross income under subparagraph (A) with respect to the amount transferred shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(3) QUALIFIED TRANSFER.—For purposes of this section, the term 'qualified transfer' means a transfer to a flexible individual retirement account that—

"(A) is made from an individual retirement plan out of amounts that are not attributable to contributions that were excludable from income under sections 402(a)(5), 402(a)(7), 403(a)(4), or 403(b)(8),

"(B) is made to a flexible individual retirement account contributions to which are not prohibited under paragraphs (3) or (4) of subsection (c),

"(C) meets the requirements of section 408(d)(3), and

"(D) is made between February 1, 1992 and December 31, 1992.

"(i) CROSS REFERENCE.—

"For taxes on prohibited transactions involving a flexible individual retirement account, see section 4975."

(b) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 (relating to prohibited transactions) is amended—

(1) by inserting ", or a flexible individual retirement account described in section 292(b)" after "described in section 408(b)" in subsection (e)(1), and

(2) by adding at the end of subsection (h) the following new sentence: "This subsection shall not apply to any tax imposed with respect to a flexible individual retirement account (as defined in section 292(b))."

(c) FAILURE TO PROVIDE REPORTS ON FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS.—Section 6693 (relating to a failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting **"OR ON FLEXIBLE INDIVIDUAL RETIREMENT ACCOUNTS"** after **"ANNUITIES"** in the heading of such section, and

(2) by adding at the end of subsection (a) the following new sentence: "The person required by section 292(g) to file a report regarding a flexible individual retirement account at the time and in the manner required by such section shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause."

(d) COMMON FUNDS.—Section 408(e)(6) is amended to read as follows:

"(6) COMMINGLING INDIVIDUAL RETIREMENT ACCOUNT AMOUNTS IN CERTAIN COMMON TRUST FUNDS AND COMMON INVESTMENT FUNDS.—Any common trust fund or common investment fund consisting of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of—

"(A) a trust exempt from taxation under section 501(a) which is part of a plan described in section 401(a), or

"(B) a flexible individual retirement account exempt from taxation under section 292."

(e) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Part XII. Flexible individual retirement accounts."

(2) The table of sections for subchapter B of chapter 68 is amended by inserting "or on flexible individual retirement accounts" after "annuities" in the item relating to section 6693.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 213. PENALTY-FREE WITHDRAWALS FOR CERTAIN EDUCATIONAL AND MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (6)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) APPLICATION OF MEDICAL RULES TO CERTAIN RELATIVES.—Section 72(t)(2)(B) is amended by adding at the end thereof the following new sentence: "For purposes of this subparagraph, a child, grandchild, or lineal ascendant of the taxpayer shall be treated as a dependent of the taxpayer in applying section 213."

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraph:

"(6) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)),

at an eligible educational institution (as defined in section 163(h)(5)(E)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions on or after February 1, 1992.

Subtitle B—Other Provisions

SEC. 221. CASUALTY LOSS ON SALE OF HOME; BASIS ADJUSTMENT.

(a) CASUALTY LOSS.—Paragraph (3) of section 165(c) is amended by striking the period and inserting ", or from the sale of a principal residence (within the meaning of section 1034)."

(b) $100 LIMITATION TO APPLY.—Paragraph (1) of section 165(h) is amended by inserting ", or from each sale of a principal residence," after "theft,".

(c) BASIS ADJUSTMENT.—Section 1016 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) INCREASE IN BASIS OF NEW PRINCIPAL RESIDENCE.—

"(1) IN GENERAL.—If—

"(A) the taxpayer sells property used by the taxpayer as his principal residence (within the meaning of section 1034) ('the old principal residence') and realizes a loss on the sale, and

"(B) the taxpayer purchases a new principal residence (within the meaning of section 1034) within the time period described in section 1034(a) (and taking into account any suspension of such period under section 1034(h) or (k)),

the basis of the new principal residence shall be increased by the amount of the loss realized on the sale of the old principal residence, less the amount treated under regulations prescribed by the Secretary as a casualty loss arising from the sale of the old principal residence.

"(2) REGULATIONS.—The Secretary shall prescribe regulations for determining the amount that shall be treated as a casualty loss arising from the sale of the old principal residence."

(d) CROSS REFERENCES.—

(1) Subsection (m) of section 165 is amended by adding at the end thereof the following new paragraph:

"(6) For adjustments to basis of a new principal residence where a loss is claimed under this section on sale of a principal residence, see section 1016(e) and section 1034."

(2) Subsection (l) of section 1034 is amended by adding at the end thereof the following new sentence: "For adjustments to basis of the new principal residence on sale of the old principal residence at a loss, see section 1016(e)."

(3) The heading of paragraph (1) of section 1034 is amended by striking "REFERENCE" and inserting "REFERENCES".

(e) EFFECTIVE DATE.—

(1) CASUALTY LOSS.—The amendments made by subsections (a) and (b) apply to sales of principal residences on or after February 1, 1992.

(2) BASIS ADJUSTMENT.—The amendments made by subsections (c) and (d) apply to sales of principal residences on or after January 1, 1991.

SEC. 222. FAMILY TAX ALLOWANCE.

(a) GENERAL RULE.—Paragraph (1) of section 151(d) (defining exemption amount) is amended to read as follows:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'exemption amount' means—

"(A) $2,000, or

"(B) in the case of an exemption under subsection (c) for a child who has not attained age 19 before the close of the calendar year in which the taxable year begins—

"(i) $2,425 for taxable years beginning in 1992, and

"(ii) $2,800 for taxable years beginning in 1993 and subsequent years."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 151(d)(3) of such Code is amended by striking "the exemption amount" and inserting "each dollar amount in effect under paragraph (1) (after any adjustment under paragraph (4))".

(2) Subparagraph (A) of section 151(d)(4) of such Code is amended—

(A) by striking "the dollar amount contained in" and inserting "the dollar amounts contained in subparagraph (A) and subparagraph (B)(ii) of", and

(B) by adding at the end thereof the following new sentence: "In the case of the $2,800 amount contained in subparagraph (B)(ii), the preceding sentence shall be applied by substituting '1992' for '1989' the first place it appears, and by substituting '1991' for '1988'."

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective October 1, 1992.

SEC. 223. EXTEND HEALTH INSURANCE DEDUCTION FOR SELF-EMPLOYED.

(a) EXTENSION.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 224. ADOPTION EXPENSES.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. SPECIAL NEEDS ADOPTION EXPENSES DEDUCTION.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year the amount of the qualified adoption expenses paid or incurred by the individual for such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM DOLLAR AMOUNT.—The aggregate amount of adoption expenses which may be taken into account under subsection (a) with respect to the adoption of a child shall not exceed $3,000.

"(2) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowable under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) REIMBURSEMENTS.—No deduction shall be allowable under subsection (a) for any qualified adoption expenses for which a taxpayer is reimbursed. If a taxpayer is reimbursed for qualified adoption expenses for which a deduction was allowed under subsection (a) in a prior taxable year, the amount of such reimbursement shall be includible in the gross income of the taxpayer in the taxable year in which such reimbursement is received.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ADOPTION EXPENSES.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorneys fees, and other expenses which—

"(A) are directly related to the legal adoption of a child with special needs by the taxpayer,

"(B) are not incurred in violation of State or Federal law, and

"(C) are of a type eligible for reimbursement under the adoption assistance program under part E of title IV of the Social Security Act.

"(2) CHILD WITH SPECIAL NEEDS.—The term 'child with special needs' means any child determined by the State to be a child described in paragraphs (1) and (2) of section 473(c) of the Social Security Act."

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (13) the following new paragraph:

"(14) ADOPTION EXPENSES.—The deduction allowed by section 220 (relating to deduction for expenses of adopting a child with special needs)."

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the item relating to section 220 and by inserting the following new items:

"Sec. 220. Special needs adoption expenses deduction.

"Sec. 221. Cross reference."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to adoptions on or after February 1, 1992.

SEC. 225. PUBLIC TRANSIT FRINGE BENEFIT EXCLUSION.

(a) Paragraph (4) of section 132(h) (providing special rules for determining the fringe benefits excluded from income under section 132) is amended to read as follows:

"(4) CERTAIN EMPLOYER-PROVIDED TRANSPORTATION EXPENSES.—The term 'working condition fringe' includes—

"(A) parking provided to an employee on or near the business premises of the employer, and

"(B) passes, tokens, fare cards, tickets or similar instruments for commuting by public transit provided to an employee at a discount by the employer, or reimbursements by the employer to cover all or part of the costs of such instruments, to the extent that the total amount of such discounts or reimbursements does not exceed $60 per month."

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for discounts and reimbursements provided on or after February 1, 1992.

TITLE III—LONG TERM GROWTH ACT OF 1992

SEC. 301. SHORT TITLE, ETC.

(a) SHORT TITLE.—This title may be cited as the "Long Term Growth Act of 1992".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly 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 Internal Revenue Code of 1986.

(c) SECTION 15 SHALL NOT APPLY.—Except as otherwise expressly provided, no amendment made by this title shall be treated as a change in rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

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Subtitle A—Extension of Expiring Provisions

SEC. 311. CREDIT FOR RESEARCH AND EXPERIMENTATION.

(a) PERMANENT CREDIT.—Section 41 (relating to the credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 28(b) is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1992.

SEC. 312. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) EXTENSION.—Paragraph (5) of section 864(f) (relating to allocation of research and experimental expenditures) is amended to read as follows:

"(5) YEARS TO WHICH RULE APPLIES.—This subsection shall apply to the taxpayer's first 4 taxable years beginning after August 1, 1989, and on or before August 1, 1993."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after August 1, 1991.

SEC. 313. EXTENSION OF LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) Paragraph (1) of section 42(o) is amended—

(A) by striking "to any amount allocated after June 30, 1992" and inserting "for any calendar year after 1993", and

(B) by striking "June 30, 1992" in subparagraph (B) and inserting "1993".

(2) Paragraph (2) of section 42(o) is amended—

(A) by striking "July 1, 1992" each place it appears and inserting "1994",

(B) by striking "June 30, 1992" in subparagraph (B) and inserting "December 31, 1993",

(C) by striking "June 30, 1994" in subparagraph (B) and inserting "December 31, 1995", and

(D) by striking "July 1, 1994" in subparagraph (C) and inserting "January 1, 1996".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1991.

SEC. 314. EXTENSION OF TARGETED JOBS TAX CREDIT.

(a) EXTENSION.—Section 51(c)(4) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work after June 30, 1992.

SEC. 315. EXTENSION OF SOLAR AND GEOTHERMAL INVESTMENT CREDIT.

(a) EXTENSION.—Section 48(a)(2)(B) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to periods after June 30, 1992.

SEC. 316. QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) (relating to manufacturing facilities and farm property) is amended to read as follows:

"(B) BONDS ISSUED TO FINANCE FARM PROPERTY.—In the case of any bond issued as part of an issue, 95 percent or more of the net proceeds of which are to be used to provide any land or property in accordance with section 147(c)(2), subparagraph (A) shall be applied by substituting 'December 31, 1993' for 'December 31, 1986' ".

(b) CONFORMING AMENDMENT.—Section 144(a)(12) (defining manufacturing facility) is amended by striking subparagraph (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after June 30, 1992.

SEC. 317. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(2) The amendment made by subsection (b) shall apply to elections for periods after June 30, 1992.

SEC. 318. EXPENSES FOR DRUGS FOR RARE CONDITIONS.

(a) IN GENERAL.—Section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking subsection (e).

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective on the date of enactment of this Act.

Subtitle B—Provisions Relating to Enterprise Zones

PART I—GENERAL PROVISIONS

SEC. 321. SHORT TITLE.

This subtitle may be cited as the "Enterprise Zone—Jobs Creation Act of 1992".

SEC. 322. PURPOSE.

It is the purpose of this subtitle to provide for the establishment of enterprise zones in order to stimulate entrepreneurship, particularly by zone residents, the creation of new jobs, particularly for disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas primarily by providing or encouraging—

(1) tax relief at the Federal, State, and local levels,

(2) regulatory relief at the Federal, State, and local levels, and

(3) improved local services and an increase in the economic stake of enterprise zone residents in their own community and its development, particularly through the increased involvement of private, local, and neighborhood organizations.

SEC. 323. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on January 1, 1992.

PART II—DESIGNATION OF ENTERPRISE ZONES

SEC. 324. DESIGNATION OF ZONES.

(a) GENERAL RULE.—Chapter 80 of subtitle F (relating to general rules) is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER D.—Designation of Enterprise Zones

"Sec. 7880. Designation

"SEC. 7880. DESIGNATION.

"(a) DESIGNATION OF ZONES.—

"(1) DEFINITION.—For purposes of this title, the term 'enterprise zone' means any area—

"(A) which is nominated by one or more local governments and the State or States in which it is located for designation as an enterprise zone (hereinafter in this section referred to as a 'nominated area'), and

"(B) which the Secretary of Housing and Urban Development, after consultation with—

"(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury; the Director of the Office of Management and Budget; and the Administrator of the Small Business Administration, and

"(ii) in the case of an area on an Indian reservation, the Secretary of the Interior, designates as an enterprise zone.

"(2) AUTHORITY TO DESIGNATE.—The Secretary of Housing and Urban Development is authorized to designate enterprise zones in accordance with the provisions of this section.

"(3) LIMITATIONS ON DESIGNATIONS.—

"(A) PUBLICATION OF REGULATIONS.—Before designating any area as an enterprise zone and not later than 4 months following the date of the enactment of this section, the Secretary of Housing and Urban Development shall prescribe by regulation, after consultation with the officials described in paragraph (1)(B)—

"(i) the procedures for nominating an area, and

"(ii) the procedures for designation as an enterprise zone, including a method for comparing courses of action under subsection (d) proposed for nominated areas, and the other factors specified in subsection (e).

"(B) TIME LIMITATIONS.—The Secretary of Housing and Urban Development shall designate nominated areas as enterprise zones only during the 48-month period beginning on the later of—

"(i) the first day of the first month following the month in which the effective date of the regulations described in subparagraph (A) occurs, or

"(ii) January 1, 1992.

"(C) NUMBER OF DESIGNATIONS.—

"(i) IN GENERAL.—The Secretary of Housing and Urban Development may designate—

"(I) not more than 50 nominated areas as enterprise zones under this section, and

"(II) not more than 15 nominated areas as enterprise zones during the 12-month period beginning on the date determined under subparagraph (B), not more than 30 by the end of the 24-month period beginning on that date, not more than 45 by the end of the 36-month period beginning on that date, and not more than 50 by the end of the 48-month period beginning on that date.

"(ii) MINIMUM DESIGNATION IN RURAL AREAS.—Of the areas designated as enterprise zones, at least one-third must be areas that are—

"(I) within a local government jurisdiction or jurisdictions with a population of less than 50,000 (as determined using the most recent census data available),

"(II) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B), or

"(III) determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

"(D) PROCEDURAL RULES.—The Secretary of Housing and Urban Development shall not make any designations under this section unless—

"(i) the State and local governments in which the nominated area is located have the authority to—

"(I) nominate such area for designation as an enterprise zone,

"(II) make the State and local commitments under subsection (d), and

"(III) provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled, and

"(ii) a nomination therefor is submitted by such State and local governments in such a manner in such form, and containing such information, as the Secretary of Housing and Urban Development shall prescribe by regulation.

"(4) NOMINATION PROCESS FOR INDIAN RESERVATIONS.—In the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be deemed to be both the State and local governments with respect to such area.

"(b) TIME PERIOD FOR WHICH DESIGNATION IS IN EFFECT—

"(1) IN GENERAL.—Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) December 31 of the 24th calendar year following the calendar year in which such date occurs,

"(B) the termination date specified by the State and local governments as provided in the nomination submitted in accordance with subsection (a)(3)(D)(ii),

"(C) such other date as the Secretary of Housing and Urban Development shall specify as a condition of designation, or

"(D) the date upon which the Secretary of Housing and Urban Development revokes such designation.

"(2) REVOCATION OF DESIGNATION.—The Secretary of Housing and Urban Development, after consultation with the officials described in subsection (a)(1)(B), may revoke the designation of an area if the Secretary of Housing and Urban Development determines that a State or local government in which the area is located is not complying substantially with the agreed course of action for the area.

"(c) AREA AND ELIGIBILITY REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary of Housing and Urban Development may designate a nominated area as an enterprise zone only if it meets the requirements of paragraphs (2) and (3).

"(2) AREA REQUIREMENTS.—A nominated area meets the requirements of this paragraph if—

"(A) the area is within the jurisdiction of the local government,

"(B) the boundary of the area is continuous, and

"(C) the area—

"(i) has a population, as determined by the most recent census data available, of not less than—

"(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(3)(C)(ii)) is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more, or

"(II) 1,000 in any other case, or

"(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

"(3) ELIGIBILITY REQUIREMENTS.—A nominated area meets the requirements of this paragraph if the State and local governments in which the nominated area is located certify, and the Secretary of Housing and Urban Development accepts such certification, that—

"(A) the area is one of pervasive poverty, unemployment and general distress,

"(B) the area is located wholly within the jurisdiction of a local government that is eligible for Federal assistance under section 119 of the Housing and Community Development Act of 1974, as in effect on the date of the enactment of the Enterprise Zone—Jobs Creation Act of 1992,

"(C) the unemployment rate for the area, as determined by the appropriate available data, was not less than 1.5 times the national unemployment rate for the period to which such data relate,

"(D) the poverty rate (as determined by the most recent census data available) for each populous census tract (or where not tracted, the equivalent county division as defined by the Bureau of the Census for the purpose of defining poverty areas) within the area was not less than 20 percent for the period to which such data relate, and

"(E) the area meets at least one of the following criteria:

"(i) Not less than 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the area within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

"(ii) The population of the area decreased by 20 percent or more between 1980 and 1990 (or the most recent decade for which census data are available).

"(4) ELIGIBILITY REQUIREMENTS FOR RURAL AREAS.—For purposes of paragraph (1), a nominated area that is a rural area described in subsection (a)(3)(C)(ii) meets the requirements of paragraph (3) if the State and local governments in which it is located certify and the Secretary, after such review of supporting data as he deems appropriate, accepts such certification, that the area meets—

"(A) the criteria set forth in subparagraphs (A) and (B) of paragraph (3), and

"(B) not less than one of the criteria set forth in the other subparagraphs of paragraph (3).

"(d) REQUIRED STATE AND LOCAL COMMITMENTS.—

"(1) IN GENERAL.—No nominated area shall be designated as an enterprise zone unless

the State and local governments of the jurisdictions in which the nominated area is located agree in writing that, during any period during which the nominated area is an enterprise zone, such governments will follow a specified course of action designed to reduce the various burdens borne by employers or employees in such area.

"(2) COURSE OF ACTION.—The course of action under paragraph (1) may include, but is not limited to—

"(A) the reduction or elimination of tax rates or fees applying within the enterprise zone,

"(B) actions to reduce, remove, simplify, or streamline governmental requirements applying within the enterprise zone,

"(C) an increase in the level of efficiency of local services within the enterprise zone, for example, crime prevention, and drug use prevention and treatment,

"(D) involvement in the program by private entities, organizations, neighborhood associations, and community groups, particularly those within the enterprise zone, including a commitment from such private entities to provide jobs and job training for, and technical, financial or other assistance to, employers, employees, and residents of the enterprise zone,

"(E) mechanisms to increase equity ownership by residents and employees within the enterprise zone,

"(F) donation (or sale below market value) of land and buildings to benefit low and moderate income people,

"(G) linkages to—

"(i) job training,

"(ii) transportation,

"(iii) education,

"(iv) day care,

"(v) health care, and

"(vi) other social service support,

"(H) provision of supporting public facilities, and infrastructure improvements,

"(I) encouragement of local entrepreneurship, and

"(J) other factors determined essential to support enterprise zone activities and encourage livability or quality of life.

"(3) LATER MODIFICATION OF A COURSE OF ACTION.—The Secretary of Housing and Urban Development may by regulation prescribe procedures to permit or require a course of action to be updated or modified during the time that a designation is in effect.

"(e) PRIORITY OF DESIGNATION.—In choosing nominated areas for designation, the Secretary of Housing and Urban Development shall give preference to the nominated areas—

"(1) with respect to which the strongest and highest quality contributions have been promised as part of the course of action, taking into consideration the fiscal ability of the nominating State and local governments to provide tax relief,

"(2) with respect to which the nominating State and local governments have provided the most effective and enforceable guarantees that the proposed course of action will actually be carried out during the period of the enterprise zone designation,

"(3) with respect to which private entities have made the most substantial commitments in additional resources and contributions, including the creation of new or expanded business activities, and

"(4) which best exhibit such other factors determined by the Secretary of Housing and Urban Development, including relative distress, which are consistent with the intent of the enterprise zone program and which have the greatest likelihood of success.

"(f) GEOGRAPHIC DISTRIBUTION.—In making designations, the Secretary of Housing and Urban Development will take into consideration a reasonable geographic distribution of enterprise zones.

"(g) DEFINITIONS.—For the purposes of this title—

"(1) GOVERNMENTS.—If more than one government seeks to nominate an area as an enterprise zone, any reference to, or requirement of, this section shall apply to all such governments.

"(2) STATE.—The term 'State' shall also include Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States.

"(3) LOCAL GOVERNMENTS.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State,

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development, and

"(C) the District of Columbia.

"(h) CROSS REFERENCES FOR—

"(1) definitions, see section 1391,

"(2) treatment of employees in enterprise zones, see section 1392, and

"(3) treatment of investments in enterprise zones, see sections 1393 and 1394."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 of subtitle F is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Designation of Enterprise Zones".

SEC. 325. REPORTING REQUIREMENTS.

Not later than the close of the second calendar year after the calendar year in which the Secretary of Housing and Urban Development first designates areas as enterprise zones, and at the close of each second calendar year thereafter, the Secretary of Housing and Urban Development shall submit to the Congress a report on the effects of such designation in accomplishing the purposes of this subtitle.

SEC. 326. INTERACTION WITH OTHER FEDERAL PROGRAMS.

(a) COORDINATION WITH RELOCATION ASSISTANCE.—The designation of an enterprise zone under section 7880 shall not—

(1) constitute approval of a Federal or federally assisted program or project (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)), or

(2) entitle any person displaced from real property located in such zone to any rights or any benefits under such Act.

(b) COORDINATION WITH ENVIRONMENTAL POLICY.—Designation of an enterprise zone under section 7880 shall not constitute a Federal action for purposes of applying the procedural requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4341) or other provisions of Federal law relating to the protection of the environment.

PART III—FEDERAL INCOME TAX INCENTIVES

SEC. 327. DEFINITIONS AND REGULATIONS; EMPLOYEE CREDIT; CAPITAL GAIN EXCLUSION; STOCK EXPENSING.

(a) GENERAL RULE.—Chapter 1 of subtitle A (relating to normal tax and surtax rules) is amended by inserting after subchapter T the following new subchapter:

"SUBCHAPTER U. Enterprise Zones

"Sec. 1391. Definitions and Regulatory Authority.

"Sec. 1392. Credit for enterprise zone employees.

"Sec. 1393. Enterprise zone capital gain.

"Sec. 1394. Enterprise zone stock.

"SEC. 1391. DEFINITIONS AND REGULATORY AUTHORITY.

"(a) ENTERPRISE ZONE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone' means any area which the Secretary of Housing and Urban Development designates pursuant to section 7880(a) as a Federal enterprise zone for purposes of this title.

"(2) TERMINATION OF ENTERPRISE ZONE.—An area will cease to constitute an enterprise zone once its designation as such terminates or is revoked under section 7880(b).

"(b) ENTERPRISE ZONE BUSINESS.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone business' means an activity constituting the active conduct of a trade or business within an enterprise zone, and with respect to which—

"(A) at least 80 percent of the gross income in each calendar year is attributable to the active conduct of a trade or business within an enterprise zone,

"(B) less than 10 percent of the property (as measured by unadjusted basis) constitutes stocks, securities, or property held for use by customers,

"(C) no more than an insubstantial portion of the property constitutes collectibles (as defined in section 408(m)(2)), unless such collectibles constitute property held primarily for sale to customers in the ordinary course of the active trade or business,

"(D) substantially all of the property (whether owned or leased) is located within an enterprise zone, and

"(E) substantially all of the employees work within an enterprise zone.

"(2) RELATED ACTIVITIES TAKEN INTO ACCOUNT.—Except as otherwise provided in regulations, all activities conducted by a taxpayer and persons related to the taxpayer shall be treated as one activity for purposes of paragraph (1).

"(3) SPECIAL RULES.—

"(A) RENTAL REAL PROPERTY.—For purposes of paragraph (1), holding real property located within an enterprise zone for use by customers other than related persons shall be treated as the active conduct of a trade or business for purposes of paragraph (1)(A) and as not subject to paragraph (1)(B).

"(B) TERMINATION OF ENTERPRISE ZONE BUSINESS.—An activity shall cease to be an enterprise zone business if—

"(i) the designation of the enterprise zone in which the activity is conducted terminates or is revoked pursuant to section 7880(b),

"(ii) more than 50 percent (by value) of the activity's property or services are obtained from related persons other than enterprise zone businesses, or

"(iii) more than 50 percent of the activity's gross income is attributable to property or services provided to related persons other than enterprise zone businesses.

"(c) ENTERPRISE ZONE PROPERTY.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'enterprise zone property' means—

"(A) any tangible personal property located in an enterprise zone and used by the taxpayer in an enterprise zone business, and

"(B) any real property located in an enterprise zone and used by the taxpayer in an enterprise zone business.

In no event shall any financial property or intangible interest in property be treated as constituting enterprise zone property,

whether or not such property is used in the active conduct of an enterprise zone business.

"(2) TERMINATION OF ENTERPRISE ZONE.—The treatment of property as enterprise zone property under subparagraph (A) shall not terminate upon the termination or revocation of the designation of the enterprise zone in which the property is located, but instead shall terminate immediately after the first sale or exchange of such property occurring after the expiration or revocation.

"(d) RELATED PERSONS.—For purposes of this subchapter, a person shall be treated as related to another person if—

"(1) the relationship of such persons is described in section 267(b) or 707(b)(1), or

"(2) such persons are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of paragraph (1), in applying section 267(b) or 707(b)(1), '33 percent' shall be substituted for '50 percent'.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the Enterprise Zone—Jobs Creation Act of 1992, including—

"(1) providing that Federal tax relief is unavailable to an activity that does not stimulate employment in, or revitalization of, enterprise zones,

"(2) providing for appropriate coordination with other Federal programs that, in combination, might enable activity within enterprise zones to be more than 100 percent subsidized by the Federal government, and

"(3) preventing the avoidance of the rules in this subchapter.

"SEC. 1392. CREDIT FOR ENTERPRISE ZONE EMPLOYEES.

"(a) GENERAL RULE.—In the case of a taxpayer who is an enterprise zone employee, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 5 percent of so much of the qualified wages of the taxpayer for the taxable year as does not exceed $10,500.

"(b) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE EMPLOYEE.—The term 'enterprise zone employee' means an individual if—

"(A) the individual performs services during the taxable year that are directly related to the conduct of an enterprise zone business,

"(B) substantially all of the services described in paragraph (1)(A) are performed within an enterprise zone, and

"(C) the employer for whom the services described in paragraph (1)(A) are performed is not the Federal Government, any State government or subdivision thereof, or any local government.

"(2) WAGES.—The term 'wages' has the meaning given by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such subsection).

"(3) QUALIFIED WAGES.—The term 'qualified wages' means all wages of the taxpayer, to the extent attributable to services described in paragraph (1).

"(c) LIMITATIONS.—

"(1) PHASE-OUT OF CREDIT.—The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

"(A) $525, over

"(B) 10.5 percent of so much of the taxpayer's total wages (whether or not constituting qualified wages) as exceeds $20,000.

"(2) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in paragraph (1) shall be adjusted on a pro rata basis (based upon the number of days).

"(d) APPLICATION WITH OTHER CREDITS.—The credit allowed under this section for the taxable year shall be reduced by the amount (if any) of tax imposed by section 55 (relating to the alternative minimum tax) with respect to such taxpayer for such year.

"(e) CREDIT TREATED AS SUBPART C CREDIT.—For purposes of this title, the credit allowed under subsection (a) shall be treated as a credit allowed under subpart C of part IV of subchapter A of chapter 1.

"SEC. 1393. ENTERPRISE ZONE CAPITAL GAIN.

"(a) GENERAL RULE.—Gross income does not include the amount of any gain constituting enterprise zone capital gain.

"(b) DEFINITION.—For purposes of this section—

"(1) IN GENERAL.—The term 'enterprise zone capital gain' means gain—

"(A) treated as long-term capital gain,

"(B) allocable in accordance with the rules under subsection (b)(5) of section 338 to the sale or exchange of enterprise zone property, and

"(C) properly attributable to period(s) of use in an enterprise zone business.

"(2) LIMITATIONS.—Enterprise zone capital gain does not include any gain attributable to—

"(A) the sale or exchange of property not constituting enterprise zone property with respect to the taxpayer throughout the period of twenty-four full calendar months immediately preceding the sale or exchange,

"(B) any collectibles (as defined in section 408(m)), or

"(C) sales or exchanges to persons controlled by the same interests.

"(c) BASIS.—Amounts excluded from gross income pursuant to subsection (a) shall not be applied in reduction to the basis of any property held by the taxpayer.

"SEC. 1394. ENTERPRISE ZONE STOCK.

"(a) GENERAL RULE.—At the election of any individual, the aggregate amount paid by such individual during the individual's taxable year for the purchase of enterprise zone stock on the original issue of such stock by a qualified issuer shall be allowed as a deduction.

"(b) LIMITATIONS.—

"(1) CEILING.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer shall not exceed $50,000 for any taxable year, nor $250,000 during the taxpayer's lifetime.

"(A) EXCESS AMOUNTS.—If the amount otherwise deductible by any person under subsection (a) exceeds the limitation under this paragraph (1)—

"(i) the amount of such excess shall be treated as an amount paid in the next taxable year, and

"(ii) the deduction allowed for any taxable year shall be allocated among the enterprise zone stock purchased by such person in accordance with the purchase price per share.

"(2) RELATED PERSONS.—The taxpayer and all individuals related to the taxpayer shall be treated as one person for purposes of the limitations described in paragraph (1).

"(3) ALLOCATION OF EXCESS AMOUNTS.—The limitations described in paragraph (1) shall be allocated among the taxpayer and related persons in accordance with their respective purchases of enterprise zone stock.

"(4) PARTIAL TAXABLE YEAR.—If designation of an area as an enterprise zone occurs, expires, or is revoked pursuant to section 7880 on a date other than the first or last day of the taxable year of the taxpayer, or in the case of a short taxable year, the limitations specified in paragraph (1) shall be adjusted on a pro rata basis (based upon the number of days).

"(c) DISPOSITION OF STOCK.—

"(1) GAIN TREATED AS ORDINARY INCOME.—Except as otherwise provided in regulations, if a taxpayer disposes of any enterprise zone stock with respect to which a deduction was allowed under subsection (a), the amount realized upon such disposition shall be treated as ordinary income and recognized notwithstanding any other provision of this subtitle.

"(2) INTEREST CHARGED IF DISPOSITION WITHIN 5 YEARS OF PURCHASE.—

"(A) IN GENERAL.—If a taxpayer disposes of any enterprise zone stock before the end of the 5-year period beginning on the date such stock was purchased by the taxpayer, the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by the amount determined in subparagraph (B).

"(B) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the additional amount shall be equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(i) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date such stock was disposed of by the taxpayer,

"(ii) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under subsection (a) with respect to the stock so disposed of.

"(d) DISQUALIFICATION.—

"(1) ISSUER OR STOCK CEASES TO QUALIFY.—If a taxpayer elects the deduction under subsection (a) with respect to enterprise zone stock, and either—

"(A) the issuer with respect to which the election was made ceases to be a qualified issuer, or

"(B) the proceeds from the issuance of the taxpayer's enterprise zone stock fail or otherwise cease to be invested by the issuer in enterprise zone property, then, notwithstanding any provision of this subtitle (other than paragraph (2)) to the contrary, the taxpayer shall recognize as ordinary income the amount of the deduction allowed under subsection (a) with respect to the issuer's enterprise zone stock.

"(2) SPECIAL RULES.—

"(A) LIQUIDATION.—Where enterprise zone property acquired with proceeds from the issuance of enterprise zone stock is sold or exchanged pursuant to a plan of complete liquidation, the treatment described in paragraph (1) shall be inapplicable.

"(B) TERMINATION OF ENTERPRISE ZONE.—The treatment of an activity as an enterprise zone business shall not cease for purposes of paragraph (1) solely by reason of the termination or revocation of the designation of the enterprise zone with respect to the activity.

"(C) PARTIAL DISQUALIFICATION.—Where some, but not all, of the property acquired by the issuer with the proceeds of issuance of enterprise zone stock ceases to constitute enterprise zone property, the treatment described in paragraph (1) shall be modified as follows—

"(i) the total amount recognized as ordinary income by all shareholders of the issuer shall be limited to an amount of deduction allowed up to the unadjusted basis of prop-

erty ceasing to constitute enterprise zone property,

"(ii) the amount recognized shall be allocated among enterprise zone stock with respect to which the election in subsection (a) was made in the reverse order in which such stock was issued, and

"(iii) the amount recognized shall be apportioned among taxpayers having made the election in subsection (a) in the ratios in which the stock described in paragraph (2)(C)(ii) was purchased.

"(3) ADDITIONAL AMOUNT.—If income is recognized pursuant to paragraph (1) at any time before the close of the 5th calendar year ending after the date the enterprise zone stock was purchased, the tax imposed by this chapter with respect to such income shall be increased by an amount equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(A) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date of the disqualification event described in paragraph (1),

"(B) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under subsection (a) with respect to the stock so disqualified.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ENTERPRISE ZONE STOCK.—The term 'enterprise zone stock' means common stock issued by a qualified issuer, but only to the extent that the amount of proceeds of such issuance are used by such issuer no later than twelve months following issuance to acquire and maintain an equal amount of newly acquired enterprise zone property.

"(2) QUALIFIED ISSUER.—

"(A) IN GENERAL.—The term 'qualified issuer' means any subchapter C corporation—

"(i) which does not have more than one class of stock,

"(ii) which is engaged solely in the conduct of one or more enterprise zone businesses,

"(iii) which does not own or lease more than $5 million of total property (including money), as measured by the unadjusted basis of the property, and

"(iv) more than 20 percent of the total voting power and 20 percent of the total value of the stock of which is owned by individuals, partnerships, estates or trusts.

"(B) LIMITATION ON TOTAL ISSUANCES.—A qualified issuer may issue no more than an aggregate of $5 million of enterprise zone stock.

"(C) AGGREGATION.—For purposes of applying the limitations under this paragraph, the issuer and all related persons shall be treated as one person.

"(3) AMOUNT PAID.—For purposes of subsection (a), the amount 'paid' by a taxpayer for any taxable year shall not include the issuance of evidences of indebtedness of the taxpayer (whether or not such indebtedness is guaranteed by another person), nor amounts paid by the taxpayer after the close of the taxable year.

"(f) ISSUANCES IN EXCHANGE FOR PROPERTY.—If enterprise zone stock is issued in exchange for property, then notwithstanding any provision of subchapter C of chapter 1 of subtitle A to the contrary—

"(1) the issuance shall be treated for purposes of this subtitle as the sale of the property at its then fair market value to the corporation, and a contribution to the corporation of the proceeds immediately thereafter in exchange for the enterprise zone stock, and

"(2) the issuer's basis for the property shall be equal to the fair market value of such property at the time of issuance.

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a taxpayer elects the deduction under subsection (a), the taxpayer's basis (without regard to this subsection) for the enterprise zone stock with respect to such election shall be reduced by the deduction allowed or allowable.

"(h) LIMITATIONS ON ASSESSMENT AND COLLECTION.—If a taxpayer elects the deduction under subsection (a) for any taxable year—

"(1) the period for assessment and collection of any deficiency attributable to any part of the deduction shall not expire before one year following expiration of such period of the qualified issuer that includes the circumstances giving rise to the deficiency, and

"(2) such deficiency may be assessed before expiration of the period described in paragraph (1) notwithstanding any provisions of this subtitle to the contrary.

"(i) CROSS REFERENCE.—For treatment of the deduction under subsection (a) for purposes of the alternative minimum tax, see section 56."

(b) TECHNICAL AMENDMENT.—Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(25) to the extent provided in section 1394(g), in the case of stock with respect to which a deduction was allowed or allowable under section 1394(a)."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter T the following new item:

"SUBCHAPTER U. Enterprise zones."

SEC. 328. ALTERNATIVE MINIMUM TAX.

(a) CORPORATIONS.—Subparagraph (B) of section 56(g)(4) (relating to adjustments based on adjusted current earnings of corporations) is amended by adding the following new clause at the end thereof:

"(iii) EXCLUSION OF ENTERPRISE ZONE CAPITAL GAIN.—Clause (i) shall not apply in the case of any enterprise zone capital gain (as defined in section 1393(b)), and such gain shall not be included in income for purposes of computing alternative minimum taxable income."

(b) INDIVIDUALS.—Subsection (b) of section 56 (relating to adjustments to the alternative minimum taxable income of individuals) is amended by adding the following new paragraph at the end thereof:

"(4) ENTERPRISE ZONE STOCK.—No deduction shall be allowed for the purchase of enterprise zone stock (as defined in section 1394(e))."

SEC. 329. ADJUSTED GROSS INCOME DEFINED.

Subsection (a) of section 62 (relating to the definition of adjusted gross income) is amended by adding at the end thereof the following new paragraph:

"(14) ENTERPRISE ZONE STOCK.—The deduction allowed by section 1394."

PART IV—REGULATORY FLEXIBILITY

SEC. 330. DEFINITION OF SMALL ENTITIES IN ENTERPRISE ZONE FOR PURPOSES OF ANALYSIS OF REGULATORY FUNCTIONS.

Section 601 of title 5, United States Code, is amended by—(1) striking "and" at the end of paragraph (5), and (2) striking paragraph (6) and inserting the following:

"(6) the term 'small entity' means—

"(A) a small business, small organization, or small governmental jurisdiction defined in paragraphs (3), (4), and (5) of this section, respectively, and

"(B) any qualified enterprise zone business; any unit of government that nominated an area which the Secretary of Housing and Urban Development designates as an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986) that has a rule pertaining to the carrying out of any project, activity, or undertaking within such zone; and any not-for-profit enterprise carrying out a significant portion of its activities within such a zone; and

"(7) the term 'qualified enterprise zone business' means any person, corporation, or other entity—

"(A) which is engaged in the active conduct of a trade or business within an enterprise zone (within the meaning of section 7880 of the Internal Revenue Code of 1986); and

"(B) at least 50 percent of the employees of which are qualified employees (within the meaning of section 1392(b)(1) of such Code)."

SEC. 331. WAIVER OR MODIFICATION OF AGENCY RULES IN ENTERPRISE ZONES.

(a) Chapter 6 of title 5, United States Code, is amended by redesignating sections 611 and 612 as section 612 and 613, respectively, and inserting the following new section after section 610:

"SEC. 611. WAIVER OR MODIFICATION OF AGENCY RULES IN ENTERPRISE ZONES.

"(a) Upon the written request of any government which nominated an area that the Secretary of Housing and Urban Development has designated as an enterprise zone under section 7880 of the Internal Revenue Code of 1986, an agency is authorized, in order to further the job creation, community development, or economic revitalization objectives with respect to such zone, to waive or modify all or part of any rule which it has authority to promulgate, as such rule pertains to the carrying out of projects, activities, or undertakings within such zone.

"(b) Nothing in this section shall authorize an agency to waive or modify any rule adopted to carry out a statute or Executive order which prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, sex, familial status, national origin, age, or handicap.

"(c) A request under subsection (a) shall specify the rule or rules to be waived or modified and the change proposed, and shall briefly describe why the change would promote the achievement of the job creation, community development, or economic revitalization objectives of the enterprise zone. If such a request is made to any agency other than the Department of Housing and Urban Development, the requesting government shall send a copy of the request to the Secretary of Housing and Urban Development at the time the request is made.

"(d) In considering a request, the agency shall weigh the extent to which the proposed change is likely to further job creation, community development, or economic revitalization within the enterprise zone against the effect the change is likely to have on the underlying purposes of applicable statutes in the geographic area which would be affected by the change. The agency shall approve the request whenever it finds, in its discretion, that the public interest which the proposed change would serve in furthering such job creation, community development, or economic revitalization outweighs the public interest which continuation of the rule unchanged would serve. The agency shall not approve any request to waive or modify a rule if that waiver or modification would—

"(1) violate a statutory requirement (including any requirement of the Fair Labor

Standards Act of 1938 (52 Stat. 1060; 29 U.S.C. 201 et seq.)), or

"(2) be likely to present a significant risk to the public health, including environmental or occupational health or safety, or of environmental pollution.

"(e) If a request is disapproved, the agency shall inform all the requesting governments, and the Department of Housing and Urban Development, in writing of the reasons therefor and shall, to the maximum extent possible, work with such governments to develop an alternative, consistent with the standards contained in subsection (d).

"(f) Agencies shall discharge their responsibilities under this section in an expeditious manner, and shall make a determination on requests not later than 90 days after their receipt.

"(g) A waiver or modification of a rule under subsection (a) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of this title. To facilitate reaching its decision on any requested waiver or modification, the agency may seek the views of interested parties and, if the views are to be sought, determine how they should be obtained and to what extent, if any, they should be taken into account in considering the request. The agency shall publish a notice in the Federal Register stating any waiver or modification of a rule under this section, the time such waiver or modification takes effect and its duration, and the scope of applicability of such waiver or modification.

"(h) In the event that an agency proposes to amend a rule for which a waiver or modification under this section is in effect, the agency shall not change the waiver or modification to impose additional requirements unless it determines, consistent with standards contained in subsection (d), that such action is necessary. Such determinations shall be published with the proposal to amend such rule.

"(i) No waiver or modification of a rule under this section shall remain in effect with respect to an enterprise zone after the enterprise zone designation has expired or has been revoked.

"(j) For purposes of this section, the term 'rule' means (1) any rule as defined in section 551(4) of this title or (2) any rulemaking conducted on the record after opportunity for an agency hearing pursuant to sections 556 and 557 of this title."

(b) The table of sections for such chapter is amended by redesignating sections 611 and 612 as sections 612 and 613, respectively, and inserting after the item relating to section 610 the following new item:

"Sec. 611. Waiver or modification of agency rules in enterprise zones."

(c) Section 601(2) of such title is amended by inserting "(except for purposes of section 611)" immediately before "means".

(d) Section 613 of such title, as redesignated by subsection (a), is amended—

(1) in subsection (a) by inserting "(except section 611)" immediately after "chapter", and

(2) in subsection (b) by inserting "as defined in section 601(2)" immediately before the period at the end of the first sentence.

SEC. 332. FEDERAL AGENCY SUPPORT OF ENTERPRISE ZONES.

In order to maximize all agencies' support of enterprise zones, the Secretary of Housing and Urban Development is authorized to convene regional and local coordinating councils of any appropriate agencies to assist State and local governments to achieve the objectives agreed to in the course of action under section 7880 of the Internal Revenue code of 1986.

PART V—ESTABLISHMENT OF FOREIGN TRADE ZONES IN ENTERPRISE ZONES

SEC. 333. FOREIGN-TRADE ZONE PREFERENCES.

(a) PREFERENCE IN ESTABLISHMENT OF FOREIGN-TRADE ZONES IN REVITALIZATION AREAS.—In processing applications for the establishment of foreign-trade zones pursuant to the Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", approved June 18, 1934 (48 Stat. 998), the Foreign-Trade Zone Board shall consider on a priority basis and expedite, to the maximum extent possible, the processing of any application involving the establishment of a foreign trade zone within an enterprise zone designated pursuant to section 7880 of the Internal Revenue Code of 1986.

(b) APPLICATION PROCEDURE.—In processing applications for the establishment of ports of entry pursuant to "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and fifteen, and for other purposes", approved August 1, 1914 (38 Stat. 609), the Secretary of the Treasury shall consider on a priority basis and expedite, to the maximum extent possible, the processing of any application involving the establishment of a port of entry which is necessary to permit the establishment of a foreign-trade zone within an enterprise zone so designated.

(c) APPLICATION EVALUATION.—In evaluating applications for the establishment of foreign-trade zones and ports of entry in connection with enterprise zones so designated, the Foreign-Trade Zone Board and the Secretary of the Treasury shall approve the applications, to the maximum extent practicable, consistent with their respective statutory responsibilities.

PART VI—REPEAL OF TITLE VII OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1987

SEC. 334. REPEAL.

Title VII of the Housing and Community Development Act of 1987 is hereby repealed.

Subtitle C—Excise Tax Provisions

SEC. 341. REPEAL OF LUXURY EXCISE TAX ON BOATS AND AIRCRAFT.

(a) GENERAL RULE.—Subpart A of part I of subchapter A of chapter 31 (relating to luxury taxes) is amended by striking sections 4002 and 4003 and by redesignating section 4004 as section 4002.

(b) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 4002(b)(2)(A) (as redesignated by subsection (a)) is amended by striking ", boat, or aircraft".

(2) Subparagraph (B) of section 4002(b)(2) (as redesignated by subsection (a)) is amended by striking "in the case of a passenger vehicle, $100,000 in the case of a boat, and $250,000 in the case of an aircraft".

(3) Paragraph (2) of section 4011(c) is amended—

(A) by striking ", boats, and aircraft" in the paragraph heading,

(B) by striking ", boat, or aircraft" in subparagraph A,

(C) by amending subparagraph (B) to read as follows:

"(B) QUALIFIED LEASE.—For purposes of subparagraph (A), the term 'qualified lease' means any long-term lease (as defined in section 4052) of any passenger vehicle.", and

(D) by striking "section 4004(c)" in subparagraph (C) and inserting "section 4002(c)".

(4) Subsection (c) of section 4221 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4002(a)".

(5) Subsection (d) of section 4222 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4002(a)".

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part I is amended by striking ", boats, and aircraft" in the item relating to subpart A.

(2) The table of sections for subpart A is amended by striking the items relating to sections 4002, 4003 and 4004 and inserting the following:

"Sec. 4002. Rules applicable to subpart A."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to boats and aircraft sold or used on or after February 1, 1992.

SEC. 342. REPEAL OF EXEMPTION FOR THE USE OF DIESEL FUEL IN PLEASURE BOATS.

(a) IN GENERAL.—Paragraph (1) of section 4041(a) (relating to imposition of tax on diesel fuel and special motor fuels) is amended to read as follows:

"(1) TAX ON DIESEL FUEL WHERE NO TAX IMPOSED UNDER SECTION 4091.—

"(A) HIGHWAY VEHICLES.—There is hereby imposed a tax on any liquid (other than any product taxable under section 4081)—

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in such vehicle, or

"(ii) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such fuel under clause (i).

"(B) BOATS.—There is hereby imposed a tax on any diesel fuel (within the meaning of section 4092(a)(2)) that is not taxable under subparagraph (A) and is—

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered boat for use as a fuel in such boat, or

"(ii) used by any person as a fuel in a diesel-powered boat unless there was a taxable sale of such fuel under clause (i).

"(C) RATE OF TAX; PREVIOUSLY TAXED FUEL.—The rate of tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use. No tax shall be imposed by this paragraph on the sale or use of any diesel fuel if there was a taxable sale of such fuel under section 4091."

(b) EXEMPTION FOR BUSINESS USE.—

(1) IN GENERAL.—Subsection (b) of section 4041 is amended by adding at the end thereof the following new paragraph:

"(3) EXEMPTION FOR BOAT BUSINESS USE.—

"(A) IN GENERAL.—No tax shall be imposed by subsection (a)(1)(B) or (d)(1) on diesel fuel sold for use or used in a boat business use.

"(B) TAX WHERE OTHER USE.—If diesel fuel on which no tax was imposed by reason of subparagraph (A) is used otherwise than in a boat business use, a tax shall be imposed by subsection (a)(1)(B)(ii) and by the corresponding provision of subsection (d)(1).

"(C) BOAT BUSINESS USE DEFINED.—For purposes of this paragraph, the term 'boat business use' means any use of a boat in the active conduct of—

"(i) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(ii) any other trade or business unless the boat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation."

(c) CONFORMING AMENDMENTS.—

(1) the heading of subsection (b) of section 4041 is amended by inserting "; EXEMPTION FOR BOAT BUSINESS USE" after "FUEL".

(2) Subparagraph (A) of section 4041(b)(1) is amended by striking "subsection (a) or (d)(1)" and inserting "paragraph (1)(A) or (2) of subsection (a) or subsection (d)(1)".

(3) Subparagraph (B) of section 4041(b)(1) is amended by striking "paragraph (1)(B) or (2)(B)" and inserting "paragraph (1)(A)(ii) or (2)(B)".

(4) Paragraph (2) of section 4092(a) is amended by striking "or a" and inserting ", diesel-powered boat, or".

(5) Subparagraph (B) of section 4092(b)(1) is amended by striking "commercial and noncommercial vessels" each place it appears and inserting "boat business use as defined in section 4042(b)(3)(C)".

(d) RETENTION OF TAXES IN GENERAL FUND.—

(1) TAXES IMPOSED AT HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (4) of section 9503(b) (relating to transfers to Highway Trust Fund) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting ", and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(2) TAXES IMPOSED AT LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1992.

SEC. 343. ADDITIONAL SERVICES SUBJECT TO COMMUNICATIONS EXCISE TAX.

(a) DIGITAL DATA TRANSMISSIONS.—Paragraph (2) of section 4252(b) is amended by inserting before the period "or an unlimited number of digital data transmissions to the subscriber's telephone or radio telephone stations in such specified area if primarily used for such transmissions".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on July 1, 1992.

SEC. 344. REPEAL OF EXEMPTION FOR CERTAIN COIN-OPERATED TELEPHONE SERVICE.

(a) REPEAL OF EXEMPTION.—Section 4253 is amended—

(1) by striking subsection (a) and redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k) as subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j), respectively, and

(2) by striking "subsection (c), (h), (i), or (j)" in subsection (j)(1) (as so redesignated) and inserting "subsection (b), (g), (h), or (i)".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1992.

Subtitle D—Provisions Related to Retirement Savings and Pension Distributions

SEC. 351. TAXABILITY OF BENEFICIARY OF QUALIFIED PLAN.

(a) IN GENERAL.—So much of section 402 (relating to taxability of beneficiary of employees' trust) as precedes subsection (g) thereof is amended to read as follows:

"SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

"(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

"(b) TAXABILITY OF BENEFICIARY OF NONEXEMPT TRUST.—

"(1) CONTRIBUTIONS.—Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

"(2) DISTRIBUTIONS.—The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amount not received as annuities).

"(3) GRANTOR TRUSTS.—A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

"(4) FAILURE TO MEET REQUIREMENTS OF SECTION 410(B).—

"(A) HIGHLY COMPENSATED EMPLOYEES.—If one of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under this subsection, include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

"(B) FAILURE TO MEET COVERAGE TESTS.—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), this subsection shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

"(i) such taxable year, or

"(ii) any preceding period for which service was creditable to such employee under the plan.

"(C) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q).

"(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—

"(1) EXCLUSION FROM INCOME.—If—

"(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

"(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

"(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

"(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

"(4) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term 'eligible rollover distribution' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

"(A) any distribution which is part of a series of substantially equal periodic payments (not less frequently than annually) made—

"(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and his designated beneficiary, or

"(ii) for a specified period of 10 years or more, and

"(B) any distribution to the extent such distribution is required under section 401(a)(9).

"(5) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under paragraph (1) to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) shall be treated as a rollover contribution described in section 408(d)(3).

"(6) SALES OF DISTRIBUTED PROPERTY.—For purposes of this subsection—

"(A) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

"(B) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

"(C) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

"(i) the portion of the money or other property which is to be treated as attributable to the amount not included in gross income, and

"(ii) the portion of the money or other property which is to be treated as included in the rollover contribution. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

"(D) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under subparagraph (C) within the time provided therein, then—

"(i) the portion of the money or other property which is to be treated as attributable to the amount not included in gross income, and

"(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis.

"(E) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in subparagraph (A), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1), neither gain nor loss on such sale shall be recognized.

"(7) SPECIAL RULE FOR FROZEN DEPOSITS.—

"(A) IN GENERAL.—The 60-day period described in paragraph (3) shall not—

"(i) include any period during which the amount transferred to the employee is a frozen deposit, or

"(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

"(B) FROZEN DEPOSITS.—For purposes of this paragraph, the term 'frozen deposit' means any deposit which may not be withdrawn because of—

"(i) the bankruptcy or insolvency of any financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(i) an individual retirement account described in section 408(a),

"(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(iii) a qualified trust, and

"(iv) an annuity plan described in section 403(a).

"(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution.

"(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

"(e) OTHER RULES APPLICABLE TO EXEMPT TRUSTS.—

"(1) ALTERNATE PAYEES.—

"(A) ALTERNATE PAYEE TREATED AS DISTRIBUTEE.—For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

"(B) ROLLOVERS.—If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

"(2) DISTRIBUTIONS BY UNITED STATES TO NONRESIDENT ALIENS.—The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

"(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

"(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term 'basic pay' shall have the meaning provided in section 8331(3) of title 5, United States Code.

"(3) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

"(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

"(1) IN GENERAL.—The plan administrator of any plan shall, when making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term 'eligible rollover distribution' has the same meaning as when used in subsection (c) of this section or paragraph (4) of section 403(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' has the meaning given such term by subsection (c)(8)(B)."

(b) REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.—Subsection (b) of section 101 is hereby repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 55(c) is amended by striking "shall not include any tax imposed by section 402(e) and".

(2) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(e)) is hereby repealed.

(3) Paragraph (4) of section 72(o) (relating to special rule for treatment of rollover amount) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(4) Paragraph (2) of section 219(d) (relating to recontributed amount) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(5) Subparagraph (A) of section 292(h)(2) (relating to flexible individual retirement accounts), as added by section 212 of this Act, is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(6) Paragraph (20) of section 401(a) is amended by striking "qualified total distribution described in section 402(a)(5)(E)(i)(I)" and inserting "distribution to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan".

(7) Subparagraph (B) of section 401(a)(28) (relating to coordination with distribution rules) is amended by striking clause (v).

(8) Subclause (IV) of section 401(k)(2)(B)(i) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(9) Clause (ii) of section 401(k)(10)(B) (relating to distributions that must be lump-sum distributions is amended to read as follows:

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution."

(10) Paragraph (1) of section 402(g) is amended by striking "subsections (a)(8)" and inserting "subsections (e)(3)".

(11) Subsection (i) of section 402 is amended by striking ", except as otherwise provided in subparagraph (A) of subsection (e)(4)".

(12) Subsection (j) of section 402 is hereby repealed.

(13)(A) Clause (i) of section 403(a)(4)(A) is amended by inserting "in an eligible rollover distribution" before the comma at the end thereof.

(B) Subparagraph (B) of section 403(a)(4) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 402(c) shall apply for purposes of subparagraph (A)."

(14)(A) Clause (i) of section 403(b)(8)(A) is amended by inserting "in an eligible rollover distribution" before the comma at the end thereof.

(B) Paragraph (8) of section 403(b) is amended by striking subparagraphs (B), (C), and (D) and inserting the following:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2), (3), (4), (5), (6), and (7) of section 402(c) shall apply for purposes of subparagraph (A)."

(15) Subsection (c) of section 406 (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(16) Subsection (c) of section 407 (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(17) Paragraph (1) of section 408(a) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(18) Clause (ii) of section 408(d)(3)(A) is amended by striking "of qualified total distribution (as defined in section 402(a)(5)(E)(i))" and inserting "(as defined in section 402(c)(1))".

(19) Clause (ii) of section 408(d)(3)(A) is amended—

(A) by striking "the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and", and

(B) by striking "the entire amount thereof" and inserting "the entire amount received (including money and any other property)".

(20) Subparagraph (B) of section 408(d)(3) (relating to limitations) is amended by striking the second sentence thereof.

(21) Subparagraph (F) of section 408(d)(3) (relating to frozen deposits) is amended by striking "section 402(a)(6)(H)" and inserting "section 402(c)(7)".

(22) Subclause (I) of section 414(n)(5)(C)(iii) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(23) Paragraph (2) of section 414(s) (relating to employer may elect to treat certain deferrals as compensation) is amended by striking "402(a)(8)" and inserting "402(e)(3)".

(24) Subparagraph (A) of section 415(b)(2) (relating to annual benefit in general) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(25) Subparagraph (B) of section 415(b)(2) (relating to adjustment for certain other forms of benefit) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(26) Paragraph (2) of section 415(c) (relating to annual addition) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(27) Clause (i) of section 457(c)(2)(B) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(28) Subsection (c) of section 691 (relating to coordination with section 402(e)) is amended by striking paragraph (5).

(29) Subparagraph (B) of section 871(a)(1) (relating to income other than capital gains) is amended by striking "402(a)(2), 403(a)(2), or".

(30) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(31) Paragraph (1) of section 871(k) is amended by striking "section 402(a)(4)" and inserting "section 402(e)(2)".

(32) Subsection (b) of section 877 (relating to alternative tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(33) Subsection (b) of section 1441 (relating to income items) is amended by striking "section 402(a)(2), 403(a)(2), or".

(34) Paragraph (5) of section 1441(c) (relating to special items) is amended by striking "section 402(a)(2), 403(a)(2), or".

(35) Subparagraph (A) of section 3121(v)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(36) Subparagraph (A) of section 3306(r)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(37) Subsection (a) of section 3405 is amended by striking "PENSIONS, ANNUITIES, ETC.—" from the heading thereof and inserting "PERIODIC PAYMENTS.—".

(38) Subsection (b) of section 3405 (relating to nonperiodic distribution) is amended—

(A) by striking "the amount determined under paragraph (2)" from paragraph (1) thereof and inserting "an amount equal to 10 percent of such distribution" and

(B) by striking paragraph (2) (relating to amount of withholding) and redesignating paragraph (3) as paragraph (2).

(39) Paragraph (4) of section 3405(d) (relating to qualified total distributions) is hereby repealed.

(40) Paragraph (8) of section 3405(d) (relating to maximum amounts withheld) is amended to read as follows:

"(8) MAXIMUM AMOUNT WITHHELD.—The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property received in the distribution."

(41) Subparagraph (A) of section 4973(b)(1) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(42) Paragraph (4) of section 4980A(c) is amended to read as follows:

"(4) ONE-TIME ELECTION FOR CERTAIN DISTRIBUTIONS.—A taxpayer may elect to determine the excess distributions as defined in paragraph (1) for a calendar year by multiplying the limitation in paragraph (1) by 5 times the amount of such limitation without regard to this subparagraph. Not more than one election may be made under this paragraph with respect to any taxpayer."

(43) Subparagraph (C) of section 7701(j)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—Distributions made before February 1, 1992, shall be taxed in accordance with the provisions of sections 101(b) and 402 of the Internal Revenue Code of 1986 as in effect prior to the amendments made by this section.

(3) TERMINATION OF PRIOR TRANSITIONAL RULES.—Paragraph (5) of section 1122(h) of the Tax Reform Act of 1986 shall not apply to any amount distributed after December 31, 1996.

(4) 5-YEAR PHASE-OUT OF PRIOR TRANSITIONAL RULES.—

(A) In the case of any lump distribution in any taxable year beginning after December 31, 1991 and before January 1, 1997, paragraph (5) of section 1122(h) of the Tax Reform Act of 1986 shall apply to the phase-out percentage of any lump sum distribution which would have been eligible for the election of those provisions.

(B) For purposes of this paragraph.—

In the case of distributions during calendar year:	The phase-out percentage is:
1992	100
1993	70
1994	35
1995	20
1996	10

SEC. 352. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

If the age of the primary annuitant on the annuity starting:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If in connection with the commencement of annuity payments under any qualified employer plan the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is on or after February 1, 1992.

SEC. 353. REQUIREMENT THAT QUALIFIED PLANS INCLUDE OPTIONAL TRUSTEE-TO-TRUSTEE TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

"(a) GENERAL RULE.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (30) the following new paragraph:

"(31) OPTIONAL DIRECT TRANSFER OR ELIGIBLE ROLLOVER DISTRIBUTIONS.—

"(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

"(i) elects to have such distribution paid directly to an eligible retirement plan, and

"(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

"(B) LIMITATION.—Subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) and 403(a)(4)).

"(C) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A).

"(D) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term 'eligible retirement plan' has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions."

(b) EMPLOYEE'S ANNUITIES.—Paragraph (2) of section 404(a) (relating to employee's annuities) is amended by striking "and (27)" and inserting "(27), and (31)".

(c) EXCLUSION FROM INCOME.—

(1) QUALIFIED TRUSTS.—Subsection (e) of section 402 (relating to taxability of beneficiary of employees' trust), as amended by section 351 of this Act, is amended by adding at the end the following new paragraph:

"(4) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer."

"(2) EMPLOYEE ANNUITIES.—Subsection (a) of section 403 is amended by adding at the end thereof the following new paragraph:

"(5) DIRECT TRUSTEE-TO-TRUSTEE TRANSFER.—Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer."

(d) WRITTEN EXPLANATION.—Paragraph (1) of section 402(f) (as amended by section 351 of this Act) is amended to read as follows:

"(1) IN GENERAL.—The plan administrator of any plan shall, before making an eligible rollover distribution, provide a written explanation to the recipient of—

"(A) the optional direct transfer provisions provided pursuant to section 401(a)(31), and

"(B) the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning on or after February 1, 1992.

SEC. 354. SALARY REDUCTION ARRANGEMENTS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) SALARY REDUCTION ARRANGEMENTS.—

(1) IN GENERAL.—Paragraph (6) of section 408(k) (relating to salary reduction arrangements) is amended to read as follows:

"(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

"(A) QUALIFIED ARRANGEMENTS.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, the employee may participate in a qualified salary reduction arrangement.

"(B) CERTAIN EMPLOYERS NOT ELIGIBLE.—This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 100 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

"(C) QUALIFIED SALARY REDUCTION ARRANGEMENT.—For purposes of this paragraph, the term 'qualified salary reduction arrangement' means a written arrangement of an eligible employer which meets the requirements of subparagraphs (D), (E), and (F) and under which—

"(i) an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash,

"(ii) the amount which an employee may elect under clause (i) for any year may not exceed a total of $3,000 for any year.

An arrangement meets the requirements of clause (ii) only if, under the arrangement, the employer may not place a limit on the percentage of compensation an employee may elect to contribute.

"(D) NONELECTIVE CONTRIBUTIONS.—An arrangement meets the requirements of this subparagraph only if, under the arrangement, the employer is required (without regard to whether the employee makes an elective contribution) to make a contribution to the simplified employee pension on behalf of each employee eligible to participate for the year in an amount equal to 1 percent of the employee's compensation (not in excess of $100,000) for the year.

"(E) ARRANGEMENT MAY BE ONLY PLAN OF EMPLOYER.—

"(i) IN GENERAL.—An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or amounts were accrued, for any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made.

"(ii) SERVICE CREDIT.—A qualified plan maintained by an employer shall provide that, in computing the accrued benefit of any employee, no credit shall be given with respect to any year for which such employee was eligible to participate in a qualified salary reduction arrangement of such employer.

"(F) RULES RELATING TO MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph only if, under the arrangement, the employer is required to make a matching contribution described in subparagraph (F)(ii) to the simplified employee pension on behalf of each employee that makes elective contributions under subparagraph (C)(i)(I).

"(ii) RATES OF MATCHING CONTRIBUTIONS.—The level of an employer's matching contribution—

"(I) shall equal as much of the employee's elective contribution as does not exceed 3 percent of the employee's compensation, plus

"(II) an amount equal to 50 percent of the employee's elective contribution that exceeds 3 percent of the employee's compensation and is not greater than 5 percent of the employee's compensation.

"(G) QUALIFIED PLAN.—For purposes of this paragraph, the term 'qualified plan' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

"(H) COMPENSATION.—For purposes of this paragraph, the term compensation has the same meaning as in section 414(q)(5)."

(2) CONFORMING CHANGES.—Subparagraph (B) of section 408(k)(7) is amended by striking "paragraph (2)(C)" and inserting "paragraphs (2)(C) and (6)(H)".

(b) COST-OF-LIVING ADJUSTMENTS.—Paragraph (8) of section 408(k) is amended to read as follows:

"(8) COST-OF-LIVING ADJUSTMENTS.—

"(A) IN GENERAL.—The Secretary shall adjust each of the following amounts at the same time and in the same manner as under section 415(d):

"(i) The $300 amount in paragraph (2)(C).

"(ii) The $200,000 amount in paragraph (3)(C).

"(iii) The $3,000 amount in paragraph (6)(C)(ii).

"(iv) The $100,000 amount in paragraph (6)(D)(i).

"(B) EXCEPTIONS.—

"(i) COORDINATION WITH SECTION 401(A)(17).—The amount described in clause (ii) of subparagraph (A) (as adjusted under such subparagraph) shall not exceed 100 percent of the amount in effect under section 401(a)(17).

"(ii) BASE PERIOD.—The base period taken into account under section 415(d) for the amounts described in clauses (iii) and (iv) of subparagraph (A) shall be the calendar quarter beginning October 1, 1991."

(c) REPORTING REQUIREMENTS.—Subsection (1) of section 408 is amended—

(1) by striking "(1) SIMPLIFIED EMPLOYER REPORTS.—An" and inserting the following:

"(1) SIMPLIFIED EMPLOYER REPORTS.—

"(1) IN GENERAL.—An",

(2) by moving the text of such subsection 2 ems to the right, and

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

"(2) QUALIFIED SALARY REDUCTION ARRANGEMENTS UNDER SIMPLIFIED EMPLOYEE PENSIONS.—

"(A) IN GENERAL.—The employer maintaining any simplified employee pension established pursuant to a qualified salary reduction arrangement under subsection (k)(6) shall each year prepare, and provide to each employee eligible to participate in the arrangement, a description containing the following information:

"(i) The name and address of the employer and the trustee.

"(ii) The requirements for eligibility for participation.

"(iii) The benefits provided with respect to the arrangement.

"(iv) The time and method of making elections with respect to the arrangement.

"(v) The procedures for, and effects of, withdrawals from the arrangement.

"(B) TIME REPORT PROVIDED.—The description under subparagraph (A) for any year shall be provided to each employee during the 30-day period preceding the first date during such year on which the employee may make an election with respect to the arrangement."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1991.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to a simplified employee pension which was in effect on the date of the enactment of this Act and which maintained a salary reduction arrangement on such date, unless the employer elects to have such amendments apply for any year and all subsequent years.

SEC. 355. TAX EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) GENERAL RULE.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) STATE AND LOCAL GOVERNMENTS NOT ELIGIBLE.—A cash and deferred arrangement shall not be treated as a qualified cash and deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This subparagraph shall not apply to a rural cooperative plan."

(b) EFFECTIVE DATES.—The amendment made by this section shall apply to plan years beginning on or after February 1, 1992.

SEC. 356. DUTIES OF SPONSORS OF CERTAIN PROTOTYPE PLANS.

(a) IN GENERAL.—The Secretary of the Treasury may, as a condition of sponsorship, prescribe rules defining the duties and responsibilities of sponsors of master and prototype plans, regional prototype plans, and other Internal Revenue Service preapproved plans.

(b) DUTIES RELATING TO PLAN AMENDMENT, NOTIFICATION OF ADOPTERS, AND PLAN ADMINISTRATION.—The duties and responsibilities referred to in subsection (a) may include—

(1) the maintenance of lists of persons adopting the sponsor's plans, including the updating of such lists not less frequently than annually,

(2) the furnishing of notices at least annually to such persons and to the Secretary or his delegate, in such form and at such time as the Secretary shall prescribe,

(3) duties relating to administrative services to such persons in the operation of their plans,

(4) other duties that the Secretary considers necessary to ensure that—

(A) the master and prototype, regional prototype, and other preapproved plans of adopting employers are timely amended to meet the requirements of the Internal Revenue Code of 1986 or of any rule or regulation of the Secretary, and

(B) adopting employers receive timely notification of amendments and other actions taken by sponsors with respect to their plans.

SEC. 357. SIMPLIFICATION OF NONDISCRIMINATION TESTS APPLICABLE UNDER SECTIONS 401(k) AND 401(m).

(a) CASH OR DEFERRED ARRANGEMENTS.—

(1) IN GENERAL.—Paragraph (3) of section 401(k) (relating to application of participation and discrimination standards) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by striking subparagraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

"(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1),

"(ii) the actual deferral percentage of each eligible highly compensated employee for the plan year does not exceed 200 percent of the average deferral percentage of nonhighly compensated employees for the preceding plan year, and

"(iii) the actual deferral percentage of each eligible highly compensated employee for the plan year does not exceed the average deferral percentage of nonhighly compensated employees for the preceding plan year by more than 3 percentage points.

"(B) DEFERRAL PERCENTAGES.—For purposes of this paragraph—

"(i) ACTUAL DEFERRAL PERCENTAGE.—The actual deferral percentage of any employee for a plan year is the percentage which—

"(I) the amount of employer contributions actually paid over to the trust on behalf of such employee for such plan year, is of

"(II) the employee's compensation for such plan year.

"(ii) AVERAGE DEFERRAL PERCENTAGE OF NONHIGHLY COMPENSATED EMPLOYEES.—The average deferral percentage of nonhighly compensated employees for any plan year is the average of the actual deferral percentages for such plan year all of eligible employees other than highly compensated employees.

"(C) SPECIAL RULES.—

"(i) ELECTION TO USE AVERAGE DEFERRAL PERCENTAGE FOR HIGHLY COMPENSATED EMPLOYEE.—A plan may provide that in lieu of satisfying the requirements of clauses (ii) and (iii) of subparagraph (3)(A), a cash or deferred arrangement may be a qualified cash or deferred arrangement if the average deferral percentage for eligible highly compensated employees for such year bears a relationship to the average deferral percentage of nonhighly compensated employees for the preceding plan year which meets either of the following tests:

"(I) The average deferral percentage for the group of eligible highly compensated employees is not more than the average deferral percentage for nonhighly compensated employees for the preceding plan year multiplied by 1.25.

"(II) The excess of the average deferral percentage for the group of eligible highly compensated employees over the average deferral percentage for nonhighly compensated employees for the preceding plan year is not more than 2 percentage points, and the average deferral percentage for the group of eligible highly compensated employees is not more than the average deferral percentage for nonhighly compensated employees for the preceding plan year multiplied by 2.

The average deferral percentage for the group of eligible highly compensated employees is the average of the actual deferral percentages for such plan year of all eligible highly compensated employees.

"(ii) SPECIAL RULE FOR FIRST PLAN YEAR.—In the case of the first plan year of any plan, the amount taken into account as the average deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(I) 3 percent, or

"(II) if the employer makes an election under this subclause, the average deferral percentage of nonhighly compensated employees determined for such first plan year.

"(iii) AGGREGATION OF PLANS.—If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this paragraph. If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the actual deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement.

"(iv) RULES RELATING TO ELECTION.—

"(I) IN GENERAL.—The election to use the average deferral percentage pursuant to subparagraph (C) shall be made, if at all, with respect to the first plan year of the plan (or, if later, the first plan year beginning after February 1, 1992) and, once made, shall be irrevocable.

"(II) CONSISTENCY REQUIREMENT.—The election to use the average contribution percentage pursuant to section 401(m)(3)(C)(i) will be treated as an election to use the average deferral percentage pursuant to subparagraph (C)(i)."

(2) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—Paragraph (8) of section 401(k) is amended by striking subparagraphs (A), (B), and (C), and inserting the following:

"(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clauses (ii) and (iii) of paragraph (3)(A) (or clause (i) of paragraph (3)(C)) for any plan year if, with respect to each highly compensated employee having excess contributions for such plan year, the amount of such excess contributions (and any income allocable to such contributions) is distributed to such employee before the close of the following plan year. Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

"(B) EXCESS CONTRIBUTIONS.—For purposes of subparagraph (A), the term 'excess contributions' means, with respect to any highly compensated employee for any plan year, the excess of—

"(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of such employee for such plan year, over

"(ii) the maximum amount of such contributions permitted under the limitations of paragraph (3).

"(C) PLANS THAT UTILIZE AVERAGING OPTION.—A plan that elects to use the average deferral percentage for highly compensated employees as provided in paragraph (3)(C)(i) must determine the maximum amount of contributions permitted under the limits of paragraph (3)(C)(i) by reducing the contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages and distribute the excess contributions to the highly compensated employees on the basis of the respective portions of the excess contributions attributable to each such employee. To the extent permitted by regulations, an employee may elect to treat the amount of excess contributions as an amount distributed to the employee and then contributed by the employee to the plan."

(b) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) IN GENERAL.—Subparagraph (A) of section 401(m)(2) (relating to contribution percentage requirement) is amended to read as follows:

"(A) CONTRIBUTION PERCENTAGE REQUIREMENT.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if—

"(i) the actual contribution percentage of each eligible highly compensated employee for such plan year does not exceed 200 percent of the average contribution percentage of nonhighly compensated employees for the preceding plan year, and

"(ii) the actual contribution percentage of each eligible highly compensated employee for the plan year does not exceed the average

contribution percentage of nonhighly compensated employees for the preceding plan year by more than 3 percentage points."

(2) CONTRIBUTION PERCENTAGES.—Paragraph (3) of section 401(m) is amended to read as follows:

"(3) CONTRIBUTION PERCENTAGES.—For purposes of this subsection—

"(A) ACTUAL CONTRIBUTION PERCENTAGE.—The actual contribution percentage of any employee for any plan year is the percentage which—

"(i) the sum of the matching contributions and employee contributions paid under the plan on behalf of such employee for such plan year, is of

"(ii) such employee's compensation (within the meaning of section 414(s)) for such plan year.

"(B) AVERAGE CONTRIBUTION PERCENTAGE OF NONHIGHLY COMPENSATED EMPLOYEES.—The average contribution percentage of nonhighly compensated employees for any plan year is the average of the actual contribution percentages for such plan year of all eligible employees other than highly compensated employees.

"(C) SPECIAL RULES.—

"(i) ELECTION TO USE AVERAGE CONTRIBUTION PERCENTAGE FOR HIGHLY COMPENSATED EMPLOYEE.—A plan may provide that in lieu of satisfying the requirements of paragraph (2)(A), a plan meets the contribution requirement of this section if the average contribution percentage for eligible highly compensated employees for such year bears a relationship to the average contribution percentage of nonhighly compensated employees for the preceding plan year which meets either of the following tests:

"(I) The average contribution percentage for the group of eligible highly compensated employees is not more than the average contribution percentage for nonhighly compensated employees for the preceding plan year multiplied by 1.25.

"(II) The excess of the average contribution percentage for the group of eligible highly compensated employees over the average contribution percentage for nonhighly compensated employees for the preceding plan year is not more than 2 percentage points, and the average contribution percentage for the group of eligible highly compensated employees is not more than the average contribution percentage for nonhighly compensated employees for the preceding plan year multiplied by 2.

The average contribution percentage for the group of eligible highly compensated employees is the average of the actual contribution percentages for such plan year of all eligible highly compensated employees.

"(ii) CERTAIN CONTRIBUTIONS MAY BE TAKEN INTO ACCOUNT.—Under regulations, an employer may elect to take into account under subparagraph (A)(i) elective deferrals and qualified nonelective contributions under the plan or any other plan of employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A) for any plan year, such contributions shall not be taken into account under paragraph (2) for such plan year.

"(iii) SPECIAL RULE FOR FIRST PLAN YEAR.—Rules similar to the rules of subsection (k)(3)(C)(ii) shall apply for purposes of this subsection.

"(iv) RULES RELATING TO ELECTIONS.—

"(I) IN GENERAL.—The election to use the average contribution percentage pursuant to subparagraph (C) shall be made, if at all, with respect to the first plan year of the plan (or, if later, the first plan year beginning after February 1, 1992) and, once made, shall be revocable only with the consent of the Commissioner.

"(II) CONSISTENCY REQUIREMENT.—The election to use the average deferral percentage pursuant to section 401(k)(3)(C)(i) will be treated as an election to use the average contribution percentage pursuant to subparagraph (C)(i)."

(3) DISTRIBUTION OF EXCESS AGGREGATE CONTRIBUTIONS.—Paragraph (6) of section 401(m) is amended—

(A) by striking subparagraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, with respect to each highly compensated employee having excess aggregate contributions for such plan year, the amount of such excess aggregate contributions (and any income allocable to such contributions) is distributed to such employee before the close of the following plan year (or, if forfeitable, is forfeited). Any distribution of excess aggregate contributions (and income) may be made without regard to any other provision of law.

"(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term 'excess aggregate contributions' means, with respect to any highly compensated employee for any plan year, the excess of—

"(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account under paragraph (3)(A)(i)) actually made on behalf of such employee for such plan year, over

"(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A)."

"(C) PLANS THAT UTILIZE AVERAGING OPTION.—A plan that elects to use the average contribution percentage for highly compensated employees as provided in paragraph (3)(C)(i) must determine the maximum amount of contributions permitted under the limits of paragraph (3)(C)(i) by reducing the contributions made on behalf of highly compensated employees in order of the actual contribution percentages beginning with the highest of such percentages and distribute the excess aggregate contributions to the highly compensated employees on the basis of the respective portions of the excess aggregate contributions attributable to each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph."

(4) CONFORMING AMENDMENT.—Paragraph (9) of section 401(m) is amended to read as follows:

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after February 1, 1992.

SEC. 358. DEFINITION OF HIGHLY COMPENSATED EMPLOYEE.

(a) GENERAL RULE.—Subsection (q) of section 414 (defining highly compensated employee) is amended to read as follows:

"(q) HIGHLY COMPENSATED EMPLOYEE.—

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

"(A) was a 5-percent owner, or

"(B) received compensation from the employer in excess of $50,000.

The Secretary shall adjust the $50,000 amount specified in subparagraph (B) at the same time and in the same manner as under section 415(d).

"(2) SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in such subparagraph for the year for which the determination is being made unless such employee is a member of the group consisting of the 100 employees paid the highest compensation during the year for which such determination is being made.

"(3) 5-PERCENT OWNER.—An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

"(4) SPECIAL RULE IF NO EMPLOYEE DESCRIBED IN PARAGRAPH (1).—If no employee is treated as a highly compensated employee under paragraph (1), the employee who has the highest compensation for the year shall be treated as a highly compensated employee.

"(5) COMPENSATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

"(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

"(i) without regard to sections 125, 402(e)(3), 402(h)(1)(B), and 414(h)(2), and

"(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to sections 403(b) and 457.

"(6) FORMER EMPLOYEES.—A former employee shall be treated as a highly compensated employee if—

"(A) such employee was a highly compensated employee when such employee separated from service, or

"(B) such employee was a highly compensated employee at any time after attaining age 55.

"(7) COORDINATION WITH OTHER PROVISIONS.—Subsections (b), (c), (m), (n), and (o) shall be applied before the application of this section.

"(8) SPECIAL RULE FOR NONRESIDENT ALIENS.—For purposes of this subsection, any employee described in subsection (r)(9)(F) shall not be treated as an employee."

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 414(r) is amended by adding at the end thereof the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

"(F) Employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the

employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph."

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(8)" and inserting "paragraph (9)".

(2) Paragraph (2) of section 414(s) is amended to read as follows:

"(2) EMPLOYER MAY ELECT TO TREAT CERTAIN DEFERRALS AS COMPENSATION.—An employer may elect to include all of the following amounts as compensation:

"(A) Amounts not includible in the gross income of the employee under section 125, 402(e)(3), 402(h)(1)(B), or 414(h)(2).

"(B) Amounts contributed by the employer under a salary reduction agreement and not includible in gross income under section 403(b) or 457."

(3) Paragraph (17) of section 401(a) is amended by striking the last sentence.

(4) Subsection (1) of section 404 is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning on or after February 1, 1992.

SEC. 359. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.

(a) INTERNAL REVENUE CODE AMENDMENT.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

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

(2) by striking subparagraph (C).

(b) ERISA AMENDMENT.—Paragraph (2) of section 203(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended—

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

(2) by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1993, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1995.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

Subtitle E—Other Provisions

PART I—PROVISIONS RELATING TO CHARITABLE CONTRIBUTIONS

SEC. 361. THE ALTERNATIVE MINIMUM TAX.

(a) REPEAL OF TAX PREFERENCE.—Subsection (a) of section 57 is amended by striking paragraph (6) (relating to the appreciated property charitable deduction under the alternative minimum tax) and by redesignating paragraph (7) as paragraph (6).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in calendar years ending on or after December 31, 1992.

SEC. 362. ALLOCATION AND APPORTIONMENT.

(a) APPLICATION OF SECTION 864(E)(6).—Paragraph (6) of section 864(e) is amended by designating the existing text as subparagraph (A), by inserting the heading "AFFILIATED GROUP RULE" before the text of subparagraph (A), and by adding at the end thereof the following new subparagraph:

"(B) ALLOCATION AND APPORTIONMENT OF CHARITABLE DEDUCTIONS.—A charitable contribution allowable as a deduction in computing taxable income for a taxable year shall be allocated and apportioned solely to gross income from sources within the United States. For purposes of the preceding sentence, all members of an affiliated group shall be treated as a single corporation."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in calendar years ending on or after December 31, 1992.

SEC. 363. INFORMATION REPORTING OF LARGE DONATIONS.

(a) REPORTING BY DONEES.—

(1) REPORTING REQUIREMENTS.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new section:

"SEC. 6050P. RETURNS RELATING TO CERTAIN CHARITABLE CONTRIBUTIONS.

"(a) GENERAL RULE.—The donee of any large charitable donation shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

"(1) the name, address, and TIN of the donor,

"(2) the amount of the contribution (or the value, if the contribution is made other than in money), and

"(3) the circumstances under which the contribution was made.

"(b) LARGE CHARITABLE DONATION.—For purposes of this section, the term 'large charitable donation' means any combination of money or value of property contributed by an individual during the calendar year in contributions for which a deduction could potentially be claimed under section 170, based on the donee's determination that it did not provide substantial goods or services in exchange for the contribution, if the amount of such contributions exceeds $500.

"(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.

"(d) EXCEPTIONS FROM FILING.—Subsection (a) shall not apply to any organization exempt from the filing requirements of section 6033 by reason of the organization's normal level of gross receipts, whether exempted by section 6033(a)(2)(A)(ii) or by the Secretary pursuant to section 6033(a)(2)(B)."

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 (as amended by section 363 of this Act) is amended by adding at the end thereof the following new items:

"Sec. 6050P. Returns relating to certain charitable contributions."

(b) DENIAL OF DEDUCTION.—Except as otherwise provided by regulations, no deduction for a large charitable donation (as defined in section 6050P of the Internal Revenue Code) shall be allowed unless the donor includes on the return on which such deduction is first claimed such additional information as the Secretary may prescribe (by form or regulation).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made on or after July 1, 1992.

PART II—OTHER PROVISIONS

SEC. 371. EXTEND MEDICARE HOSPITAL INSURANCE (HI) COVERAGE TO ALL STATE AND LOCAL EMPLOYEES.

(a) APPLICATION OF HOSPITAL INSURANCE TAX.—Paragraph (2) of section 3121(u) (relating to the application of the hospital insurance tax to State and local employment) is amended:

(1) by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)" in subparagraph (A), and

(2) by deleting subparagraphs (C) and (D).

(b) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—

(1) Section 210(p) of the Social Security Act (42 U.S.C. 410(p)) is amended:

(A) by striking "paragraphs (2) and (3)" and inserting "paragraph (2)" in paragraph (1)(B), and

(B) by deleting paragraphs (3) and (4).

(2) Section 218(n) of the Social Security Act (42 U.S.C. 418(n)) is repealed.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to services performed after June 30, 1992.

(2) SERVICES PERFORMED BEFORE JULY 1, 1992.—If any service performed by an individual during July 1992 is medicare qualified government employment (as defined in section 210(p) of the Social Security Act (42 U.S.C. 410(p)), as amended by subsection (b) of this section), the amendments made by subsection (b) of this section shall apply to all periods (if any) of service performed by that individual before July 1, 1992, that would be medicare qualified government employment (as so defined) if performed after June 30, 1992.

(3) DISABILITY BEFORE JULY 1, 1992.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to the amendments made by subsection (b) of this section, no individual may be considered to be under a disability for any period before July 1, 1992.

(4) CONFORMING AMENDMENT.—Section 278(d)(2)(A) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, as amended by section 309(a)(11) of the Technical Corrections Act of 1982, Pub. L. No. 97-448, is amended by inserting "or of section 371(c)(2) of the Long Term Growth Act of 1992" after "subsection".

SEC. 372. CONFORM TAX ACCOUNTING TO FINANCIAL ACCOUNTING FOR SECURITIES DEALERS.

(a) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 of the Internal Revenue Code of 1986 (relating to inventories) is amended by inserting at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN STOCK OR SECURITIES.

"(a) GENERAL RULE.—Each stock or security held for resale to customers in the ordinary course of the taxpayer's trade or business at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year and any gain or loss shall be taken into account for that taxable year.

"(b) BASIS ADJUSTMENT REQUIRED.—Proper adjustment shall be made to the taxpayer's basis in each stock or security so that any gain or loss subsequently realized is not recognized to the extent such gain or loss was previously taken into account by reason of subsection (a).

"(c) DERIVATIVE FINANCIAL INSTRUMENTS HELD BY DEALERS.—A taxpayer that is re-

quired by subsection (a) to treat stocks or securities held for resale to customers in the ordinary course of the taxpayer's trade or business as sold for their fair market value on the last business day of the taxable year shall—

"(1) treat all derivative financial instruments held at the close of the taxable year as sold for their fair market value on the last business day of the taxable year, and

"(2) properly adjust the amount of gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1).

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) STOCK OR SECURITIES DEFINED.—The term 'stock or securities' shall include stock or securities as defined in section 851(b)(2), 1091(a), or 1236(c), and notional principal contracts.

"(2) DEALERS OR TRADERS IN NOTIONAL PRINCIPAL CONTRACTS.—A dealer or trader in notional principal contracts shall be treated as holding such contracts for resale to customers in the ordinary course of its trade or business.

"(3) DERIVATIVE FINANCIAL INSTRUMENTS DEFINED.—The term 'derivative financial instruments' includes commodities, options, forward contracts, futures contracts, notional principal contracts, short positions in securities, and any similar financial instrument.

"(4) SECTION 263A SHALL NOT APPLY.—The cost capitalization rules of section 263A shall not apply to stock, securities, or derivative financial instruments accounted for under this section.

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the effect of this section."

(b) CONFORMING AMENDMENT.—Subsection (b) of section 471 is amended to read as follows:

"(b) CROSS REFERENCES.—

"(1) For rules relating to the inventory method that conforms to the best accounting practice for dealers in stock or securities, see section 475.

"(2) For rules relating to capitalization of direct and indirect costs of property, see section 263A."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"SEC. 475. Conform tax accounting to financial accounting for securities dealers."

(1) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1992.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary,

(C) the change in method of accounting shall be implemented by valuing each stock or security to which the amendments of this section apply at its fair market value on the last day of the first taxable year ending on or after December 31, 1992, and

(D) 10 percent of any increase or decrease in value by reason of subparagraph (C) shall be taken into account in each of the 10 taxable years beginning with the first taxable year ending on or after December 31, 1992.

SEC. 373. DISALLOWANCE OF INTEREST DEDUCTIONS ON CORPORATE OWNED LIFE INSURANCE

(a) DISALLOWANCE OF DEDUCTION.—Subsection (a) of section 264 is amended—

(1) by striking "to the extent that the aggregate amount of such indebtedness with respect to policies covering such individuals exceeds $50,000" in paragraph (4), and

(2) by striking the last sentence thereof.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to interest incurred on or after February 1, 1992.

SEC. 374. CLARIFICATION OF TREATMENT OF CERTAIN FSLIC ASSISTANCE.

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) no deduction is allowed under section 165 of such Code for a loss of the disposition of property to the extent that the taxpayer has a right to be reimbursed for the loss with FSLIC Assistance, and

(2) no deduction is allowed under section 166, 585, or 593 of such Code with respect to any debt to the extent that the taxpayer has a right to be reimbursed for the debt with FSLIC Assistance.

(b) FSLIC ASSISTANCE.—For purposes of this section, the term "FLSIC Assistance" means any money or other property provided with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or any similar provision of law). The term "FSLIC Assistance" does not include money or other property to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 apply.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The provisions of this section apply to FSLIC Assistance credited on or after March 4, 1991, with respect to property disposed of and charge-offs made in taxable years ending on or after March 4, 1991.

(2) SPECIAL RULE FOR NET OPERATING LOSS CARRYOVERS.—The amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991, must be reduced by the amount of FSLIC Assistance credited on or after March 4, 1991, with respect to property disposed of or charge-offs made in taxable years ending before March 4, 1991.

SEC. 375. EQUALIZING TAX TREATMENT OF LARGE CREDIT UNIONS AND THRIFTS.

(a) REPEAL OF EXEMPTION.—Subparagraph (A) of section 501(c)(14) is amended to read as follows:

"(A) Small credit unions without capital stock organized and operated for mutual purposes and without profit. For purposes of this subparagraph, a credit union is a small credit union unless, for any taxable year, the average adjusted basis of all of its assets exceeds $50,000,000."

(b) REPEAL OF DEDUCTION FOR DIVIDENDS PAID.—Subsection (a) of section 591 is amended by inserting "credit unions that are not small credit unions as defined in section 501(c)(14)(A)," after "domestic building and loan associations,".

(c) RESERVES FOR BAD DEBTS.—

(1) IN GENERAL.—Paragraph (1) of section 593(a) is amended by striking "or" at the end of subparagraph (B), by inserting "or" at the end of subparagraph (C), and by inserting after subparagraph (C) the following new subparagraph:

"(D) any credit union that is not a small credit union as defined in section 501(c)(14)(A),".

(2) CONFORMING AMENDMENT.—Paragaph (2) of section 593(a) is amended by striking "association or bank" and inserting "entity".

(d) EFFECTIVE DATE.—The provisions of this section apply for taxable years ending on or after December 31, 1992.

SEC. 376. TREATMENT OF ANNUITIES WITHOUT LIFE CONTINGENCIES.

(a) LIFE CONTINGENCY REQUIRED FOR ANNUITY TREATMENT.—Paragraph (5) of section 72(c) is amended to read as follows:

(5) ANNUITY CONTRACT.—

"(A) IN GENERAL.—For purposes of this subtitle (other than subchapter L), a contract is treated as an annuity contract only if the purchaser irrevocably chooses as a settlement option a series of substantially equal periodic payments (not less frequently than annually) made for the life of the annuitant or the joint lives of the annuitants. The settlement option must be irrevocable as of the date the contract is entered into.

"(B) CERTAIN FEATURES.—

"(i) TERM CERTAIN FEATURE.—If the settlement option described in subparagraph (A) contains a term certain feature, that feature may not guarantee that periodic payments will be made for a period of time that exceeds one-third of the life expectancy of the annuitant determined as of the annuity starting date.

"(ii) AMOUNT CERTAIN FEATURE.—If the settlement option described in subparagraph (A) contains an amount certain feature, that feature may not guarantee that an amount will be paid that exceeds one-third of the cash value of the contract (determined without regard to any surrender charge) determined as of the annuity starting date (or date of annuitant's death, if earlier).

"(C) SPECIAL RULES.—This paragraph shall not apply to—

"(i) annuities purchased by a trust described in section 401(a) which is exempt from tax under section 501(a),

"(ii) annuities purchased as part of a plan described in section 403(a),

"(iii) annuities described in section 403(b),

"(iv) annuities provided for employees of a life insurance company under a plan described in section 818(a)(3),

"(v) amounts received from an individual retirement account or an individual retirement annuity,

"(vi) individual retirement annuities,

"(vii) amounts received from a trust described in section 401(a) which is exempt from tax under section 501(a), and

"(viii) annuities which qualify as a 'qualified funding asset' in accordance with section 130(d)."

(b) EFFECTIVE DATE.—The provisions of this section apply to all contracts entered into on or after the date of enactment of this Act.

SEC. 377. EXPANSION OF 45-DAY INTEREST-FREE PERIOD.

(a) IN GENERAL.—Subsection (e) of section 6611 (relating to interest on overpayments) is amended to read as follows:

"(e) TAX REFUND WITHIN 45 DAYS.—No interest shall be allowed under subsection (a) on any overpayment of tax imposed by this title if such overpayment—

"(1) is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return),

"(2) is refunded within 45 days after the date the return is filed, in case the return is filed after such last date, or

"(3) is refunded within 45 days of the date the right to the refund arises, in case the right to the refund arises other than pursuant to the original filing of a tax return."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns due on or after July 1, 1992, and to all other refunds made on or after such date.

TITLE IV—FINANCIAL INSTITUTIONS SAFETY AND CONSUMER CHOICE ACT OF 1992

SEC. 401. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Financial Institutions Safety and Consumer Choice Act of 1992".

(b) TABLE OF CONTENTS.—

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SEC. 402. PURPOSES.

The purposes of this title are—

(1) To strengthen the role of capital in insured depository institutions.

(2) To permit nationwide banking and branching.

(3) To authorize the establishment of financial services holding companies to permit companies owning depository institutions to engage in other financial activities with appropriate safeguards.

(4) To promote consumer convenience by permitting banking organizations a broader range of financial products.

Subtitle A—Financial Services Modernization

CHAPTER 1—FINANCIAL SERVICES HOLDING COMPANIES

SEC. 411. FINANCIAL SERVICES HOLDING COMPANIES.

(a) DEFINITIONS MODIFIED.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) by amending subsection (a)(1) to read as follows:

"(a)(1)(A) The term 'financial services holding company' means any company (other than a diversified holding company) which has control over any bank.

"(B) The term 'diversified holding company' means any company (other than a bank or a foreign bank) which has control over a bank only through a financial services holding company and which engages in activities or controls any company engaged in activities that are not permissible for a financial services holding company or any subsidiary thereof under this Act. For purposes of this subparagraph the term 'foreign bank' does not include (and the term 'diversified holding company' may include) any company organized under the laws of a foreign country (as defined in section 1(b)(8) of the International Banking Act of 1978), a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which does not engage in the business of banking.";

(2) in the second sentence of subsection (a)(5)(A), by inserting a period after "thereto" and striking the balance of the sentence;

(3) by amending subsection (f) to read as follows:

"(f)(1) The term 'appropriate Federal banking agency' shall have the same meaning as set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(2) The term 'Board' means the Board of Governors of the Federal Reserve System."; and

(4) by adding after subsection (m) the following new subsections:

"(n) SECURITIES AFFILIATE.—The term 'securities affiliate' means any company that is controlled by a financial services holding company and that is engaged in the United States in activities pursuant to section 4(c)(15).

"(o) INSURANCE AFFILIATE.—The term 'insurance affiliate' means any company that is controlled by a financial services holding company and that is engaged in the United States in activities pursuant to section 4(c)(16).

"(p) FOREIGN BANK.—The term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).

"(q) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' means any insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and any insured institution.

"(r) WELL CAPITALIZED AND ADEQUATELY CAPITALIZED.—The terms 'well capitalized' and 'adequately capitalized' have the same meaning as in section 38 of the Federal Deposit Insurance Act.

"(s) WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANY.—The term 'well capitalized financial services holding company' means any financial services holding company that qualifies as a well capitalized financial services holding company pursuant to section 38(e)(2) of the Federal Deposit Insurance Act.

"(t) FUNCTIONAL REGULATOR.—The term 'functional regulator' means a Federal or State agency that has supervisory authority concerning the activities of a company (other than an insured depository institution) that are of concern to the Board for purposes of section 6(c).

"(u) NEW FINANCIAL ACTIVITY.—The term 'new financial activity' means any activity authorized pursuant to section 4(c)(8), 4(c)(15), or 4(c)(16) other than any activity that, prior to the date of enactment of the Financial Institutions Safety and Consumer

Choice Act of 1992, the Board has determined, by any other or regulation that continued to be in effect on December 31, 1993, to be closely related to banking and a proper incident thereto.

"(v) QUALIFIED FINANCIAL ACTIVITY.—The term 'qualified financial activity' means any activity authorized pursuant to section 4(c)(8), 4(c)(15), or 4(c)(16).

"(w) FINANCIAL AFFILIATE.—The term 'financial affiliate' means any company that is controlled by a financial services holding company that is engaged in the United States in qualified financial activities and any other company that is controlled by a diversified holding company that is engaged in activities authorized to be engaged in by a subsidiary of a financial services holding company pursuant to section 4(c)(8), 4(c)(15), or 4(c)(16).".

(b) CONFORMING AMENDMENTS.—Section 2 of the Bank Holding Act of 1956 (12 U.S.C. 1841) is further amended—

(1) in subsection (c)(2)(J), by striking "Federal Savings and Loan Insurance Corporation insurance to Federal Deposit Insurance Corporation insurance" and inserting "Savings Association Insurance Fund to Bank Insurance Fund";

(2) in subsection (h)(5), by striking "bank" the first time it appears and inserting "insured depository institution"; and

(3) by striking "bank holding company" wherever it appears except in subsection (b) and inserting—

(A) in subsections (a)(5)(A), (a)(5)(B), (a)(5)(C), (a)(5)(D), (d), and (g)(1), "financial services holding company and diversified holding company"; and

(B) in all other instances, "financial services holding company".

SEC. 412. ACQUISITION OF BANKS.

(a) AMENDMENTS TO APPLICATION PROCESS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended—

(1) in subsection (a)—

(A) by amending paragraph (3) to read as follows:

"(3) for any financial services holding company to acquire ownership or control of any voting shares of any insured depository institution or financial services holding company, for any diversified holding company to acquire ownership or control of any voting shares of any financial services holding company, or for a company to acquire ownership or control of a diversified holding company if, after such acquisition, such company will own or control more than 5 per centum of the voting shares of such institution or company";

(B) by striking "Notwithstanding the foregoing" and inserting "It shall be unlawful for any insured depository institution (other than a foreign bank operating an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) to become a financial services holding company or a diversified holding company. Notwithstanding the foregoing";

(C) by adding at the end thereof the following new sentence: "Notwithstanding paragraph (1), any company that was a bank holding company under the Bank Holding Company Act of 1956 on December 31, 1993, shall be a financial services holding company as of January 1, 1994 without further approval by the Board.";

(D) in subparagraph (A)(ii), by striking "or" at the end thereof; and

(E) in subparagraph (B), by inserting after "prior to such acquisition" the following: "; or (C) the acquisition by a company of control of a bank in a reorganization in which a person or group of persons exchange their shares of the bank for shares of a newly formed financial services holding company and receive after the reorganization substantially the same proportional share interest in the holding company as they held in the bank except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law if (i) immediately following the acquisition, the bank meets the requirements for well capitalized or adequately capitalized, (ii) the holding company does not engage in any activities other than those of managing and controlling banks as a result of the reorganization, and (iii) the company provides 30 days prior notification to the Board.";

(2) in subsection (b)—

(A) by amending the first sentence to read "Upon receiving from a company any application for approval under this section to acquire any interest in an insured depository institution, the Board shall give notice (A) to the Comptroller of the Currency, if the insured depository institution to be acquired is a national banking association or a District bank, (B) to the Director of the Office of Thrift Supervision, if the insured depository institution to be acquired is a Federally-chartered insured institution, or (C) to the appropriate supervisory authority of the interested State, if the insured depository institution to be acquired is a State-chartered bank or State-chartered insured institution, in order to provide for the submission of the views and recommendations of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the State supervisory authority, as appropriate.";

(B) in the second sentence, by inserting ", the Director of the Office of Thrift Supervision," after "Comptroller of the Currency";

(C) in the third sentence—

(i) by inserting ", the Director of the Office of Thrift Supervision," after "Comptroller of the Currency"; and

(ii) by striking "disapproves" and inserting "recommends disapproval of"; and

(D) in the ninth sentence, by inserting ", the Director of the Office of Thrift Supervision," after "Comptroller of the Currency";

(3) in subsection (C)—

(A) in paragraph (1), by striking ", or" at the end thereof and inserting a semicolon;

(B) in paragraph (2), by striking the period at the end thereof and inserting "; or"; and

(C) by adding after paragraph (2) the following new paragraph:

"(3) any acquisition or merger or consolidation if the Comptroller of the Currency or the Director of the Office of Thrift Supervision determines that the insured depository institution to be acquired or any other insured depository institution controlled by the company involved in the proposal is engaging in any unsafe and unsound practice or, following the transaction, will be in an unsafe and unsound condition.";

(4) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively; and

(5) by inserting after subsection (c) the following new subsections:

"(d) EXPEDITED PROCEDURES FOR ACQUISITION OF ADDITIONAL BANKS BY WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) PROCEDURES.—

"(A) Upon receiving from a well capitalized financial services holding company a complete application for approval under this section to acquire an insured depository institution, the Board shall notify the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the appropriate supervisory authority of an interested State, if any, as provided for in subsection (b). Notwithstanding subsection (b)(1), the views and recommendations of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the appropriate supervisory authority of an interested State, as appropriate, shall be submitted within 21 days of the date on which notice is given to them by the Board.

"(B) The Board must approve or disapprove the application within 45 days after the date of receipt of such application.

"(C) In the event of the failure of the Board to act on any such application within 45 days after it has been received, the application shall be deemed to have been approved.

"(D) If the Board has found that an emergency exists requiring expeditious action, or that it must act immediately to prevent probable failure, or if the Board receives a certification described in section 13(f)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)(8)(D)) from the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the State supervisory authority that an insured depository institution is in danger of closing, the Board may waive or shorten the 45-day notice period with respect to any application for an acquisition received pursuant to this subsection.

"(2) EXTENSION OF TIME FOR NOTICE AND HEARING.—The 45-day period may be extended if the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the State supervisory authority recommends disapproval of an application subject to subparagraph (1) in writing based on its consideration of the factors listed in paragraphs (1), (2), or (3) of subsection (c). In the event that the Comptroller of the Currency, the Director of the Office of Thrift Supervision or the State Supervisory authority recommends disapproval, the Board shall follow the review period and procedures for notice and hearing contained in subsection (b)(1).

"(3) GROUNDS FOR DISAPPROVAL.—An application under this subsection shall be disapproved only—

"(A) pursuant to subsection (c)(1), (c)(2) or (c)(3);

"(B) if the financial services holding company does not qualify as, or would not continue to qualify as, a well capitalized financial services holding company after consummation of the transaction; or

"(C) if the Board determines that the transaction would not be consistent with the convenience and needs of the community to be served.

"(e) ACQUISITION INVOLVING DIVERSIFIED HOLDING COMPANIES.—The Board shall not permit any acquisition or merger or consolidation of a financial services holding company involving a diversified holding company or a company that seeks to become a diversified holding company unless all financial services holding companies controlled by the diversified holding company are and remain well capitalized financial services holding companies, and any financial services holding company to be acquired, will be, upon consummation of the transaction, a well capitalized financial services holding company. An application involving a proposal that meets the requirement of this subsection shall be reviewed in accordance with

the procedures and standards under subsection (d).".

(b) CONFORMING AMENDMENTS.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is further amended—

(1) by striking "bank holding company" wherever it appears (except in the last sentence of subsection (a) as added by this section or as it appears in the reference to the "Bank Holding Company Act Amendments of 1970") and inserting—

(A) in subsections (a)(1), (a)(2), (a)(4), (a)(5), (a)(A), and (d), "financial services holding company or diversified holding company"; and

(B) in all other instances, "financial services holding company";

(2) in subsection (a)(2), by striking "causes a bank" and inserting "causes an insured depository institution";

(3) in subsection (a)(4)—

(A) by striking "other than a bank" and inserting "other than an insured depository institution"; and

(B) by striking "assets of a bank" and inserting "assets of an insured depository institution";

(4) in subsection (a)(A), by striking "acquired by a bank" and inserting "acquired by an insured depository institution"; and

(5) in subsection (a)(B), by striking "in a bank" and inserting "in an insured depository institution".

SEC. 413. INTERESTS IN NONBANKING ORGANIZATIONS.

(a) INTERESTS IN NONBANKING ORGANIZATIONS.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(1) in subsection (a)—

(A) by striking the two flush sentences following paragraph (2);

(B) in paragraph (2)—

(i) by striking ", or in the case of a company which has been" and all that follows through "December 31, 1980" and inserting "or in the case of a company that becomes a financial services holding company as a result of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, on January 1, 1993";

(ii) in subparagraph (A)—

(I) by striking "of banking or"; and

(II) by adding at the end thereof ", in the case of a foreign bank, the business of banking, where otherwise permitted through a branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)";

(iii) in subparagraph (B), by striking "those permitted under" and all that follows through "under such paragraph" and inserting "those permitted under subsection (c)(8)(A)(i) subject to all the conditions specified in such subsection or in any order or regulation issued by the Board under such subsection, and (C) those permitted under subsection (c)(16) provided that the financial services holding company is a company exclusive owned in a mutual form by holders of contracts of insurance issued by such financial services holding company, or is a company organized as a reciprocal inter-insurance exchange";

(iv) in the second sentence, by inserting a period after "practices" and striking the remainder of the sentence; and

(v) by striking the last sentence.

(2) in subsection (c)—

(A) by striking the two flush sentences following paragraph (14)(H)(ii);

(B) in paragraph (8)—

(i) in subparagraphs (C), (D), and (E), by redesignating clauses (i) and (ii) as subclauses (i) and (ii), respectively;

(ii) by redesignating subparagraphs (B) through (G) as clauses (ii) through (vii), respectively;

(iii) by redesignating subparagraph (A) as subparagraph (B)(i);

(iv) in subparagraph (B)(vii) (as redesignated), by striking "subparagraph (A), (B), or (C)" and inserting "clause (i), (ii), or (iii)";

(v) by striking "shares of any company" and all that follows through "provide" and inserting:

"(A) shares of any company the activities of which the Board, after due notice and opportunity for comment, has determined (by order or regulation) to be of a financial nature.

"(i) Any activity that the Board has determined (by order or regulation that is effective on December 31, 1993) to be closely related to banking and a proper incident thereto shall be deemed to be of a financial nature for purposes of this paragraph.

"(ii) Any company that was a bank holding company on December 31, 1993 and that, on January 1, 1994, becomes a financial services holding company as a result of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, may without further approval under this paragraph retain shares of any company engaged in any activity described in clause (i) and continue to engage in any activity described in clause (i), provided that such company lawfully acquired the company or commenced the activity pursuant to approval that was granted by the Board prior to January 1, 1994, and was still in effect on December 31, 1993.

"(iii) Notwithstanding clause (ii), no financial services holding company may pursuant to this paragraph engage in, or acquire or retain the shares of any company engaged in, underwriting and dealing in securities that a national bank may not underwrite or deal in under section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), except that a financial services holding company that received approval of the Board to underwrite and deal in such securities may continue to do so pursuant to this section subject to all the same conditions and limitations as required by the Board on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992 of a period of time not to exceed three years from the date of enactment of that Act.

"(iv) Real estate investment, management, or development and the purchase and sale of real estate as principal or broker shall not be deemed to be of a financial nature except to the extent authorized pursuant to clause (i).

"(v) Activities described in paragraph (16) shall not be deemed to be of a financial nature, except providing.";

(vi) by striking "except" before subparagraph (B) (as redesignated); and

(vii) by striking the last five sentences;

(C) in paragraph (13), by striking "or" at the end thereof;

(D) in paragraph (14), by striking the period at the end thereof and inserting a semicolon; and

(D) by inserting after paragraph (14) the following new paragraphs:

"(15)(A) shares of any company engaged in any of the following activities subject to the provisions of subsection (1);

"(i) underwriting, distributing, or dealing in securities;

"(ii) organizing, sponsoring, controlling, or distributing the shares of any registered investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

"(iii) securities brokerage, private placement, or investment advisory activities; or

"(iv) other securities activities permitted for broker or dealers registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or for investment advisers registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.;

"(B) a financial services holding company that acquires control of a securities affiliate under this paragraph shall not, after one year from the date of that acquisition, permit a bank or an insured depository institution that it controls to engage, directly or indirectly, in the United States in activities described in subparagraph (A) except to the extent that these activities are specifically authorized by statute for a national bank (other than underwriting and dealing in obligations issued by a State or political subdivision as permitted by law) or by a regulation or order promulgated by the Office of the Comptroller of the Currency pursuant to that statute before the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992: *Provided, however*, That a financial services holding company acquiring control of a securities affiliate under this paragraph shall not permit, after one year from the date of that acquisition, an insured depository institution it controls to underwrite or deal in obligations issued by a State or political subdivision thereof and shall permit these activities to be conducted only by a securities affiliate and not by an affiliate pursuant to subsection (c)(8);

"(C) for purposes of this paragraph, a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank (as the terms 'agency', 'branch', 'commercial lending company', and 'foreign bank' are defined in section 1 of the International Banking Act of 1978 (12 US.C. 3101)), shall be considered a bank; or

"(16)(A) shares of any company that provides insurance as principal, agent, or broker subject to the provisions of subsection (*l*);

"(B) A financial services holding company that acquires control of an insurance affiliate may not permit an insured depository institution it controls or a subsidiary thereof to provide insurance—

"(i) as principal; or

"(ii) as agent or broker, including insurance in which an affiliate acts as principal, agent or broker, unless the laws of the State in which the bank is located permit banks chartered by the state to provide insurance as agent or broker in that State.

"(C) Nothing in subparagraph (B) shall be construed to limit the ability of a financial services holding company to sell insurance pursuant to subsection (8);

"(D) for purposes of this paragraph, a branch or agency of a foreign bank (as the terms 'branch' and 'agency' are defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)) shall be considered an insured depository institution.";

(3) by amending subsection (i) to read as follows:

"(i) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

"(1) GENERAL NOTICE PROCEDURE.—

"(A) NOTICE REQUIREMENT.—No financial services holding company may engage in activities or acquire or retain ownership or control of the shares of a company engaged in qualified financial activities without providing the Board with at least 45 days prior written notice of the proposed transaction or expansion.

"(B) CONTENTS OF NOTICE.—The notice submitted to the Board shall contain such infor-

mation as the Board shall prescribe by regulation or by specific request in connection with a particular notice. The Board may only require such information as may be relevant to the nature and scope of the proposed transaction and to the Board's evaluation of the criteria provided for in paragraph (2) and subsection (j), as appropriate.

"(C) PROCEDURE FOR AGENCY ACTION.—A notice filed under this subsection shall be deemed to be approved by the Board unless, prior to the expiration of 45 days from the receipt of a complete notice, the Board issues an order setting forth the reasons for disapproval. The Board may extend the 45-day period for an additional 30 days.

"(D) EXPEDITED PROCEDURES FOR WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANIES.—

"(i) COMMENCEMENT OF PERMISSIBLE NONBANKING ACTIVITIES.—Notwithstanding subparagraph (A), any well capitalized financial services holding company may commence through a subsidiary (other than a depository institution), any activity authorized by subsections (c)(15) and (c)(16) of section 4 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1843) or that has been determined by regulation by the Board under section 4(c)(8) of such Act to be permissible for such a financial services holding company or subsidiary. The financial services holding company shall provide the Board with written notice of the commencement of such activity not later than 30 days following such action.

"(ii) Acquisitions.—Notwithstanding subparagraphs (B) and (C), a notice filed under this subsection by a financial services holding company that will qualify as a well capitalized financial services holding company both before and after the proposed transaction shall be deemed to be approved unless prior to the expiration of 30 days after the receipt of a complete notice, the Board issues an order setting forth the reasons for disapproval.

"(E) NOTICE OF APPROVAL.—Any proposal may proceed prior to the expiration of the disapproval period if the Board issues a written notice of approval. The Board may provide for no notice under this paragraph or notice for a shorter period of time with respect to particular activities or transactions.

"(F) EXTENSION OF NOTICE PERIOD.—In the case of any proposal to engage in, or acquire or retain ownership or control of shares of any company engaged in, any activity pursuant to subsection (c)(8) that has not been previously approved by order or regulation, the Board may extend the notice period under this subsection for an additional 90 days.

"(2)(A) GENERAL STANDARDS FOR REVIEW.—In connection with a notice under this subsection, the Board may consider the following criteria—

"(i) the managerial resources of the companies involved;

"(ii) the adequacy of their financial resources, including their capital, giving consideration to the financial resources and capital of others engaged in similar activities;

"(iii) any material adverse effect on the safety and soundness or financial condition of an affiliated depository institution; and

"(iv) whether, in the case of notice for approval involving activities under subsection (c)(8), performance of the activity by a financial services holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

"(B) REQUIREMENTS FOR DISAPPROVAL.—The Board shall not approve any proposed transaction under this subsection if the Board determines that any insured depository institution controlled by the financial services holding company is engaging in any unsafe and unsound practice or is in an unsafe and unsound condition.

"(C) STANDARDS FOR WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANY.—A notice filed under this section by a well capitalized financial services holding company or any subsidiary (other than an insured depository institution of such company) may be disapproved only pursuant to subparagraph (B) or if the Board determines that the financial services holding company is not a well capitalized financial services holding company."; and

(4) by adding after subjection (i) the following new subsections:

"(j) ADDITIONAL CAPITAL REQUIREMENTS FOR NEW FINANCIAL ACTIVITIES.—The Board shall disapprove a notice to engage in, or acquire or retain the shares of a company engaged in, a new financial activity unless the company filing the notice is a well capitalized financial services holding company, or the Board finds that—

"(1) the capital of each insured bank controlled by the company is above the mean capital level of the range for insured banks are adequately capitalized; and

"(2) the financial services holding company is making substantial progress toward qualifying as a well capitalized financial services holding company.

"(k) MAINTENANCE OF HIGHER CAPITAL.—Any financial services holding company that—

"(1) engages, directly or indirectly, in any new financial activity, or controls any company engaged in any such activity, and

"(2) fails to qualify as a well capitalized financial services holding company within the time period specified by the Board,

shall be subject to the provisions of section 38(e)(5) of the Federal Deposit Insurance Act.

"(l) LIMITATIONS ON ACTIVITIES OF FINANCIAL SERVICES HOLDING COMPANIES.—

"(1) DISCLOSURE.—A securities affiliate, an insurance affiliate, or an affiliate engaged in securities or insurance activities authorized pursuant to subsection (c)(8) shall each—

"(A) prominently disclose in writing to its customers that such affiliates are not insured depository institutions and are separate from any affiliated depository insured institution;

"(B) prominently disclose in writing to its customers that securities or insurance products sold, offered, or recommended by such affiliates are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by any affiliated insured depository institutions, and are not otherwise obligations of such insured depository institutions unless such is the case; and

"(C) obtain an acknowledgement of receipt of the disclosures including the date of receipt and the customer's name, address, and account number.

"(2) REGULATIONS.—

"(A) The Securities and Exchange Commission is authorized to adopt regulations in consultation with the Board pursuant to this subsection regarding disclosures by securities affiliates and affiliates engaged in securities activities pursuant to subsection (c)(8).

"(B) The Board is authorized to adopt regulations pursuant to this subsection regarding disclosures by insurance affiliates or by any affiliates engaged in activities pursuant to subsection (c)(8) (other than securities activities).

"(3) DISCLOSURE OF CUSTOMER INFORMATION.—The Board is authorized to issue regulations limiting disclosures of nonpublic customer information between an insured depository institution and affiliates thereof, including an evaluation of the creditworthiness of an issuer or other customer of that insured depository institution or subsidiary thereof or financial, securities, or insurance affiliate.

"(4) AUTHORITY TO IMPOSE ADDITIONAL SAFEGUARDS.—The Board may by regulation or order adopt limitations or restrictions on the extension of credit or other similar financial support, the purchase or sale of assets, or the issuance of guarantees, letters of credit, or other credit facilities to or for the benefit of an affiliate engaged in any new financial activity or to customers of such affiliate by an affiliate that is an insured depository institution controlled by the financial services holding company. Such restrictions and limitations shall be adopted as the Board deems appropriate to address potential adverse effects, including unfair competition, conflicts of interest, and unsafe banking practices. Transactions or similar arrangements between an insured depository institution and the customers of an affiliate engaged in such activities that are both controlled by the same financial services holding company shall not be used to evade any restrictions or limitations imposed under this paragraph.

"(m) EXCEPTION FOR CERTAIN NONBANKING INVESTMENTS.—

"(1) IN GENERAL.—Notwithstanding subsection (a), a financial services holding company may own or control shares of any company engaged in activities not authorized pursuant to this section if—

"(A) the shares were acquired before January 1, 1994, and the aggregate investment in all such shares does not exceed 5 per centum of the financial services holding company's capital and surplus on a consolidated basis; or

"(B) the shares are acquired and held by a securities affiliate as part of a bona fide underwriting or investment banking activity if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis consistent with the nature of such investment banking activity.

"(2) LIMITATIONS.—The limitations in section 5(c) shall apply to the companies described in paragraphs (1)(A) and (1)(B).

"(3) DIVESTITURE IN CASE OF LOSS OF EXEMPTION.—

"(A) If any financial services holding company loses the exemption provided in paragraph (1)(A), such company shall divest ownership and control of all of the shares of such company within 180 days after the loss of such exemption.

"(B) If any financial services holding company loses the exemption provided in paragraph (1)(B) the financial services holding company shall divest ownership and control of such shares within 15 days of the loss of the exemption.".

(b) CONFORMING AMENDMENTS.—Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) is further amended—

(1) by striking "bank holding company" wherever it appears (except in subsections (c)(1), (c)(8)(A)(ii), and (c)(8)(B)(vii)) and inserting "financial services holding company"; and

(2) in subsection (c)—

(A) in paragraph (1)(A), by striking "banking subsidiary" and inserting "insured depository institution";

(B) in paragraphs (1)(C) and (1)(D), by striking "banking subsidiaries" wherever it appears and inserting "insured depository institutions";

(C) in paragraph (1)(D), by striking "banking subsidiaries" wherever it appears and inserting "insured depository institutions"; and

(4) in paragraph (4), by striking "acquired by a bank" and inserting "acquired by an insured depository institution".

SEC. 414. DIVERSIFIED HOLDING COMPANIES.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended to read as follows:

"SEC. 5. DIVERSIFIED HOLDING COMPANIES.

"(a) CAPITAL REQUIREMENTS FOR ACQUISITION OF FINANCIAL SERVICES HOLDING COMPANIES.—No diversified holding company may acquire control of a financial services holding company unless, after the acquisition, such company is a well capitalized financial services holding company.

"(b) NOTICE PROVISION FOR DIVERSIFIED HOLDING COMPANIES.—A diversified holding company that acquires the shares of a financial affiliate, shall file notice with the Board 30 days after the commencement of such activity or the acquisition of such shares.

"(c) LIMITATIONS ON DIVERSIFIED HOLDING COMPANIES AND THEIR AFFILIATES.—

"(1) Except in the case of a foreign bank, no financial services holding company or any of its subsidiaries shall—

"(A) extend credit in any manner to an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company;

"(B) purchase for its own account financial assets or any securities of an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company;

"(C) issue a guarantee, acceptance or letter of credit, including an endorsement or standby letter of credit, to an affiliated diversified holding company or any of its affiliates not otherwise under the control of a financial services holding company; or

"(D) extend credit to any customer of the diversified holding company or any of its affiliates except on an arms-length basis in compliance with section 23B of the Federal Reserve Act (12 U.S.C. 371c-1).

"(2) To the extent that activities are not prohibited under paragraph (1), the restrictions and limitations issued by the Board pursuant to section 4(l) shall apply to diversified holding companies and their financial affiliates that are not otherwise controlled by an affiliated financial services holding company in the same manner and to the same extent as if the diversified holding company were a financial services holding company.

"(3) A diversified holding company and any of its affiliates that are engaged in the purchase and sale of real property, as principal, agent or broker, may not market such service jointly with any affiliated insured depository institution unless such insured depository institution is permitted under State law to engage in such purchase or sale of property.

"(4) A diversified holding company that either directly or through an affiliate (not otherwise under the control of an affiliated financial services holding company) provides insurance as principal, agent or broker, may not permit an affiliated insured depository institution or a subsidiary thereof to provide insurance as agent or broker, including insurance in which the diversified holding company or such affiliate acts as principal, agent or broker, unless the laws of the State in which the insured depository institution is located permit depository institutions chartered by such State to provide insurance as agent or broker in that State.

"(5) In the case of a foreign bank that is a financial services holding company, the Board shall apply the restrictions in paragraph (1) to the United States affiliates of such foreign bank and the foreign bank in the same manner and to the same extent as they apply to domestic financial services holding companies and their affiliates.".

SEC. 415. ADMINISTRATION.

The Bank Holding Company Act of 1956, is amended by inserting after section 5 the following new section:

"SEC. 6. ADMINISTRATION.

"(a) REGISTRATION OF FINANCIAL SERVICES HOLDING COMPANY.—Within 180 days after becoming a financial services holding company, each financial services holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and inter-company relationships of the financial services holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this Act. The Board may, in its discretion, extend the time within which a financial services holding company shall register and file the requisite information.

"(b) REGULATIONS AND ORDERS.—

"(1) The Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof: *Provided, however*, That any capital requirements for diversified holding companies or financial services holding companies shall only be imposed pursuant to subsection (f)(2)(B) of this section.

"(2) The Board shall propose and issue regulations for the purpose of implementing this Act. Such regulations shall be adopted and published as final before January 1, 1994.

"(c) RECORDS, REPORTS AND EXAMINATIONS.—

"(1) RECORDS AND REPORTS.—

"(A) RECORDS RELATING TO DIVERSIFIED HOLDING COMPANIES.—A financial services holding company shall obtain such information and make and keep such records as the Board may prescribe concerning the financial services holding company's policies and procedures for monitoring and controlling financial and operational risks to its insured depository institution subsidiaries from the activities of the diversified holding company or its financial affiliates that are not controlled by the financial services holding company. Such records shall describe the activities conducted by the diversified holding company and such financial affiliates that are likely to have a material impact on the financial or operational condition of the insured depository institution subsidiaries of the financial services holding company, and the customary sources of capital and funding of such activities.

"(B) REPORTS OF FINANCIAL SERVICES HOLDING COMPANY AND DEPOSITORY INSTITUTIONS.—The Board from time to time may require the financial services holding company and its insured depository institution subsidiaries to file reports under oath to keep it informed as to whether the provisions of this Act and such regulations and orders issued thereunder have been complied with. With regard to insured depository institutions controlled by a financial services holding company, the Board shall consult with and, to the extent possible, use reports obtained by, the appropriate Federal banking agency for such institutions.

"(C) REPORTS OF FINANCIAL SERVICES HOLDING COMPANIES AND AFFILIATES.—The Board may require a financial services holding company, and any affiliate it controls, to file reports if the Board reasonably believes that the activities or financial condition of such holding company or affiliate is likely to have a material impact on the financial or operational condition of any insured depository institution subsidiary (and a subsidiary thereof) of the financial services holding company. The Board shall consult with and, to the extent possible, use reports obtained by, the functional regulator of the financial services holding company or affiliate to obtain the necessary information.

"(D) REPORTS OF DIVERSIFIED HOLDING COMPANIES AND FINANCIAL AFFILIATES.—The Board may require a diversified holding company and any financial affiliate not controlled by a financial services holding company to file reports if the Board reasonably believes that the activities or financial condition of such diversified holding company or financial affiliate is likely to have a material impact on the financial or operational condition of the insured depository institution subsidiaries (and subsidiaries thereof) of the financial services holding company. The Board shall consult with and, to the extent possible, use reports obtained by, the functional regulator of the diversified holding company or financial affiliate to obtain the necessary information.

"(E) RECIPROCAL ACCESS.—The functional regulator of a diversified holding company or a financial affiliate may have access on a reciprocal basis to reports, other than examination reports, obtained by the Board under this subsection with respect to an affiliated insured depository institution or financial services holding company, if the functional regulator reasonably believes that the activities or financial condition of such institution or financial services holding company is likely to have a material impact on the financial or operational condition of the diversified holding company or a financial affiliate. The Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation may have access on a reciprocal basis to reports, other than examination reports, obtained by the Board under this subsection with respect to any affiliate of the insured depository institution, if the Comptroller of the Currency, the Director of the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation reasonably believes that the activities or financial condition of such affiliate or company is likely to have a material impact on the insured depository institution.

"(F) RESTRICTION ON DISCLOSURE.—Any reports obtained from another agency or regulator under this subsection shall not be disclosed to the public by the recipient agency or regulator and shall not be disclosed to any other governmental agency or to the Congress except as otherwise permitted by law. Reports obtained from another agency or regulator under this subsection may be used only to carry out the purposes of this subsection or as otherwise permitted by law.

"(2) EXAMINATIONS.—

"(A) FINANCIAL SERVICES HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS.—The

Board may make on-site examinations of each financial services holding company, its insured depository institution subsidiaries (and subsidiaries thereof) and, subject to subparagraphs (B) through (E), any of its other affiliates. Where appropriate, the Board shall consult with, and to the extent possible, use the report of examination made by the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the appropriate State bank supervisory authority.

"(B) FINANCIAL SERVICES HOLDING COMPANIES AND AFFILIATES.—The Board may examine the financial services holding company and any affiliate it controls—

"(i) to determine whether such holding company or affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in sections 4(1) and 5(c);

"(ii) to determine compliance with sections of the Federal Deposit Insurance Act, as applicable; or

"(iii) if the agency reasonably believes that such holding company or affiliate is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to any insured depository institution subsidiary (or a subsidiary thereof).

The Board shall consult with and, to the extent possible, use the report of examinations made by the functional regulator, if any, of an affiliate to obtain the necessary information. If such reports do not contain the necessary information, the Board shall request the functional regulator to conduct an examination to obtain such information. In the event the functional regulator does not conduct an examination within a reasonable period of time, the Board may conduct the examination, but shall notify the functional regulator before doing so.

"(C) DIVERSIFIED HOLDING COMPANIES AND FINANCIAL AFFILIATES.—The Board may examine the diversified holding company and any financial affiliate not controlled by a financial services holding company—

"(i) to determine whether such holding company or affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in sections 4(1) and 5(c);

"(ii) to determine compliance with sections of the Federal Deposit Insurance Act, as applicable; or

"(iii) if the agency reasonably believes that such holding company or affiliate is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to any insured depository institution subsidiary (or a subsidiary thereof).

The Board shall consult with and, to the extent possible, use the report of examinations made by the functional regulator, if any, of the diversified holding company or financial affiliate to obtain the necessary information. If such reports do not contain the necessary information, the Board shall request the functional regulator to conduct an examination to obtain such information. In the event the functional regulator does not conduct an examination within a reasonable period of time, the Board may conduct the examination, but shall notify the functional regulator before doing so.

"(D) RECIPROCAL EXAMINATION OF INSURED DEPOSITORY INSTITUTION AFFILIATES CONTROLLED BY FINANCIAL SERVICES HOLDING COMPANIES.—The functional regulator for a financial affiliate may examine an insured depository institution affiliate if the regulator reasonably believes that such institution is engaged in a particular transaction or course of conduct that directly or indirectly may constitute a material risk to the financial affiliate. The functional regulator shall consult with, and, to the extent possible, use the report of examinations made by, the appropriate Federal banking agency to obtain the necessary information. If such report does not contain the necessary information, the functional regulator shall request the appropriate Federal banking agency to conduct an examination to obtain such information. In the event the appropriate Federal banking agency does not conduct an examination within a reasonable period of time, the functional regulator may conduct the examination and shall notify the appropriate Federal banking agency before doing so.

"(E) NONFINANCIAL AFFILIATES OF A DIVERSIFIED HOLDING COMPANY.—The Board may examine any of the non-financial affiliates of a diversified holding company in order to determine whether such affiliate is engaged in a particular transaction that would violate, directly or indirectly, the restrictions prescribed in section 5(c).

"(F) COST OF EXAMINATIONS.—The cost of examinations of a diversified holding company and any affiliate of a diversified holding company not controlled by a financial services holding company shall be assessed against, and paid by, the diversified holding company or the affiliate, whichever is the subject of the examination. The cost of examinations of a financial services holding company and its subsidiaries shall be assessed against, and paid by, the financial services holding company.

"(d) TRANSFER OF RECORDS.—No agency or department transferring records as provided by this section shall be deemed to have waived any privilege applicable to those records under law.

"(e) REPORT TO THE CONGRESS; RECOMMENDATIONS.—The Board shall include in its annual report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

"(f) CEASE AND DESIST AUTHORITY; TERMINATION OF ACTIVITIES OR OWNERSHIP OR CONTROL OF NONBANK SUBSIDIARIES CONSTITUTING SERIOUS RISK.—

"(1) In addition to any other authority of the Board, the Board may take any action described in paragraph (2) if it has reasonable cause to believe that—

"(A) any financial affiliate of an insured depository institution, or any other affiliate controlled by a financial services holding company, is engaged in activities in such a manner as to constitute a serious risk to the financial safety, soundness, or stability of such insured depository institution; or

"(B) the diversified holding company, the financial services holding company controlled by the diversified holding company, or any affiliate is in significant danger of default and either poses a significant risk to the liquidity or solvency of an affiliated insured depository institution or is likely to cause a significant dissipation of its assets or earnings.

"(2) Subject to paragraph (1), the Board—

"(A) may institute cease and desist proceedings or issue a temporary order requiring the diversified holding company or financial services holding company controlled by the diversified holding company or affiliate thereof engaged in qualified financial activities to cease and desist from such activity and take affirmative action to prevent significant dissipation of assets or earnings, of an insured depository institution as prescribed in section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818);

"(B) may institute cease and desist proceedings or issue a temporary order requiring a financial services holding company described in paragraph (1)(B) to increase its capital; and

"(C) in the event the diversified holding company or the financial services holding company controlled by the diversified holding company or the affiliate thereof does not comply with the order issued pursuant to subparagraph (A) or (B), may order the diversified holding company or such financial services holding company or any such affiliate, after due notice and opportunity for hearing and after considering the views of the insured depository institution's appropriate Federal banking agency and the appropriate State authority in the case of a State-insured depository institution, to terminate (within 120 days, or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such affiliate either by sale to any third party or by distribution of the shares of the affiliate to the shareholders of the diversified holding company or financial services holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing diversified holding company or financial services holding company, and such holding company shall not make any charge to its shareholders arising out of such a distribution.

"(3) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(g) OATHS AND AFFIRMATIONS; DEPOSITIONS; SUBPOENAS.—

"(1) In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas including witness subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection.

"(2) The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. A subpoena issued under this section may be served upon any person who is not found within the territorial jurisdiction of any court in the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not

to be found in the United States may be issued only on the prior approval of the Board. Any party to the proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such court shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

"(3) Any service required under this subsection in any State or in any territory or other place subject to the jurisdiction of the United States may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide, and all process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper.

"(4) Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in obedience to the subpoena of the Board shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.".

SEC. 416. RESERVATION OF RIGHTS TO STATES; PREEMPTION OF ANTI-AFFILIATION PROVISIONS.

Section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) is amended to read as follows:

"SEC. 7. RESERVATION OF RIGHTS TO STATES; ANTI-AFFILIATION PROVISIONS.

"(a) No provision of this Act shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks, diversified holding companies, financial services holding companies, and subsidiaries thereof.

"(b)(1) Notwithstanding subsection (a), no provision of law of any State, including, without limitation, any provision relating to the business of insurance, banking (including any law relating to savings associations as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), real estate, securities, finance, retail or other law regulating the provisions of financial or other services, shall prevent or impede or shall be interpreted or applied by any administrative, executive, or judicial authority with the purpose or effect of preventing or impeding—

"(A) any insured depository institution, any affiliate thereof or any representative of any such institution or affiliate thereof from being acquired, owned or controlled by, or from being affiliated in any manner with, any company which is or becomes a financial services holding company or with any affiliate of such company because of the types of activities engaged in directly or indirectly by such insured depository institution or any affiliate thereof, or by any representative of any such institution or affiliate thereof or because of the types of activities engaged in directly or indirectly by any such company or affiliate thereof, or by any representative of any such company or affiliate thereof;

"(B) any company which is or becomes a financial services holding company or affiliate thereof, any representative of any such company or affiliate thereof, from acquiring, owning, or controlling or being affiliated in any way with any insured depository institution or affiliate thereof because of the types of activities engaged in directly or indirectly by any such company or affiliate thereof, or any representative of any such company or affiliate thereof, or because of the types of activities engaged in directly or indirectly by any such insured depository institution or affiliate thereof, or by any representative of such institution or affiliate thereof; or

"(C) any insured depository institution or any affiliate thereof, or any representative of any such institution or affiliate thereof, from offering or marketing products or services of any affiliated financial services holding company or affiliate thereof or from having its products or services offered or marketed by any affiliate thereof, or by any representative of such company or affiliate—

"(i) except as provided in sections 4(c)(16)(B) and 5(c)(3) and 5(c)(4); and

"(ii) except with regard to offering and marketing insurance pursuant to section 4(c)(8).

Nothing in this subparagraph shall exempt any company which is or becomes a financial services holding company or an affiliate thereof, or any representative of any such company or affiliate, from complying with, or shall annul, alter, or affect the application of, the laws of any State relating to the examination, supervision, or regulation of providers of financial services or the protection of consumers, except to the extent that the intent, purpose or effect of those laws is inconsistent with this subsection or with the purposes of this Act and then only to the extent of the inconsistency.

"(2) For purposes of this subsection, an insured depository institution includes a branch, agency, or commercial lending company subsidiary of a foreign bank, as those terms are defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

SEC. 417. PENALTIES.

Section 8 of the Banking Holding Company Act of 1956 (12 U.S.C. 1847) is amended—

(1) by striking "bank holding company" wherever it appears and inserting "financial services holding company";

(2) in subsection (a)—

(A) in paragraph (2), by striking "profit significantly" and inserting "obtain anything of value"; and

(B) by striking the flush text following paragraph (2);

(3) in subsection (b)(1), by striking "forfeit and"; and

(4) in subsection (d)—

(A) in the heading, by striking "Penalty" and inserting "Civil penalty"; and

(B) in paragraphs (1) through (4), by inserting "civil" before "penalty" each place it appears.

SEC. 418 ANTITRUST REVIEW.

(a) ANTITRUST REVIEW.—Section 11(b)(1) of the Bank Holding Company Act (12 U.S.C. 1849(b)(1)) is amended by inserting ", except that such period may be eliminated or reduced with the concurrence of the Attorney General" before the period at the end of the third sentence.

(b) CONFORMING AMENDMENTS.—Section 11 of the Bank Holding Company Act of 1956 (12 U.S.C. 1849) is further amended—

(1) by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(2) in subsection (b)(1), by striking "failure of a bank" and inserting "failure of an insured depository institution".

(c) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended by inserting ", except that such period may be eliminated or reduced with the concurrence of the Attorney General" before the period at the end of the third sentence.

SEC. 419. TECHNICAL AMENDMENT.

Section 1 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 note) is amended by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992".

SEC. 420. EFFECTIVE DATE.

Sections 411 through 419 shall become effective on January 1, 1994, except that section 4(c)(8)(A)(ii) of the Bank Holding Company Act of 1956 (as added by section 413(a)(2)), shall be effective on the date of enactment of this title.

SEC. 421. APPLICATION OF THE LIMITATIONS ON TYING ARRANGEMENTS AND INSIDER LENDING TO FINANCIAL SERVICES HOLDING AND DIVERSIFIED HOLDING COMPANIES.

(a) DEFINITIONS.—Section 106(a) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971) is amended by striking "bank holding company" and inserting "financial services holding company and diversified holding company".

(b) CERTAIN TYING ARRANGEMENTS PROHIBITED.—Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2)(A) A financial services holding company and any subsidiary (other than a bank) of such holding company and a diversified holding company and any subsidiary (other than a bank) of such holding company shall not in any manner extend credit, lease, or sell property of any kind, or furnish any service or fix or vary the consideration for any of the foregoing, on the condition or requirement that the customer shall obtain credit, property or service from an affiliated bank except as provided in subparagraph (B).

"(B) A financial services holding company and any subsidiary (other than a bank) of such holding company and a diversified holding company and any subsidiary (other than a bank) of such holding company may vary the consideration—

"(i) for any extension of credit, lease or sale of property of any kind, or the furnishing of any service on the condition or requirement that the customer shall obtain some credit, property, or service from an affiliated bank provided that the products or services offered to and obtained by the customer are also separately available to such customer on substantially the same terms, including interest rate, collateral, and cost, as those prevailing at the time for comparable transactions that are not subject to such conditions or requirements; or

"(ii) for any loan, discount, deposit, or trust service on the condition or requirement that the customer shall obtain a loan, discount, deposit or trust service from an af-

filiated bank provided that such products or services described in this subparagraph are also separately available to such customer.

"(C) The Board may adopt such regulations to carry out the purposes of this paragraph which may include such restrictions or limitations regarding subparagraph (B) as it deems necessary or appropriate in the public interest.".

(c) CONFORMING AMENDMENTS.—Sections 22(h)(6) (C) and (D) of the Federal Reserve Act (12 U.S.C. 375b(6) (C) and (D)) are each amended—

(1) by striking "bank holding company" wherever it appears and inserting "financial services holding company and diversified holding company"; and

(2) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting "Financial Services Holding Company Act of 1992".

SEC. 422. PROVISIONS EXEMPTING FINANCIAL SERVICES HOLDING COMPANIES FROM THE SAVINGS AND LOAN HOLDING COMPANY ACT.

Section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)) is amended—

(1) in paragraph (1), by amending subparagraph (D) to read as follows:

"(D) SAVINGS AND LOAN HOLDING COMPANY.—

"(i) Except as provided in clause (ii), the term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(ii) No company which is a financial services holding company or a diversified holding company registered under and subject to the provisions of the Financial Services Holding Company Act of 1992, other than a company described in section 4(f) of such Act (12 U.S.C. 1843(f)), and no company controlled by such company, shall be deemed to be a savings and loan holding company."; and

(2) by adding after paragraph (4) the following new paragraph:

"(5) EXEMPTION FOR FINANCIAL SERVICES HOLDING COMPANIES AND DIVERSIFIED HOLDING COMPANIES.—The provisions of this section shall not apply to any company that is a financial services holding company or a diversified holding company registered under, and subject to, the provisions of the Financial Services Holding Company Act of 1992, other than companies described in section 4(f) of such Act (12 U.S.C. 1843(f)), or to any company directly or indirectly controlled by such company (other than a savings association)."

CHAPTER 2—FINANCIAL ACTIVITIES OF NATIONAL BANKS

SEC. 426. AMENDMENTS TO THE BANKING ACT OF 1933.

(a) DEALING, UNDERWRITING AND PURCHASING SECURITIES.—Paragraph Seventh of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)) is amended by adding at the end thereof the following: "If an association is not an affiliate of a securities affiliate (as the terms 'affiliate' and 'securities affiliate' are defined in section 2 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841)), the limitations and restrictions contained in this paragraph as to dealing in, underwriting, and purchasing securities for its own account shall not apply to the distribution of securities issued by investment companies (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)): *Provided*, That notwithstanding any other provision of law (including this section), an association shall not in the United States, pursuant to any express or incidental power, underwrite, distribute, or sell interests in a pool of assets originated or purchased by the association or its affiliate, and an association shall not continue to engage in such activity pursuant to any order issued by the Comptroller of the Currency: *Provided further*, That no association shall sponsor, organize or control an investment company registered under the Investment Company Act of 1940: *Provided further*, That no association shall engage in the United States in any securities activity except to the extent that such activity is specifically authorized by statute, or authorized by regulation, order, or interpretation issued by the Office of the Comptroller of the Currency pursuant to that statute, on the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, provided that this shall not authorize the underwriting or distributing by an association of securities backed by or representing an interest in mortgages or other assets originated or purchased by the association or its affiliate.".

(b) CONFORMING AMENDMENTS.—

(A) Section 20 of the Banking Act of 1933 (12 U.S.C. 377) is repealed.

(B) Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is repealed.

SEC. 427. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a) SALE OF INSURANCE AUTHORIZED.—In addition to the powers vested by law in national banking associations, any such association located in a place that has a population not exceeding 5,000 (as shown by the preceding decennial census) may sell insurance so long as such insurance activities are confined to that place, and the insurance is sold only to residents of the State in which the association is located or to natural persons employed in that State: *Provided*, That no such association shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *Provided further*, That the association shall not guarantee the truth of any statement made in any application made for such insurance.

(b) DEFINITION.—For purposes of subsection (a), the term 'residents of that State' includes—

(1) companies incorporated in, or organized under the laws of, the State;

(2) companies licensed to do business in the State; and

(3) companies having an office in the State.

(c) ADDITIONAL AUTHORITY UNDER STATE LAW.—Notwithstanding the limitations in subsection (a), a national banking association organized under the laws of the United States may act as agent in soliciting and selling insurance and collecting premiums in one or more States in which such association or any of its branches is located to the extent to which such activities are permitted by such States for banks located in those States.

(d) CONFORMING AMENDMENT.—Chapter 461 of the Act of September 7, 1916 (39 Stat. 753; 12 U.S.C. 92 note) is further amended by striking "That in addition to the powers now vested by law in national banking associations" and all that follows through "filing his application for insurance.".

SEC. 428. AMENDMENTS TO SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT.

(a) Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (a)—

(i) in paragraph (2), by striking the period at the end thereof and inserting ": *Provided, however*, That notwithstanding the foregoing, a loan or extension of credit shall not be deemed to be made to any affiliate if—

"(A) the member bank approves such loan or extension of credit in accordance with substantially the same standards, procedures, and terms that it has applied to similar loans or extensions of credit the proceeds of which are not transferred to or for the benefit of an affiliate; and

"(B) such loan or extension of credit is not made for purposes of evading any of the requirements of this section."; and

(ii) by adding after paragraph (4) the following new paragraph:

"(5) No financial services holding company shall permit an insured depository institution that it controls to engage in any covered transaction if such covered transaction exceeds 5 percent of the capital stock and surplus of the insured depository institution unless 5 days prior notice is provided to the Board and the appropriate Federal banking agency for the insured depository institution, if different;"

(2) in subsection (b)—

(A) in paragraph (1)(D), by amending clause (ii) to read as follows:

"(ii) any investment company, commodity pool, or other company engaged in substantially the same activities as an investment company or commodity pool with respect to which a member bank or any affiliate is an investment advisor as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(20)), commodity trading advisor as defined in section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)), or performs substantially equivalent activities which are substantially equivalent to those of an investment advisor or commodity trading advisor; and";

(B) in paragraph (2)(A), by inserting "and of which the member bank owns at least 80 per centum of the voting stock" after "member bank";

(C) in paragraph (5), by inserting "principally engaged in deposit taking or lending activities" after "trust company";

(D) in paragraph (7)—

(i) in subparagraph (D), by striking "or" at the end thereof;

(ii) in subparagraph (E)—

(I) by inserting "to, or" after "standby letter of credit,"; and

(II) by striking "or" at the end thereof; and

(iii) by adding after subparagraph (E) the following new subparagraphs:

"(F) the assumption by a member bank of a liability of any affiliate whether directly or through the transfer of such affiliate to the member bank;

"(G) a loan or extension of credit to any company, or the issuance of or participation in a standby letter of credit, asset purchase agreement, indemnification, guarantee, insurance or other facility with any company, the purpose of which is to enhance the marketability of securities or other obligations or assets, other than those securities that a member bank may underwrite pursuant to section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), that are underwritten or distributed by the affiliate, unless there is substantial participation by other lenders in such loan, extension of credit, letter of credit, agreement, indemnification, guarantee, insurance or other facility; or

"(H) any other financial arrangement that is determined by the Board by regulation to be substantially equivalent to a transaction described in this paragraph;";

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting "to, or" after "letter of credit issued"; and

(ii) by striking "at the time of the transaction"; and

(B) in paragraph (4)—

(i) by inserting "the member bank or" after "issued by"; and

(ii) by inserting "to, or" after "letter of credit"; and

(4) in subsection (d)(5), by inserting "provided that the company provides services solely to affiliated member banks" before the semicolon.

(b) Section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) is amended—

(1) in subsection (a)(2)(E)—

(A) in clause (i), by striking ", or" and inserting a semicolon;

(B) in clause (ii), by striking the period and inserting "; or"; and

(C) by adding at the end thereof the following new clause:

"(iii) if the third party is a customer of an affiliate (as defined in section 2 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841) unless—

"(I) the member bank approves such transaction in accordance with substantially the same standards, procedures, and terms that it has applied to similar transactions with persons who are not customers of an affiliate; and

"(II) such transaction or series of transactions is not made for the purpose of evading any of the requirements of this section."; and

(2) in subsection (b)(2), by inserting "officers, directors, or employees of" after "of the bank or".

SEC. 429. CUSTOMER DISCLOSURE.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding after subsection (n) the following new subsection:

"(o) CUSTOMER DISCLOSURE REGARDING SECURITIES, INSURANCE AND OTHER NONBANKING PRODUCTS.—

"(1) PRODUCTS OFFERED, RECOMMENDED OR SOLD BY DEPOSITORY INSTITUTIONS.—An insured depository institution shall prominently disclose in writing to its customers pursuant to regulations adopted by its appropriate Federal banking agency, that securities or insurance products offered, recommended, or sold by the insured depository institution are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the insured depository institution or an affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution unless such is the case.

"(2) PRODUCTS OFFERED, RECOMMENDED OR SOLD ON BANK PREMISES OR THROUGH JOINT MARKETING ACTIVITIES.—An insured depository institution shall not permit securities or insurance products to be offered, recommended, or sold on bank premises, or to bank customers as part of joint marketing activities with another entity, unless the entity prominently discloses in writing that it is not an insured institution and is separate from the insured depository institution in addition to the disclosures required in paragraph (1).

"(3) CUSTOMER ACKNOWLEDGEMENT OF DISCLOSURES.—No insured depository institution shall permit the sale of securities or insurance products to be consummated unless an acknowledgement of receipt of the disclosures described in paragraphs (1) and (2) including the date of receipt and the customer's name, address and account number is obtained from the customer.

"(4) REGULATIONS.—The appropriate Federal banking agencies may adopt regulations implementing this subsection and applying these provisions to nonbank products sold in a similar manner.".

SEC. 430. BANKERS' BANKS.

(a) Section 5136 (Seventh) of the Revised Statutes (12 U.S.C. 24 (Seventh)) is further amended by inserting "or their holding companies" after "providing services for other depository institutions".

(b) Section 5169(b)(1) of the Revised Statutes (12 U.S.C. 27(b)(1)) is amended by inserting "or their holding companies" after "other depository institutions" the second time it appears.

CHAPTER 3—NON-BANKING ACTIVITIES OF FOREIGN BANKS IN THE UNITED STATES

SEC. 431. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) IN GENERAL.—Section 8 of the International Banking Act of 1978 (12 U.S.C. 3106) is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1)(A) Except as otherwise provided in this section, any foreign bank—

"(i) that maintains a branch or agency in the United States, or

"(ii) that directly or indirectly owns or controls a commercial lending company organized under State law,

shall be subject to the provisions of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841 to et seq.) and to sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850, 1971 et seq.) in the same manner and to the same extent as a financial services holding company.

"(B) Any company that directly or indirectly owns or controls a foreign bank described in subparagraph (A) shall be subject to the provisions of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841 et seq.) and to sections 105 and 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1850, 1971 et seq.) in the same manner and to the same extent as a company that owns or controls a financial services holding company.

"(C)(i) Notwithstanding subparagraphs (A) and (B), no foreign bank or company described in this subsection shall, by reason of this subsection alone, be deemed to be a financial services holding company or a company that controls a financial services holding company for purposes of section 3 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842).

"(ii) Notwithstanding clause (i), a foreign bank or company described in this subsection that seeks to acquire, directly or indirectly, more than 5 percent of the shares of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), other than a foreign bank that is an insured depository institution solely by virtue of operating an insured branch, must obtain the prior approval of such acquisition by the Board under section 3 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842) as if the foreign bank or company were a financial services holding company or company that owns or controls a financial services holding company.

"(2) The Board shall disapprove any notice or application under section 4(c) of the Financial Services Holding Company Act of 1992 by a foreign bank or foreign company controlling a foreign bank unless the Board determines that the foreign bank or foreign company has capital equivalent to that of a domestic financial services holding company engaged in similar activities."

(2) in subsection (c)(1)—

(A) by amending the second sentence to read as follows: "Notwithstanding the preceding sentence, no foreign bank or other company referred to in this subsection may retain, pursuant to this subsection, the ownership or control of any company engaged in the business of underwriting, distributing or otherwise buying or selling stocks, bonds, and other securities in the United States after three years from the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992.";

(B) in the third sentence, by striking "Except in the case of affiliates described in the preceding sentence, nothing" and inserting "Nothing";

(C) in the fifth sentence, by striking "the term 'domestically-controlled affiliate covered in 1978'" and all that follows in such sentence and inserting a period; and

(D) by striking the sixth sentence.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall become effective on January 1, 1994.

CHAPTER 4—AMENDMENTS TO THE SECURITIES ACTS

SEC. 436. AMENDMENTS TO THE SECURITIES ACT OF 1933.

(a) BANK-ISSUED SECURITIES.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)), is amended—

(1) by striking "or any security issued or guaranteed by any bank;" and

(2) by striking "a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank".

(b) SAVINGS ASSOCIATION-ISSUED SECURITIES.—Section 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(5)) is amended to read as follows:

"(5) Any security issued by—

"(A) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1986 (26 U.S.C. 521);

"(B) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code;

"(C) a corporation described in section 501(c)(2) of such Code and organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in subparagraph (A) or (B); or

"(D) a savings and loan association or Federal savings bank issued or exchanged in connection with a transaction pursuant to which a savings and loan association or Federal savings bank converts from the mutual stock form of ownership under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) or section 402 of the National Housing Act (12 U.S.C. 1725(j)).".

(c) TREATMENT OF CERTAIN BANK AND SAVINGS ASSOCIATION INSTRUMENTS.—Section 3 of the Securities Act of 1933 (15 U.S.C. 77c) is amended by adding after subsection (c) the following new subsection:

"(d)(1) Except as hereinafter expressly provided, in those circumstances in which an interest in any of the following is otherwise deemed to be a 'security' within the meaning of section 2, the provisions of this Act shall not apply to—

"(A) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank or savings association,

"(B) a share account issued by a savings association if such account is insured by the Federal Deposit Insurance Corporation,

"(C) a banker's acceptance,

"(D) a letter of credit issued by a bank or savings association, or

"(E) a debit account at a bank or savings association arising from a credit card or other similar arrangement,

except that this paragraph shall not exempt from the provisions of this Act any participation in such an interest, account, certificate, instrument, acceptance, or letter of credit, other than a participation that is a direct obligation of a bank or savings association.

"(2) For purposes of this subsection, the term 'deposit' means the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business—

"(A) for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account;

"(B) which is evidenced by its certificate of deposit, a check or draft drawn against a deposit account and certified by a bank or savings association, a letter of credit or a traveler's check, or by any other similar instrument on which the bank is liable;

"(C) which consists of nonpooled assets of individual trust funds received or held by such bank or savings association whether held in the trust department or deposited in any other department of such bank or savings association;

"(D) which is received or held by a bank or savings association for a special or specific non-investment purpose, including, without being limited to, escrow funds, funds held in security for any obligation due to the bank or savings association or others (including funds held as dealers' reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing subscriptions to United States Government securities, funds held to meet its acceptances or letters of credit, and withheld taxes; or

"(E) which is insured by the Federal Deposit Insurance Corporation, is subject to deposit reserve requirements adopted by the Board of Governors of the Federal Reserve System, or is regulated by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System as a deposit.

"(3) For purposes of this subsection, the term 'savings association' shall have the meaning given in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).".

(d) EXEMPTION OF CERTAIN HOLDING COMPANY FORMATIONS FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding after paragraph (6) the following new paragraph:

"(7) transactions involving offers or sales of equity securities, in connection with the acquisition, under section 3(a) of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842(a)), of a bank by a financial services holding company, or a financial services holding company by a diversified holding company if—

"(A) the acquisition occurs solely as part of a reorganization in which a person or group of persons—

"(i) exchanges shares of a bank for shares of a newly formed financial services holding company, or shares of a financial services holding company for shares of a newly formed diversified holding company; and

"(ii) receives, after such reorganization, substantially the same proportional share interests in the newly formed financial services holding company as they held in the bank or financial services holding company, as the case may be, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under State or Federal law; and

"(B) the newly formed company has substantially the same assets as it predecessor.".

(e) TECHNICAL AMENDMENTS.—

(1) Section 12(2) of the Securities Act of 1933 (15 U.S.C. 771(2)) is amended by inserting "or (d)" after "subsection (a)".

(2) Section 304(a)(4) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)) is amended by inserting "or 3(d)" after "section 3(a)".

SEC. 437. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) REGULATION OF BANK BROKER ACTIVITIES.—Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

"(4) BROKER.—

"(A) IN GENERAL.—The term 'broker' means any person engaged in the business of affecting transactions in securities for the account of others.

"(B) EXCLUSION OF BANKS.—Such term does not include a bank unless the bank publicly solicits such business or is compensated for such business by the payment of commissions or similar remuneration based on effecting transactions in securities, excluding fees calculated as a percentage of assets under management (hereinafter referred to as 'incentive compensation').

"(C) BANK ACTIVITIES.—A bank shall not be deemed to be a broker because it engages in one or more of the following activities:

"(i) Enters into contractual or other arrangements with a broker or dealer registered under this Act pursuant to which the broker or dealer will offer brokerage services on or off the premises of the bank if—

"(I) such broker or dealer is clearly identified as the person performing the brokerage services;

"(II) bank employees perform only clerical or ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization;

"(III) bank employees do not receive incentive compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of a self-regulatory organization; and

"(IV) such services are provided by the broker or dealer on a basis in which all customers are fully disclosed.

"(ii) Engages in trust activities (including effecting transactions in the course of such trust activities) permissible for national banks under section 1 of Public Law 87-722 (12 U.S.C. 92a) or for State banks under relevant State trust statutes or law (excluding securities safekeeping, self-directed individual retirement accounts, or managed agency or other functionally equivalent accounts of a bank) unless the bank—

"(I) publicly solicits brokerage business other than by advertising, in conjunction with advertising its other trust activities, that it effects transactions in securities; and

"(II) receives incentive compensation.

"(iii) Effects transactions in exempted securities, other than municipal securities, or in commercial paper, bankers' acceptances, or commercial bills.

"(iv) Effects transactions in municipal securities and does not have a securities affiliate as provided in section 4(c)(15) of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1843(c)(15)).

"(v) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries.

"(vi) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that attempts to maintain a constant net asset value per share and has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less.

"(vii) Effects transactions for the account of any affiliate of the bank, as the term 'affiliate' is defined in section 2 of the Banking Act of 1933 (12 U.S.C. 221a), treating all banks as member banks for purposes of such definition.

"(viii) Effects sales—

"(I) as part of a primary offering of securities by an issuer, not involving a public offering, pursuant to section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; and

"(II) exclusively to: a bank as defined in section 3(a)(2) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Securities Act of 1933; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; an insured institution, as defined in section 401 of the National Housing Act; an employee benefit plan within the meaning of title 1 of the Employee Retirement Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, that is a bank as defined in section 3(a)(2) of the Securities Act of 1933, or an insurance company as defined in section 2(17) of the Investment Company Act of 1940, or an investment adviser registered under the Investment Advisers Act of 1940, or if the employee benefit plan has total assets in excess of $5,000,000; an employee benefit plan as defined in section 3 of the Employee Retirement Income Security Act of 1974, established and maintained by a State, its political subdivisions, or any agency or instrumentality of a State or its political subdivisions exclusively for the benefit of its employees or their beneficiaries that is governed by fiduciary principles comparable to those contained in such Act, if (aa) the plan has total assets in excess of $25,000,000, and (bb) investment decisions for the plan are made by a plan fiduciary, as defined in section 3(21) of such Act, that is a bank as defined in section 3(a)(2) of the Securities Act of 1933, an insurance company as defined in section 2(17) of the Investment Company Act of 1940, or an investment adviser registered under the Investment Advisers Act of 1940; a corporation with total assets in excess of $50,000,000 and net worth in excess of $5,000,000, as reflected on financial statements prepared in accordance with general accepted accounting principles; an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 with total assets in excess of $5,000,000; a foreign bank, broker, dealer, insurance company, or government or government agency; or a natural person with a net worth exceeding $5,000,000. The dollar limitations in this clause shall be

adjusted annually after December 31, 1992, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics.

"(ix) Effects fewer than 1,000 transactions per year in securities other than transactions described in clauses (i) through (viii), if the bank does not have a subsidiary or affiliate registered as a broker or dealer under this Act.".

(b) REGULATION OF BANK DEALER ACTIVITIES.—Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

"(5)(A) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.

"(B) Such term does not include—

"(i) any person insofar as that person buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

"(ii) any bank insofar as the bank—

"(I) buys and sells commercial paper, bankers' acceptances, or commercial bills, or exempted securities other than municipal securities;

"(II) buys and sells municipal securities and does not have a securities affiliate as provided in section 4(c)(15) of the Financial Services Holding Company Act of 1992; or

"(III) buys and sells securities for investment purposes for the bank or for accounts for which the bank, acting as a trustee or fiduciary, is authorized to determine the securities to be purchased or sold.".

(c) POWER TO EXEMPT FROM THE DEFINITIONS OF BROKER OR DEALER.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding after subsection (d) the following new subsection:

"(e) The Commission, by rule, regulation, or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or class of persons from the definitions of 'broker' or 'dealer', if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this Act.".

(d) REQUIREMENT THAT BANKS FALLING WITHIN THE DEFINITIONS OF BROKER OR DEALER PLACE THEIR SECURITIES ACTIVITIES IN A SEPARATE CORPORATE ENTITY.—Section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is amended to read as follows:

"(a)(1) It shall be unlawful for any broker or dealer that is either a person other than a natural person or a natural person not associated with a broker or dealer that is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b).

"(2) It shall be unlawful for any bank to act as a broker or dealer, except in the course of an exclusively intrastate business. This section shall not preclude a subsidiary of a bank or an affiliate of a financial services holding company other than a bank, as those terms are defined in the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841 et seq.), that is registered in accordance with subsection (b) from acting as a broker or dealer to any extent otherwise permissible by law.

"(3) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraphs (1) and (2) any broker or dealer or class of brokers or dealers specified in such rule or order.".

(e) REGULATION OF TRANSACTIONS IN CERTAIN SECURITIES ON BANK PREMISES.—Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding after subsection (e) the following new subsection:

"(f)(1) No bank may permit any evidence of indebtedness of, or ownership interest in, any affiliate of such bank to be sold or offered for sale to the general public in any part of any office (other than an office which is not located within any State) of such bank which is commonly accessible to the general public for the purpose of accepting deposits.

"(2) No bank may permit any evidence of indebtedness of, or ownership interest in, such bank to be sold or offered for sale to the general public in any part of any office (other than an office which is not located within any State) of such bank which is commonly accessible to the general public for the purpose of accepting deposits.

"(3)(A) This subsection shall not apply to transactions in shares of investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) that are affiliated with the bank by or through a broker or dealer registered under this Act, if sales by or through such broker or dealer are subject to sales practice standards of a self-regulatory organization, provided the transactions—

"(i) are consistent with the purposes of this subsection; and

"(ii) are in the public interest.

"(B) This subsection shall not apply to any evidence of indebtedness or ownership interest which—

"(i) is a deposit in an insured depository institution; or

"(ii) constitutes a means of payment to a third party, such as a traveler's check, cashier's check, teller's check or money order.".

(f) SECURITIES EXCHANGE ACT ADMINISTRATION TRANSFER.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(i)) is repealed.

SEC. 438. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940.

(a) CUSTODY OF INVESTMENT COMPANY ASSETS BY AFFILIATE BANKS.—

(1) MANAGEMENT COMPANIES.—Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended by striking "trusts" the first place it appears and inserting "trusts, but where any such bank or an affiliated person thereof is an affiliated person, promoter, sponsor, or organizer of, or principal underwriter for, such registered company, only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, after consulting in writing with the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)),".

(2) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-26(a)(1)) is amended by inserting "not affiliated with such underwriter or depositor, or where such bank is so affiliated, only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors after consulting in writing with the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)),," after "bank".

(b) INDEPENDENT DIRECTORS.—

(1) INTERESTED PERSONS.—Section 2(a)(19)(A)(v) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A)(v)) is amended by striking "1934 or any affiliated person of such a broker or dealer" and inserting "1934 or any person that, at any time during the preceding 6 months, has acted as custodian or transfer agent or has executed any portfolio transactions for, engaged in any principal transactions with, or loaned money to, the investment company, or any other investment company having the same investment adviser, principal underwriter, sponsor, or promoter, or any affiliated person of such a broker, dealer, or person".

(2) AFFILIATION OF DIRECTORS.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(c)) is amended by striking "bank, except" and inserting "bank and its subsidiaries or any financial services holding company and its affiliates and subsidiaries, as those terms are defined in the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842 et seq.),".

(c) ADDITIONAL SEC RULEMAKING AUTHORITY REGARDING BANK AFFILIATED MUTUAL FUNDS.—Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-37) is amended by adding after subsection (c) the following new subsection:

"(d) The Commission shall have the authority to promulgate such rules regarding loans, purchases or sales of assets, and other transactions involving a bank, an affiliated person, and an affiliated registered investment company.".

(d) ADDITIONAL DISCLOSURE AUTHORITY.—Section 35(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-34(a)) is amended to read as follows:

"(a) UNLAWFUL REPRESENTATION OF GUARANTEE BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof or has been insured by the Federal Deposit Insurance Corporation or is guaranteed by or is otherwise an obligation of any bank or insured institution. If a financial services holding company, bank, or separately identifiable division or department of a bank, or any affiliate or subsidiary thereof, is an investment adviser, organizer, sponsor, promoter, principal underwriter, or an affiliated person of a registered investment company, or a bank or an affiliated person of a bank is offering or selling securities of a registered investment company, or the name of an investment company is that of, or similar to that of, a bank, pursuant to regulations adopted by the Commission, after consultation in writing with the appropriate federal banking agencies as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), any person in issuing or selling securities of such investment company may be required to disclose prominently that the investment company and any security issued by it are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated bank or insured institution, and are not otherwise an obligation of such a bank or insured institution. The Commission may determine by order as provided for

in subsection (d), after consultation with the appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) that use of a name similar to that of a bank is deceptive and misleading. In that event, use of such name shall be unlawful as provided in subsection (d) and the Commission shall have the authority to take such actions as provided in that subsection.".

(e) DEFINITION OF BROKER.—Section 2(a)(6) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as follows:

"(6) 'Broker' has the same meaning as in the Securities Exchange Act of 1934, but does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.".

(f) DEFINITION OF DEALER.—Section 2(a)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(11) is amended to read as follows:

"(11) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

SEC. 439. REMOVAL OF THE EXCLUSION FROM THE DEFINITION OF INVESTMENT ADVISER FOR BANKS THAT ADVISE INVESTMENT COMPANIES.

(a) Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended—

(1) in subparagraph (A), by striking "investment company" and inserting "investment company, except that the term 'investment adviser' includes any bank or financial services holding company to the extent such bank acts as an investment adviser to a registered investment company unless the bank performs such services through a separately identifiable department or division of the bank, in which case the department or division and not the bank shall be deemed to be the investment adviser"; and

(2) by adding at the end thereof the following: "For purposes of this paragraph, a separately identifiable department or division of a bank shall mean a unit that—

"(A) is under the direct supervision of an officer or officers designated by the appropriate Federal banking agency or directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

"(B) there are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, all of the records relating to such investment adviser activities and such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of the Act and rules and regulations thereunder.".

(b) DEFINITION OF BROKER.—Section 202(a)(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as follows:

"(3) 'Broker' has the same meaning as in the Securities Exchange Act of 1934.".

(c) DEFINITION OF DEALER.—Section 202(a)(7) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as follows:

"(7) 'Dealer' has the same meaning as in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.".

(d) NOTIFICATION AND CONSULTATION.—The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) is amended by inserting after section 210 the following new section:

"SEC. 210A. NOTIFICATION AND CONSULTATION.

"(a) IN GENERAL.—The Commission, prior to the examination of, the entry of an order of investigation of, or the commencement of any disciplinary or law enforcement proceedings against, any financial services holding company, bank, or department or division of a bank that is a registered investment adviser shall give notice to the appropriate Federal banking agency as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), of the identity of such financial service holding company, bank, department or division and the nature of the proposed actions and shall consult in writing with such appropriate Federal banking agency concerning any such proposed action, unless the protection of investors requires immediate action by the Commission and prior notice or consultation is not practical under the circumstances, in which case notice shall be given and the appropriate Federal banking agency shall be notified and consulted as promptly as possible thereafter.

"(b) EXAMINATION RESULTS.—The Commission and the appropriate Federal banking agency shall exchange the results of any examination of any financial services holding company, bank, department or division of a bank that is a registered investment adviser concerning activities subject to this Act.

"(c) EFFECT ON OTHER AUTHORITY.—Nothing herein shall limit in any respect the authority of the appropriate Federal banking agency with respect to such financial services holding company, bank, or department or division under any provision of law.".

SEC. 440. TREATMENT OF BANK COMMON TRUST FUNDS.

(a) SECURITIES ACT OF 1933.—Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking "or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by a bank in its capacity as trustee, executor, administrator, or guardian" and inserting "or any interest or participation in any common trust fund or similar fund excepted from the definition of the term 'investment company' by section 3(c)(3) of the Investment Company Act (15 U.S.C. 80a-3(c)(3))".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:

"(iii) any interest or participation in any common trust fund or similar fund excepted from the definition of the term 'investment company' by section 3(c)(3) of the Investment Company Act.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 3(c)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(3)) is amended by deleting the period at the end thereof and inserting: "so long as—

"(A) such fund is employed by the bank solely as an aid to the administration of trust, estates, and other accounts created and maintained for a fiduciary purpose;

"(B) except in connection with generic advertising of the bank's fiduciary services, interests in such fund are not—

"(i) advertised; or

"(ii) offered for sale to the general public; and

"(C) a fund is not charged any fees or expenses which, when added to any other compensation charged by the bank to a participant account, exceeds the total amount of compensation which would have been charged to such participant account if no assets of such participant account had been invested in interests in the fund, except that any reasonable and necessary expenses related to the prudent operation of the fund, as determined by the Comptroller of the Currency shall be permitted to be charged directly to the fund.".

(d) TAX EFFECT.—Section 584 of the Internal Revenue Code of 1986 (26 U.S.C. 584) is amended by adding after subsection (g) the following new subsection:

"(h) CONVERSION, MERGERS, OR REORGANIZATION OF COMMON TRUST FUNDS.—Notwithstanding any other provision of the Internal Revenue Code, any transfer of all or substantially all of the assets of a common trust fund taxable under this section to a registered investment company taxable under subchapter M shall not result in a gain or loss to the participants in such common trust fund where the transfer is a result of a merger, conversion, reorganization, transfer, or other similar transaction or series of transactions.".

SEC. 441. SECURITIES AND EXCHANGE COMMISSION STUDY OF BANK AND INSURANCE POOLED INVESTMENT VEHICLES.

(a) IN GENERAL.—The Securities and Exchange Commission, in consultation with the Secretary of Labor, shall examine—

(1) the appropriate treatment of bank collective investment funds and separate accounts under the securities laws and the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.); and

(2) the appropriate treatment of common trust funds under the securities laws.

(b) REPORT.—Not later than six months after the date of enactment of this title, the Securities and Exchange Commission shall transmit to the Congress a final report which shall contain a detailed statement of findings and conclusions, including recommendations for such administrative and legislative action as the Commission deems advisable.

SEC. 442. EFFECTIVE DATE.

This chapter shall become effective on January 1, 1994, except that section 441 shall become effective on the date of enactment of this title.

CHAPTER 5—AMENDMENTS TO PROMPT CORRECTIVE ACTION

SEC. 446. AMENDMENTS TO PROMPT CORRECTIVE ACTION.

(a) PROVISIONS APPLICABLE TO WELL CAPITALIZED BANKS AND COMPANIES.—Section 38 of the Federal Deposit Insurance Act is amended—

(1) in subsection (b)(2), by inserting at the end the following new subparagraphs:

"(J) BANKING LAWS DEFINED.—For the purposes of this section, the term 'banking laws' means this Act, the National Bank Act, the Federal Reserve Act, the Financial Services Holding Company Act of 1992, the Change in Bank Control Act, the Bank Merger Act, the International Banking Act of 1978, any other law codified in title 12 of the United States Code that is applicable to or affects insured banks or persons that own or control insured banks, and any regulations promulgated thereunder.

"(K) DIVERSIFIED HOLDING COMPANY DEFINED.—The term 'diversified holding company' shall have the same meaning as provided in section 2(a)(2) of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841(a)(2)).

"(L) FINANCIAL SERVICES HOLDING COMPANY AND FINANCIAL AFFILIATE DEFINED.—The terms 'financial services holding company' and 'financial affiliate' shall have the same

meaning as provided in section 2 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841).

"(M) NEW FINANCIAL ACTIVITY DEFINED.—The term 'new financial activity' means any activity authorized pursuant to subsections (c)(8), (c)(15), or (c)(16) of section 4 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1843) other than any activity that, prior to the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, the Board of Governors of the Federal Reserve System had determined, by any order or regulation that continued to be in effect on December 31, 1993, to be closely related to banking and a proper incident thereto.

"(N) BOARD OF GOVERNORS DEFINED.—The term 'Board of Governors' means the Board Governors of the Federal Reserve System.";

(2) by redesignating subsections (e) through (o) as subsections (f) through (p), respectively; and

(3) by inserting after subsection (d) the following new subsection:

"(e) PROVISIONS APPLICABLE TO WELL CAPITALIZED BANKS AND COMPANIES.—

"(1) EXPANSION BY WELL CAPITALIZED BANKS.—

"(A) IN GENERAL.—Notwithstanding any other provision of the banking laws, any insured bank that qualifies under subparagraph (B) may—

"(i) DE NOVO BRANCHES.—Subject to the notice requirement of paragraph (3)(A), establish and maintain a new branch office at any location permitted under the banking laws, so long as the branch office is not the first branch office of the bank in a given State and the bank has an outstanding or satisfactory record of meeting community credit needs as determined pursuant to section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906);

"(ii) COMMENCEMENT OF PERMISSIBLE ACTIVITIES DE NOVO.—Subject to the notice requirement of paragraph (3)(A), commence, either directly or through a subsidiary, any activity that has been determined by the appropriate Federal banking agency under the banking laws to be permissible for such insured bank or such subsidiary; and

"(iii) MERGERS AND ACQUISITIONS BY BANKS.—Subject to any applicable notice, application, and approval requirement of the banking laws as modified by paragraph (3)(B)—

"(I) merge or consolidate with any other insured bank, acquire directly or indirectly the assets of any other insured bank, or assume liability directly or indirectly to pay any deposits made in any other insured bank; or

"(II) acquire, directly or indirectly, the assets (other than assets acquired in the ordinary course of business), or all of the voting shares or control, of any company (other than an insured bank) that is engaged solely in activities that have been determined by regulation by the appropriate Federal banking agency under the banking laws to be permissible for an insured bank.

"(B) QUALIFYING BANKS.—An insured bank qualifies under this subparagraph if, both prior to and following consummation of the transaction or other expansion—

"(i) the insured bank is well capitalized; and

"(ii) in the event the insured bank is controlled by a financial services holding company, the company qualifies as a well capitalized financial services holding company as described in paragraph (2).

"(2) WELL CAPITALIZED FINANCIAL SERVICES HOLDING COMPANIES.—A financial services holding company is well capitalized if insured depository institutions representing at least 80 percent of the assets of all insured depository institutions controlled by the company are well capitalized, and the balance of the insured depository institutions controlled by the company are adequately capitalized.

"(3) PROCEDURES AND STANDARDS FOR REVIEW.—

"(A) SUBSEQUENT NOTICE FOR CERTAIN ACTIONS.—For actions described in clauses (i) and (ii) of paragraphs (1)(A), the insured bank shall provide the appropriate Federal banking agency with written notice no later than 30 days following such action.

"(B) LIMITATION ON REVIEW PERIOD FOR PROPOSED TRANSACTIONS.—Notwithstanding any other provision of the banking laws, the appropriate Federal banking agency shall make a decision to approve or disapprove any proposed transaction described in paragraph (1)(A)(iii) no later than 45 days after the date of receipt of the completed notice or application.

"(C) REVIEW STANDARDS.—The appropriate Federal banking agency may disapprove any proposed transaction described in paragraph (1)(A)(iii) involving a well capitalized insured bank only—

"(i) pursuant to section 18(c)(5) (A) or (B); or

"(ii) if the appropriate Federal banking agency determines—

"(I) that the insured bank or any other insured bank controlled by the same financial services holding company is engaging in an unsafe and unsound practice or will be in an unsafe and unsound condition following the transaction; or

"(II) that the proposed transaction is inconsistent with the convenience and needs of the community to be served.

"(D) FORM OF NOTICES.—Each appropriate Federal banking agency shall by regulation establish the form and content of the notice required under subparagraph (A).

"(4) EFFECT OF NOTICE UNDER THIS SUBSECTION.—

"(A) SUBSEQUENT NOTICE.—Any notice required under paragraph (3)(A) shall supersede any other notice or application requirement under the banking laws imposed on the insured bank in connection with the proposed transaction or other expansion.

"(B) OTHER REQUIREMENTS CONTINUE TO APPLY TO ACTIVITY.—Except as provided in this subsection, nothing in this subsection shall relieve any insured bank or any subsidiary thereof from the provisions of any law or regulation applicable to that institution or subsidiary.

"(5) HOLDING COMPANY FAILURE TO MAINTAIN WELL CAPITALIZED STATUS AFTER EXPANSION.—

"(A) CAPITAL MUST BE PROMPTLY RESTORED.—Any financial services holding company that—

"(i) engages, directly or indirectly, in any new financial activity, directly or indirectly controls any company engaged in any new financial activity, or is controlled by a diversified holding company, and

"(ii) does not continue to qualify under subsection (e)(2), or does not qualify under such subsection within such time period as is specified by the Board of Governors pursuant to section 4(k) of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1843(k)),

must either restore the capital of insured banks controlled by such financial services holding company to at least the levels required for the company to requalify under subsection (e)(2) or take the actions required in subparagraph (B). A financial services holding company shall be given a period of at least 45 days within which to restore such capital.

"(B) REQUIRED ACTIONS.—Any financial services holding company that does not requalify under subsection (e)(2) within the applicable period under subparagraph (A) must—

"(i) immediately post a bond in an amount equal to the amount necessary to restore the capital of the insured depository institutions controlled by such company to at least the level required to permit the company to requalify under subsection (e)(2 as of the date the bond is posted, which bond shall be subject to forfeiture as necessary to reimburse the Corporation for any funds expended for resolution of the insured depository institutions controlled by such company; and

"(ii)(I) within the time period provided in subsection (b)(2), submit to the Board of Governors and, after its acceptance, implement a capital plan that meets the requirements of such subsection (other than subsection (b)(2)(C)(ii)) and will restore the relevant capital measures to the level necessary to requalify under subsection (e)(2); or

"(II) within one year from the date the company originally failed to meet the requirements of subsection (e)(2)—

"(aa) divest any interest in any insured depository institution; or

"(bb) terminate all direct or indirect new financial activities and divest any interest in any company engaged in any such activity.

"(C) APPOINTMENT OF CONSERVATOR.—If the financial services holding company does not complete the actions required by either clause (i) or (ii) of subparagraph (B), the Board of Governors may appoint a conservator for any insured depository institution controlled by such company that maintains capital below the level necessary for the company to requalify under subsection (e)(2).

"(D) ALTERATION OF COMPLIANCE PERIOD.—

"(i) EXTENSION OF COMPLIANCE PERIOD.—The Board of Governors may extend the period provided in subparagraph (B)(ii)(II) for up to one year if the Board of Governors finds that the financial services holding company has taken significant steps toward restoring the capital of the insured depository institutions controlled by that company to at least the levels required for the company to requalify under subsection (e)(2).

"(ii) SHORTENING OF COMPLIANCE PERIOD FOR FAILURE TO MAINTAIN WELL CAPITALIZED STATUS.—The Board of Governors may, by regulation, establish shorter divestiture and termination periods under subparagraph (B)(ii)(II) applicable to any financial services holding company that fails to continue to qualify under subsection (e)(2) after having once fallen out of qualification from subsection (e)(2).

"(E) APPLICABILITY TO DIVERSIFIED HOLDING COMPANIES.—If a financial services holding company to which this paragraph applies is controlled by a diversified holding company, and the financial services holding company does not complete the actions under either subparagraph (A) or (B) (other than clause (ii)(II)(bb) of subparagraph (B)), then the diversified holding company must, within the same time period specified in subparagraph (B)(ii)(II), divest any interest in the financial services holding company or terminate all direct or indirect activities not permitted for a financial services holding company.".

(b) CONFORMING AMENDMENTS.—Section 38 of the Federal Deposit Insurance Act is amended—

(1) in subsection (b)(2)(D), by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992";

(2) in subsection (f)(2) (as redesignated by this section), by striking "(f)(2)" and inserting "(g)(2)";

(3) in subsection (g)(1)(B)(i) (as redesignated by this section), by deleting "(e)(2)(D)" and inserting "(f)(2)(D)";

(4) in subsection (g)(2)(D) (as redesignated by this section), by deleting "(e)(3)" and inserting "(f)(3)";

(5) in subsection (h)(1) (as redesignated by this section)—

(A) by deleting "(e)" and inserting "(f)"; and

(B) by deleting "(f)(2)" and inserting "(g)(2)";

(6) in subsection (i)(1) (as redesignated by this section), by deleting "(i)" and inserting "(j)";

(7) in subsection (k) (as redesignated by this section), by deleting "(e) through (i)" and inserting "(f) through (j)";

(8) in subsection (n) (as redesignated by this section), by deleting "(f)(2)(F)(ii)" and inserting "(g)(2)(F)(ii)";

(9) in subsection (p)(1)(B) (as redesignated by this section) by, deleting "(k)" and inserting "(l); and

(10) in subsection (p)(2) (as redesignated by this section), by deleting "(e)(2), (f), and (h)" and inserting "(f)(2), (g), and (i)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective three years after the date of enactment of this title, except that such amendments shall become effective January 1, 1994, with respect to financial services holding companies with bank subsidiaries that are well capitalized or adequately capitalized that wish to engage in any new financial activity.

CHAPTER 6—NATIONWIDE BANKING AND BRANCHING

SEC. 451. NATIONWIDE BANKING.

(a) INTERSTATE ACQUISITIONS.—Section 3(f) of the Financial Services Holding Company Act (12 U.S.C. 1842(f)), as redesignated by this title, is amended to read as follows:

"(f) INTERSTATE ACQUISITIONS.—

"(1) IN GENERAL.—The Board may approve an application under this section for a diversified holding company, financial services holding company, or foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of, any additional insured depository institution or financial services holding company located in any State.

"(2) STATE LAWS.—Any acquisition described in paragraph (1) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of—

"(A) the location or size of the acquiring diversified holding company or financial services holding company or foreign bank or any subsidiary of such company or foreign bank;

"(B) the number of insured depository institution subsidiaries of such diversified holding company or financial services holding company or foreign bank; or

"(C) any factor that has the effect, directly or indirectly, of prohibiting or limiting the acquisition of shares or control of an insured depository institution or financial services holding company located in that State by an out-of-State diversified holding company or financial services holding company or foreign bank without such factor having a similar effect on such acquisitions by financial services holding companies located in that State.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective three years after the date of enactment of this title.

SEC. 452. INTERSTATE BRANCHING BY NATIONAL BANKS.

(a) LOCATION OF BRANCHES.—Section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)) is amended—

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

(2) in paragraph (2), by striking the first period and inserting "; and";

(3) by adding after paragraph (2) the following new paragraph:

"(3) at an initial location within any State in which a financial services holding company having the same home State as such association could acquire a bank pursuant to section 3 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842) or at an initial location within any State in which a State bank chartered in the home State of such association could establish a branch, and, thereafter, at any point within those States to the extent permitted in paragraph (1) and paragraph (2) for associations situated in those States."; and

(4) by adding at the end thereof the following: "A State, other than the State in which the principal office of a national banking association is located, may require any national banking association establishing a branch within the host State to comply with such filing requirements as are otherwise imposed on a corporation that is incorporated in another State and seeks to engage in business in the host State.".

(b) DEFINITIONS.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is further amended—

(1) by amending subsection (f) to read as follows:

"(f) The term 'branch' as used in this section shall mean any office, agency, or other place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, checks paid, or money lent."; and

(2) by adding after subsection (h) the following new subsections:

"(i) For purposes of this section, the term 'home State' shall mean—

"(1) in the case of a national banking association, the State in which the principal place of business of such association is located;

"(2) in the case of a State bank, the State in which such bank is chartered and engaged in a banking business; and

"(3) in the case of a financial services holding company, the State in which the total deposits of all bank subsidiaries of such company are largest.

"(j) For purposes of this section, the term 'State' shall include the District of Columbia.

"(k) For purposes of this section, the term 'host State' is the State in which a bank establishes or maintains a branch other than the State in which the principal place of business of such bank is located.".

SEC. 453. INTERSTATE CONSOLIDATION OR MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.

(a) CONSOLIDATION OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Section 1 of the Act of November 7, 1918 (12 U.S.C. 215) is amended by inserting "or in any other State" after "located in the same State".

(b) MERGER OF NATIONAL BANKS OR STATE BANKS WITH NATIONAL BANKS.—Section 2(a) of the Act of November 7, 1918 (12 U.S.C. 215a(a)) is amended by inserting "or in any other State" after "located within the same State".

(c) DEFINITION AMENDMENT.—Section 3(4) of the Act of November 7, 1918 (12 U.S.C. 215b(4)) is amended by striking ", located within the same State,".

(d) RETENTION OF BRANCHES FOLLOWING MERGER OR CONSOLIDATION WITH NATIONAL BANKS.—Section 5155(b)(2) of the Revised Statutes (12 U.S.C. 36(b)(2)) is amended to read as follows:

"(2)(A) A national bank resulting from the merger or consolidation of a national bank (under whose charter the consolidation is effected) with any other bank may retain and operate as a branch any office which, immediately prior to such merger or consolidation, was in operation as an office or branch of any bank participating in the merger or consolidation if the Comptroller of the Currency approves the continued operation of such office or branch as a branch after the merger or consolidation.

"(B)(i) The Comptroller of the Currency may not grant approval under subparagraph (A) for the retention of any office or branch of any bank participating in the merger or consolidation referred to in such subparagraph if, in a situation identical to that of the resulting national bank, any State bank which were to result from the merger or consolidation of a State bank with any other bank would be prohibited by the law of the State where the office or branch is located from retaining and operating as a branch after such merger or consolidation, any office or branch which is identically situated and was operated as an office or branch of the State bank immediately prior to the merger or consolidation.

"(ii) For purposes of this subparagraph, the term 'host State' is the State in which a bank establishes or maintains a branch other than the State in which the principal place of business of such bank is located.".

SEC. 454. INTERSTATE BRANCHING BY STATE BANKS.

Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding after paragraph (2) the following new paragraphs:

"(3) STATE LAW.—Except as otherwise provided in this subsection, no State may prohibit any insured bank chartered by another State, and engaged in a banking business in another State from establishing and maintaining one or more branches within the State. A host State may require any insured bank chartered by another State that wishes to establish a branch within the host State to comply with such filing requirements as are otherwise imposed on a corporation that is incorporated in another State and seeks to engage in business in the host State.

"(4) LOCATION OF BRANCHES.—

"(A) Any insured State bank may, if authorized by the law of the State in which the bank is chartered, establish and maintain:

"(i) a branch at an initial location within any State in which a financial services holding company, whose principal place of operations is the same State in which the insured bank is chartered, could acquire an additional bank pursuant to section 3 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842); and

"(ii) additional branches at locations within any State in which the bank has estab-

lished an initial branch pursuant to clause (i) to the extent permitted for insured State banks located in such State as if the initial branch of the out-of-State insured bank were a State bank chartered in such State with its head office at the location of the initial branch.

"(B) For purposes of this paragraph, 'principal place of operations' means the State in which the total deposits of all bank subsidiaries of such company are largest.

"(5) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection shall limit in any way the right of a State to determine the authority of State banks chartered in that State to establish and maintain branches, or to supervise, regulate, and examine State banks chartered by that State.

"(6) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch or branches pursuant to paragraph (4) may not conduct any activity at such branch that is not permissible for a bank chartered by the host State.

"(7) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) A host State bank supervisory or regulatory authority may examine branches established in the host State by banks chartered by another State for the purpose of determining compliance with the host State law regarding permissible activities and to ensure that the activities of the branch are conducted in a manner not inconsistent with sound banking principles and do not constitute a serious risk to the safety and sound operation of the branch.

"(B) In the event that a host State bank authority as described above determines that there is a violation of host State law concerning the activities being conducted by the branch or that the branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank authority may undertake such enforcement actions or proceedings as would be permitted under host State law as if the branch were deemed to be a bank chartered by that host State.

"(C) The State bank authorities from one or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State-chartered banks including cooperative agreements relating to the coordination of examinations and joint participation in examinations as long as the participation in the examination of the branch of an out-of-State bank by a host State bank authority is limited as described in subparagraph (B).

"(8) DEFINITION.—For purposes of this subsection a 'host State' is the State in which a bank establishes or maintains a branch other than the State in which the bank is chartered and engaging in banking business."

SEC. 455. INTERSTATE BRANCHING AND BANKING BY FOREIGN BANKS.

(a) Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) is amended to read as follows:

"(a) ESTABLISHMENT AND OPERATION OF FEDERAL BRANCHES AND AGENCIES.—

"(1) INITIAL FEDERAL BRANCH OR AGENCY.—Subject to paragraph (2), a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller and the Board, establish and operate a Federal branch or Federal agency at an initial location in the United States in any State in which it is not operating a branch or agency pursuant to State law; provided that during the three-year period beginning on the date of the enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, the Comptroller and the Board may only authorize such establishment of a branch or agency by a foreign bank, as the case may be, if such establishment is not prohibited by the law of the relevant State.

"(2) FEDERAL BRANCH AND AGENCY OUTSIDE A HOME STATE.—No foreign bank which engages directly in a banking business outside the United States may establish and operate an initial Federal branch or Federal agency in a State other than the foreign bank's home State, except with the approval of the Comptroller and the Board, in the same location and subject to the same requirements as a national bank having the same home State (as the term 'home State' as defined for national banks under section 5155(c) of the Revised Statutes) as the foreign bank.

"(3) BOARD CONDITIONS REQUIRED TO BE INCLUDED.—In considering any application for approval under this subsection, the Comptroller shall include any condition imposed by the Board under section 7(d)(5) as a condition for the approval of such application.".

"(b) Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended by adding after paragraph (2) the following new paragraph:

"(3) DETERMINATION OF HOME STATE.—For purposes of section 36(c) of the National Bank Act (12 U.S.C. 36(c)), the home State of a foreign bank shall be its home State as determined under section 5.".

(c) Section 5(a) of the International Banking Act of 1978 (12 U.S.C. 3103(a)) is amended to read as follows:

"(a) LIMITATIONS.—

"(1) No foreign bank may establish and operate a State branch in any State outside its home State unless a financial services holding company whose principal place of operation under section 3 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1842) is the same as the home State of the foreign bank would be permitted to acquire a bank in such other State.

"(2) No foreign bank may directly or indirectly establish and operate a State branch, State agency, or commercial lending company subsidiary outside of the foreign bank's home State unless its establishment and operation is approved by the Board and the bank regulatory authority of the State in which the new branch is to be located.

"(3) Notwithstanding paragraph (2), effective three years after the date of enactment of the Financial Institutions Safety and Consumer Choice Act of 1992, no State shall prohibit a foreign bank having a State branch or State agency licensed by another State and engaged in a banking business in that other State, from establishing and maintaining one or more branches or agencies of that foreign bank within the State after approval from the bank regulatory authority of such other State and the Board. Establishment, operation and supervision of any such branches or agencies shall be in accordance with the provisions applicable to an interstate branch of a State bank under section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) as if the branch in such other State were an insured State bank located in such other State.

"(4) Notwithstanding paragraph (1) and section 4(h), a foreign bank may, with the approval of the Comptroller and the Board, establish and operate a Federal branch or Federal agency, or with the approval of the Board and the bank regulatory authority of the State, a State branch or State agency, in any State outside of its home State if—

"(A) establishment and operation of a branch or agency is expressly permitted by the State in which it is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.).".

SEC. 456. INTERSTATE ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.

Section 10(e)(3) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(3)) is amended to read as follows:

"(3) INTERSTATE ACQUISITIONS.—

"(A) IN GENERAL.—The Director may approve an application under this subsection for a savings and loan holding company or a foreign bank to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all the assets of, any additional savings association located in any State.

"(B) STATE LAWS.—Any acquisition described in subparagraph (A) that has been approved under this section may be consummated notwithstanding any State law that would prohibit or otherwise limit such acquisition on the basis of the location or size of the acquiring company or foreign bank or any subsidiary of such company or foreign bank, the number of insured depository institution subsidiaries of such company or foreign bank, or any other factor that has the effect directly or indirectly of prohibiting or limiting the acquisition of shares or control of a savings association or savings and loan holding company located in that State by an out-of-State savings and loan holding company or foreign bank without having a similar effect on such acquisitions by savings and loan holding companies located in that State.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'State' includes the District of Columbia; and

"(ii) the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act (12 U.S.C. 3101(7)).".

SEC. 457. EFFECTIVE DATE.

Except as provided in section 451(b), the provisions of this chapter shall become effective on the date of enactment of this title.

Subtitle B—Miscellaneous Provisions

CHAPTER 1—REDUCTION IN REGULATORY BURDEN

SEC. 461. FAIR HOUSING REPORTING.

Effective one year after the date of enactment of this title, no appropriate Federal banking agency shall require any institution for which it is the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) to prepare, file, or maintain any form for the purpose of collection, analysis, or maintenance of appropriate data to further the purposes of, or to fulfill the requirements of, the Fair Housing Act (42 U.S.C. 3601 et seq.), other than a form for data collection, analysis, or maintenance prescribed pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

CHAPTER 2—EXPEDITED FUNDS AVAILABILITY

SEC. 466. AMENDMENT OF THE EXPEDITED FUNDS AVAILABILITY ACT.

Section 604(f)(2) of the Expedited Funds Availability Act (12 U.S.C. 4003(f)(2)) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) After a depository institution has provided notice as required under subparagraphs (A), (B), and (C), no further notice shall be

required until the earlier of one year after notice has been provided or such other time as the exception for which the notice was provided ceases to apply.".

Subtitle C—Technical and Conforming Amendments

CHAPTER 1—SEVERABILITY; TRANSITION REFERENCES

SEC. 471. SEVERABILITY.

If any provision of this title, or application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of any remaining provision to other persons or circumstances, shall not be affected thereby.

SEC. 472. TRANSITION REFERENCES.

Effective on the date of enactment of this title, and until January 1, 1994, any reference to a financial services holding company or to this the Financial Services Holding Company Act of 1992 in any amendment made by, or provision of, this title that becomes effective prior to such date shall be deemed to include a reference to a bank holding company and the Bank Holding Company Act of 1956, respectively.

CHAPTER 2—TECHNICAL AND CONFORMING AMENDMENTS

SEC. 476. AMENDMENT TO ACTS CODIFIED IN TITLE 2, UNITED STATES CODE.

THE FEDERAL ELECTION CAMPAIGN ACT OF 1971.—The Federal Election Campaign Act of 1971 is amended effective on the date of enactment of this title—

(1) in section 301(8)(B)(vii) (2 U.S.C. 431(8)(B)(vii), by striking ", Federal Savings and Loan Insurance Corporation,"; and

(2) in section 302(h)(1) (2 U.S.C. 432(h)(1)), by striking ", the Federal Savings and Loan Insurance Corporation,".

SEC. 477. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

Title 5, United States Code, is amended—

(1) in section 8438(a)(7)(B), effective on the date of enactment of this title, by striking "Federal Savings and Loan Insurance Corporation" and inserting "Federal Deposit Insurance Corporation"; and

(2) in section 8478(a)(2)(B)(iii), by striking "or the Federal Savings and Loan Insurance Corporation".

SEC. 478. AMENDMENT TO ACT CODIFIED IN TITLE 7, UNITED STATES CODE.

THE FOOD STAMP ACT OF 1977.—Section 10 of the Food Stamp Act of 1977 (7 U.S.C. 2019) is amended effective on the date of enactment of this title—

(1) by striking "the Federal Savings and Loan Insurance Corporation, or"; and

(2) by striking "the Federal Savings and Loan Insurance Corporation or".

SEC. 479. AMENDMENTS TO ACTS CODIFIED IN TITLE 12, UNITED STATES CODE.

(a) THE FEDERAL RESERVE ACT.—The Federal Reserve Act is amended—

(1) in section 11(d) (12 U.S.C. 248)—

(A) by striking "the bureau under the charge of the Comptroller of the Currency" and inserting "the Secretary of the Treasury"; and

(B) by striking "such notes may be delivered by the Comptroller" and inserting "such notes may be delivered by the Secretary of the Treasury";

(2) in section 23A(d)(5) (12 U.S.C. 371c(d)(5)), by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992";

(3) in section 16—

(A) in the eighth paragraph (12 U.S.C. 418), by striking "the Comptroller of the Currency shall, under the direction of the Secretary of the Treasury," and inserting "the Secretary of the Treasury shall";

(B) in the ninth paragraph (12 U.S.C. 419), by striking "shall be deposited in the Treasury, or in the subtreasury or mint of the United States nearest the place of business of each Federal reserve bank and shall be held for the use of such bank subject to the order of the Comptroller of the Currency" and inserting "shall be delivered to the Board of Governors of the Federal Reserve System subject to the order of the Secretary of the Treasury"; and

(C) in the tenth paragraph (12 U.S.C. 420)—

(i) by striking "Comptroller of the Currency" and inserting "Secretary of the Treasury"; and

(ii) by striking "Federal Reserve Board" ; and inserting "Board of Governors of the Federal Reserve System"; and

(4) in the tenth undesignated paragraph of section 25(a) (12 U.S.C. 619)—

(A) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting "Financial Services Holding Company Act of 1992";

(B) by striking "bank holding companies" and inserting "financial services holding companies"; and

(C) by striking "bank holding company" and inserting "financial services holding company".

(b) The Home Owners' Loan Act.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is further amended—

(1) in section 10 (12 U.S.C. 1467a)—

(A) in subsection (a)(1)(I)—

(i) by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(ii) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992";

(B) in subsection (C)—

(i) in paragraph (2)(F)(i)—

(I) by striking "bank holding companies" and inserting "financial services holding companies"; and

(II) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992"; and

(ii) in paragraph (8)—

(I) by striking "bank holding company" and inserting "financial services holding company"; and

(II) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992";

(C) in subsection (m)(3)(C)—

(i) by striking "bank holding company" wherever it appears and inserting "financial services holding company";

(ii) by striking "bank holding companies" and inserting "financial services holding companies"; and

(iii) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting "Financial Services Holding Company Act of 1992"; and

(D) in subsection (q)(1)(A)(ii), by striking "bank holding company" and inserting "financial services holding company"; and

(2) in section 11(c) (12 U.S.C. 1468(c))—

(A) by striking "or 18(j)"; and

(B) by striking ", as appropriate".

(c) THE NATIONAL HOUSING ACT.—The National Housing Act is amended—

(1) in section 203(s)(6) (12 U.S.C. 1709(s)(6)), by striking "bank holding company" and inserting "financial services holding company".

(2) in section 255(k)(3) (12 U.S.C. 1715z-20(k)(3)), effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision"; and

(3) in section 502 (12 U.S.C. 1701c), effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" wherever it appears and inserting "Director of the Office of Thrift Supervision".

(d) THE ACT OF OCTOBER 15, 1982.—Section 341(e)(1) of the Act of October 15, 1982 (12 U.S.C. 1701j-3) is amended, effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" wherever it appears and inserting "Director of the Office of Thrift Supervision".

(e) THE DOMESTIC HOUSING AND INTERNATIONAL RECOVERY AND FINANCIAL STABILITY ACT.—Section 469 of the Domestic Housing and International Recovery and Financial Stability Act (12 U.S.C. 1701p-1) is amended, effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

(f) THE FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3 (12 U.S.C. 1813)—

(A) in subsection (u), by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(B) in subsection (w) by striking "bank holding company" wherever it appears and inserting "financial services holding company";

(2) in section 5(d)(3) (12 U.S.C. 1815(d)(3))—

(A) in subparagraph (A), by striking "bank holding company" and inserting "financial services holding company"; and

(B) in subparagraph (E), by striking "bank holding company" wherever its appears and inserting "financial services holding company";

(3) in section 7 (12 U.S.C. 1817)—

(A) in subsection (a)(3), by striking "Chairman of the Director" and by inserting "Director"; and

(B) in subsection (n), by striking "under section 1467 of this Act"; and

(4) in section 8(b)(4) (12 U.S.C. 1818(b)(4)), by striking "bank holding company" and inserting "financial services holding company".

(g) THE BANK PROTECTION ACT OF 1968.—Section 2(4) of the Bank Protection Act of 1968 (12 U.S.C. 1881) is amended by inserting "associations" after "savings".

(h) THE REAL ESTATE SETTLEMENT PROCEDURES ACT.—The Real Estate Settlement Procedures Act is amended, effective on the date of enactment of this title—

(1) in section 4(a) (12 U.S.C. 2603(a)), by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision"; and

(2) in section 8 (12 U.S.C. 2607), by striking "Federal Home Loan Bank Board" wherever it appears and inserting "Director of the Office of Thrift Supervison".

(i) THE COMMUNITY REINVESTMENT ACT OF 1977.—Section 803(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2902(1)) is amended—

(1) in subparagraph (B), by striking "bank holding companies" and inserting "financial services holding companies"; and

(2) in subparagraph (C), by striking "section 8 of this Act, by".

(j) THE INTERNATIONAL BANKING ACT OF 1978.—The International Banking Act of 1978 is amended—

(1) in section 1(b) (12 U.S.C. 3101)—

(A) by amending paragraph (13) to read as follows:

"(13) the terms 'affiliate', 'bank', 'financial services holding company', 'company', 'control', and 'subsidiary' have the same meanings assigned to those terms in the Financial Services Holding Company Act of 1992, and the terms 'controlled' and 'controlling' shall be construed consistently with the term 'control' as defined in section 2 the Financial Services Holding Company Act of 1992;"; and

(2) in section 8(c) (12 U.S.C. 3106)—

(A) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting "Financial Services Holding Company Act of 1992"; and

(B) by striking "bank holding company" wherever it appears and inserting "financial services holding company".

(k) THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT OF 1978.—The Depository Institution Management Interlocks Act of 1978 is amended—

(1) in section 202 (12 U.S.C. 3201)—

(A) by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(B) by striking "Bank Holding Company Act of 1956" wherever it appears and inserting "Financial Services Holding Company Act of 1992";

(2) in section 207(2) (12 U.S.C. 3206(2)) by striking "bank holding companies" and inserting "financial services holding companies"; and

(3) in section 208 (12 U.S.C. 3207)—

(A) in paragraph (2), by striking "bank holding companies" and inserting "financial services holding companies"; and

(B) in paragraph (4), effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" and inserting "Director of the Office of Thrift Supervision with respect to institutions which are members of the Savings Association Insurance Fund".

(l) THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978.—Section 1002 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301) is amended, effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" and inserting "Office of Thrift Supervision".

(m) THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1101 of the right to Financial Privacy Act of 1978 (12 U.S.C. 3401) is amended—

(1) in paragraph (6)—

(A) in subparagraph (A), by striking "bank holding company" and inserting "financial services holding company"; and

(B) in subparagraph (B), by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992"; and

(2) in paragraph (7)(G), by inserting ", insurance" after "banking".

(n) THE EXPEDITED FUNDS AVAILABILITY ACT OF 1987.—Section 609(e) of the Expedited Funds Availability Act of 1987 (12 U.S.C. 4008(e)) is amended, effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" and inserting "Office of Thrift Supervision".

SEC. 480. AMENDMENTS TO ACTS CODIFIED IN TITLE 15, UNITED STATES CODE.

(a) THE ACT OF SEPTEMBER 26, 1914.—Effective on the date of enactment of this title, section 18(f)(1) of the Act of September 26, 1914 (15 U.S.C. 57a(f)(1)) is amended—

(1) by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision";

(2) by striking "each such Board" and inserting "the appropriate Board or the Director";

(3) by striking "any such Board" and inserting "the appropriate Board or the Director"; and

(4) by striking "such Board" and inserting "the appropriate Board or the Director".

(b) THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended—

(1) in section 3(a)(34) (14 U.S.C. 78c(a)(34))—

(A) in subparagraph (A)(ii), by striking "a bank holding company, a subsidiary of a bank holding company" and inserting "a financial services holding company, a subsidiary of a financial services holding company";

(B) in subparagraph (B)(ii), by striking "a bank holding company, or a subsidiary of a bank holding company" and inserting "a financial services holding company, or a subsidiary of a financial services holding company";

(C) in subparagraph (C)(ii), by striking "a bank holding company, or a subsidiary of a bank holding company" and inserting "a financial services holding company, or a subsidiary of a financial services holding company, or a subsidiary of a financial services holding company"; and

(D) in the last sentence—

(i) by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(ii) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992";

(2) in section 15C—

(A) in subsection (b)(2)(C)(ii) (15 U.S.C. 58o-5(b)(2)(C)(ii)), by striking "section 8 of the Bank Holding Company Act of 1956" and inserting "section 8 of the Financial Services Holding Company Act of 1992"; and

(B) in subsection (f)(1) (15 U.S.C. 78o-5(f)(1)), effective on the date of enactment of this title, by striking "the Federal Savings and Loan Insurance Corporation."; and

(3) in section 17(h)(3)(B) (15 U.S.C. 78q(h)(3)(B)), by striking "section 8 of the Bank Holding Company Act of 1956" and inserting "section 8 of the Financial Services Holding Company Act of 1992".

(c) THE INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(3)) is amended, effective on the date of enactment of this title, by inserting "(or successor thereto)" after "Federal Savings and Loan Insurance Corporation".

(d) THE INVESTMENT ADVISORS ACT OF 1940.—Section 202(a)(11) of the Investment Advisors Act of 1940 (15 U.S.C. 80b-2(a)(11)) is amended—

(1) by striking "bank holding company" and inserting "financial services holding company"; and

(2) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992".

(e) THE SMALL BUSINESS INVESTMENT ACT OF 1958.—The Small Business Investment Act of 1958 (15 U.S.C. 661) is amended—

(1) in section 302(b) (15 U.S.C. 682(b)), effective on the date of enactment of this title, by striking "Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Act of 1956, shares" and inserting "Shares"; and

(2) in section 308(b) (15 U.S.C. 687(b)), by striking "or the Federal Savings and Loan Insurance Corporation".

(f) THE EXPORT TRADING COMPANY ACT OF 1982.—Section 102(b) of the Export Trading Company Act of 1982 (15 U.S.C. 4001(b)) is amended by striking "bank holding companies" wherever it appears and inserting "financial services holding companies".

SEC. 481. AMENDMENT TO ACT CODIFIED IN TITLE 16, UNITED STATES CODE.

THE FEDERAL POWER ACT.—Section 305(c)(2)(A) of the Federal Power Act (16 U.S.C. 825d(c)(2)(A)) is amended by striking "bank holding company" and inserting "financial services holding company".

SEC. 482. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

Section 1005 of title 18, United States Code, is amended in the last sentence of the sixth paragraph by inserting ", as amended by the Financial Services Holding Company Act of 1992" before the period.

SEC. 483. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended—

(1) in section 149(b)(4)(B), effective on the date of enactment of this title, by striking "the Federal Savings and Loan Insurance Corporation,";

(2) in section 246A(c)(3)—

(A) by amending subparagraph (B)(ii) to read as follows:

"(ii) FINANCIAL SERVICES HOLDING COMPANY.—The term 'Financial Services Holding Company' means a financial services holding company (within the meaning of section 2 of the Financial Services Holding Company Act of 1992 (12 U.S.C. 1841)).'; and

(B) by striking "bank holding company" wherever it appears and inserting "financial services holding company";

(3) in section 304(b)(3)—

(A) by amending subparagraph (D)(ii) to read as follows:

"(ii) FSHC.—The term 'FSHC' means a financial services holding company (within the meaning of section 2 of the Financial Services Holding Company Act of 1992).";

(B) by striking "bank holding companies" and inserting "financial services holding companies";

(C) by striking "BHC" wherever it appears and inserting "FSHC"; and

(D) by striking "BHC's" wherever it appears and inserting "FSHC's";

(4) in section 597(c)(1), effective on the date of enactment of this title, by inserting "(or any successor thereof)" after "the Federal Savings and Loan Insurance Corporation"; and

(5) in section 864(e)(5)(D)—

(A) by striking "bank holding companies" and inserting "financial services holding companies";

(B) by striking "bank holding company" wherever it appears and inserting "financial services holding company"; and

(C) by striking "Bank Holding Company Act of 1956" and inserting "Financial Services Holding Company Act of 1992".

SEC. 484. AMENDMENTS TO TITLE 31, UNITED STATES CODE.

Section 5115 of title 31, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b) The amount of United States currency notes outstanding and in circulation may not be more than $300,000,000."; and

(2) by adding after subsection (b) the following new subsection:

"(c) The Secretary shall not be required to reissue United States currency notes upon redemption.".

SEC. 485. AMENDMENTS TO ACTS CODIFIED IN TITLE 42, UNITED STATES CODE.

(a) THE ENERGY CONSERVATION AND PRODUCTION ACT.—Section 303(7) of the Energy Conservation and Production Act (42 U.S.C.

6832(7)) is amended, effective on the date of enactment of this title, by striking "the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation" and inserting "the Director of the Office of Thrift Supervision".

(b) THE NEIGHBORHOOD REINVESTMENT CORPORATION ACT.—Section 606(c)(3) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8105(c)(3)) is amended, effective on the date of enactment of this title, by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

SEC. 486. AMENDMENT TO TITLE 46, UNITED STATES CODE.

Section 10315(a)(3) of title 46, United States Code, is amended, effective on the date of enactment of this title, by striking "or the Federal Savings and Loan Insurance Corporation".

CHAPTER 3—REPEAL OF OBSOLETE PROVISIONS OF LAW

SEC. 491. REPEAL OF OBSOLETE PROVISIONS OF LAW.

The following provisions of law (as they may have been amended) are repealed:

(1) section 331 (12 U.S.C. 13) of the Revised Statutes;

(2) title II of the Act of October 28, 1974 (Public Law 93-495; 12 U.S.C. 2401 *et seq.*); and

(3) section 14 of the Act of December 22, 1974 (Public Law 93-533; 12 U.S.C. 2612).

CHAPTER 4—EFFECTIVE DATE

SEC. 496. EFFECTIVE DATE.

Unless otherwise expressly provided, the amendments made by this subtitle shall become effective January 1, 1994.

TITLE V—PENSION SECURITY ACT

SECTION 501. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pension Security Act of 1992".

(b) TABLE OF CONTENTS.—

Subtitle A—Amendments to Pension Plan Funding Requirements

PART 1—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

Sec. 511. Revision of additional funding requirements for plans that are not multiemployer plans.
Sec. 512. Correction to ERISA citation.
Sec. 513. Effective dates.

PART 2—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 521. Revision of additional funding requirements for plans that are not multiemployer plans.
Sec. 522. Effective dates.

Subtitle B—Amendments to Title IV of ERISA

Sec. 531. Limitation on benefits guaranteed.
Sec. 532. Enforcement of minimum funding requirements.
Sec. 533. Definition of contributing sponsor.
Sec. 534. Recovery ratio payable under Corporation's guaranty.
Sec. 535. Elimination of the seventh revolving fund.
Sec. 536. Distress termination criteria for banking institutions.
Sec. 537. Variable rate premium exemption.

Subtitle C—Employer Liability, Lien, and Priority

PART 1—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 541. Employer liability lien and priority amount.
Sec. 542. Liability upon liquidation of contributing sponsor where plan remains ongoing.

PART 2—AMENDMENTS TO TITLE 11, UNITED STATES CODE

Sec. 551. Pension Benefit Guaranty Corporation permitted to be a member of an unsecured creditors' committee.
Sec. 552. Clarification of priorities in conformity with the Employee Retirement Income Security Act of 1974.
Sec. 553. Notice required where federally-insured pension plan is administered by the debtor or its affiliate.

Subtitle A—Amendments to Pension Plan Funding Requirements

PART 1—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 511. REVISION OF ADDITIONAL FUNDING REQUIREMENTS FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.

(a) Section 412(a) of the Internal Revenue Code of 1986 (26 U.S.C. 412(a)) is amended by striking "the excess of the total charges to the funding standard account" through the end of that sentence, and inserting "the largest of—

"(1) the lesser of—

"(A) the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years; or,

"(B) the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years; or,

"(2) if applicable, the underfunding reduction requirement under subsection (l); or

"(3) if applicable, the solvency maintenance requirement under subsection (o).".

(b) Section 412(l) is revised to read as follows:

"(l) UNDERFUNDING REDUCTION REQUIREMENT FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

"(1) UNDERFUNDING REDUCTION REQUIREMENT.—In the case of a defined benefit plan (other than a multiemployer plan) that has an initial funding ratio of less than 100 percent for any plan year, the underfunding reduction requirement for such plan year is the sum of—

"(A) an amount equal to the product of the initial unfunded liability of the plan multiplied by the excess (if any) of (i) 30 percent, over (ii) the product of one quarter of one percent multiplied by the number of percentage points (if any) that the initial funding ratio of the plan exceeds 35 percent;

"(B) the charges to the funding standard account for normal cost under subparagraph (b)(2)(A) and for the amounts necessary to amortize any waived funding deficiencies under subparagraph (b)(2)(C);

"(C) the excess (if any) of—

"(i) the sum of charges to the funding standard account for plans years beginning after December 31, 1993, for net experience losses under clause (b)(2)(B)(iv) and net losses resulting from changes in actuarial assumptions under clause (b)(2)(B)(v) over—

"(ii) the sum of credits to the funding standard account for plan years beginning after December 31, 1993—

"(I) for net experience gains under clause (b)(3)(B)(ii) and net gains resulting from changes in actuarial assumptions under clause (b)(3)(B)(iii); and

"(II) for amounts considered contributed by the employer under subparagraph (b)(3)(A) (to the extent they are necessary to avoid an accumulated funding deficiency under section 412(b)); and

"(D) the net of—

"(i) charges to the funding standard account for plan years beginning on or before December 31, 1993, for net experience losses under clause (b)(2)(B)(iv) and net losses resulting from changes in actuarial assumptions under clause (b)(2)(B)(v); and

"(ii) the sum of credits to the funding standard account for plan years beginning on or before December 31, 1993—

"(I) for net experience gains under clause (b)(3)(B)(ii) and net gains resulting from changes in actuarial assumptions under clause (b)(3)(B)(iii); and

"(II) for amounts considered contributed by the employer under subparagraph (b)(3)(A) (to the extent they are necessary to avoid an accumulated funding deficiency under section 412(b)).

"(2) DEFINITIONS.—For definitions pertaining to this subsection, see subsection (o)(3).

"(3) APPLICATION TO SMALL PLANS.—For the application of this subsection to small plans, see subsection (o)(4).".

(c) Section 412 is further amended by adding at the end thereof the following new subsection (o):

"(o) SOLVENCY MAINTENANCE REQUIREMENT FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

"(1) SOLVENCY MAINTENANCE REQUIREMENT.—In the case of a defined benefit plan (other than a multiemployer plan) that has an initial funding ratio of less than 100 percent for any plan year, the solvency maintenance requirement for such plan year is the sum of—

"(A) the sum of:

"(i) all disbursements from the plan for the plan year, and

"(ii) an amount equal to the initial unfunded liability of the plan multiplied by the interest rate used by such plan (determined under subparagraph (b)(5)(A));

"(B) the charges described in section 412(l)(1)(B);

"(C) the amount described in section 412(l)(1)(C); and

"(D) the amount described in section 412(l)(1)(D).

"(2) LIMITATION ON SOLVENCY MAINTENANCE REQUIREMENT.—For plan years commencing after December 31, 1993, the amount required under paragraph (1) shall not exceed the sum of—

"(A) the amount required under 412(l); and

"(B) the product of—

"(i) the excess (if any) of—

"(I) the amount required under paragraph 1 over

"(II) the amount required under subsection (l); multiplied by—

"(ii) the applicable percentage.

"(iii) For purposes of subparagraph (ii), the applicable percentage is:

"For plan years commencing after:	The applicable percentage is:
December 31, 1993	20 percent
December 31, 1994	40 percent
December 31, 1995	60 percent
December 31, 1996	80 percent
December 31, 1997	100 percent

"(3) DEFINITIONS.—For purposes of this subsection and subsection (l)—

"(A) INITIAL UNFUNDED LIABILITY.—The term 'initial unfunded liability' means the excess (if any) of the amount necessary to satisfy the initial termination liability of the plan over the initial value of assets of the plan.

"(B) INITIAL FUNDING RATIO.—The term 'initial funding ratio' means the ratio of (i) the initial value of assets of the plan to (ii) the amount necessary to satisfy the initial termination liability of the plan.

"(C) INITIAL TERMINATION LIABILITY.—The term 'initial termination liability' means all liabilities with respect to employees and their beneficiaries under the plan in the meaning of section 401(a)(2) as of the first day of the plan year.

"(D) INITIAL VALUE OF ASSETS.—The term 'initial value of assets' means the value of the assets of the plan determined under section 412(c)(2) as of the first day of the plan year.

"(E) DISBURSEMENTS FROM THE PLAN.—

"(i) IN GENERAL.—The term 'disbursements from the plan' means benefit payments, including purchases of annuities or payment of lump sums in satisfaction of liabilities, administrative expenditures or any other disbursements from the plan or its trust.

"(ii) SPECIAL RULE FOR PURCHASES OF ANNUITIES AND PAYMENT OF LUMP SUMS.—In determining the applicable amounts attributable to purchases of annuities or the payment of lump sums under clause (i), the actual purchase or lump sum amounts paid by the plan or trust shall be multiplied by the excess (if any) of one over the initial funding ratio of the plan.

"(4) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection and subsection 412(l) shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding year had no more than 150 participants, the additional amounts required by the underfunding reduction requirement under subsection (l) or the solvency maintenance requirement under this subsection shall be equal to the product of—

"(i) the excess of such requirements (determined without regard to this subparagraph) over the funding deficiency (if any) under subsection 412(b), multiplied by—

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

"(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.".

(d) CONFORMING AMENDMENTS.—

(1) Section 412(b) is amended—

(A) by striking the last sentence of paragraph (2); and

(B) by striking "and for purposes of determining a plan's required contribution under section 412(l)" in subparagraph (5)(B) and inserting "under section 412(c)(7)(B)".

(2) Section 412(c) is amended by striking "has the meaning given such term by section 412(l)(7) and inserting "means all liabilities with respect to employees and their beneficiaries under the plan within the meaning of section 401(a)(2) (within such limitations as the Secretary may prescribe by regulation) determined by using the interest rate under section 412(b)(5)(B)".

(3) Section 412(m)(4)(B) is amended by striking "section 412" in subparagraph (i) and inserting "section 412(b) or (l), whichever is greater".

(4) Section 401(a)(29) is amended—

(A) by striking "current liability" and "funded current liability percentage" and "unfunded current liability" and "412(l)" each time they appear and inserting instead, respectively, the terms "initial termination liability" and "initial funding ratio" and "initial unfunded liability" and "412(o)".

(B) By striking everything after the word "except" in subparagraph (E) and inserting "that in computing initial unfunded liability there shall not be taken into account an amount equal to the initial unfunded liability of the plan as of the beginning of the first plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987), reduced by an amount equal to the product of the amount necessary to amortize such pre-1988 initial unfunded liability in equal annual installments over a period of 18 plan years (beginning with the first plan year beginning after December 31, 1988) multiplied by the number of years (but not more than 18) beginning since December 31, 1988.".

(5) Section 404(a)(1)(D) is amended by striking "the unfunded liability determined under section 412(l)." at the end of the first sentence and inserting instead "the amount necessary to assure that the plan can satisfy all liabilities with respect to employees and their beneficiaries within the meaning of section 412(c)(7)(B) determined by using the interest rate under section 412(b)(5)(B)."

SEC. 512. CORRECTION TO ERISA CITATION.

(a) Section 404(g)(4) is amended by striking "enactment" and all that follows through the end of the paragraph and inserting "the transaction involved.".

SEC. 513. EFFECTIVE DATES.

The amendments made by section 511 shall be effective for plan years beginning after December 31, 1993. The amendment made by section 512 shall be effective upon enactment.

PART 2—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 521. REVISION OF ADDITIONAL FUNDING REQUIREMENTS FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.

(a) Section 302(a)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(a)(2)) is amended by striking "the excess of the total charges to the funding standard account" through the end of that sentence, and inserting "the largest of—

"(A) the lesser of—

"(i) the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years; or,

"(ii) the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years; or,

"(B) if applicable, the underfunding reduction requirement under subsection (d); or,

"(C) if applicable, the solvency maintenance requirement under subsection (g).".

(b) Section 302(d) is revised to read as follows:

"(d) UNDERFUNDING REDUCTION REQUIREMENT FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

"(1) UNDERFUNDING REDUCTION REQUIREMENT.—In the case of a defined benefit plan (other than a multiemployer plan) that has an initial funding ratio of less than 100 percent for any plan year, the underfunding reduction requirement for such plan year is the sum of—

"(A) An amount equal to the product of the initial unfunded liability of the plan multiplied by the excess (if any) of (i) 30 percent, over (ii) the product of one-quarter of one percent multiplied by the number of percentage points (if any) that the initial funding ratio of the plan exceeds 35 percent;

"(B) the charges to the funding standard account for normal cost under subparagraph (b)(2)(A) and for the amounts necessary to amortize any waived funding deficiencies under subparagraph (b)(2)(C);

"(C) the excess (if any) of—

"(i) the sum of charges to the funding standard account for plans years beginning after December 31, 1993 for net experience losses under clause (b)(2)(B)(iv) and net losses resulting from changes in actuarial assumptions under clause (b)(2)(B)(v) over—

"(ii) the sum of credits to the funding standard account for plan years beginning after December 31, 1993—

"(I) for net experience gains under clause (b)(3)(B)(ii) and net gains resulting from changes in actuarial assumptions under clause (b)(3)(B)(iii); and

"(II) for amounts considered contributed by the employer under subparagraph (b)(3)(A) (to the extent they are necessary to avoid an accumulated funding deficiency under section 302(b)); and

"(D) the net of—

"(i) charges to the funding standard account for plan years beginning on or before December 31, 1993 for net experience losses under clause (b)(2)(B)(iv) and net losses resulting from changes in actuarial assumptions under clause (b)(2)(B)(v); and

"(ii) the sum of credits to the funding standard account for plan years beginning on or before December 31, 1993—

"(I) for net experience gains under clause (b)(3)(B)(ii) and net gains resulting from changes in actuarial assumptions under clause (b)(3)(B)(iii); and

"(II) amounts considered contributed by the employer under subparagraph (b)(3)(A) (to the extent they are necessary to avoid an accumulated funding deficiency under section 302(b)).

"(2) DEFINITIONS.—For definitions pertaining to this subsection, see subsection (g)(3).

"(3) APPLICATION TO SMALL PLANS.—For the application of this subsection to small plans, see subsection (g)(4).".

(c) Section 302 is further amended by—

(1) redesignating subsection (g) as (h); and

(2) inserting after subsection (f) the following:

"(g) SOLVENCY MAINTENANCE REQUIREMENT FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

"(1) SOLVENCY MAINTENANCE REQUIREMENT.—In the case of a defined benefit plan (other than a multiemployer plan) that has an initial funding ratio of less than 100 percent for any plan year, the solvency maintenance requirement for such plan year is the sum of—

"(A) the sum of:

"(i) all disbursements from the plan for the plan year, and

"(ii) an amount equal to the initial unfunded liability of the plan multiplied by the interest rate used by such plan (determined under subparagraph (b)(5)(A));

"(B) the charges described in section 302(d)(1)(B);

"(C) the amount described in section 302(d)(1)(C); and

"(D) the amount described in section 302(d)(1)(D).

"(2) LIMITATION ON SOLVENCY MAINTENANCE REQUIREMENT.—For plan years commencing after December 31, 1993, the amount required under paragraph (1) shall not exceed the sum of—

"(A) the amount required under section 302(d); and

"(B) the product of—

"(i) the excess (if any) of—

"(I) the amount required under paragraph 1 over

"(II) the amount required under section 302(d); multiplied by—

"(ii) the applicable percentage.

"(iii) For purposes of subparagraph (ii), the applicable percentage is:

"For plan years commencing after:	The applicable percentage is:
December 31, 1993	20 percent
December 31, 1994	40 percent
December 31, 1995	60 percent
December 31, 1996	80 percent
December 31, 1997	100 percent

"(3) DEFINITIONS.—For purposes of this subsection and subsection (d)—

"(A) INITIAL UNFUNDED LIABILITY.—The term "initial unfunded liability" means the excess (if any) of the amount necessary to satisfy the initial termination liability of the plan over the initial value of assets of the plan.

"(B) INITIAL FUNDING RATIO.—The term "initial funding ratio" means the ratio of (i) the initial value of assets of the plan to (ii) the amount necessary to satisfy the initial termination liability of the plan.

"(C) INITIAL TERMINATION LIABILITY.—The term "initial termination liability" means all liabilities with respect to employees and their beneficiaries under the plan in the meaning of section 401(a)(2) of the Internal Revenue Code of 1986 as of the first day of the plan year.

"(D) INITIAL VALUE OF ASSETS.—The term "initial value of assets" means the value of the assets of the plan determined under section 302(c)(2) as of the first day of the plan year.

"(E) DISBURSEMENTS FROM THE PLAN.—

"(i) IN GENERAL.—The term "disbursements from the plan" means benefit payments, including purchases of annuities or payment of lump sums in satisfaction of liabilities, administrative expenditures or any other disbursements from the plan or its trust.

"(ii) SPECIAL RULE FOR PURCHASES OF ANNUITIES AND PAYMENT OF LUMP SUMS.—In determining the applicable amounts attributable to purchases of annuities or the payment of lump sums under clause (i), the actual purchase or lump sum amounts paid by the plan or trust shall be multiplied by the excess (if any) of one over the initial funding ratio of the plan.

"(4) SPECIAL RULES FOR SMALL PLANS.—

"(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection and subsection (d) shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

"(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding year had no more than 150 participants, the additional amounts required by the underfunding reduction requirement under subsection (d) or the solvency maintenance requirement under this subsection shall be equal to the product of—

"(i) the excess of such requirements (determined without regard to this subparagraph) over the funding deficiency (if any) under subsection 302(b), multiplied by—

"(ii) 2 percent for the highest number of participants in excess of 100 on any such day.".

(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

(d) CONFORMING AMENDMENTS.—

(1) Section 302(b) is amended—

(A) by striking "and for purposes of determining a plan's required contribution under section 302(d)" in subparagraph (5)(B) in inserting "under section 302(c)(7)(B)".

(2) Section 302(c) is amended by striking "has the meaning given such term by subsection 302(d)(7) (without regard to subparagraph (D) thereof)" in subparagraph (7)(B) and inserting "means all liabilities with respect to employees and their beneficiaries under the plan within the meaning of section 401(a)(2) of the Internal Revenue Code of 1986 (within such limitations as the Secretary of the Treasury may prescribe by regulation) determined by using the interest rate under section 302(b)(5)(B)".

(3) Section 302(e)(4)(B) is amended by striking "section 412 of the Internal Revenue Code of 1986" in subparagraph (i) and inserting "section 412 (b) or (i) of the Internal Revenue Code of 1986, whichever is greater".

SEC. 522. EFFECTIVE DATES.

The amendments made by this part shall be effective for plan years beginning after December 31, 1993.

Subtitle B—Amendments to Title IV of ERISA

SEC. 531. LIMITATION ON BENEFITS GUARANTEED.

(a) Subsection (b)(1) of section 4022 of ERISA is amended by adding after "(7)" ", (8) and (9)".

(b) Subsection (b)(7) of section 4022 of ERISA is amended by—

(1) striking the period at the end and inserting in its place a semicolon; and

(2) by adding after paragraph (7) a new paragraph (8):

"(8)(A) Benefits under a new plan or any increase in benefits under a plan resulting from a plan amendment, which new plan or amendment was adopted or became effective after December 31, 1991, shall be disregarded unless:

"(i) The plan was fully funded for vested benefits for the plan year that the new plan or amendment was adopted or became effective, whichever is later, or became fully funded for vested benefits in a subsequent plan year; and

"(ii) The new plan or amendment was adopted or effective, whichever is later, at least one year prior to the date of plan termination.

"(B) For purposes of this section, a plan is 'fully funded for vested benefits' for any plan year if such plan has no unfunded vested benefits within the meaning of section 4006(a)(3)(E)(iii) as of the last day of such plan year.

"(C)(i) Except as provided in clause (ii), paragraph (7) and paragraphs (5)(B) and (5)(C) shall not apply to benefits described in subparagraph (A) of this paragraph.

"(ii) This paragraph shall not apply, and paragraph (7) and paragraphs (5)(B) and (5)(C) shall apply, to any new plan or plan amendment resulting from a collective bargaining agreement or amendment thereto entered and ratified on or prior to December 31, 1991."

(c) Subsection (b) of section 4022 of ERISA (as amended by subsection (b) of this section) is further amended by adding a new paragraph (9):

"(9)(A) Notwithstanding paragraph (8), any plan provision or amendment adopted or effective after December 31, 1991, that creates or increases unpredictable contingent event benefits shall not be guaranteed.

"(B) For purposes of this section, an 'unpredictable contingent event benefit' means any benefit contingent on an event other than—

"(i) age, service compensation, death or disability, or

"(ii) an event which is reasonably and reliably predictable (as determined under regulations prescribed by the corporation).".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective on December 31, 1991.

SEC. 532. ENFORCEMENT OF MINIMUM FUNDING REQUIREMENTS.

(a) IN GENERAL.—Paragraph (1) of section 4003(c) of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1303 (e)(1)) is amended by inserting after "title" the following: "and, in the case of a plan to which this title applies under section 4021, section 302 of this Act or section 412 of the Internal Revenue Code of 1986".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective for installments and other payments required under section 302 of the Employee Retirement Income Security Act of 1974 or section 412 of the Internal Revenue Code of 1986 due on or after the date of the enactment of this Act.

SEC. 553. DEFINITION OF CONTRIBUTING SPONSOR.

(a) IN GENERAL.—Paragraph (13) of section 4001(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(13)) is amended to read as follows:

"(13) 'contributing sponsor' means, with respect to a single-employer plan, a person entitled to receive a deduction under section 404(a)(1) of the Internal Revenue Code of 1986 for contributions required to be made to the plan under section 302 of this Act or section 412 of such Code.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in section 9305 of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-351).

SEC. 534. RECOVERY RATIO PAYABLE UNDER CORPORATION'S GUARANTY.

(a) IN GENERAL.—Section 4022(c)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(c)(3)(B)) is amended—

(1) by redesignating clauses (i) and (ii) as clauses (ii) and (iii) respectively; and

(2) by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the outstanding amount of benefit liabilities does not exceed $20,000,000,".

(b) TERMINATIONS.—Clause (iii) of section 4022(c)(3)(B) of such Act (29 U.S.C. 1322(c)(3)(B)), as redesignated by subsection (a), is amended—

(1) by inserting ", or proceedings were instituted under section 4042," after "provided"; and

(2) by striking "in which occurs the date of the notice of intent to terminate with respect to the plan termination".

(c) CONFORMING AMENDMENTS.—Clause (i) of section 9312(b)(3)(B) of the Pension Protection Act is amended by—

(1) inserting ", or proceedings were instituted under section 4042," after "provided"; and

(2) striking "1990" and inserting "1994".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9312(b)(3) of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-362).

SEC. 535. ELIMINATION OF THE SEVENTH REVOLVING FUND.

(a) TRANSFER.—Effective September 30, 1992, all assets and liabilities of the fund described in section 4005(f)(1) of the Employee Retirement Income Security Act of 1974 (as

in effect before the amendments made by this section) shall be transferred to the fund established pursuant to section 4005(a) of such Act with respect to basic benefits guaranteed under section 4022 of such Act.

(b) REPEAL.—Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fiscal years beginning after September 30, 1992.

SEC. 536. DISTRESS TERMINATION CRITERIA FOR BANKING INSTITUTIONS.

(a) IN GENERAL.—Subclause (I) of section 4041(c)(2)(B)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting "Federal law or" before "law of a State".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan terminations under section 4041 of the Employee Retirement Income Security Act of 1974 with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided on or after the date of the enactment of this Act.

SEC. 537. VARIABLE RATE PREMIUM EXEMPTION.

(a) IN GENERAL.—Clause (v) of section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by striking all that follows "not less than" and inserting "the maximum amount that may be contributed without incurring an excise tax under section 4972 of the Internal Revenue Code of 1986".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1992.

Subtitle C—Employer Liability, Lien and Priority

PART 1—AMENDMENTS TO TITLE IV OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 541. EMPLOYER LIABILITY LIEN AND PRIORITY AMOUNT.

(a) REVISED LIMITATIONS ON LIEN AND TAX PRIORITY AMOUNT.—Section 4068(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1368(a)) is amended—

(1) by striking "If any person liable to the corporation" and inserting "(1) Subject to paragraphs (2) and (3), if any person liable to the corporation";

(2) by striking "section 4062" and inserting "section 4062(a)(1)";

(3) by striking the comma after "belonging to such person" and inserting a period;

(4) by striking "except that such lien" and inserting the following:

"(2) In the case of plan terminations under section 4041 with respect to which notices of intent to terminate under section 4041(a)(2) are provided before January 1, 1992, and plan terminations with respect to which proceedings are instituted by the corporation before January 1, 1992, the lien established under paragraph (1)"; and

(5) by adding at the end the following paragraph:

"(3)(A) In the case of plan terminations under section 4041 with respect to which notices of intent to terminate under section 4041(a)(2) are provided on or after January 1, 1992, and plan terminations with respect to which proceedings are instituted by the corporation on or after January 1, 1992, the lien established under paragraph (1) may not be in an amount in excess of the sum of—

"(i) the amount of benefits attributable to the occurrence of unpredictable contingent events valued as of the date of plan termination arising at any time during the 3 years preceding the date of plan termination (to the extent not funded prior to plan termination), plus

"(ii) the greater of—

"(I) 30 percent of the collective net worth of all persons described in section 4062(a), or

"(II) the currently applicable percentage of the excess of the amount of unfunded benefit liabilities under the plan as of the date of plan termination over the amount described in clause (i).

"(B) For purposes of this paragraph—

"(i) the term 'currently applicable percentage' means—

"(I) with respect to plan terminations initiated in calendar year 1992, 10 percent,

"(II) with respect to plan terminations initiated in any calendar year after 1992 and before 2012, the percentage determined under this clause with respect to plan terminations initiated in the preceding calendar year, plus 2 percent, and

"(III) with respect to plan terminations initiated in calendar years after 2011, 50 percent.

"(ii) The term 'amount of benefits attributable to the occurrence of unpredictable contingent events' means, with respect to any plan, the present value of unpredictable contingent event benefits (within the meaning of section 302(d)(7)(B)(ii)), determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044.

"(C) In applying subparagraph (A), the corporation may disregard subclause (I) of clause (ii) thereof if the corporation determines, in its sole discretion, that disregarding such subclause (I) is cost-effective.".

(b) CONFORMING AND CLARIFYING AMENDMENTS RELATING TO AMOUNT ENTITLED TO PRIORITY TREATMENT IN INSOLVENCY AND BANKRUPTCY CASES.—Section 4068(c)(2) of such Act (29 U.S.C. 1368(c)(2)) is amended by inserting "(A)" after "(2)" and by adding at the end the following new subparagraph:

"(B) Subparagraph (A) shall apply—

"(i) in the case of terminations described in paragraph (2) of subsection (a), only with respect to so much of the liability as does not exceed the amount determined under such paragraph (2), and

"(ii) in the case of terminations described in paragraph (3) of subsection (a), only with respect to so much of the liability as does not exceed the amount determined under such paragraph (3).".

(c) CLARIFICATION OF BANKRUPTCY AND INSOLVENCY CLAIM.—Section 9312(b)(2)(B) of the Pension Protection Act (Public Law 100-203, 101 Stat. 1330-361) is amended by adding at the end thereof the following new clause:

"(iii) Section 4068(c)(2) of ERISA (29 U.S.C. 1368(c)(2)) is amended—

"(I) by striking 'the lien imposed under subsection (a)' and inserting 'the liability to the corporation under section 4062(a)(1), 4063, or 4064'; and "(II) by inserting 'which is' after 'tax', and by inserting 'and assigned priority' after 'United States'.".

(d) EFFECTIVE DATES.—

(1) Section 4068(a)(2) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) and section 4068(c)(2)(B)(i) of such Act (as amended by subsection (b)) shall be effective with respect to plan terminations under section 4041 of such Act with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided before January 1, 1992, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act before January 1, 1992.

(2) Section 4068(a)(3) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) and section 4068(c)(2)(B)(ii) of such Act (as amended by subsection (b)) shall be effective with respect to plan terminations under section 4041 of such Act with respect to which notices of intent to terminate under section 4041(a)(2) of such Act are provided on or after January 1, 1992, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act on or after January 1, 1992.

(3) The amendment made by subsection (a)(2) shall be effective as if included in the enactment of section 11011(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Public Law 99-272; 100 Stat. 253).

(4) The amendment made by subsection (c) shall be effective as if included in the enactment of section 9312(b)(2)(B) of the Pension Protection Act (Public Law 100-203, 101 Stat. 1330-361).

SEC. 542. LIABILITY UPON LIQUIDATION OF CONTRIBUTING SPONSOR WHERE PLAN REMAINS ONGOING

(a) IN GENERAL.—Section 4062 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended by adding at the end the following new subsection:

"(f) LIABILITY ON LIQUIDATION OF CONTRIBUTING SPONSOR.—

"(1) IN GENERAL.—In any case in which all or substantially all of the assets of a person who is a contributing sponsor of a single-employer plan are liquidated in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision of a State, and in the course of such liquidation another member of such person's controlled group remains a contributing sponsor of the plan or is liable for payment of contributions or installments under section 302(c)(11) of this Act or section 412(c)(11) of the Internal Revenue Code of 1986, such person shall be deemed liable under subsection (b) as if such plan had terminated under section 4041(c) in the course of such liquidation and as if the termination date were the date determined by the corporation as the date on which the liquidation was initiated.

"(2) APPLICABILITY OF OTHER PROVISIONS.—Any provision of this Act or any other provision of law that applies to liability under this section upon termination of a plan shall apply in the same manner and to the same extent to the liability established under this subsection. For purposes of this paragraph, the date referred to in paragraph (1) shall be deemed the date of plan termination.

"(3) TRANSFER OF LIABILITY PAYMENTS TO THE ONGOING PLAN.—The corporation shall pay to the plan amounts collected by the corporation in satisfaction of any liability established under this subsection in connection with such plan.

"(4) REGULATIONS.—The corporation may prescribe regulations under this subsection. Such regulations may—

"(A) prescribe rules governing—

"(i) the basis upon which the plan will continue as an ongoing plan maintained by other members of the controlled group,

"(ii) the determination of whether a liquidation referred to in this subsection has occurred, and

"(iii) the assignment of the corporation's claim to liability payments under this sub-

section to other members of the controlled group as a means of collecting such payments, subject to the transfer of such payments to the plan, and

"(B) provide alternative arrangements for making liability payments under this subsection.".

(b) CONFORMING AMENDMENT.—Section 4062(a)(1) of such Act (29 U.S.C. 1362(a)(1)) is amended by striking "subsection (b) and inserting "subsections (b) and (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective for liquidations initiated on or after the date of the enactment of this Act.

PART 2—AMENDMENTS TO TITLE 11, UNITED STATES CODE

SEC. 551. PENSION BENEFIT GUARANTY CORPORATION PERMITTED TO BE A MEMBER OF AN UNSECURED CREDITORS' COMMITTEE.

(a) DEFINITION.—Section 101(41) of title 11 of the United States Code is amended by inserting "that guarantees pension benefits of the debtor or an affiliate of the debtor, or" after "governmental unit" the second time it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

SEC. 552. CLARIFICATION OF PRIORITIES IN CONFORMITY WITH THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PRIORITY AS EXPENSES ARISING BEFORE COMMENCEMENT OF CASE.—

(1) in subparagraph (F), by striking "or" at the end;

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

(3) by adding after subparagraph (G) the following:

"(H) unpaid contributions (including interest) to pension plans for plan years beginning after December 31, 1987, which are attributable to the period prior to the date of the filing of the petition and treated as taxes owing to the United States under section 412(n)(4)(C) of the Internal Revenue Code of 1986; or

"(I) liability (including interest) arising under section 4062(a)(1), 4063, or 4064 of the Employee Retirement Income Security Act of 1974 to the extent it is treated as a tax under section 4068(c)(2) of such Act, if the date of pension plan termination is on or prior to the date of the filing of the petition. "For purposes of subparagraph (I), the date of plan termination, the amount of the liability, and the extent to which the liability is treated as a tax shall be determined in accordance with the provisions of the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.".

(b) PRIORITY AS ADMINISTRATIVE EXPENSES ARISING AFTER COMMENCEMENT OF CASE.—Section 503(b) of such title 11 is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting "; and"; and

(3) by adding at the end the following;

"(7)(A) unpaid contributions (including interest) to pension plans for plan years beginning after December 31, 1987, which are attributable to the period beginning on the date of the filing of the petition and treated as taxes owing to the United States under section 412(n)(4)(C) of the Internal Revenue Code of 1986; and

"(B) liability (including interest) arising under section 4062(a)(1), 4063, or 4064 of the Employee Retirement Income Security Act of 1974 to the extent it is treated as a tax under section 4068(c)(2) of such Act, if the date of pension plan termination is after the date of the filing of the petition.

"For purposes of paragraph (7)(B), the date of plan termination, the amount of the liability, and the extent to which the liability is treated as a tax shall be determined in accordance with the provisions of the Employee Retirement Income Security Act of 1974 and the regulations promulgated thereunder.".

(c) EFFECTIVE DATE.—Sections 507(a)(7)(H) and 503(b)(1)(7)(A) of title 11 of the United States Code (as amended by this section) shall be effective as if included in section 9304(e) of the Pension Protection Act (Public Law 100-203; 101 Stat. 1330-348). Sections 507(a)(7)(I) and 503(b)(1)(7)(B) of such title (as amended by this section) shall be effective with respect to cases under such title which commence on or after the date of the enactment of this Act or cases under such title which are pending on the date of the enactment of this Act and in which claims for liability have not been resolved as of such date.

SEC. 553. NOTICE REQUIRED WHERE FEDERALLY INSURED PENSION PLAN IS ADMINISTERED BY THE DEBTOR OR ITS AFFILIATE.

(a) IN GENERAL.—Rule 2002(j) of the Bankruptcy Rules (11 U.S.C. Appendix) is amended by inserting before the period at the end the following: "; (5) to the Pension Benefit Guaranty Corporation in any case in which the debtor or an affiliate of the debtor maintains a pension plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect one day after the date of enactment of title VI.

TITLE VI—FEDERAL INSURANCE ACCOUNTING ACT OF 1992

SECTION 601. SHORT TITLE.

This Act may be cited as the "Federal Insurance Accounting Act of 1992".

SEC. 602. INSURANCE ACCRUAL ACCOUNTING.

Title V of the Congressional Budget Act of 1974 is amended as follows:

(a) The title of title V is amended to read "TITLE V—CREDIT AND INSURANCE ACCOUNTING REFORM".

(b) Following the title, insert "Subtitle A—Credit Accounting".

(c) Substitute the word "subtitle" for "title" wherever it appears.

(d) Following section 507, insert the following:

"Subtitle B—Insurance Accounting

"SEC. 550. PURPOSES.

"The purposes of this subtitle are to—

"(1) measure more accurately the cost of Federal insurance programs;

"(2) place the cost of insurance programs on a budgetary basis equivalent to other Federal spending;

"(3) improve the allocation of resources among insurance programs and between insurance and other spending programs; and

"(4) encourage the provision of Federal insurance in a manner that adequately protects the insured at the least cost to the Federal Government.

"SEC. 551. EFFECTIVE DATES.

"The definitions and changes in budget treatment and accounting shall be effective as of the following dates:

"(a) October 1, 1991, for: the deposit insurance activities of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the National Credit Union Administration; and the pension guarantee program of the Pension Benefit Guaranty Corporation;

"(b) October 1, 1992, for all other insurance programs.

"SEC. 552. DEFINITIONS.

"For purposes of this subtitle, with respect to any Federal insurance program—

"(1) the term 'obligation' means a binding agreement by a Federal agency to indemnify a nonfederal entity against specified losses in return for premiums paid. This term does not include loan guarantees as defined in Subtitle A or obligations of social security, Medicare, and other social and medical insurance programs;

"(2) the term 'accrued cost' means the net present value of the insurance liabilities outstanding on the effective date and at the end of each successive reporting period;

"(3) the term 'accrual cost' means the increase or decrease in accrued cost during a fiscal year or from the beginning of a fiscal year to the time of the insured event, if one occurs during the fiscal year. Alternatively, for programs for which it is possible to make actuarial estimates, the accrual cost may be the estimated long-term average loss per fiscal year for periods of comparable exposure to risk of loss;

"(4) the term 'liquidating account' means the budget account for the accrued cost, as estimated on the effective date specified in section 551;

"(5) the term 'program account' means the budget account for the accrual costs, for all costs of administering the insurance program, and balances;

"(6) the term 'financing account' means the non-budget account that receives cost payments from the program account and the liquidating account, makes payments to the program account, includes all cash flows to and from the Federal Government, and holds balances;

"(7) the term 'insured event' means an event that results in an obligation of the Federal Government; and

"(8) the term 'Director' means the Director of the Office of Management and Budget.

"SEC. 553. OMB, CBO, AND AGENCY ANALYSIS, COORDINATION, AND REVIEW.

"(a) DIRECTOR'S RESPONSIBILITIES.—For the Executive branch, the Director shall be responsible for the estimates required by this subtitle, in consultation with the agencies that administer insurance programs.

"(b) DELEGATION.—The Director may delegate to agencies authority to make estimates. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this subtitle.

"(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

"(d) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of methods of estimating the costs of insurance programs. The Office of Management and Budget and the Congressional Budget Office shall have access to the agency data necessary to develop estimates of costs.

"(e) ACCOUNTING SUPPORT.—The Director shall coordinate the development by the Federal agencies that conduct insurance programs of such accounting methods and systems as are necessary to support accounting and budgeting for insurance programs on an accrual basis.

"SEC. 554. BUDGETARY TREATMENT.

"(a) BUDGET ACCOUNTING.—For any insurance program.—

"(1) Premiums and other income shall be credited to a finance account and available to finance program costs in the following priority:

"(A) administrative expenses, by reimbursement to the program account;

"(B) accrued costs, estimated as of the effective date specified in section 551, for insured events that occur during a fiscal year, before drawing on the resources of the liquidating account; and

"(C) accrual costs, before drawing on the resources of the program account.

"(2) Any balance of premiums and other income remaining after financing the program costs shall be paid to the program accounts.

"(3) All collections and payments by the financing accounts shall be a means of financing.

"(4) To the extent the accrued costs, estimated as of the effective date specified in section 551, for insured events that occur during a fiscal year, exceed the premiums and other income available in accordance with paragraph (1), an obligation equal to the amount of such excess shall be recorded in the insurance liquidating account. Such obligation shall be a charge, first, against any unobligated balances of the liquidating account and, second, against appropriations to the liquidating account for that year. Outlays from the liquidating account shall be made to the financing account at the time the insured event occurs. Any balances remaining in excess of accrued costs shall be transferred to the program account.

"(5) For any year in which there is an accrual cost that exceeds the premiums and other income available in accordance with paragraph (1), an obligation equal to such excess shall be recorded in the program account. Such obligation will be a charge, first, against any unobligated balances of the program account and, second, against appropriations to the program account for that year. An outlay in the amount of the obligation shall be made in the same fiscal year to the finance account for the program.

"(6) For the Bank Insurance Fund, any appropriations necessary under paragraphs (4) and (5) shall be repaid to the general fund from premiums and other income on a 15 year schedule as authorized under section 14 of the Federal Deposit Insurance Corporation Improvement Act of 1991. Premiums and other income available to the Bank Insurance Fund shall be available, first, to finance costs in the priority shown in paragraph (1) and, second, to finance these repayments.

"(b) MODIFICATIONS.—No action shall be taken to modify an insurance program in a manner that increases its accrual cost unless budget authority for the additional accrual cost is appropriated in advance, or is available out of existing appropriations or from other budgetary resources.

"(c) ADMINISTRATIVE EXPENSES.—All obligations for an agency's administration of an insurance program shall be displayed as distinct and separately identified subaccounts within the program account. To the extent that the administrative expenses of an insurance programs are authorized to be financed by premiums and other income, the financing account shall reimburse the program account for administrative expenses. The administrative expenses of the Resolution Trust Corporation shall be financed as authorized by section 501 of Public Law 101-73, in a program account established for the purpose, separate from the RTC Revolving Fund.

"SEC. 555. AUTHORIZATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There are authorized to be appropriated to each Federal agency authorized to conduct insurance programs, such sums as may be necessary to pay the accrued and accrual costs associated with such insurance programs. For the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, such appropriations shall be considered discretionary spending if the spending for a program was classified as discretionary spending by that Act. If such spending was not classified as discretionary spending, it shall be considered direct spending (entitlement authority).

"(b) AUTHORIZATION TO ESTABLISH FINANCING ACCOUNTS.—In order to implement the accounting required by this subtitle, the President is authorized to establish such non-budgetary accounts as may be appropriate.

"(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the insurance financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supersede or override the authority of the head of a Federal agency to administer and operate an insurance program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the program, financing, and liquidating accounts in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

"(d) ELIGIBILITY AND ASSISTANCE.—Nothing in this subtitle shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by, an insurance program.

"SEC. 556. EFFECT ON OTHER LAWS.

"(a) This subtitle shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this subtitle to the extent such provision is inconsistent with this subtitle. Nothing in this subtitle shall be construed to establish a limitation on any Federal insurance program.

"(b) The changes made by this subtitle shall be considered changes in budget concepts and definitions for the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.".

SEC. 603. CONFORMING AMENDMENTS.

"(a) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3(2) of the Congressional Budget Act of 1974 is amended by adding "and accrual costs of insurance programs," after "programs,".

(2) Section 1105(a) of title 31, United States Code, is amended by inserting at the end thereof the following:

"(29) the accrued and accrual costs of insurance programs.".

(b) EFFECTIVE DATE.—These changes are effective upon enactment.

TITLE VII—MEDICARE PREMIUM EQUITY AMENDMENTS OF 1992

SEC. 701. SHORT TITLE.

This title may be cited as the "Medicare Premium Equity Amendments of 1992".

SEC. 702. INCREASE IN MEDICARE PART B PREMIUM FOR INDIVIDUALS WITH HIGH INCOME.

Section 1839 of the Social Security Act is amended by adding at the end the following:

"(g)(1)(A) Notwithstanding the previous subsections, in the case of an individual who in a taxable year ending with or within a calendar year has an adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) exceeding the applicable amount (specified under subparagraph (B)), the amount of the monthly premium for the calendar year shall be increased by an amount such that the total monthly premium shall be equal to 150 percent of the monthly actuarial rate for enrollees age 65 and over determined for that calendar year.

"(B) For purposes of subparagraph (A), the applicable amount is—

"(i) $125,000, in the case of an individual who is a married individual (as defined in section 7703 of the Internal Revenue Code of 1986) who makes a single return jointly with his spouse under section 6013 of that Code, who is a surviving spouse (as defined in section 2(a) of that Code), or who is a head of a household (as defined in section 2(b) of that Code),

"(ii) $62,500, in the case of an individual who is a married individual (as so defined) who does not make a single return jointly with his spouse under section 6013 of that Code, and

"(iii) $100,000, in the case of any other individual.

"(2) Subsection (f) does not apply to the additional amount specified under paragraph (1).".

SEC. 703. COLLECTION OF ADDITIONAL PREMIUM.

Section 1840 of the Social Security Act is amended by adding at the end the following:

"(i)(1) Notwithstanding the previous subsections, the additional premium amounts specified in section 1839(g)(1) shall be paid in such manner and at such times as the Secretary may specify.

"(2) The Secretary may impose such interest and penalties for failure to comply with requirements developed under paragraph (1) as the Secretary may specify.

"(3) The Secretary of the Treasury shall provide to the Secretary information concerning taxpayers and tax returns as is needed to carry out this subsection and section 1839(g).".

SEC. 704. TERMINATION OF PART B ENROLLMENT.

Section 1838 of the Social Security Act is amended by adding at the end the following:

"(f) Notwithstanding the previous subsections, the Secretary may provide for termination of enrollment and coverage under this part at such times and in such manner as the Secretary may specify for failure to comply with requirements developed under section 1840(i).".

SEC. 705. INITIAL FUNDING OF PROGRAM MANAGEMENT.

Amounts appropriated for fiscal year 1992 or 1993 for the Health Care Financing Administration under the heading "Program Management" or for the Social Security Administration under the heading "Limitation on Administrative Expenses", and that are reserved to meet unanticipated costs or to process unanticipated workloads, may be expended and apportioned for use to meet the costs of administering the amendments made by this title.

SEC. 706. EFFECTIVE DATE.

The amendments made by this title apply to premiums for months after March 1992.

TITLE VIII—MEDICARE BUDGET AMENDMENTS OF 1992

SEC. 801. SHORT TITLE, REFERENCES IN TITLE, AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Medicare Budget Amendments of 1992".

(b) REFERENCES IN TITLE.—The amendments in this title apply to the Social Security Act unless otherwise specifically stated.

SEC. 802. ELIMINATION OF CERTAIN ANOMALIES IN PAYMENTS FOR ANESTHESIA.

(a) GENERAL RULE.—

(1) Part B of title XVIII is amended by inserting after section 1846 the following:

"ELIMINATION OF CERTAIN ANOMALIES IN PAYMENTS FOR ANESTHESIA

"SEC. 1847. (a) Payment under this part for anesthesia physicians' services, when a separate charge (on a fee schedule basis) is also made for the services of a certified registered nurse anesthetist, may not, when added to the payment made for the services of the nurse anesthetist, exceed the amount that would be paid for the anesthesia physicians' services if a separate payment were not made for the services of the nurse anesthetist.".

(2) Section 1848(g)(2)(D) is amended by inserting "(or the lower amount under section 1847)" after "subsection (a)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to services furnished after September 1992.

SEC. 803. RATES FOR CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) NON-MEDICALLY DIRECTED CRNA'S.—

(1) Section 1833(1)(4)(A) is amended—

(A) in the matter preceding clause (i), by striking "subparagraphs (C) and (D)" and inserting "subparagraph (C)", and

(B) in clause (i)—

(i) in subclause (III), by striking "$16.00," and inserting "$18.00, and",

(ii) by striking subclauses (IV) through (VI),

(iii) in subclause (VII), by striking "1996" and inserting "1993", and

(iv) by renumbering subclause (VII) as (IV).

(2) Section 1833(1)(4) is further amended—

(A) by striking subparagraph (C), and

(B) by redesignating subparagraph (D) as (C).

(b) MEDICALLY DIRECTED CRNA'S.—Section 1833(1)(4)(B) is amended—

(1) in clause (i), by striking "subparagraph (D)" and inserting "subparagraph (C)", and

(2) in clause (ii)—

(A) in subclause (III), by striking "$11.00," and inserting "$8.60, and",

(B) by striking subclauses (IV) through (VI),

(C) in subclause (VII), by striking "1997" and inserting "1993", and

(D) by renumbering subclause (VII) and (IV).

SEC. 804. SECRETARIAL DISCRETION IN DETERMINING ANNUAL UPDATE IN PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

(a) DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(14)(B) is amended by striking out "the percentage increase" and all that follows through "year" and inserting "a percentage change (or no change), which may be different for different kinds of equipment, as determined by the Secretary and published in the Federal Register by the end of the September preceding the year, after taking into consideration market factors and technological change".

(b) PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Section 1834(h)(4)(A) is amended—

(1) by striking "and" at the end of clause (i),

(2) in clause (ii)—

(A) by striking "a subsequent year" and inserting "1992", and

(B) by striking the semicolon and adding a comma and "and", and

(3) by adding at the end the following:

"(iii) for a subsequent fiscal year, a percentage change (or no change), which may be different for different kinds of items, as determined by the Secretary and published in the Federal Register by the end of the September preceding the year, after taking into consideration market factors and technological change.".

SEC. 805. PAYMENTS CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) LOWER CAP.—Section 1833(h)(4)(B) is amended—

(1) by striking "and" at the end of clause (iii),

(2) in clause (iv), by inserting "and before October 1, 1992," after "1990,",

(3) by striking the period at the end of clause (iv) and adding a comma and "and", and

(4) by adding at the end the following:

"(v) after September 30, 1992, is equal to 76 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(b) SECRETARIAL DISCRETION IN DETERMINING ANNUAL UPDATE IN PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.—Section 1833(h)(2)(A)(ii) is amended—

(1) by striking "and" at the end of subclause (II),

(2) in subclause (III), by striking ", 1992, and 1993 shall be 2 percent." and adding "and 1992 shall be 2 percent, and", and

(3) by adding at the end the following:

"(IV) the annual adjustment in the fee schedules determined under clause (i) for each subsequent year shall be a percentage change (or no change), which may be different for different kinds of tests, as determined by the Secretary and published in the Federal Register by the end of the September preceding the year, after taking into consideration market factors and technological change.".

SEC. 806. UPDATES FOR INPATIENT HOSPITAL SERVICES ON A CALENDAR YEAR BASIS.

(a) PPS HOSPITALS.—Section 1886(b)(3)(B)(i) is amended—

(1) in the matter preceding subclause (I), by striking "fiscal year" and inserting "particular time period",

(2) in subparagraph (VII), by inserting "and the three succeeding months" after "fiscal year 1992",

(3) in subparagraphs (VIII) through (X), by striking "fiscal year", and

(4) in subparagraph (XI), by striking "for fiscal year 1996 and each subsequent fiscal year" and inserting "for 1996 and each subsequent year".

(b) OTHER HOSPITALS.—Section 1886(b)(3)(B)(ii) is amended—

(1) by renumbering subclause (IV) as (VI), and

(2) by inserting after subclause (III) the following:

"(IV) fiscal years 1989, 1990, 1991, and 1992, the market basket percentage increase,

"(V) fiscal year 1993, 75 percent of the market basket percentage increase, and"

"(c) CONFORMING AMENDMENT.—Section 1886(b)(3)(B)(iii) is amended—

(1) by striking "fiscal year" the first place it occurs and inserting "particular time period",

(2) by striking "period or fiscal year" the first place it occurs and inserting "cost reporting period or particular time period", and

(3) by striking "for the period or fiscal year" and inserting "for the cost reporting period or fiscal year ending in the particular time period".

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN SAVINGS SET-ASIDE AMENDMENTS OF 1992

SHORT TITLE

SEC. 901. This title may be cited as the "AFDC Savings Set-Aside Amendments of 1992".

INCREASE IN RESOURCE LIMIT

SEC. 902. Section 402(a)(7)(B) of the Social Security Act is amended by striking out the semicolon at the end and inserting lieu thereof: "and at the option of the State disregard, in determining such combined value with respect to a family already receiving aid, resources the value of which do not exceed $10,000, but only if the State plan provides that (I) the State agency will determine that any such disregarded resources are being retained for later expenditure for a purpose directly related to improving the education, training, or employability (including self-employment) of a family member or for the purchase of a home for the family, (II) the value of any resources so disregarded will not be taken into consideration for purposes of determining eligibility for benefits under the Food Stamp Act of 1977, and (III) the State agency will not disregard under this paragraph any resource (or interest therein) owned by a family member within the preceding 12 months, if such resource (or interest) was disposed of at less than fair market value for the purpose of establishing eligibility for aid under the State plan (and any such transaction shall be presumed to have been for such purpose unless convincing evidence is furnished to establish that the transaction was for another purpose exclusively);".

DISREGARDS TO CARRY OUT A SELF-EMPLOYMENT PLAN

SEC. 903. (a) Section 402(a)(7) of the Social Security Act is amended by striking out "and section 415" in the matter preceding subparagraph (A) and inserting in lieu thereof "section 415, and section 482(b)".

(b) Section 482(b)(1) of the Act is amended by adding at the end thereof the following new subparagraphs:

"(C) The employability plan may, at the option of the State agency, provide for the retention and set-aside of such amounts of income and resources as the State agency determines necessary for carrying out an approved employability plan which includes self-employment as its employment goal, and the State agency must find that the specific form of self-employment for which the set-aside is intended is practical and attainable by the participant in light of all the surrounding circumstances. Income and resources set aside in order to carry out a self-employment plan shall not be considered to be income or resources for purposes of the participant's continued receipt of aid to families with dependent children, or for purposes of determining eligibility for or the amount of benefits payable under any other Federal or Federally assisted program providing benefits based on need, but only for months in which the State agency determines that the participant is making progress towards achieving the self-employment goal and otherwise satisfactorily participating in the program under this part.

"(D) The State agency may, at its option, develop an employability plan at the request of individual who is exempt from participation in the program under this part which has such individual's self-employment as its employability goal. The State agency may then approve the set-aside of income and resources, subject to the same terms and con-

ditions as provided in subparagraph (C), to fulfill such plan.

"(E) Income may be disregarded under subparagraph (C) or (D) for no more than a 24-month period beginning with the first month in which self-employment income is produced under the plan, and such subparagraphs shall cease to apply to an employability plan 36 months after the State agency approves such plan.".

EFFECTIVE DATE

SEC. 904. The amendments made by this title shall become effective October 1, 1992.

TITLE X—FOOD STAMP AMENDMENTS OF 1992

SHORT TITLE

SEC. 1001. That this title may be cited as the "Food Stamp Amendments of 1992".

COOPERATION WITH CHILD SUPPORT ENFORCEMENT AGENCIES

SEC. 1002. (a) Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015) is amended by adding a new subsection (i) at the end thereof as follows—

"(i) No natural or adoptive parent or other individual who is living with and exercising parental control over a child under the age of eighteen who has an absent parent shall be eligible to participate in the food stamp program unless such individual cooperates with the State agency administering the program under part D of title IV of the Social Security Act in (1) establishing the paternity of such child (if born out of wedlock) and (2) in obtaining support for such child or for herself/himself and for such child, unless good cause is found by the State agency for refusing to cooperate. The State agency responsible for administering the program under this title shall make determinations of good cause. For a determination of refusal to cooperate to be made, an individual must be able to cooperate, but clearly demonstrate that she or he will not take actions that she or he is able to take that are required to establish paternity and/or obtain support for such child or for herself/himself and for such child. Good cause for an individual's failure to appear for an interview at the State agency administering the program under part D of title IV of the Social Security Act to meet the requirements of this subsection shall include, but not be limited to, circumstances beyond the individual's control, including illness, illness of another household member requiring the presence of the individual scheduled for the interview, or a household emergency such as the death of a relative or fire. Good cause for refusal to cooperate with the agency administering the program under part D of title IV of the Social Security Act in meeting the requirements of this subsection shall include, but not be limited to, situations in which cooperation would be against the best interests of the child because such cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child or the parent or caretaker relative, the child for whom support is sought was conceived as a result of incest or forcible rape, or legal proceedings for the adoption of the child are pending before a court of competent jurisdiction or the applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption and discussions have not gone on for more than three months, or the applicant or recipient is pregnant or has given birth within the previous 60 days. Notwithstanding any other provision of law, in no event shall individuals subject to the requirements in this subsection be made to pay a fee for services provided under part D of title IV of the Social Security Act or be subject to cost recovery for services provided under such part D.".

(b) Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) is amended by—

(1) striking "and" at the end of paragraph (24);

(2) striking the period at the end of paragraph (25) and inserting in lieu thereof "; and"; and

(3) adding a new paragraph (26) at the end of the subsection as follows—

"(26) that the State agency shall (A) furnish to the State agency administering the program under part D of title IV of the Social Security Act, the information required by that agency to establish and enforce support obligations pursuant to such part D with respect to households from which a parent is absent that include a child or children under the age of eighteen who are applying for or receiving food stamps under this Act and are not applying for or receiving cash assistance under the State plan under part A of title IV, or foster care maintenance payments under part E of title IV of the Social Security Act; (B) establish, in accordance with regulations issued by the Secretary, a conciliation procedure for the resolution of disputes involving determinations of refusal to cooperate with the State agency administering the program under Part D of title IV of the Social Security Act; and (C) inform individuals subject to section 6(i) of this Act of the benefits of cooperating with the State agency administering the program under part D of title IV of the Social Security Act.".

(c) The provisions of this section shall become effective with respect to a State agency at such time as it is implemented by the State agency after promulgation of implementing regulations by the Secretary, but in no event later than October 1, 1994. The Secretary shall consult with the Secretary of Health and Human Services prior to promulgation of such implementing regulations.

RETENTION OF FUNDS OR ALLOTMENTS RECOVERED OR COLLECTED BY STATES

SEC. 1003. Effective upon enactment, section 16(a) of the Food Stamp Act of 1977 (7 U.S.C. 2025(a)) is amended by—

(1) striking in the provision of the first sentence the following: "during the period beginning October 1, 1990, and ending September 30, 1995, and 50 percent thereafter"; and

(2) striking in the provision of the first sentence the following: "during the period beginning October 1, 1990, and ending September 30, 1995, and 25 percent thereafter".

TITLE XI—CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1992

SHORT TITLE

SEC. 1101. This title may be cited as the "Child Support Enforcement Amendments of 1992".

APPLICATION FEES

SEC. 1102. Section 454(6)(B) is amended by striking out "an application fee for furnishing such services shall be imposed" and inserting in lieu thereof: "a $25 application fee (or, at the option of the State, a $50 application fee) for furnishing such services shall be imposed with respect to each individual applying for such services, but if the State elects to impose the $50 fee, no application fee may be charged to individuals whose income, as determined in such manner as the State may prescribe, does not exceed 185 percent of the poverty line as most recently revised by the Secretary pursuant to section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))" and by striking out everything after "income to the program),".

SERVICES FEES

SEC. 1103. Section 454(6) of the Act is amended by—

(1) by redesignating clause (E) as clause (F), and

(2) by striking out "and" after clause (D) and inserting in lieu thereof the following:

"(E)(i) a $25 services fee (or, at the option of the State, a $50 services fee) shall be imposed with respect to each family for which a collection is made, but if the State elects to impose the $50 fee, no services fee may be charged with respect to families whose income does not exceed 185 percent of the poverty line as referenced in clause (B), (ii) such fee will be collected annually for each year in which support is collected at such time or times in accordance with such schedule as the State finds appropriate, and (iii) such fee shall be paid in any of the ways allowed under clause (B) (and shall be treated, when paid from State funds, in the same way as fees under clause (B) when so paid), and".

PERFORMANCE BASED INCENTIVES

SEC. 1104. (a) Section 458 of the Social Security Act is amended—

(1) by redesignating subsection (a) as subsection (a)(1),

(2) by redesignating subsection (b)(1) as paragraph (2)(A) (and subparagraphs (A) and (B) thereof as clauses (i) and (ii), respectively),

(3) by redesignating paragraphs (2), (3), and (4) of subsection (b) (prior to any redesignating by this section) as subparagraphs (B), (C), and (D), respectively,

(4) by redesignating subsection (c) as paragraph (3) and paragraphs (1) and (2) of such subsection as subparagraphs (A) and (B), respectively, and

(5) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) Section 458 is further amended by adding between subsection (a) and subsection (c) (as redesignated by the previous provisions of this subsection) the following new subsection:

"(b)(1) In order to encourage and reward States for activities that can be expected to increase paternity establishment and lead to increased support collections, the Secretary shall by regulation establish a schedule of incentive payments to be made with respect to each of the following measures of performance:

"(A) with respect to cases described in section 454 (4) or (6)—

"(i) the number of children in a fiscal year for whom the State has established paternity;

"(ii) the number of cases in which support orders were established or modified in a fiscal year;

"(B) the number of cases in a fiscal year in which payments of aid under part A were terminated by the State in a month in which child support was collected for each such case; and

"(C) such other performance standards as the Secretary may find appropriate.

"(2)(A) The Secretary shall, in accordance with the succeeding provisions of this subsection, determine the amount of the incentive payment or payments with respect to each category of performance enumerated in this subsection in a manner designed to best achieve the objectives of this section and, more generally, of this part, and shall from

time to time review and revise the schedule of incentive payments as he finds appropriate to better achieve such objectives.

"(B) Notwithstanding any other provision of this subsection, the Secretary shall not provide any amount to a State for a fiscal year under this subsection in excess of 10 per centum of the State's total child support collections for such year with respect to children receiving aid under part A.".

(c)(1) Section 458(a)(2)(A) of the Act (as redesignated by subsection (a)) is amended by striking out "6 percent" in clauses (i) and (ii) and by inserting in lieu thereof "3 percent".

(2) Section 458(a)(3) of the Act (as so redesignated) is amended—

(A) in subparagraph (A), by striking out "6.5 percent" and inserting in lieu thereof "3.25 percent",

(B) in subparagraph (B), by striking out "one-half of 1 percent" and inserting in lieu thereof "one-quarter of 1 percent", and

(C) by striking out "10 percent" and inserting in lieu thereof "5 percent".

(d) Section 458(a) of the Act (as amended by the preceding provisions of this section) is further amended—

(1) in paragraph (1)(A) by striking out "subsection (b)" and inserting in lieu thereof "paragraph (2)",

(2) in paragraph (2)(A), by striking out "paragraphs (2), (3), and (4)" and inserting in lieu thereof "subparagraphs (B), (C), and (D)",

(3) in paragraph (2)(B), by striking out "subsection (c)" and inserting in lieu thereof "paragraph (3)", by striking out "paragraph (1) (A) or (B)" and inserting in lieu thereof "subparagraph (A) (i) or (ii)", by striking out "such subsection" and inserting in lieu thereof "such subparagraph" and by striking out "this subsection" and inserting in lieu thereof "this paragraph",

(4) in paragraph (2)(C), by striking out "paragraph (1)(B)" and inserting in lieu thereof "subparagraph (A)(ii)" by striking out "subsection (c)" (in two places) and inserting in lieu thereof "paragraph (3)", and by striking out "paragraph (1)(A)" and inserting in lieu thereof "subparagraph (A)(i)", and

(5) in paragraph (3), by striking out "subparagraph (A) or (B) of subsection (b)(1)" and inserting in lieu thereof "clause (i) or (ii) of paragraph (2)(A)".

USE OF INCENTIVES

SEC. 1105. Section 454 of the Social Security Act is amended—

(1) by striking out "and" after paragraph (23);

(2) by striking out the period after paragraph (24) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (24) (and before the last sentence of such section) the following new paragraph:

"(25) provide that incentive payments made to such State under section 458 shall be used to improve or protect the welfare of children within the State.".

MANDATORY SERVICES FOR RECIPIENTS OF CERTAIN NEED-BASED FEDERAL OR FEDERALLY ASSISTED PROGRAMS

SEC. 1106. (a) Section 454(4) of the Social Security Act is amended to read as follows:

"(4) provide that such State will undertake—

"(A) to establish the paternity of each child born out of wedlock with respect to whom an assignment under section 402(a)(26), 471(a)(17), or 1912 is in effect or with respect to whom a referral for services has been made to the State agency administering the program under this part because the child, or the family with whom he lives, is applying for or receiving or has been found eligible to receive need-based assistance pursuant to a Federal or Federally-assisted program under which continued cooperation with such State agency is required, and

"(B) to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse or former spouse (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States, except that when such arrangements and other means have proven ineffective, the States may utilize the Federal courts to obtain or enforce court orders for support, unless (i) the agency administering the State plan approved under part A or part E of this title, or under title XIX, determines that it is against the best interests of the child to do so, in the case of a child with respect to whom an assignment under section 402(a)(26) or 471(a)(17), or under section 1912, respectively, is in effect, or (ii) the agency that has made such referral so determines pursuant to standards applicable to the Federal or Federally-assisted program involved;".

(b)(1) Section 464(a)(2)(A) of that Act is amended by striking out "which such State has agreed to collect under section 454(6)" and inserting instead ", other than support described in paragraph (1), which such State has undertaken to collect under section 454(4) or 454(6)".

(2) Section 466(a)(3)(B) of that Act is amended by striking out "overdue support which a State has agreed to collect under section 454(6)" and inserting instead "any other overdue support which a State has undertaken to collect under section 454(4) or 454(6)".

EFFECTIVE DATE

SEC. 1107. The amendments made by this title shall be effective with respect to fiscal years beginning after September 30, 1992.

TITLE XII—INCENTIVES FOR FAMILIES WITH ABSENT PARENTS TO COOPERATE WITH STATE AGENCIES UNDER THE SOCIAL SECURITY ACT IN SECURING CHILD SUPPORT FOR DEPENDENTS

SEC. 1201. Section 3(b)(4) of the United States Housing Act of 1937 is amended by read as follows:

"(4) The term 'income' means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture, including spousal support imputed to the family in the following situation. In accordance with regulations issued by the Secretary, a family that has a member residing in the household (other than the head of the household or his or her spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student and whose parent is absent may have spousal support imputed to it. The amount imputed would be the amount of the established spousal support obligation, but no more than $550 a year. Spousal support may be imputed only where there is an established support obligation for child support and spousal support payable to the parent residing in the household and the family has failed, without good cause, to cooperate in securing spousal support with the State agency administering the program under part D of title IV of the Social Security Act for the collection of child and spousal support. With the exception of the imputation of spousal support described above, any amounts not actually received by the family may not be considered as income under this paragraph.".

SEC. 1202. Section 3(b)(5)(A) of the United States Housing Act of 1937 is amended by—

(1) inserting immediately after "student" the following: ", except that, in accordance with regulations issued by the Secretary, a family with an absent parent may be ineligible for this exclusion if the family has failed, without good cause, to cooperate in securing support for the dependent member of the family with the State agency administering the program under part D of title IV of the Social Security Act for the collection of child and spousal support"; and

(2) inserting immediately after "his" the following: "or her".

SEC. 1203. In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendments made by sections 1201 and 1202 shall also apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian Housing Authority.

TITLE XIII—PURPOSES AND DURATION OF EMERGENCY ASSISTANCE UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM

PURPOSE AND DURATION OF EMERGENCY ASSISTANCE

SEC. 1301. (a) Section 406(e) of the Social Security Act is amended—

(1) by striking out in paragraph (1) "furnished for a period not in excess of 30 days in any 12-month period" and inserting in lieu thereof "furnished with respect to needs of one period that does not exceed 30 consecutive days in any 12-month period", and

(2) by redesignating paragraph (2) as paragraph (3), and

(3) by adding after paragraph (1) the following new paragraph:

"(2) Emergency assistance under paragraph (1) may include amounts necessary to satisfy shelter and utility arrearages for no more than 3 months in order to prevent evictions and utility shut-offs. Emergency assistance may also include amounts necessary to pay an initial month's shelter charges and security deposit necessary to secure permanent housing for homeless families. Any such amounts must be authorized by the State agency during the single 30-day period referred to in paragraph (1).".

(b) The amendments made by subsection (a) shall become effective October 1, 1992.

TITLE XIV—ENHANCE INSURANCE COVERAGE FOR CHILDREN UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM

SEC. 1401. REQUIREMENTS FOR HEALTH INSURANCE COVERAGE OF CHILDREN.

(a) STATE PLAN REQUIREMENTS.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) by redesignating the second paragraph (58) as paragraph (59);

(2) by striking out the period at the end of paragraph (59), as redesignated, and inserting instead "; and"; and

(3) by adding below paragraph (59) the following new paragraphs:

"(60) provide assurances satisfactory to the Secretary that the State has in effect laws applicable to health insurers and insurance policies or programs subject to the laws of the State that—

"(A) require insurers to permit enrollment at any time under the health insurance of a

non-custodial parent, upon application either by such parent or (where such parent fails to make application) by the custodial parent or the State agency administering the program under this part, of any child for whom such non-custodial parent is required by court or administrative order to provide support; and

"(B) in any case where a child is covered under the health insurance of a non-custodial parent, require insurers, at the option of the custodial parent—

"(i) to permit the custodial parent (or service provider, with the custodial parent's approval) to submit claims for covered services without the approval of the non-custodial parent, and

"(ii) to make payment on claims submitted in accordance with clause (i) directly to the custodial parent or the service provider.

"(61) provide assurances satisfactory to the Secretary that the State has in effect laws authorizing the State agency to garnish the wages, salary, or other employment income of, and to withhold amounts from State tax refunds to, any person who—

"(A) is required by court or administrative order to provide coverage of the costs of medical services to an individual eligible for medical assistance under this title,

"(B) has received payment from a third party for the costs of medical services to such individual, and

"(C) has not used such payments to reimburse, as appropriate, either such individual or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of medical services.".

(b) EFFECTIVE DATE.—(1) IN GENERAL.—The amendments made by subsection (a) apply to calendar quarters beginning on or after October 1, 1992, except as provided in paragraph (2).

(2) EXTENSION FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), 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 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.

TITLE XV—CHILD NUTRITION AMENDMENTS OF 1992

SEC. 1500. This title may be cited as the "Child Nutrition Amendments of 1992".

Subtitle A—Budget-Related Provisions

INCREASED CASH SUBSIDY FOR REDUCED PRICE MEALS IN THE NATIONAL SCHOOL LUNCH PROGRAM

SEC. 1501. (a) Section 9(b)(3) of the National School Lunch Act (42 U.S.C. 1758(b)(3)) is amended by deleting "40" and inserting in lieu thereof "15".

(b) Section 11(a) of the National School Lunch Act (42 U.S.C. 1759a(a)) is amended—

(1) in paragraph (2)—

(A) by deleting "98.75" and inserting in lieu thereof "162.25"; and

(B) by deleting "40" and inserting in lieu thereof "15"; and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by deleting "1982" and inserting in lieu thereof "1993"; and

(ii) by deleting clause (iv);

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by adding a new subparagraph (B) to read as follows:

"(B) The Secretary shall prescribe on July 1, 1982, and on each subsequent July 1, an annual adjustment in the national average payment rates for supplements (as established under section 17(c) of this Act).".

INCREASED CASH SUBSIDIES FOR REDUCED PRICE MEALS IN THE SCHOOL BREAKFAST PROGRAM

SEC. 1502. (a) Section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)) is amended—

(1) by deleting "57" and inserting in lieu thereof "96.25";

(2) by deleting "one-half of the national average payment for each free breakfast," and all that follows up to the period at the end of that sentence and inserting in lieu thereof "10 cents less than the national average payment for each free breakfast"; and

(3) by deleting "8.25" and inserting in lieu thereof "13.00".

(b) Section 4(b)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(C)) is amended by deleting "30" and inserting in lieu thereof "10".

(c) Section 4(b)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(2)(B)) is amended—

(1) by deleting "the higher of—(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or (ii) 45 cents" and inserting in lieu thereof "114.25 cents"; and

(2) by deleting "January 1, 1978" and all that follows up to the period and inserting in lieu thereof "July 1, 1993".

(d) Section 4(b)(2)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(2)(C)) is amended by deleting "thirty" and inserting in lieu thereof "ten".

INCREASED WIC RESEARCH FUNDS TO STUDY THE EFFECTS ON CHILDREN

SEC. 1503. Section 17(g)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(5)) is amended by deleting "$5,000,000" and inserting in lieu thereof "$7,000,000".

Subtitle B—Effective Date

SEC. 1521. Except as otherwise provided in this section, the provisions of this title shall become effective on July 1, 1992. The amendments made by section 1503 of this title shall become effective on October 1, 1992.

TITLE XVI—SOCIAL SECURITY CROSS PROGRAM RECOVERY AMENDMENTS OF 1992

SEC. 1601. SHORT TITLE.

This title may be cited as the "Social Security Act Cross Program Recovery Amendments of 1992".

SEC. 1602. RECOVERY OF SUPPLEMENTAL SECURITY INCOME OVERPAYMENTS FROM SOCIAL SECURITY BENEFITS.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by adding at the end of part A a new section as follows:

"RECOVERY OF SSI OVERPAYMENTS FROM SOCIAL SECURITY BENEFITS

"SEC. 1144. (a) Whenever the Secretary determines that more than the correct amount of any payment has been made to any person under the supplemental security income program authorized by title XVI of this Act (which includes, for purposes of this section, State supplementary payments which are made by the Secretary under an agreement pursuant to section 1616(a) of this Act or section 212(b) of Public Law 93-66), and the Secretary is unable to make proper adjustment or recovery of the amount so incorrectly paid as provided in section 1631(b) of this Act, the Secretary (notwithstanding section 207 of this Act) may recover the amount incorrectly paid by decreasing any amount which is payable under the Federal Old-Age and Survivors Insurance program or the Federal Disability Insurance program authorized by title II of this Act to that person or his estate.

"(b) Notwithstanding sections 1611 (a) and (b) of this Act, in any case in which the Secretary takes action in accordance with subsection (a) to recover an overpayment from any person, neither that person, nor any individual whose eligibility or benefit amount is determined by considering any part of that person's income, shall, as result of such action—

"(1) become eligible under the program of supplemental security income benefits under title XVI of this Act, or

"(2) if such person or individual is already so eligible, become eligible for increased benefits thereunder.".

(b) CONFORMING CHANGES.—

(1) Section 204 of such Act is amended by adding at the end a new subsection as follows:

"(f) For payments which are adjusted or withheld to recover an overpayment of supplemental security income benefits paid under title XVI of this Act (including State supplementary payments which were paid under an agreement pursuant to section 1616(a) of this Act or section 212(b) of Public Law 93-66), see section 1144.".

(2) Section 1631(b) of such Act is amended by adding at the end a new paragraph as follows:

"(6) For the recovery of overpayments of benefits under this title from benefits payable under title II, see section 1144.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act and shall apply to overpayments outstanding on or after such date.

TITLE XVII—AMERICA 2000 EXCELLENCE IN EDUCATION ACT

SHORT TITLE

SEC. 1701. This title may be cited as the "AMERICA 2000 Excellence in Education Act".

TABLE OF CONTENTS

SEC. 1702. This title is organized as follows:

PART A—NEW AMERICAN SCHOOLS
PART B—MERIT SCHOOLS
PART C—TEACHERS AND SCHOOL LEADERS
Subpart 1—Governors' Academies for Teachers
Subpart 2—Governors' Academies for School Leaders
Subpart 3—Alternative Certification of Teachers and Principals
PART D—EDUCATIONAL REFORM AND FLEXIBILITY
Subpart 1—Educational Reform Through Flexibility and Accountability
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PART E—PARENTAL CHOICE OF SCHOOLS
Subpart 1—Findings
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Subpart 3—Assistance for Parental Choice Programs
Subpart 4—Parental Choice Programs of National Significance
PART F—NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS
PART G—NATIONAL COMMISSION ON TIME, STUDY, LEARNING, AND TEACHING
PART H—REGIONAL LITERACY RESOURCE CENTERS
PART I—GENERAL PROVISIONS

FINDINGS

SEC. 1703. The Congress finds that—

(1) nine years after the report of the National Commission on Excellence in Education, the Nation's schools have yet to show significant improvement;

(2) the educational reforms of the 1980's were too slow and too timid; a bolder and more comprehensive effort that involves the citizens of every American community is needed;

(3) the Federal Government should provide start-up funding to communities across the country to create their own high-performance New American Schools—schools where all students meet new World Class Standards;

(4) rewards for schools in which students make significant gains in learning can spur improvements in all schools;

(5) teachers and school leaders in every State should receive the additional training they need to deliver capable instruction in the core academic disciplines and to provide strong instructional leadership to their schools;

(6) new approaches to training and certifying teachers and principals would expand the pool of talent from which schools draw professional staff and would enable talented, qualified individuals who do not possess traditional credentials to enter teaching and the principalship;

(7) greater flexibility and accountability at the school site can enable educators to improve learning for all students;

(8) expanding parental choice among schools can help all schools to improve;

(9) an expanded National Assessment of Educational Progress can be used to provide clear and comparable information on the progress of States, school districts, and schools toward attainment of the National Education Goals;

(10) Americans need to know how much time their children should spend learning, and how that time should be used, in order for those children to develop the intellectual competencies necessary for a productive workforce and an enlightened citizenry;

(11) better coordination of adult literacy services, and access by service providers to information about the best practices in the field of literacy, will assist the Nation in meeting the goal that every adult American be literate by the year 2000; and

(12) therefore, national progress toward attainment of the National Education Goals by the year 2000 can be assisted by the Federal Government through initiatives that provide funds for the creation of the first of a new generation of American schools; reward schools that make demonstrated progress toward attainment of the National Education Goals; create academies for the training of teachers and school leaders; provide support for development of alternative teacher and school administrator certification programs in the States; provide schools with greater flexibility in exchange for accountability for results; encourage, test, and evaluate educational choice programs; expand the National Assessment of Educational Progress; create a National Commission on Time, Study, Learning, and Teaching; and establish Regional Literacy Resource Centers.

PART A—NEW AMERICAN SCHOOLS

STATEMENT OF FINDINGS

SEC. 1711. The Congress finds that—

(1) many American elementary and secondary schools—

(A) are structured according to models that are outmoded and ineffective;

(B) rely on notions about pedagogy, management, technology, staffing, and other resources that may be outdated or insufficient for the challenges of the next century; and

(C) are unsuccessful at equipping the majority of students with the knowledge and skills needed to succeed as citizens and in the workplace;

(2) new approaches to elementary and secondary education are needed. Without major reforms in elementary and secondary schools, the United States will lose its ability to compete fully and successfully in the world economy;

(3) although educational change must take place school by school, experience shows that the schools, on their own, will not alter themselves radically;

(4) there is an appropriate Federal role in providing seed money for the establishment of new types of schools in communities across the country; and

(5) the Nation is embarking on a major effort to support the invention of radically better forms of schooling, and to establish a network of American communities whose citizens are dedicated to the improvement of education.

PURPOSE

SEC. 1712. (a) The purpose of this part is to support the creation of new schools across the country—schools that reflect the best thinking about teaching and learning, employ the highest-quality instructional materials and technologies, and are designed to meet the National Education Goals, as well as the particular needs of their students and communities.

(b) In order to carry out this purpose, this part authorizes financial assistance for New American Schools in communities that have been designated "AMERICA 2000 Communities".

ALLOCATION OF FUNDS

SEC. 1713. (a) From the amount of funds appropriated to carry out this part for fiscal years 1992, 1993, and 1994, the Secretary shall reserve a total of up to $3 million for a national program evaluation.

(b)(1) The Secretary shall allocate the remaining funds among the several States in proportion to their respective numbers of members of Congress, including Senators, Representatives, and Delegates. For the purpose of this subsection, the Commonwealth of the Northern Mariana Islands and Palau (until the effective date of the Compact of Free Association with the Government of Palau) shall be treated as if they each had one member of Congress.

(2) If, within any State, a congressional district has no community that has been designated an AMERICA 2000 Community, or there are fewer such communities than members of Congress from such State, the Secretary shall proportionately reduce such State's allocation under paragraph (1), and shall proportionately increase the allocation of all other States.

STATE APPLICATIONS

SEC. 1714. In order for a State to qualify for its allocation under section 1713(b), the Governor shall submit an application at such time as the Secretary may determine, including—

(1) a description of the process the Governor has used, in accordance with section 1715, to nominate communities to create New American Schools;

(2) a list of the communities nominated by the Governor, and the name of the agency, institution, or organization designated by the Governor to receive a New American School grant on behalf of each such community;

(3) copies of the plans, prepared by each community nominated by the Governor for funding under this part, for establishing and operating a New American School, including, as necessary, a description of the steps to be taken to obtain recognition or accreditation from the State;

(4) an identification of non-Federal resources that will be available to establish and operate each New American School in the State; and

(5) such other information as the Secretary may require.

SELECTION OF COMMUNITIES TO CREATE NEW AMERICAN SCHOOLS

SEC. 1715. (a)(1) The Governor of each State shall nominate communities within the State to create New American Schools.

(2) The Governor may nominate only communities that have been previously designated by the Governor as AMERICA 2000 Communities, in accordance with the President's AMERICA 2000 initiative.

(b) In carrying out subsection (a), each Governor shall nominate—

(1) at least as many communities as there are members in the State's congressional delegation; and

(2) at least one community in each congressional district in the State.

(c)(1) Each Governor shall nominate communities on the basis of criteria established by the Secretary, based on the advice of the panel of experts established under section 1717, including, at a minimum—

(A) the level of commitment and activity displayed by the community through its participation in the AMERICA 2000 Communities initiative;

(B) the need for new and innovative educational programs in the schools of the community; and

(C) the quality of the application submitted by the applicant to the Governor.

(d)(1) The Secretary, with the advice of the panel of experts established under section 1717, shall approve some or all of the communities nominated by each Governor, and the agencies, institutions, and organizations designated by the Governor to receive New

American School grants on behalf of those communities, based on the Secretary's determination that such approval would be fully consistent with the purpose and requirements of this part.

(2) The Secretary shall ensure that—

(A) to the extent consistent with paragraph (1), a New American School is created in each congressional district and that the number of such schools created in each State is at least equal to the number of members in the State's congressional delegation; and

(B) communities with high concentrations of children from low-income families in each State receive an equitable share of awards under this part.

(e) The Governor may nominate other communities or recipients if—

(1) the Secretary does not approve one or more of the Governor's nominees;

(2) an approved community or recipient withdraws from the program; or

(3) the Secretary determines that the community or recipient is unable successfully to carry out its project or is not making adequate progress in carrying out such project.

AMOUNT OF AWARDS, OPERATION OF SCHOOLS, AND USES OF FUNDS

SEC. 1716. (a)(1) The Secretary shall make grants for New American Schools to agencies, organizations, and institutions selected by the Secretary under section 1715(d).

(2) The Secretary, after consultation with the Governor, shall determine the total amount of each award under this part, except that—

(A) no such award shall exceed $1,000,000; and

(B) the Secretary shall consider the expected student enrollment in the New American School in setting such amount.

(b) In establishing a New American School, the grantee is encouraged to adapt and implement one or more New American School designs developed by research and development teams funded by the New American Schools Development Corporation.

(c)(1) Funds made available under this part may be used only to meet the special start-up costs associated with the creation and establishment of a New American School, including—

(A) planning, curriculum development, and curriculum adaptation;

(B) training of teachers, administrators, and other staff, as well as parents and members of the community who are involved with the school;

(C) purchase of equipment and materials;

(D) minor renovation and remodeling of facilities; and

(E) obtaining the assistance of outside experts, including one or more of the teams described in subsection (b), to assist it in adapting and implementing one or more of the designs developed by such teams to the needs of the individual community and school.

(2) Such funds may not be used for construction or for the grantee's general administrative expenses.

(d) Each New American School shall have obtained State recognition or accreditation, as necessary, and be fully operating by the start of the 1996–1997 school year.

SECRETARY'S PANEL OF EXPERTS

SEC. 1717. Within 90 days of enactment of this Act, the Secretary shall convene an expert panel of educators, representatives of private business, and public representatives to advise on the administration of the program authorized by this part, including—

(1) the criteria to be used to nominate communities for New American Schools; and

(2) the approval of communities nominated by Governors to establish and operate New American Schools, and of the agencies, institutions, and organizations to receive grants for those schools.

NATIONAL EVALUATION

SEC. 1718. (a) The Secretary shall use the funds reserved under section 1713(a) to conduct a national evaluation of the impact of the New American Schools program on schools and communities, and on education generally.

(b) The Secretary shall submit such interim evaluation reports to the President and the Congress as may be appropriate, and shall submit a final report by September 30, 1998.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1719. For the purpose of carrying out this part, there are authorized to be appropriated $180 million for fiscal year 1992, $180 million for fiscal year 1993, and $185 million for fiscal year 1994. Such sums shall remain available for obligation by the Secretary for two fiscal years beyond the fiscal year for which they are appropriated.

DEFINITION

SEC. 1720. For the purpose of this part, the term "community" means—

(1) a unit of general purpose local government, such as a city, township, or village;

(2) a geographically distinct area, such as a school district, school attendance area, ward, precinct, or neighborhood; or

(3) an identifiable group of individuals, such as the members of a service organization, who generally reside in a particular geographic area.

PART B—MERIT SCHOOLS

FINDINGS AND PURPOSE

SEC. 1721. (a) FINDINGS.—The Congress finds that—

(1) all elementary and secondary schools in the United States should seek to attain the National Education Goals by the year 2000;

(2) achievable standards of excellence can and should be set for all students and for all schools;

(3) schools' progress in meeting those standards should be measured and made public;

(4) financial incentives can spur schools to rise to the challenge of meeting those standards; and

(5) demonstrated school-wide progress in achieving excellence, particularly in mathematics and science, deserves reward and recognition.

(b) PURPOSE.—The purpose of this part is to recognize and reward public and private elementary and secondary schools (including their faculty) that make documented progress in attaining the National Education Goals, particularly the goal of increasing students' mastery of the core academic subjects.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1722. For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1992 and such sums as may be needed for each of the four succeeding fiscal years. Such sums shall remain available for obligation by the Secretary for two fiscal years beyond the fiscal year for which they are appropriated.

ALLOCATION OF APPROPRIATIONS

SEC. 1723. (a) RESERVATIONS.—From the amount appropriated under section 1722 for any fiscal year, the Secretary may reserve—

(1) up to one quarter of 1 percent for grants to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau) for activities under this part; and

(2) up to two percent for evaluations and dissemination.

(b) ALLOCATION AMONG STATES.—(1) The amount remaining after any reservation of funds under subsection (a) shall be allocated among the States on the same basis as funds were allocated among such States under sections 1005 and 1006 of the Elementary and Secondary Education Act of 1965 for the preceding fiscal year.

(2) For purposes of this subsection, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

STATE APPLICATIONS

SEC. 1724. (a) APPLICATIONS.—The Governor of each State that wishes to receive a grant under this part shall submit to the Secretary an application for a three-year period, which may be followed by an application for the succeeding two years, at such time and in such manner as the Secretary may prescribe.

(b) APPLICATION CONTENTS.—Each State application shall contain—

(1) the criteria the Governor will use to select Merit Schools under section 1727;

(2) the criteria the Governor will use to determine the amount of awards;

(3) an assurance that the State will carry out this part in accordance with the requirements of this title and other applicable legal requirements; and

(4) other information the Secretary may require.

(c) GEPA PROVISIONS INAPPLICABLE.—Sections 435 and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to this part.

STATE USE OF FUNDS

SEC. 1725. (a) ADMINISTRATION.—Each State may use up to five percent of its annual allocation for the administrative costs of carrying out this part.

(b) MERIT SCHOOL AWARDS.—(1) Each State shall use at least 95 percent of its annual allocation for Merit School awards made in accordance with section 1727, except that the Governor may, by so notifying the Secretary, designate part or all of such amount to remain available to make such awards for two additional years.

(2) Of the amount used for Merit School awards, the Governor shall use at least 20 percent for awards to schools that demonstrate exceptional progress in improving students' performance in mathematics and science, in addition to meeting the national and State criteria under sections 1727 (b) and (c).

STATE ACTIVITIES AND RESPONSIBILITIES

SEC. 1726. (a) STATE REVIEW PANEL.—(1) Each Governor shall establish a State review panel to assist in the selection of Merit Schools.

(2) The State review panel shall be broadly representative of the following interests in the State—

(A) public and private elementary and secondary school teachers and administrators;

(B) college and university faculty and administrators;

(C) parents;

(D) students;

(E) State and local boards of education;

(F) State and local governments;

(G) labor;

(H) business; and

(I) the general public.

(b) ANNUAL REPORTS TO THE SECRETARY.—(1) Within 60 days of the end of each fiscal year, each Governor shall submit a report to the Secretary that—

(A) identifies the schools chosen as Merit Schools;

(B) states the reasons for their selection; and

(C) states the amount of the award to each school.

(2) Beginning with the second year for which any State makes awards under this part, the Governor's annual report shall also include a brief description of how schools selected in the previous year used their awards.

SELECTION OF MERIT SCHOOLS

SEC. 1727. (a) ELIGIBLE SCHOOLS.—(1) A Governor may designate as Merit Schools public or private elementary or secondary schools in the State that have been nominated through procedures established by the Governor.

(2) In selecting Merit Schools, the Governor shall apply the selection criteria described in subsections (b) and (c) uniformly to public and private schools.

(b) NATIONAL CRITERIA.—Each school selected through the nomination procedure established by the Governor under subsection (a) shall have—

(1) demonstrated progress over a period of at least three years in significantly increasing the number or percentage of students who meet the National Education Goal of leaving grades four, eight, and twelve, as applicable, having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography;

(2) utilized objective measures of progress over the period that are established by the State in its plan and approved by the Secretary; and

(3) made public an annual "report card", which includes information about the progress the school is making toward achievement of relevant aspects of the National Education Goals.

(c) STATE CRITERIA.—(1) In selecting Merit Schools, each Governor may use selection criteria in addition to those set out in subsection (b).

(2) In setting these additional criteria, the Governor—

(A) may include other aspects of educational performance, including the school's progress in attaining the other National Education Goals;

(B) shall take into account differences in the composition of the student body of different schools;

(C) shall give special consideration to schools with substantial numbers or proportions of children from low-income families; and

(D) may set different criteria for awards for achievement in different grade levels.

(3) Each Governor shall develop State criteria for selecting schools to receive awards under section 1725(b)(2) for outstanding progress in student achievement in mathematics and science.

(4) In applying the criteria to a school in which a program is conducted under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, the Governor shall consider the desired outcomes identified for children in the application submitted under section 1012(b) of such Act by the local educational agency operating the school. No school that has received assistance under section 1021(b) of such Act for all of the years covered by a Merit Schools Award competition shall be eligible for a Merit School Award.

(5) In selecting Merit Schools and in setting the amount of their awards, the Governor may not consider a school's planned use of a Merit School award, if it is otherwise permitted by law.

(d) AMOUNT OF AWARD.—Each Governor shall establish criteria, subject to subsection (c)(5), for determining the amount of Merit School awards. Such criteria shall include criteria relating to the school size and the economic circumstances of the student body.

(e) BYPASS.—If a State is either prohibited by State law from providing funds made available under this part to private schools, or is unwilling to do so, the Governor shall notify the Secretary of such prohibition or unwillingness, as well as the private schools the Governor has designated as Merit Schools and the amount of their awards. The Secretary shall then provide those funds, from the State's allocation under this part, to the designated private schools, through such arrangements as the Secretary finds suitable. The Secretary shall also withhold from the State's allocation under this part the administrative costs of making such arrangements.

USE OF FUNDS BY MERIT SCHOOLS

SEC. 1728. A Merit School shall use its Merit School award for activities, otherwise permitted by law, that further the educational program of the school. Such activities may include, but are not limited to—

(1) development, implementation, or expansion of special programs, such as those focused on: dropout prevention or reentry, student transition to college or employment, preschool children, remedial services, or gifted and talented students;

(2) the purchase or lease of computers, telecommunications equipment, scientific instruments, instructional materials, library books, and other equipment and materials, except that a public agency shall have title to, and exercise administrative control of, all such equipment and materials;

(3) bonus payments for faculty and administrators;

(4) college scholarships for secondary school students;

(5) parental involvement activities;

(6) community outreach activities; and

(7) helping other schools replicate its success.

PROHIBITION ON STATE OR LOCAL REDUCTION OF OTHER ASSISTANCE

SEC. 1729. No Federal, State, or local agency may, in any year, take a Merit School award into account in determining whether to award any other assistance from Federal, State, or local resources, or in determining the amount of such assistance, to either the Merit School itself or the local educational agency, if any, that operates the school.

PART C—TEACHERS AND SCHOOL LEADERS

Subpart 1—Governors' Academies for Teachers

STATEMENT OF FINDINGS

SEC. 1731. The Congress finds as follows:

(1) Reform and restructuring of American education, and the Nation's ability to attain the National Education Goals, depend heavily on the quality of teaching in elementary and secondary schools, particularly in the core academic disciplines of English, mathematics, science, history, and geography.

(2) Experienced teachers need access to training of exceptional quality to keep current in the core academic disciplines, participate successfully in curriculum development, and act as master teachers.

(3) Governors' efforts to reform elementary and secondary education in the States should include a focus on ensuring that teachers have a firm grasp of, and keep current in, the core academic disciplines.

(4) Governors' Academies for Teachers can be a principal vehicle for providing the kind of high-level, intensive training essential to education reform and accomplishment of the National Education Goals.

(5) Excellent teachers in the academic subjects deserve public recognition and appropriate financial rewards in return for their efforts.

PURPOSE

SEC. 1731A. The purposes of this subpart are—

(1) to build the highest quality teaching force for the Nation's schools, by providing start-up funds for Governors' Academies that teachers from public and private elementary and secondary schools may attend to obtain advanced instruction focusing on the core academic disciplines; and

(2) to establish awards for outstanding teachers in the academic subjects covered by those Academies.

PROGRAM AUTHORIZED; ALLOCATION OF APPROPRIATIONS

SEC. 1731B. (a)(1) From funds appropriated under section 1731G (a) and (b), the Secretary shall make a one-time, five-year grant to each State, in accordance with this subpart, to establish and operate Governors' Academies for Teachers and to recognize outstanding teachers.

(2) The Governor of each State shall use the State's grant to make competitive awards to the State educational agency, local educational agencies, institutions of higher education, other public and private agencies and organizations, or consortia of such agencies, institutions, and organizations, to establish and operate Governors' Academies for Teachers.

(3) Such Academies may be operated in cooperation or consortium with those of other States.

(b)(1) From the funds appropriated for this subpart for any fiscal year, the Secretary—

(A) may reserve up to $500,000 for evaluations of, and dissemination of information about, activities conducted under this subpart; and

(B) shall reserve up to $175,000 for Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau), to be expended in such manner as the Secretary determines will best meet the purpose of this subpart.

(2) The Secretary shall proportionately allocate the remainder of such funds to each of the 50 States, the District of Columbia, and Puerto Rico, on the basis of the full-time equivalent number of public elementary and secondary school teachers in the most recent year for which satisfactory data are available.

(3) If the Secretary determines that any amount of a State's allotment for any fiscal year under paragraph (2) will not be needed for such fiscal year by the State, the Secretary shall reallot such amount to other States that need additional funds, in such manner as the Secretary determines is appropriate.

STATE APPLICATION

SEC. 1731C. (a) The Governor of each State wishing to receive a grant under this subpart

shall submit an application to the Secretary, for a five-year period, at such time and in such manner, as the Secretary may prescribe.

(b) Each such application shall include—

(1) a description of how the Governors' Academies planned for the State will relate to the Governor's overall plan for the reform of elementary and secondary education and the attainment of the National Education Goals in the State, including, in particular, improvement of education in the core academic subjects;

(2) a description of the competitive process the Governor will use to select applicants to operate the Governors' Academies for Teachers in the State;

(3) an assurance that a separate Academy will be established in each of the five core academic subjects (English, mathematics, science, history, and geography), unless the Governor determines that it would be inefficient to use funds in this manner and the application describes the Governor's reasons for establishing Academies that focus on more than one subject. Nothing in this paragraph prohibits the same agency, institution, or organization from operating more than one Academy;

(4) a description of how Academy participants will be selected;

(5) a description of how the State will monitor the implementation of Governors' Academies for Teachers, including the awards to teachers under section 1731D(d), and the performance of teachers who have been trained in those Academies, and an assurance that it will comply with reasonable requests of the Secretary for information on these matters;

(6) a description of how the State will meet the cost-sharing requirements of section 1731F, and how the State will continue to operate the Academies when Federal assistance is no longer available; and

(7) such other assurances and information as the Secretary may require.

AUTHORIZED ACTIVITIES

SEC. 1731D. (a) Each Governor's Academy for Teachers assisted under this subpart shall conduct a program of intensive instruction, during the summer or the school year, focusing on the core academic disciplines of English, mathematics, science, history, and geography. Such instruction shall be provided to current elementary and secondary school teachers.

(b) The instruction provided by each such Academy shall include—

(1) renewal and enhancement of participant's knowledge of one of the five core academic disciplines described in subsection (a), except as provided in section 1731(b)(3);

(2) teaching skills and strategies needed to impart academic subject matter to students, including students who are economically disadvantaged, limited English proficient, or have disabilities, and other students from diverse backgrounds;

(3) at the Academy's discretion, the use of educational technologies in teaching the core academic disciplines;

(4) training needed to become a lead teacher or a master teacher in a core subject, consistent with State policies on teacher career ladders;

(5) training needed to participate in curriculum development in a core subject; and

(6) training in the development and use of assessment tools.

(c) Each Academy assisted under this subpart shall carry out activities consistent with the purpose of this subpart, which may include—

(1) review of existing teacher enhancement programs to identify the most promising approaches;

(2) development of a curriculum for use by the Academy;

(3) recruitment of teachers within the State to participate in the Academy's program, including, on a nondiscriminatory basis, recruitment of—

(A) minority group members;

(B) individuals with disabilities;

(C) individuals from areas with high numbers or concentrations of disadvantaged students; and

(D) other teachers who have a potential for leadership;

(4) follow-up activities for previous participants;

(5) dissemination of information about the Academy, including the training curricula developed; and

(6) evaluation of the impact of the Academy on the teaching practices of participants, and other evaluation activities designed to strengthen the Academy's program.

(d)(1) The Governor shall allocate to the Academies, in the same proportion as funds appropriated under section 1731G(a) are distributed to those Academies, the State's allocation under section 1731G(b). Each Academy shall use such allocation for a program of cash awards and recognition to outstanding teachers in the core academic subject or subjects covered by the program of the Academy.

(2) Academies shall select teachers to receive awards from nominations received from local educational agencies, public and private schools, teachers, associations of teachers, parents, associations of parents and teachers, businesses, business groups, and student groups.

(3) Any full-time public or private elementary or secondary school teachers of a core academic subject, including an elementary school teacher of the general curriculum, shall be eligible to receive an award under this subpart.

(4) The Academy shall select award recipients in accordance with criteria developed by the Academy and approved by the Governor. The selection criteria may take into account, but are not limited to, teacher's success in—

(A) educating disadvantaged children, children with disabilities, children of limited English proficiency, or homeless children, as well as the children of migrant agricultural workers, in a core academic subject;

(B) educating gifted and talented students in a core academic subject;

(C) encouraging students to enroll, and succeed, in advanced classes in a core academic subject;

(D) teaching a core academic subject successfully in schools educating large numbers of disadvantaged students, including schools in low-income inner-city or rural areas;

(E) introducing a new curriculum in a core academic subject into a school or strengthening an established curriculum; or

(F) acting as a "master teacher" in a core academic subject.

(5) The amount of a teacher's award under this subsection shall not exceed $5,000 and shall be available for any purpose the recipient chooses.

USE OF FUNDS

SEC. 1731E. Each recipient of funds appropriated under section 1731G(a) shall use those funds to meet the reasonable start-up and initial operating costs of carrying out the activities described in section 1731D (a) through (c), which may include stipends and travel and living expenses for teachers who participate in the Academy's program if no other funds are available to pay those costs.

COST-SHARING

SEC. 1731F. Funds received under section 1731G(a) may be used to pay up to 75 percent of the cost of a Governor's Academy for Teachers in the first year, 65 percent of such cost in the second year, 55 percent in the third year, 45 percent in the fourth year, and 35 percent in the fifth year. The remaining share shall be provided from non-Federal sources, and may include in-kind contributions, fairly valued.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1731G. (a) For the purpose of carrying out this subpart, except for section 1731D(d), there are authorized to be appropriated $62,400,000 for fiscal year 1992, $54,170,000 for fiscal year 1993, $45,940,000 for fiscal year 1994, $37,710,000 for fiscal year 1995, and $29,480,000 for fiscal year 1996.

(b) For the purpose of carrying out section 1731D(d), there are authorized to be appropriated $7,600,000 for each of the fiscal years 1992 through 1996.

Subpart 2—Governors' Academies for School Leaders

STATEMENT OF FINDINGS

SEC. 1732. The Congress finds as follows:

(1) The role of the school principal and other school leaders is central to school performance, school reform, and achievement of the National Education Goals.

(2) School restructuring intensifies the need for effective school leadership as it locates greater authority and responsibility at the school building level. In this context, principals and other administrators need to cultivate strong collegial relationships among teachers and staff and effectively involve parents.

(3) School leaders must be well versed in the core academic disciplines, must provide instructional leadership to the teachers in their schools, and must be able to coordinate school services with those of social service agencies and other organizations, including businesses, in the community affecting students and their families.

(4) Over the next ten years, at least half of those individuals now serving as school principals will be eligible for retirement.

(5) Governors' efforts to reform elementary and secondary education in the States must include a focus on preparing a new generation of highly effective school leaders.

(6) The pool of talent from which to draw school leaders can be expanded substantially with well-designed training programs.

PURPOSE

SEC. 1732A. The purpose of this subpart is to improve the training and performance of public and private school principals and other school leaders, and increase the number of persons who are well trained and well qualified to be school leaders, by supporting the development and implementation of programs that offer—

(1) for prospective school leaders, recruitment, training, and, as appropriate, internships under experienced school leaders;

(2) for experienced school leaders, opportunities for professional renewal and enhancement of skills; and

(3) for all participants, a focus on instructional leadership, school-based management, school reform strategies, and implementation of school-level accountability mechanisms.

PROGRAM AUTHORIZED; ALLOCATION OF APPROPRIATIONS

SEC. 1732B. (a)(1) The Secretary shall make a one-time, five-year grant to each State, in accordance with this subpart, to establish and operate a Governor's Academy for School Leaders.

(2) The Governor of each State shall use the State's grant to make competitive awards to the State educational agency, local educational agencies, institutions of higher education, other public and private agencies and organizations, or consortia of such agencies, institutions, and organizations, to establish and operate a Governor's Academy for School Leaders.

(3) Such Academies may be operated in cooperation or consortium with those of other States.

(b)(1) From the funds appropriated for this subpart for any fiscal year, the Secretary—

(A) may reserve up to $500,000 for evaluations of, and dissemination of information about, activities conducted under this subpart; and

(B) shall reserve up to $55,000 for Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau), to be expended in such manner as the Secretary determines will best meet the purpose of this subpart.

(2)(A) Except as provided in paragraph (3), the Secretary shall proportionately allocate the remainder of such funds to each of the 50 States, the District of Columbia, and Puerto Rico, on the basis of the number of public elementary and secondary schools in each such jurisdiction in the most recent year for which satisfactory data are available.

(B) If the Secretary determines that any amount of a State's allotment for any fiscal year under subparagraph (A) will not be needed for such fiscal year by the State, the Secretary shall reallot such amount to other States that need additional funds, in such manner as the Secretary determines is appropriate.

STATE APPLICATION

SEC. 1732C. (a) The Governor of each State wishing to receive a grant under this subpart shall submit an application to the Secretary for a five-year period, at such time and in such manner as the Secretary may prescribe.

(b) Each such application shall include—

(1) a description of how the Governor's Academy for School Leaders planned for the State will relate to the Governor's overall plan for the attainment of the National Education Goals and the reform of elementary and secondary education in the State, including, in particular, improvement of school leadership in the State;

(2) a description of the competitive process the Governor will use to select the applicant to operate the Governor's Academy;

(3) a description of how Academy participants will be selected;

(4) a description of how the State will monitor the implementation of the Governor's Academy and the subsequent progress of individuals trained by the Academy, and an assurance that it will comply with reasonable requests of the Secretary for information on these matters;

(5) a description of how the State will meet the cost-sharing requirements of section 1732F and how the State will continue to operate the Academy when Federal assistance is no longer available; and

(6) such other assurances and information as the Secretary may require.

AUTHORIZED ACTIVITIES

SEC. 1732D. Each Academy assisted under this subpart shall—

(1) identify models and methods of leadership training and development that are promising or have proven to be successful;

(2) develop curricula, which focus on instructional leadership, school-based management, and the design and execution of school improvement strategies and accountability mechanisms, for the development of school leaders;

(3) identify, in a nondiscriminatory manner, candidates, including members of minority groups, individuals with disabilities, and individuals from schools with high numbers of concentrations of disadvantaged students, to be trained as new school leaders;

(4) provide intensive training and development programs both for persons desiring and demonstrating outstanding promise to become school leaders, and for current school leaders seeking enhanced and up-to-date knowledge needed to perform their jobs effectively;

(5) identify districts and schools with principal and other school leader vacancies and work with them to match Academy participants with such vacancies;

(6) as appropriate, facilitate internships for graduates of the program for new school leaders, under the guidance and supervision of experienced administrators;

(7) provide periodic follow-up development activities for school leaders trained through the Academy's programs;

(8) disseminate information about the Academy, including the training curricula developed; and

(9) evaluation of the impact of the Academy on the leadership practices of participants, and other evaluation activities designed to strengthen the Academy's program.

USE OF FUNDS

SEC. 1732E. Each recipient of funds under this subpart shall use those funds to meet the reasonable start-up and initial operating costs of carrying out the activities described in section 1732D, which may include stipends, travel, and living expenses for participants in the Academy if no other funds are available to pay those costs.

COST-SHARING

SEC. 1732F. Funds received under this subpart may be used to pay up to 75 percent of the cost of a Governor's Academy for School Leaders in the first year, 65 percent of such cost in the second year, 55 percent in the third year, 45 percent in the fourth year, and 35 percent in the fifth year. The remaining share shall be provided from non-Federal sources, and may include in-kind contributions, fairly valued.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1732G. For the purpose of carrying out this subpart, there are authorized to be appropriated $22,500,000 for fiscal year 1992, $19,500,000 for fiscal year 1993, $16,500,000 for fiscal year 1994, $13,500,000 for fiscal year 1995, and $10,500,000 for fiscal year 1996.

Subpart 3—Alternative Certification of Teachers and Principals

FINDINGS

SEC. 1733. The Congress finds that—

(1) effective elementary and secondary schools require competent teachers and strong leadership;

(2) school systems would benefit greatly by recruitment pools of well-qualified individuals, such as scientists and engineers, from which to select teachers and principals;

(3) talented professionals who have demonstrated a high level of subject area competence or management and leadership qualities outside the education profession and who wish to pursue second careers in education often do not meet traditional certification requirements; and

(4) alternative certification requirements that do not exclude such individuals from teaching or school administration solely because they do not meet current certification requirements would allow school systems to take advantage of these professionals and improve the supply of well-qualified teachers and principals.

PURPOSE

SEC. 1734. (a) It is the purpose of this subpart to improve the supply of well-qualified elementary and secondary school teachers and principals by encouraging and assisting States to develop and implement alternative teacher and principal certification requirements.

(b) As used in this subpart, the term—

(1) "alternative teacher and principal certification requirements" means State or local requirements that permit entry into elementary and secondary teacher and principal positions for individuals who have demonstrated a high level of appropriate subject area competence, or management or leadership qualities, in careers in or out of the education field, but who would not otherwise meet existing requirements for teaching or supervisory positions. Alternative teacher and principal certification requirements may recognize that—

(A) for teachers, a high level of demonstrated competence in an appropriate subject area may be substituted for traditional teacher certification requirements (such as teacher training course work); and

(B) for principals, a high level of demonstrated competence in administration and management may be substituted for traditional principal certification requirements (such as teaching experience or supervisory experience in the field of education); and

(2) "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

AUTHORIZATION OF APPROPRIATIONS

Sec. 1735. For the purpose of carrying out this subpart, there are authorized to be appropriated $25 million for fiscal year 1992.

ALLOTMENTS

SEC. 1736. (a)(1) From the amount appropriated to carry out this subpart, the Secretary shall allot to each State the lesser of either the amount the State applies for under section 325 or an amount that is proportional to the State's share of the total population of children ages five through seventeen in all the States (based on the most recent data available that is satisfactory to the Secretary).

(2) If a State does not apply for its allotment, or the full amount of its allotment, under the preceding paragraph, the Secretary may reallocate the excess funds to one or more other States that demonstrate, to the satisfaction of the Secretary, a current need for the funds.

(b) Notwithstanding section 412(b) of the General Education Provisions Act, funds awarded under this subpart shall remain available for obligation by a recipient for a period of two calendar years from the date of the grant.

STATE APPLICATIONS

SEC. 1737. (a) Any State desiring to receive a grant under this subpart shall submit an

application, through its Governor, at such time, in such manner, and containing such information, as the Secretary may reasonably require.

(b) Each State application shall—

(1) describe the programs, projects, and activities to be undertaken; and

(2) contain such assurances as the Secretary deems necessary, including assurances that—

(A) funds awarded to the State will be used to supplement, and not to supplant, any State or local funds available for the development and implementation of alternative teacher and principal certification requirements;

(B) the State has, in developing its application, consulted with the State or local agency that certifies teachers and principals, as well as representatives of elementary and secondary school teachers and principals, local school systems, parents, and other interested organizations and individuals; and

(C) the State will submit to the Secretary, through the Governor, at such time as the Secretary may specify, a final report describing the activities carried out with funds awarded under this subpart and the results achieved.

(c) Sections 435 and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to this subpart.

USE OF FUNDS

SEC. 1738. (a)(1) A State shall use funds awarded under this subpart to support programs, projects, or activities that develop and implement new, or expand and improve existing, alternative teacher and principal certification requirements.

(2) A State may carry out such programs, projects, or activities directly, through contracts, or through subgrants to local educational agencies, intermediate educational agencies, institutions of higher education, or consortia of such agencies.

(b) Programs, projects, and activities supported under this subpart may include, but are not limited to, the—

(1) design, development, implementation, testing, and evaluation of alternative teacher and principal certification requirements;

(2) establishment of administrative structures necessary to the development and implementation of alternative teacher and principal certification requirements;

(3) training of staff, including the development of appropriate support programs, such as mentor programs, for teachers and principals entering the school system through the alternative teacher and principal certification program;

(4) development of recruitment strategies; and

(5) development of reciprocity agreements between or among States for the certification of teachers and principals.

PART D—EDUCATIONAL REFORM AND FLEXIBILITY

Subpart 1—Educational Reform Through Flexibility and Accountability

STATEMENT OF FINDINGS AND PURPOSE

SEC. 1741. (a) FINDINGS.—Historically, Federal education programs have addressed the Nation's most pressing educational problems by providing categorical assistance with detailed requirements relating to the use of funds. While this approach has proven generally successful, some program requirements may inadvertently impede educational achievement. The Nation's schools are being asked to deal effectively with increasingly diverse educational needs that current program structures may not be flexible enough to address. In an era when educational change and reform must prevail, it is more important than ever to provide programs that result in improved educational outcomes for all students; promote the coordination of education and related services that benefit children and their families; respond flexibly to the needs of a diverse student population; stop the proliferation of unnecessary Federal, State, and local regulation; and place less emphasis on measuring resources and reviewing procedures and more emphasis on achieving program results.

(b) PURPOSE.—The purpose of this subpart is to promote educational reform that leads to improved educational outcomes for participants in affected programs. Under this approach, the schools and other recipients of Federal funds would be held accountable for achieving specific educational improvement goals in exchange for increased flexibility in the use of their resources. This more flexible approach is intended to enable school and program administrators, teachers, parents, local agencies, and community groups to work together to develop effective education programs that lead to improved achievement and meet the needs of all participants, particularly those who are disadvantaged.

FLEXIBILITY AND ACCOUNTABILITY IN EDUCATION AND RELATED SERVICES

SEC. 1742. Subpart I of Part C of the General Education Provisions Act (20 U.S.C. 1221 *et seq.*) is amended by adding after section 421A a new section 421B to read as follows:

"FLEXIBILITY AND ACCOUNTABILITY IN EDUCATION AND RELATED SERVICES

"SEC. 421B. (a) PROGRAM AUTHORIZED.—(1)(A) The Secretary shall, in accordance with this section, assist elementary and secondary schools and other service providers to improve the achievement of all students and other participants, but particularly disadvantaged individuals, by authorizing waivers by which the Governors, State and local educational agencies, and other service providers can improve the performance of schools and programs by increasing their flexibility in the use of their resources while holding them accountable for achieving educational gains.

"(B) In support of these projects, the Secretary is authorized to waiver any statutory or regulatory requirement (except as provided in subsection (e)) applicable to a program administered by the Department of Education that the Secretary determines may impede the ability of a school or other service provider to meet the special needs of such students and other individuals in the most effective manner possible. The head of any other Federal agency is similarly authorized to waive such requirements applicable to a program administered by such agency if the agency head and the Secretary agree that such a waiver would promote the purpose of this section.

"(2) Projects conducted under this section, and any waivers associated with such projects, shall last no longer than three years, except that the Secretary may extend a project and any associated waivers for an additional two years if the Secretary determines that the project is making substantial progress in meeting its goals.

"(3) The Secretary shall terminate a project and its associated waivers if the Secretary, at any time, determines it is not making acceptable progress toward meeting its goals. The head of any other Federal agency who has granted waivers under this section shall determine whether to extend or terminate those waivers, but the Secretary shall have exclusive authority to extend or terminate the project.

"(b) ELIGIBILITY.—(1) Each project that involves elementary or secondary schools shall include the participation of a State educational agency and at least—

"(A) one local educational agency; and

"(B) two schools.

"(2) To the extent possible, each grade and academic program, including programs under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, in a participating school shall participate in the project.

"(3) If fewer than all the schools of a local educational agency participate in a project, available resources, including available Federal assistance, shall not be concentrated unreasonably in those schools that do participate.

"(4) Each project that does not involve elementary and secondary schools shall involve at least two programs, including at least one program administered by the Secretary.

"(c) APPLICATIONS.—The Governor of any State wishing to conduct a project under this section shall, after consultation with, as the Governor finds appropriate, the State educational agency, one or more local educational agencies, and other State and local agencies and service providers, submit an application to the Secretary for each such project. Each application shall include a plan that—

"(1) describes the purposes and overall expected outcomes of the project;

"(2) identifies, for each school or site participating in the project, those impediments to improved educational outcomes that would be removed by the proposed waivers;

"(3) identifies the Federal programs to be included in the project, the Federal statutory or regulatory requirements to be waived, and the purpose and duration of the requested waivers;

"(4) describes the State and local requirements that will be waived, the purpose of such waivers, and, if such requirements will not have been waived before the project begins, when those waivers will be obtained and take effect;

"(5) describes specific, measurable, educational improvement goals for each school or other site in the project and for each school year of the project, including—

"(A) goals for improving the achievement of all participants, including disadvantaged individuals, with respect to achievement in basic and advanced skills;

"(B) goals that reflect the broad purposes of each program for which a waiver is sought; and

"(C) an explanation of how the applicant will measure progress in meeting the goals set for each school or site in the project and for disadvantaged individuals participating in the project; and

"(6) for projects involving elementary or secondary schools—

"(A) identifies the schools to be included in the project and describes the student population at each school including—

"(i) current data regarding the achievement of the disadvantaged students as well as other students; and

"(ii) in the number of students who—

"(I) are of limited English proficiency, as defined in section 7003(a)(1) of the Bilingual Education Act;

"(II) are children with disabilities, as defined in section 602(a)(1) of the Individual with Disabilities Education Act;

"(III) are currently or formerly migratory;

"(IV) are educationally deprived, for the purposes of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and

"(V) are eligible for a free or reduced price school lunch;

"(B) describes specific goals for enhancing coordination between the regular education program available to all students and programs serving disadvantaged students;

"(C) if fewer than all the schools in a local educational agency will participate in a project, describes the expected educational outcomes for disadvantaged students in schools that do not participate, and how those outcomes will be assessed; and

"(D) describes how school administrators, teachers, staff, and parents (including parents of educationally disadvantaged children) have been, or will be, involved in the planning, development, and implementation of the goals and program for each participating school.

"(d) APPROVAL OF PROJECTS.—(1) The Secretary shall approve an application for a project under this section if he determines that the project shows substantial promise of achieving the purposes of this section, after considering—

"(A) the comprehensiveness of the project, including the types of students, schools, programs, and activities to be included;

"(B) the extent to which the provisions for which waivers are sought impede educational improvement;

"(C) the State and local requirements that will be waived for the project;

"(D) the significance and feasibility of the proposed project's goals for each participating school or site; and

"(E) the quality of the plan for ensuring accountability for the proposed plan's activities and goals.

"(2) The Secretary shall consult with the heads of other appropriate Federal agencies, if any, in determining whether to approve a project. Each such agency head shall notify the Secretary of any waivers granted by such agency head as part of such project.

"(e) ALLOCATION OF FEDERAL FUNDS; RESTRICTION ON WAIVERS.—(1) Federal funds under any program that are used to support a project under this section shall be allocated to States and other recipients in accordance with the statutory and regulatory requirements that govern the operation of that program, except that, for the purpose of such a project, the Secretary (or the head of any other Federal agency) may extend the duration of, and provide continuation funding to, a project chosen on a competitive basis that a participating agency is conducting before the project under this section commences.

"(2) Neither the Secretary nor the head of any other Federal agency shall waive under this section any statutory or regulatory requirement in awarding a new competitive grant to a State educational agency, local educational agency, or other applicant participating in a project under this section.

"(3) Neither the Secretary nor, when applicable, the head of any other Federal agency shall waive under this section any statutory or regulatory requirement—

"(A) relating to—

"(i) maintenance of effort;

"(ii) comparability; or

"(iii) the equitable participation of students attending private schools;

"(B) under section 438 or 439 of the General Education Provisions Act;

"(C) under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, or the Age Discrimination Act of 1975; or

"(D) under the Individuals with Disabilities Education Act—

"(i) relating to the availability of a free appropriate public education to children with disabilities (including the evaluation and placement of such children), or the procedural safeguards afforded such children and their parents, under part B thereof; or

"(ii) relating to the provision of early intervention services to infants and toddlers with disabilities, or the procedural safeguards afforded such infants and toddlers and their parents, under part H thereof.

"(f) REPORTS AND EVALUATIONS.—(1) Each project shall submit, no later than 90 days after the end of each year of the project, an annual report to the Secretary that—

"(A) summarizes the principal activities of the project;

"(B) contains school-by-school and other data, as described in the project plan, that show the extent to which the project is meeting its overall goals, including its goals for improving the achievement of all participants, particularly disadvantaged individuals, with respect to achievement in basic and advanced skills, and is meeting the goals for each school or other site;

"(C) describes the impact of the project on disadvantaged children in schools, if any, that are not participating in the demonstration; and

"(D) describes the effectiveness of efforts to coordinate programs and services for children and their families as appropriate.

"(2) The Secretary shall submit a report to the Congress every two years that summarizes and analyzes the project reports required by paragraph (1).

"(3) At the end of the 5-year period described in this section, and at such interim points as the Secretary deems appropriate, the Secretary shall report to the Congress on the evaluation of this section by the Department of Education and other affected Federal agencies. Such reports may include recommendations for amendments to program statutes that are based on the experience of projects that successfully raise educational achievement by eliminating or modifying statutory or regulatory provisions that impede educational improvement.

"(g) DEFINITION.—For the purpose of this section, the term 'disadvantaged students' includes students of limited English proficiency, children with disabilities, students who are currently or formerly migratory, and students who are educationally deprived.

"(h) BUDGET NEUTRALITY.—The authority provided by this section shall not be exercised in a manner that, for any fiscal year, increases total obligations or outlays of discretionary appropriations for programs subject to such authority, or that increases total obligations or outlays of funding for all direct-spending programs subject to such authority over those that would have occurred absent such authority.".

Subpart 2—Amendments to Chapter 2

ALLOCATION TO LOCAL EDUCATIONAL AGENCIES

SEC. 1745. Section 1512(a) of the Elementary and Secondary Education Act of 1965 is amended by striking out "not less than 80 percent" and inserting in lieu thereof "50 percent".

STATE USES OF FUNDS

SEC. 1746. Section 1521(b) of the Elementary and Secondary Education Act of 1965 is amended—

(1) in paragraph (1), by striking out "25 percent" and inserting in lieu thereof "10 percent"; and

(2) in paragraph (2)(A), by striking out "20 percent" and inserting in lieu thereof "8 percent".

STATE APPLICATIONS

SEC. 1747. Section 1522(a) of the Elementary and Secondary Education Act of 1965 is amended—

(1) by submitting a comma and "approved by the Governor," after "an application"; and

(2) in paragraph (2), in the text following subparagraph (I), by striking out "(not to exceed 20 percent of the amount of the State's allotment)".

LOCAL USES OF FUNDS

SEC. 1748. Section 1531(b) of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(2) by inserting before paragraph (2), as so redesignated, a new paragraph (1) to read as follows:

"(1) educational choice programs;".

AUTHORIZED ACTIVITIES

SEC. 1749. Section 1532(a) of the Elementary and Secondary Education Act of 1965 is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively; and

(2) by inserting before paragraph (2), as so redesignated, a new paragraph (1) to read as follows:

"(1) any activities or expenses directly related to planning, implementing, operating, evaluating, and disseminating information about, the local educational agency's educational choice program, if any, including expenses of parents and children resulting from their participation in such program, to the extent otherwise permitted by law;".

PART E—PARENTAL CHOICE OF SCHOOLS

Subpart 1—Findings

SEC. 1751. The Congress finds that—

(1) parental choice in education creates market-based accountability, encourages school diversity and competition, and provides parents and their children with a sense of investment in their schools;

(2) economically disadvantaged children deserve the same educational choices, both public and private, as their more advantaged peers;

(3) educational choice programs and programs of compensatory education assisted under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 should be coordinated with, and be carried out so as to enhance, each other;

(4) local implementation of programs that enhance student and parental choice deserves national support and encouragement; and

(5) different methods for expanding educational choice should be tested and evaluated.

Subpart 2—Parental Choice and Chapter 1

CHAPTER 1 SERVICES FOR CHILDREN PARTICIPATING IN EDUCATIONAL CHOICE PROGRAMS

SEC. 1752. (a) Subpart 2 of part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof a new section 1022 to read as follows:

"CHILDREN PARTICIPATING IN EDUCATIONAL CHOICE PROGRAMS

"SEC. 1022. (a) SERVICES TO FOLLOW THE CHILD.—Notwithstanding any other provision

of this chapter, a local educational agency that is carrying out an educational choice program shall, in accordance with this section, make available supplementary compensatory education services, paid for under this part, to each child residing in such agency who is afforded the opportunity to participate in that program and who, in the absence of the choice program, would receive services from that agency under this part.

"(b) FUNDS TO PARENTS.—(1) If the local educational agency determines that it is not feasible or efficient to make such services available to such a child directly or through arrangements with other service providers, it shall provide to the parents of such child a per-child share of funds received by such agency under subpart 1 of this part for the applicable fiscal year.

"(2) As used in paragraph (1), a 'per-child share' means—

"(A) the total amount of funds received by the local educational agency under subpart 1 of this part for the applicable fiscal year, minus amounts spent on administrative expenses including transportation provided under section 1011(a)(4); divided by

"(B) the number of children selected by such agency to receive services under this part.

"(3) Parents may use funds received from a local educational agency under paragraph (1) only for either or both of the following—

"(A) to purchase supplementary compensatory education services that meet the special educational needs of the parents' eligible child, as identified by the local educational agency, from any elementary or secondary school, or any other public or private agency, organization, or institution that the local educational agency determines is able to provide appropriate and effective supplementary compensatory educational services to the child; and

"(B) for the costs of transportation related to the child's participation in the educational choice program.

"(4) Payments received by parents under paragraph (1) are not income for Federal income tax purposes.

"(c) APPLICATION BY LOCAL EDUCATIONAL AGENCY.—Each local educational agency subject to this section shall include in its application under section 1012—

"(1) a description of its policies and procedures for carrying out this section;

"(2) an assurance that it will keep such records and provide such information to the State educational agency relating to the provision of funds to parents under subsection (b) as may be required for fiscal audit and program compliance; and

"(3) an assurance that it will exercise due diligence to—

"(A) ensure that payments made to parents under subsection (b)(1) will be used only for the purposes authorized by subsection (b)(3); and

"(B) recover such payments that are not so used.".

(b) Section 1011(a) of the ESEA is amended by adding at the end thereof a new paragraph (4) to read as follows:

"(4) A local educational agency may use funds received under this chapter for the additional transportation costs of children receiving services under this part who are participating in an educational choice program.".

PARENTAL INVOLVEMENT

SEC. 1752A. Section 1016(c) of the Elementary and Secondary Education Act of 1965 is amended—

(1) in paragraph (2), by adding the following sentence at the end thereof: "If the local educational agency is carrying out an educational choice program, representatives of such agency shall explain the availability of compensatory education services under the various available options."; and

(2) by adding at the end thereof a new paragraph (7) to read as follows:

"(7) Each local educational agency that is implementing an educational choice program shall provide an explanation in writing, and in such other manner as may be appropriate, to the parents of each eligible child selected to participate in the agency's program under this part of the options available to them under the educational choice program and this part.".

DEFINITION

SEC. 1752B. Section 1471 of the Elementary and Secondary Education Act of 1965 is amended by adding at the end thereof a new paragraph (24) to read as follows:

"(24) The term 'educational choice program' means a program, including a desegregation plan, adopted by a State educational agency or a local educational agency under which parents select the school in which their children will be enrolled.".

Subpart 3—Assistance for Parental Choice Programs

PROGRAM AUTHORIZED

SEC. 1753. The Secretary shall make grants, in accordance with this subpart, to local educational agencies that carry out educational choice programs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1753A. For the purpose of carrying out this subpart, there are authorized to be appropriated $200 million for fiscal year 1992, and such sums as may be needed for each of the four succeeding fiscal years.

ELIGIBILITY

SEC. 1753B. (a) A local educational agency is eligible for a grant under this subpart if it will carry out an educational choice program during the year for which assistance is sought and carried out such a program during the preceding year.

(b) For the purpose of this subpart, an "educational choice program" is a program adopted by a State or by a local educational agency under which—

(1) parents select the school, including private schools, in which their children will be enrolled; and

(2) sufficient financial support is provided to enable a significant number or percentage of parents to enroll their children in a variety of schools and educational programs, including private schools.

ALLOCATION OF APPROPRIATIONS

SEC. 1753C. (a) From the amount appropriated under section 1753A for any fiscal year, the Secretary shall allot, to each eligible local educational agency whose application for a grant under this part has been approved, an amount that bears the same ratio to such amount as the amount allocated to such agency under sections 1005 and 1006 of the Elementary and Secondary Education Act of 1965 for the previous fiscal year bears to the amounts so allocated to all such eligible agencies whose applications have been approved.

(b) No local educational agency's allotment shall exceed—

(1) the average per pupil expenditure of all local educational agencies in the State for the most recent fiscal year for which satisfactory data are available to the Secretary; multiplied by

(2) the number of children afforded the opportunity to participate in the educational choice program in the year preceding the year for which assistance is sought.

(c) Any funds appropriated under this subpart for any fiscal year that exceed the amounts that can be awarded under this section shall be returned to the Treasury.

AUTHORIZED ACTIVITIES

SEC. 1753D. (a) Each local educational agency that receives funds under this subpart may use those funds only for educational services provided to the students of such agency and for parental involvement activities, except that such services and activities must be in addition to services and activities that would otherwise be provided from State or local funds.

(b) A local educational agency may not use funds received under this subpart for general administrative expenses.

APPLICATIONS

SEC. 1753E. (a) Each local educational agency that wishes to receive a grant under this subpart shall submit an application to the Secretary, covering a period of one year, at such time and in such manner as the Secretary may prescribe.

(b) Each such application shall contain—

(1) a description of the educational choice program carried out in the year preceding the year for which assistance is sought, in sufficient detail for the Secretary to determine whether the agency is eligible under this subpart; and

(2) such other assurances and information as the Secretary may require.

(c) Before finally deciding not to approve a local educational agency's application under this subpart, the Secretary shall—

(1) provide a written explanation to such agency; and

(2) afford such agency a reasonable opportunity to respond.

Subpart 4—Parental Choice Programs of National Significance

PROGRAM AUTHORIZED

SEC. 1754. The Secretary shall make grants, in accordance with this subpart, to State educational agencies, local educational agencies, and other agencies, institutions, and organizations to conduct and demonstrate nationally significant model programs of educational choice.

AUTHORIZATION OF APPROPRIATIONS

SEC. 1754A. (a) For the purpose of carrying out this subpart, there are authorized to be appropriated $30 million for fiscal year 1992 and such sums as may be needed for each of the four succeeding fiscal years.

(b) From the amount appropriated under subsection (a) for any fiscal year, the Secretary may set aside up to five percent for evaluation of, and dissemination of information about, educational choice programs assisted under this subpart.

ANNUAL COMPETITION

SEC. 1754B. In any fiscal year for which funds are available to make new awards, the Secretary shall announce the approaches to educational choice that will be considered for funding under this subpart. An application for assistance may be considered only if it complies with such announcement.

APPLICATIONS

SEC. 1754C. (a) Each agency, institution, or organization that wishes to receive a grant under this subpart shall submit an application to the Secretary, at such time, in such manner, and containing such assurances and information as the Secretary may prescribe.

(b) Each application under this subpart shall be for a period of up to five years.

AUTHORIZED ACTIVITIES

SEC. 1754D. (a) Each recipient of a grant under this subpart shall use the grant funds only for activities directly related to planning, implementing, operating, and evaluating, and disseminating information about, the educational choice demonstration program funded under this subpart.

(b) Such funds may be used, to the extent otherwise permitted by law, to meet expenses of parents and children resulting from their participation in such program.

EXPERT ADVICE

SEC. 1754E. The Secretary shall consult with educational practitioners with experience with educational choice programs, individuals with expert knowledge and experience in the area of educational choice, and other interested individuals, including parents, in determining which approaches to educational choice to support under, and in otherwise carrying out, this subpart.

DEFINITION

SEC. 1754F. For the purpose of this subpart, an "educational choice program" is a program adopted by a State or by a local educational agency under which parents select the school in which their children will be enrolled and that complies with the annual announcement under section 1754B.

PART F—NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

SEC. 1761. Section 406 of the General Education Provisions Act is amended—

(1) by amending subsection (f)(1) to read as follows:

"(1) There are authorized to be appropriated for the purposes of this section $86,160,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.";

(2) in subsection (i)—

(A) in paragraph (2)(A)—

(i) by amending the first sentence to read as follows: "The National Assessment shall provide a fair and accurate presentation of educational achievement in skills, abilities, and knowledge in reading, writing, mathematics, science, history, and geography, and in other areas specified by the Board, and shall use sampling techniques that produce data that are representative on a national and on a State basis for those States that choose to participate.";

(ii) by amending clause (i) to read as follows:

"(i) collect and report data on a periodic basis, but at least once every four years in reading, writing, mathematics, science, history, and geography;"; and

(iii) in clause (ii), by striking out "every 2 years" and inserting in lieu thereof "annually";

(B) by striking out paragraph (2)(B);

(C) in paragraph (4)(B)(i), by striking out "and that information with respect to individual schools";

(D) by striking out paragraph (4)(C); and

(E) by amending paragraphs (8) (B) and (C) to read as follows:

"(B) Participation in assessments made on a State basis shall be voluntary. The Secretary shall enter into an agreement with any State that desires to carry out an assessment for the State under this subsection. Each such agreement shall contain assurances that the State will—

"(i) participate in the Assessment;

"(ii) perform the functions of conducting the Assessment at the school level for all schools in the State sample and coordinating within the State, subject to subparagraph (C);

"(iii) pay from non-Federal sources the minimum State contribution required in subparagraph (C)(i); and

"(iv) comply with the terms and conditions specified in subsection (i)(2)(C)(iv).

"(C)(i) The minimum State contribution for participation in the State assessments for each fiscal year shall be $100,000, which the State may meet by in-kind contributions, fairly valued.

"(ii) The Secretary shall pay the State for the cost, in excess of the minimum State contribution, of conducting the Assessment at the school level for all schools in the State sample and for the cost of coordination within the State an amount that shall be identified in the agreement reached under subparagraph (B), that shall be the product of the total number of hours of work and training of school staff the Secretary estimates is required to conduct the Assessment at the school level and the total number of hours of work of State staff the Secretary estimates is required to coordinate the Assessment within the State multiplied by a daily rate of pay, as determined by the Secretary.".

PART G—NATIONAL COMMISSION ON TIME, STUDY, LEARNING, AND TEACHING

SEC. 1771. (a) ESTABLISHMENT.—There is hereby established a National Commission on Time, Study, Learning, and Teaching (hereafter in this title referred to as the "Commission").

(b) MEMBERSHIP OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall consist of twelve members, of whom—

(A) six members shall be appointed by the President;

(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 recommendations of the Majority Leader and the 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 among—

(i) the Nation's Governors;

(ii) individuals from the business community;

(iii) representatives of nonprofit organizations or foundations committed to the improvement of American education;

(iv) individuals who are engaged in the profession of teaching;

(v) individuals engaged in school administration, members of school boards, and parents or representatives of parents or parent organizations;

(vi) State officials directly responsible for education;

(vii) Federal officials responsible for education policy; and

(viii) educational researchers with experience relevant to the Commission's work.

(B) The 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 seven members of the Commission have been appointed.

(c) FUNCTIONS OF THE COMMISSION.—

(1) STUDY.—The Commission shall examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States in an era when World Class Standards of achievement need to be met, including issues regarding the length of the school day and year, the extent and role of homework, how time is currently being used for academic subjects, year-round professional opportunities for teachers, and the use of school facilities for extended learning programs.

(2) REPORT.—The Commission shall submit a final report under subsection (d). The report shall include an analysis and recommendations concerning—

(A) the length of the academic day and the academic year in elementary and secondary schools throughout the United States and in schools of other nations;

(B) the time children spend in school learning the five core subjects of English, mathematics, science, history, and geography;

(C) the use of incentives for students to increase their educational achievement in available instructional time;

(D) how children spend the 91 percent of their time that is outside school, with particular attention to how much of that time can be considered "learning time" and how out-of-school activities affect intellectual development;

(E) the time children spend on homework, how much of that time is spent on the core curriculum subjects, the importance that parents and teachers attach to homework, and the extent to which homework contributes to student learning;

(F) year-round professional opportunities for teachers and how teachers can use their time to acquire knowledge and skills that will permit them to improve their performance and help raise the status of the profession;

(G) how school facilities are used for extended learning programs;

(H) the appropriate number of hours per day and days per year of instruction for United States elementary and secondary schools; and

(I) if appropriate, a model plan for adopting a longer academic day and academic year for use by United States elementary and secondary schools by the end of this decade, including recommendations regarding mechanisms to assist States, school districts, schools, and parents in making the transition from the current academic day and year to an academic day and year of a longer duration.

(d) COMMISSION REPORT.—Not later than one year after the Commission concludes its first meeting, the Commission shall submit a report to the President and the Congress on the study and any recommendations required pursuant to this section.

(e) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission may, for the purpose of carrying out this section, 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 section, the Commission may 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 quality and adequacy of American students' study and learning time in an era when World Class Standards of achievement need to be met.

(3) INFORMATION.—The Commission may secure directly from any Federal agency such information, relevant to its functions, as may be necessary to enable the Commission to carry out this section. Upon request of the Chairman of the Commission, the head of the agency shall, to the extent permitted by law, furnish such information to the Commission.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of money, services, or property, both real and personal, for the purpose of aiding the work of the Commission.

(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 Secretary shall provide to the Commission on a reimbursable basis such reasonable 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 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 Commission shall appoint a staff director, who shall be paid at a rate not to exceed the maximum rate of basic pay under section 5376 of title 5, United States Code, and such professional and clerical 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 classification and General Schedule pay rates.

(4) OTHER FEDERAL PERSONNEL.—Upon request of the Chairman of the Commission, the head of any Federal agency is authorized to detail, with or without reimbursement, any personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section. 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 a total of $1,000,000 for fiscal years 1991 and 1992 to carry out this part.

PART H—REGIONAL LITERACY RESOURCE CENTERS

REGIONAL LITERACY RESOURCE CENTERS

SEC. 1781. Part B of the Adult Education Act (20 U.S.C. 1203 et seq.) is amended—

(1) by redesignating subpart 7 as subpart 8; and

(2) by inserting after subpart 6 the following:

"Subpart 7—Regional Literacy Resource Centers

"REGIONAL LITERACY RESOURCE CENTERS

"SEC. 356. (a) PURPOSE.—It is the purpose of this section to assist State and local public and private nonprofit efforts to improve literacy through a program of regional literacy resource center grants to—

"(1) stimulate the coordination of literacy services;

"(2) enhance the capacity of State and local organizations to provide literacy services.

"(b) REGIONAL RESOURCE CENTERS.—The Secretary, from funds available for this subpart, shall make grants to or enter into contracts with, State educational agencies, local educational agencies, State offices on literacy, volunteer organizations, community-based organizations, institutions of higher education, or other nonprofit entities to operate regional literacy resource centers in such regions of the United States as the Secretary determines are appropriate.

"(c) USE OF FUNDS.—Funds awarded under subsection (b) to carry out this section shall be used to conduct such activities as—

"(1) improving and promoting the dissemination and adoption of teaching methods, technologies, and program evaluations;

"(2) developing innovative approaches to the coordination of literacy services within and among States and with the Federal Government;

"(3) assisting public and private agencies in coordinating the delivery of literacy services;

"(4) encouraging government and industry partnerships, including partnerships with small businesses, private nonprofit organizations, and community-based organizations for the delivery of literacy services;

"(5) encouraging innovation and experimentation in literacy activities that will enhance the delivery of literacy services and address emerging problems;

"(6) providing technical assistance to State and local governments and service providers to improve literacy programs and access to such programs; and

"(7) providing training and technical assistance to literacy instructors in reading instruction and in—

"(A) selecting and making the most effective use of methodologies, instructional materials, and technologies such as—

"(i) computer-assisted instruction;

"(ii) video tapes;

"(iii) interactive systems; and

"(iv) data link systems; or

"(B) assessing learning styles, screening for learning disabilities, and providing individualized remedial reading instruction.

"(d) APPLICATIONS.—Each entity that desires to receive an award under this section for a regional adult literacy resource center shall submit to the Secretary an application that describes how the applicant will—

"(1) develop a literacy resource center or expand an existing literacy resource center;

"(2) provide services and activities with the assistance provided under this section;

"(3) ensure access to services of the center for the maximum participation of all public and private programs and organizations providing or seeking to provide basic skills instruction, including local educational agencies, agencies responsible for corrections education, service delivery areas under the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations;

"(4) develop procedures for the coordination of literacy activities conducted within the States of the region by public and private organizations, and for enhancing the systems of service delivery;

"(5) secure approval of the Governors of each State in the region, to ensure that the regional literacy resource center serves the needs of the State, as identified in the four-year plan developed under section 342 of this Act;

"(6) evaluate the effectiveness of the services and activities supported by the center, including the provision of such information as the Secretary may require; and

"(7) meet the cost-sharing requirements of subsection (e).

"(e) PAYMENTS; FEDERAL SHARE.—(1) The Secretary shall pay to each entity having an application approved pursuant to subsection (d) the Federal share of the cost of the activities described in the application.

"(2) The Federal share—

"(A) for each of the first two fiscal years in which the applicant receives funds under this section shall not exceed 80 percent;

"(B) for each of the third and fourth fiscal years in which the applicant receives funds under this section shall not exceed 70 percent; and

"(C) for the fifth fiscal year in which the applicant receives funds under this section shall not exceed 60 percent.

"(3) The non-Federal share of payments under this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $5,000,000 for fiscal year 1992, and such sums as may be necessary for each of the four succeeding fiscal years.".

PART I—GENERAL PROVISIONS

DEFINITIONS

SEC. 1791. Except as otherwise provided, as used in this title—

(1) the terms "elementary school", "local educational agency", "secondary school", and "State educational agency" have the meanings given them in section 1471 of the Elementary and Secondary Education Act of 1965;

(2) the term "Governor" means the chief executive of each State;

(3) the term "Secretary" means the Secretary of Education; and

(4) the term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau).

INSULAR AREAS

SEC. 1792. The provisions of Public Law 95-134, permitting the consolidation of grants to the Insular Areas, shall not apply to funds received by such area under this title.

EFFECTIVE DATE

SEC. 1793. This title shall take effect on enactment.

TITLE XVIII—STUDENT FINANCIAL ASSISTANCE IMPROVEMENTS ACT OF 1992

SHORT TITLE

SEC. 1801. This title may be cited as the "Student Financial Assistance Improvements Act of 1992".

EXTENSION OF PELL GRANT PROGRAM AUTHORITY

SEC. 1802. Section 411(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; hereinafter in this title referred to as the Act) is amended by striking out "September 30, 1992," and inserting in lieu thereof "September 30, 1993,".

AMOUNT OF PELL GRANTS

SEC. 1803. Section 411(b) of the Act is amended to read as follows:

"(b) AMOUNT OF GRANTS.—(1)(A) The amount of a basic grant for a student eligible under this subpart shall be the lesser of—

"(i) the maximum award specified in paragraph (2), less an amount equal to the amount determined in accordance with Part F of this title to be the expected family contribution with respect to that student for that year; or

"(ii) the percentage, specified in paragraph (3), of the amount of the student's need for financial assistance (as defined in section 471).

"(B) In any case in which a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any award year, the amount of the basic grant for which that student is eligible shall be reduced in proportion to the extent to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for this purpose and published in the Federal Register.

"(2) The maximum amount of an award under this subpart shall be $3,700 for award year 1993–1994 and the four succeeding award years.

"(3) The percentage of the amount of a student's need for financial assistance to be used in paragraph (1)(A)(ii) shall be—

"(A) 80 percent, if the family of the student has a total income (excluding the income of the dependent student) of $10,000 or less;

"(B) 75 percent, if the family of the student has a total income (excluding the income of the dependent student) of between $10,001 and $15,000, inclusive;

"(C) 69 percent, if the family of the student has a total income (excluding the income of the dependent student) of between $15,001 and $20,000, inclusive; and

"(D) 55 percent, if the family of the student has a total income (excluding the income of the dependent student) of $20,001 or more.

"(4) Except as provided in subsection (g)(2), no basic grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subsection for any award year would be less than $200.".

PERIOD OF ELIGIBILITY FOR PELL GRANTS

SEC. 1804. Section 411(c) of the Act is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking out "period required" through "attendance" and inserting in lieu thereof the following: "period normally required for the completion of the first undergraduate baccalaureate course of study,"; and

(B) by amending subparagraph (A) to read as follows:

"(A) such period may not exceed the full-time equivalent of—

"(i) three academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring two years or less;

"(ii) five academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring more than two years but not more than four years, including any period for which the student received a Pell Grant in accordance with clause (i); or

"(ii) six academic years in the aggregate in the case of all undergraduate degree or certificate programs normally requiring more than four years, including any period for which the student received a Pell Grant in accordance with clause (i) or (ii);"; and

(2) in paragraph (3), by striking out "is entitled to" and inserting in lieu thereof "shall".

PELL GRANT NEED ANALYSIS REPEALS

SEC. 1805. Sections 411A, 411B, 411C, 411D, 411E, and 411F of the Act are repealed.

LIMITATIONS ON AMOUNTS OF LOANS COVERED BY FEDERAL INSURANCE

SEC. 1806. Section 424(a) of the Act is amended by striking out "1992." and inserting in lieu thereof "1993.".

LOAN LIMITS; LESS THAN HALF-TIME ATTENDANCE

SEC. 1807. (a) Section 425(a) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in clause (i), by striking out "$2,625," and inserting in lieu thereof "$3,500,";

(ii) in clause (ii), by striking out "$4,000," and inserting in lieu thereof "$5,000,"; and

(iii) in clause (iii), by striking out "(as defined in regulations of the Secretary)";

(B) in subparagraph (B), by striking out the first sentence therein; and

(2) in paragraph (2)(A)—

(A) in clause (i), by striking out "$17,500," and inserting in lieu thereof "$22,000,"; and

(B) in clause (ii)—

(I) by striking out "$54,750," and inserting in lieu thereof "$59,500,"; and

(II) by striking out "as defined by regulations of the Secretary and".

(b) Section 427 of the Act is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and"; and

(B) in paragraph (2)(B)(i), by striking out the semicolon at the end thereof and inserting in lieu thereof "and subsection (d)"; and

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

"(d) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on a less than half-time basis (as determined by the institution)—

"(1) shall be required to—

"(A) repay any loans received while attending an eligible institution on at least a half-time basis without regard to the borrower's less than half-time attendance; and

"(B) commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and

"(2) may receive deferments under subsection (a)(2)(C)(ii) for loans received while attending on a less than half-time basis.".

(c) Section 428(b) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking out "who is carrying at an eligible institution at least one-half the normal full-time academic workload (as determined by the institution)" and inserting in lieu thereof "who is enrolled at an eligible institution,";

(ii) in clause (i), by striking out "$2,625," and inserting in lieu thereof "$3,500,";

(iii) in clause (ii), by striking out "$4,000," and inserting in lieu thereof "$5,000,"; and

(iv) in the matter immediately following clause (iii), by striking out "in cases" through "but"and inserting in lieu thereof "that";

(B) in subparagraph (B)—

(i) in clause (i), by striking out "$17,250," and inserting in lieu thereof "$22,000,"; and

(ii) in clause (ii), by striking out "$54,750," and inserting in lieu thereof "$59,500,"; and

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

"(7) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on at less than half-time basis (as determined by the institution)—

"(A) shall be required to—

"(i) repay any loans received while attending an eligible institution on a least a half-time basis without regard to the borrower's less than half-time attendance; and

"(ii) commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and

"(B) may receive deferments under paragraph (1)(M)(ii) for loans received while attending on a less than half-time basis.".

(c) Section 428A(b) of the Act is amended by amending paragraphs (1) and (2) to read as follows:

"(1) ANNUAL LIMITS.—Subject to paragraphs (2) and (3), the amount a student may borrow in any academic year or its equivalent (as determined by the Secretary) may not exceed—

"(A) $2,500, in the case of a student who has not successfully completed the first year of a program of undergraduate education and who is enrolled in a program of less than one academic year (defined for this purpose as 24 semester or trimester hours, 36 quarter hours, or 900 clock hours);

"(B) $4,000, in the case of a student who has not successfully completed the first year of a program of undergraduate education and who is enrolled in a program of at least one academic year in length;

"(C) $6,000, in the case of a student who has successfully completed such first year, but who has not successfully completed the remainder of a program of undergraduate education; or

"(D) $10,000, in the case of a graduate or professional student.

"(2) AGGREGATE LIMITS.—The aggregate insured principal amount for insured loans made to any student under this section, exclusive of interest capitalized under subsection (c), shall not exceed—

"(A) $28,000, in the case of a student who has not successfully completed a program of undergraduate education; and

"(B) $50,000, in the case of a graduate or professional student, including any loans made to such student under this section before he or she became a graduate or professional student.".

GRADUATED REPAYMENT

SEC. 1808. (a) Section 427 of the Act is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (G), by striking out the "and" at the end thereof;

(B) by redesignating subparagraph (H) as subparagraph (J); and

(C) by inserting immediately following subparagraph (G) the following new subparagraph:

"(H) provides that, not more than 6 months prior to the date on which the borrower's first payment on a loan is due, the lender shall offer the borrower the option of repaying the loan in accordance with a graduated repayment schedule, provided that such schedule does not result in negative amortization of the loan, provides for the repayment of only accrued interest during the first 12 months of repayment, and, after the fourth year of repayment, requires the borrower to resume repayment on an equal installment basis in an amount sufficient to satisfy the requirements of subparagraph (B);".

(b) Section 428 of the Act is further amended—

(1) in subsection (a)(2)(A)(III), by striking out "and" at the end thereof; and

(2) in subsection (b)(1)—

(A) by amending subparagraph (E) to read as follows:

"(E) subject to subparagraphs (D) and (L), and except as provided by subparagraph (M), provides that (i) not more than 6 months prior to the date on which the borrower's first payment is due, the lender shall offer the borrower of a loan made, insured, or guaranteed under this section or section 428A the option of repaying the loan in accordance with a graduated repayment schedule, provided that such schedule does not result in negative amortization of the loan, provides for the repayment of only accrued interest during the first 12 months of repayment, and, after the fourth year of repayment, requires the borrower to resume repayment on an equal installment basis in an amount sufficient to satisfy the requirements of clause (ii), and (ii) repayment of loans shall be in installments over a period of not less than 5 years (unless the student, during the 6 months immediately preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years, beginning 6 months after the month in which the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution;".

LOAN CERTIFICATION BY ELIGIBLE INSTITUTIONS

SEC. 1809. Section 428(a)(2)(F) of the Act is amended by striking out "under this part," through the end thereof and inserting in lieu thereof "under this part."

DEFERMENTS

SEC. 1810. (a) Section 427(a)(2)(C) of the Act is amended—

(1) in clause (i), by striking out the subclause designations "(I)", "(II)", and "(III)";

(2) by redesignating clauses (i) through (xi) as subclauses (I) through (XI), respectively;

(3) by inserting immediately preceding subclause (I) (as redesignated in paragraph (2)) the following new clause:

"(i) for a loan made to cover a period of instruction beginning before October 1, 1992—";

(4) in subclause (XI) (as redesignated by paragraph (2)), by striking out the comma at the end thereof and inserting in lieu thereof a semicolon and "or"; and

(5) by inserting immediately after clause (i) the following new clause:

"(ii) except as provided in subsection (d), for a loan made to cover a period of instruction beginning on or after October 1, 1992—

"(I) during which the borrower is pursuing a full-time course of study leading to a degree or certificate at an eligible institution, is pursing at least a half-time course of study (as determined by the institution) leading to a degree or certificate during an enrollment period for which the student has obtained a loan under this part, or is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary; or

"(II) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to make the required repayments of principal and interest because of exceptional circumstances that meet criteria established by the Secretary pursuant to regulations.".

(b) Section 428(b) of the Act is further amended—

(1) in paragraph (1)—

(A) in subparagraph (M)—

(i) in clause (i), by striking out the subclause designations "(I)", "(II)", and "(III)";

(ii) by redesignating clauses (i) through (xi) as subclauses (I) through (XI), respectively;

(iii) by inserting immediately preceding subclause (I) (as redesignated in paragraph (2)) the following new clause:

"(i) for a loan made to cover a period of instruction beginning before October 1, 1992—";

(iv) in subclause (XI) (as redesignated by paragraph (2)), by adding at the end thereof "or"; and

(v) by inserting immediately after clause (i) the following new clause:

"(ii) except as provided in paragraph (7), for a loan made to cover a period of instruction beginning on or after October 1, 1992—

"(I) during which the borrower is pursuing a full-time course of study leading to a degree or certificate at an eligible institution, is pursuing at least a half-time course of study (as determined by the institution) leading to a degree or certificate during an enrollment period for which the student has obtained a loan under this part, or is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary; or

"(II) not in excess of three years in the aggregate, during which the borrower demonstrates a financial inability to make the required repayments of principal and interest because of exceptional circumstances that meet criteria established by the Secretary pursuant to regulations."; and

(B) in subparagraph (V)—

(i) in clause (i), by striking out "and" at the end thereof;

(ii) in clause (ii), by striking out "clause (i)," and clause (i)." and inserting in lieu thereof "clause (i) or (ii)," and "clause (i) or (ii).", respectively;

(iii) by redesignating clause (ii) as clause (iii); and

(iv) by inserting immediately following clause (i) the following new clause:

"(ii) provides that, upon written request, a lender shall grant a borrower forbearance, renewable at 12-month intervals for up to three years, under which no payments of interest or principal may be required, but the interest that accrues shall be added to the principal amount of the loan, if the borrower—

"(I) is serving under the Peace Corps Act or the Domestic Volunteer Service Act of 1973; and

"(II) does not qualify for the deferment described in subparagraph (M)(ii)(II); and".

(c) Section 428A(c)(2) of the Act is amended by striking out "sections 427(a)(2)(C)(i) and 428(b)(1)(M)(i)" and inserting in lieu thereof "sections 427(a)(2)(C) and 428(b)(1)(M)".

(d) Section 428B(c)(1) of the Act is amended—

(1) by striking out "clause (i), (viii) or (ix)" and inserting in lieu thereof "subclause (I), (VIII), or (IX) of clause (i), or clause (ii)"; and

(2) by striking out "clause (i) of either such section." and inserting in lieu thereof "clause (i)(I) of either such section.".

CHANGES IN FEDERAL REINSURANCE COVERAGE

SEC. 1811. Section 428(c) of the Act is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking out the period at the end thereof and inserting in lieu thereof a comma and "or 45 days after the guaranty agency discharges its insurance obligation on the loan, whichever is later."; and

(B) by amending subparagraph (B) to read as follows:—

"(B) Notwithstanding subparagraph (A)—

"(i) if, for any fiscal year, the amount of such reimbursement payments by the Secretary under this subsection exceeds 5 percent of the amount of the loans which are insured by such guaranty agency under such program and which were in repayment at the end of the preceding fiscal year, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 90 percent of the amount of such excess;

"(ii) if, for any fiscal year, the amount of such reimbursement payments exceeds 9 percent of such loans, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 80 percent of such excess; and

"(iii) if, with respect to the end of any fiscal year, a guaranty agency is being reimbursed at the level described in clause (i) or (ii), the initial reimbursement payments by the Secretary with respect to the beginning of the next succeeding fiscal year shall be calculated at such level until the Secretary determines, based on data submitted by the guaranty agency, that it meets the requirements of this subsection for reimbursement at a different level. Upon the Secretary's determination, the reimbursement payments by the Secretary shall be adjusted accordingly, including any underpayment or overpayment of the initial reimbursement payments."; and

(2) in paragraph (7)—

(A) in subparagraph (A)(i), by inserting immediately following "1977" a comma and "but before October 1, 1992";

(B) in subparagraph (B), by inserting "or (B)" immediately following "(A)";

(C) by redesignating subparagraph (B) as subparagraph (C); and

(D) by inserting immediately following subparagraph (A) the following new subparagraph:

"(B) Notwithstanding paragraph (1)(B), the Secretary may pay a guaranty agency 100 percent of the amount expended by it in discharge of its insurance obligation for any fiscal year—

"(i) which begins on or after October 1, 1992; and

"(ii) which is either the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b), or is one of the four succeeding fiscal years.".

DELAYED LOAN DISBURSEMENT

SEC. 1812. Section 428G(b) of the Act is amended—

(1) by amending the subsection heading to read as follows: "TIMING OF FIRST DISBURSEMENT.—"; and

(2) by amending paragraph (1) to read as follows:

"(1) LOANS TO FIRST-YEAR STUDENTS.—In the case of a borrower who is entering the first year of a program of undergraduate education—

"(A) at an institution with a cohort default rate equal to or greater than 30 percent, the institution shall not disburse the first installment of the proceeds of any loan made, insured, or guaranteed in accordance with section 427, 428, or 428A prior to 60 days after classes have begun for the period of enrollment for which the loan is obtained; or

"(B) at an institution with a cohort default rate less than 30 percent, the institution shall not disburse the first installment of the proceeds of any loan made, insured, or guaranteed in accordance with sections 427, 428, or 428A prior to 30 days after classes have begun for the period of enrollment for which the loan is obtained.".

LIMITATIONS, SUSPENSIONS, TERMINATIONS, OTHER HEARING PROCEDURES, AND FINES

SEC. 1813. Section 432 of the Act is amended—

(1) in subsection (a)(3), by striking out "on the record," and inserting in lieu thereof a comma;

(2) in subsection (g)—

(A) in paragraph (1), by striking out "on the record," and inserting in lieu thereof a comma;

(B) by striking out paragraphs (2), (3), and (4); and

(C) by redesignating paragraphs (5) and (6) as paragraphs (2) and (3), respectively;

(3) in subsection (h)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the first sentence therein, by striking out "shall, in accordance with sections 556 and 557 of title 5, United States Code," and inserting in lieu thereof "shall"; and

(II) in the second sentence therein, by striking out "The Secretary" through "disqualification—" and inserting in lieu thereof the following: "The Secretary shall impose any or all sanctions, imposed by the guaranty agency, on the participation of the lender in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of the imposition of such sanctions—";

(ii) in subparagraph (B), by striking out "disqualification" each place it appears and inserting in lieu thereof "sanctions"; and

(iii) by redesignating subparagraph (B) as subparagraph (C); and

(iv) by inserting immediately following subparagraph (A) the following new paragraph:

"(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 428(b)(1)(U) shall be limited to—

"(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

"(ii) a determination as to whether the guaranty agency complied with section 428(b)(1)(U) and any notice and hearing requirements specified in regulations prescribed under this part."; and

(B) in paragraph (3)—

(i) in subparagraph (A)—

(I) in the first sentence therein, by striking out "shall, in accordance with sections 556 and 557 of title 5, United States Code," and inserting in lieu thereof "shall"; and

(II) in the second sentence therein, by striking out "The Secretary" through "disqualification—" and inserting in lieu thereof the following: "The Secretary shall impose any or all sanctions, imposed by the guaranty agency, on the participation of the institution in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of the imposition of such sanctions—";

(ii) in subparagraph (B), by striking out "disqualification" each place it appears and inserting in lieu thereof "sanctions";

(iii) by redesignating subparagraph (B) as subparagraph (C); and

(iv) by inserting immediately following subparagraph (A) the following new subparagraph:

"(B) The Secretary's review under this paragraph of the limitation, suspension, or termination imposed by a guaranty agency pursuant to section 428(b)(1)(T) shall be limited to—

"(i) a review of the written record of the proceedings in which the guaranty agency imposed such sanctions; and

"(ii) a determination as to whether the guaranty agency complied with section 428(b)(1)(T) and any notice and hearing requirements specified in regulations prescribed under this part.".

(b) Section 428(b)(1)(T) of the Act is amended by striking out "as in effect on January 1, 1985".

RESTRICTIONS ON GUARANTY AGENCY OFFICERS AND EMPLOYEES

SEC. 1814. Section 428(b) of the Act is further amended by adding at the end thereof the following new paragraph:

"(7) RESTRICTIONS ON GUARANTY AGENCY OFFICERS AND EMPLOYEES.—No guaranty agency shall permit any of its officers or employees, or any member of their immediate families, to have a direct financial interest in, or serve as an officer or employee of, any lender, secondary market, contractor, or servicer with which the guaranty agency does business.".

GUARANTY AGENCY INFORMATION

SEC. 1815. (a) Section 428 of the Act is further amended—

(1) in subsection (c)(2)(B) by striking out "as the Secretary may reasonably require to carry out the Secretary's functions under this subsection," and inserting in lieu thereof "including financial information, as the Secretary may reasonably require to carry out the Secretary's functions under this part and protect the financial interest of the United States,"; and

(2) in subsection (f)—

(A) in paragraph (1)(B)—

(i) by inserting "subject to paragraph (3),"; and

(ii) by striking out "according to the provisions of this subparagraph." and inserting in lieu thereof "according to the provisions of this subsection.", respectively; and

(B) by adding at the end thereof the following new paragraph:

"(3) PROVISIONS OF FINANCIAL INFORMATION.—The Secretary is authorized to reduce or withhold payments under this subsection until the guaranty agency provides the information required under subsection (c)(2)(B).".

ADMINISTRATIVE COST ALLOWANCE

SEC. 1816. Section 428(f)(1)(B) of the Act is further amended, in the first sentence therein, by striking out "equal to" through the end thereof and inserting in lieu thereof "equal to the lesser of one percent of loan volume or actual administrative costs, as estimated in accordance with criteria prescribed by the Secretary.".

COLLECTION RETENTION ALLOWANCE

SEC. 1817. Section 428(c)(6)(A)(ii) of the Act is amended by striking out "30 percent of such payments (subject to subparagraph (D) of this paragraph)" and inserting in lieu thereof "the lesser of 30 percent of such payments, or the cost of collection on that loan, as estimated in accordance with criteria prescribed by the Secretary in regulations,".

GUARANTY AGENCY OVERSIGHT

SEC. 1818. Section 432 of the Act is amended by adding at the end thereof the following new subsections:

"(k) GUARANTY AGENCY MANAGEMENT PLANS.—(1) If the ratio of a guaranty agency's reserve funds to its outstanding guarantees is less than a level set by the Secretary, or the Secretary otherwise determines that the administrative or financial condition of the guaranty agency jeopardizes its continued ability to perform its responsibilities under its guaranty agreement, the Secretary may, in order to protect the financial interest of the United States, require the guaranty agency to submit and implement a management plan acceptable to the Secretary.

"(2) A management plan under this subsection shall include the means by which the guaranty agency will improve its financial and administrative condition. The management plan may include, but is not limited to, the limitation of administrative expenditures, the increase of the insurance premium charged to borrowers, up to the maximum prescribed in section 428(b)(1)(H), and the increase of the ratio of guaranty agency's reserve funds to outstanding guarantees.

"(3) If the guaranty agency fails to submit a management plan acceptable to the Secretary, or the Secretary determines that the guaranty agency has failed to improve substantially its administrative and financial condition in accordance with its management plan under this subsection, the Secretary may terminate the guaranty agency's agreement in accordance with subsection (l).

"(l) TERMINATION OF GUARANTY AGENCY'S AGREEMENT.—If the guaranty agency does not satisfy the requirements of subsection (k), or the Secretary otherwise determines that the guaranty agency is no longer able to perform its responsibilities under its guaranty agreement, the Secretary is authorized, in order to protect the financial interest of the United States, after notice and opportunity for a hearing, to terminate the guaranty agency's agreement under this part.

"(m) AUTHORITY OF THE SECRETARY TO ASSUME GUARANTY AGENCY FUNCTIONS.—(1) If a guaranty agency terminates its agreement under this part, or its guaranty agreement is terminated by the Secretary under subsection (1), the Secretary is authorized, to the extent the Secretary determines is necessary to protect the financial interest of the United States and carry out the purposes of this part, to—

"(A) assume responsibility for the functions of the guaranty agency under its loan insurance program, including, but not limited to—

"(i) ensuring the exercise of due diligence by lenders in making, servicing, and collecting loans;

"(ii) requiring lenders to submit the information necessary to determine the amount of interest benefits and special allowance

payments payable on loans guaranteed under the guaranty agency's loan insurance program;

"(iii) requiring the timely filing by lenders of default, death, disability, and bankruptcy claims;

"(iv) paying default claims made by lenders;

"(v) monitoring the participation of institutions and lenders in the loan insurance program, including requiring the submission of any necessary information;

"(vi) the limitation, suspension, or termination of the participation of an institution or lender;

"(vii) monitoring the enrollment status of student borrowers; and

"(viii) reporting to national credit bureaus in accordance with section 430A;

"(B) require the guaranty agency to assign or otherwise provide, without compensation, to the Secretary any of the guaranty agency's assets, books, records, computer software, and equipment that the Secretary determines are necessary to carry out the functions assumed by the Secretary under subparagraph (A); and

"(C) take such other action as the Secretary determines is appropriate to ensure the continued availability of loans made under this part to residents of the State or States in which the guaranty agency did business, and the proper servicing of loans guaranteed by the guaranty agency prior to the Secretary's assumption of its responsibilities, including the transfer of such guaranty agency's functions and assets to another entity.

"(2) Nothing in this subsection shall require the Secretary to guarantee new loans as part of the guaranty agency functions assumed under paragraph (1), or to serve as a lender of last resort in accordance with section 428(j).

"(3) The Secretary's liability for any outstanding liabilities of a guaranty agency, the functions of which the Secretary has assumed, shall not exceed the fair market value of the assets assigned by the guaranty agency to the Secretary in accordance with paragraph (1)(B), minus any necessary liquidation or other administrative costs.".

COST SHARING BY STATES

SEC. 1819. Section 428 of the Act is amended by adding at the end thereof the following new subsections:

"(m) STATE BACKING OF GUARANTY AGENCIES.—(1) Notwithstanding any other provision of law, a State shall guarantee, with the full faith and credit of the State, or its equivalent, all loans guaranteed under this part by the guaranty agency designated for the State for borrowers who are attending eligible institutions in that State.

"(2) In addition to the designated guaranty agency specified in paragraph (1), a State may elect to guarantee, with the full faith and credit of the State, loans guaranteed under this part by any other guaranty agency for borrowers who are attending eligible institutions in that State.

"(3) In the event that a guaranty agency whose loan guarantees are guaranteed by a State under paragraph (1) or (2) is unable to discharge its insurance obligation incurred on loans under its loan insurance program, the State shall be responsible for discharging such obligations, as well as the administrative costs associated with transferring the operations of that guaranty agency to another entity.

"(4) If a State discharges the insurance obligations of a guaranty agency under paragraph (3), the Secretary shall pay the State the amount such guaranty agency would have otherwise received as reimbursement under subsection (c).

"(5) Unless a State demonstrates to the satisfaction of the Secretary that it has taken any steps necessary to satisfy the requirements of paragraph (1) by January 1, 1994, the Secretary shall assess institutions of higher education participating in the program under this part that are located in that State a fee based on the risk of financial loss to the Federal Government that the State would otherwise assume under this subsection. Such fees shall be deposited in student loan insurance fund described in section 431.

"(n) STATE SHARE OF DEFAULT COSTS.—(1) For any institution of higher education that has a cohort default rate, determined on the basis of the most recent fiscal years for which data are available, that exceeds the percentage specified in paragraph (3), the State in which such institution is located shall pay to the Secretary an amount equal to one half of the percentage of new loan volume attributable to such institution that is equal to the percentage by which such institution's cohort default rate exceeds the percentage specified in paragraph (3).

"(2) A State may charge a fee to an institution of higher education that participates in the program under this part and is located in that State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's risk of loss under this subsection.

"(3) For purposes of paragraph (1), the cohort default rate percentage shall be—

"(A) 25 percent for fiscal year 1993; and

"(B) 20 percent for fiscal year 1994 and succeeding fiscal years.".

GUARANTEED STUDENT LOAN PROGRAM DEFINITIONS

"SEC. 1820. Section 435 of the Act is amended—

(1) by amending subsection (a) to read as follows:

"(a) ELIGIBLE INSTITUTION.—The term 'eligible institution' means an institution of higher education, as defined in section 481.";

(2) by striking out subsections (b), (c), and (n);

(3) in subsection (m)—

(A) by inserting the paragraph designation "(1)" immediately following the subsection heading;

(B) in the first sentence, by striking out "The term" and inserting in lieu thereof "In general, the term"; and

(C) by adding at the end thereof the following new paragraphs:

"(2) For purposes of the definition in paragraph (1) only, a loan made in accordance with section 428A shall not be considered to enter repayment until after the borrower has ceased to be enrolled in a course of study leading to a degree or certificate at an eligible institution on at least a half-time basis (as determined by the institution) and ceased to be in a period of deferment based on such enrollment. Each eligible lender of a loan made under section 428A shall provide the guaranty agency with the information necessary to determine when the loan entered repayment for purposes of this subsection, and the guaranty agency shall provide such information to the Secretary.

"(3) For purposes of calculating the cohort default rates for lenders or other holders of loans made under this part, references to lenders or other holders, as the case may be, shall be substituted for references to institutions in paragraph (1).."; and

(4) by redesignating subsections (d) through (m) as subsections (b) through (k), respectively.

SPECIAL ALLOWANCE

SEC. 1821. Section 438(b)(2) of the Act is amended—

(1) in subparagraph (A), by striking out "subparagraphs (B), (C), and (D)" and inserting in lieu thereof "subparagraphs (B), (C), (D), (E) and (F)"; and

(2) by adding at the end thereof the following new subparagraphs:

"(E) In the case of a holder of loans for which the cohort default rate exceeds 20 percent, subparagraph (A)(iii) shall be applied by substituting '3 percent' for '3.25 percent'.

"(F) In the case of a lender who does not provide to the guaranty agency the information required under section 435(k)(2), subparagraph (A)(iii) shall be applied by substituting '3 percent' for '3.25 percent'.".

AMOUNT OF NEED

SEC. 1821. Section 471 of the Act is amended by striking out the parenthetical therein.

COST OF ATTENDANCE

SEC. 1822. Section 472 of the Act is amended—

(1) by amending the matter immediately preceding paragraph (1) to read as follows: "Except as provided in subsections (b) and (c) and subject to section 478, for purposes of this title, the term 'cost of attendance' means—"

(2) by amending paragraph (1) to read as follows:

"(1) tuition and uniform compulsory fees normally assessed a student carrying the same academic workload, as determined by the institution at which the student is in attendance for any award year, without regard to whether the student receives grant, loan, or work assistance under this title;"

(3) in paragraph (3)—

(A) in the matter immediately preceding subparagraph (A), by inserting immediately following "institution" the following: "without regard to whether the student receives grant, loan, or work assistance under this title";

(B) in subparagraph (A), by striking out "$1,500" and inserting in lieu thereof "$1,700"; and

(C) in subparagraph (C), by striking out "$2,500" and inserting in lieu thereof "$2,300";

(4) by inserting the subsection designation "(a)" immediately following "SEC. 472."; and

(5) by adding at the end thereof the following new subsection:

"(b) For the purpose of subpart 1 of part A of this title—

"(1) tuition and fees to be used in determining the student's cost of attendance in accordance with subsection (a)(1) shall be first calculated on the basis of a full-time academic workload, and then adjusted in accordance with section 411(b)(1)(B);

"(2) the allowance for room and board costs, books, equipment, supplies, transportation, and miscellaneous personal expenses incurred by the student to be used in determining the student's cost of attendance in accordance with subsection (a) shall not exceed—

"(A) $1,700 for a student without dependents residing at home with his or her parents; and

"(B) $2,300 for all other students;

"except that if, for an award year after award year 1992–1993, the standard maintenance allowances specified in sections 475(c)(4) and 477(b)(4) are increased or decreased by the Secretary in accordance with

section 478, then the dollar amounts specified in paragraphs (1) and (2) shall be increased or decreased by a percentage equal to such percentage increase or decrease in such standard maintenance allowances; and

"(3) the allowance for dependent care to be used in determining the student's cost of attendance in accordance with subsection (a)(7) shall not exceed $1,000.".

FAMILY CONTRIBUTION DEFINED

SEC. 1823. Section 473 of the Act is amended by striking out "subparts 1 and 3" and inserting in lieu thereof "subpart 3".

DATA ELEMENTS

SEC. 1824. Section 474 of the Act is amended—

(1) by amending paragraphs (1), (2), and (3) to read as follows:

"(1) the available income of (A) the student and his or her parents, in the case of a dependent student, or (B) the student (and spouse), in the case of an independent student;

"(2) the number of (A) dependents of the parents of the student, in the case of a dependent student, or (B) dependents of the student (and spouse), in the case of an independent student;

"(3) the number of (A) dependents of the parents of the student, in the case of a dependent student, who are enrolled in, on at least a half-time basis, a program of postsecondary education and for whom the family may reasonably be expected to contribute to their postsecondary education, or (B) dependents of the student (and spouse), in the case of an independent student, who are so enrolled and for whom such contribution may reasonably be expected;";

(2) in paragraph (4)(B), by striking out "(and spouse)"; and

(3) in paragraph (6)—

(i) in subparagraph (A), by striking out "the student and the student's parents," and inserting in lieu thereof "the student's parents and the dependents of the parents, including the student,"; and

(ii) in subparagraph (B), by inserting "spouse and" immediately following "his or her".

FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS

SEC. 1825. Section 475 of the Act is amended—

(1) in subsection (a), by striking out "(and spouse)" each place it appears;

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B), by adding "and" at the end thereof;

(ii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(iii) by inserting the subparagraph designation "(A)" immediately following the paragraph designation; and

(iv) by adding at the end thereof the following new subparagraph:

"(B) if the amount determined under subparagraph (A) is a negative amount, setting the parents' adjusted available income at zero, and converting such negative amount to a positive number and using it to increase the adjustment to student income (determined in accordance with subsection (g)(2));"

(B) in paragraph (3), by striking out the semicolon at the end thereof and inserting in lieu thereof a period; and

(C) by striking out the matter immediately following paragraph (3);

(3) in subsection (c)—

(A) in paragraph (2), in the table therein, by striking out "$15,000 more" and inserting in lieu thereof "$15,000 or more";

(B) in paragraph (4), by amending the table therein to read as follows:

"Standard Maintenance Allowance

Family size (including student)	Number in College					
	1	2	3	4	5	For each additional subtract:
2	$10,520	$8,720				
3	13,100	11,310	$9,510			
4	16,180	14,380	12,590	$10,790		
5	19,090	17,290	15,500	13,700	$10,650	
6	22,330	20,530	18,740	16,940	15,150	$1,790
For each additional add:	2,520	2,520	2,520	2,520	2,520	";

(C) in paragraph (5)—

(i) by striking out "$2,100" each place it appears and inserting in lieu thereof "$2,500"; and

(ii) by striking out "1987–1988," and inserting in lieu thereof "1992–1993,"; and

(D) in paragraph (7), by striking out "instructional";

(4) in subsection (d)—

(A) in paragraph (1), by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following:

"except that the amount determined under this paragraph shall not be less than zero.";

(B) in paragraph (2)—

(i) by amending subparagraph (B) to read as follows:

"(B) the net value of investments and real estate, including the net value of the principal place of residence, as defined in section 480(i); and "; and

(ii) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"Adjusted Net Worth of Business or Farm Assets

If the net worth of business or farm assets is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	$0 + 40 percent of NW
$75,001–$225,000	$30,000 + 50 percent of NW over $75,000

"Adjusted Net Worth of Business or Farm Assets—Continued

If the net worth of business or farm assets is—	Then the adjusted net worth is:
$225,001–$375,000	$105,000 + 60 percent of NW over $225,000
$375,001 or more	$195,000 + 100 percent of NW over $375,000";

and

(B) in paragraph (3), by amending the table therein to read as follows:

"Asset Protection Allowance for Families and Students

If there is one parent, and the age of that parent is, or if there are two parents, and the average age of both parents is—	And there are	
	One parent	Two parents
	Then the asset protection allowance is—	
25 or less	$0	$0
26	400	1,600
27	700	3,200
28	1,100	4,800
29	1,500	6,400
30	1,900	8,000
31	2,200	9,600
32	2,600	11,200
33	3,000	12,800
34	3,400	14,400
35	3,700	16,000
36	4,100	17,600
37	4,500	19,200
38	4,900	20,800
39	5,200	22,400
40	5,600	24,000
41	5,800	24,600
42	5,900	25,100
43	6,000	25,700
44	6,200	26,100
45	6,300	26,800
46	6,500	27,400
47	6,700	28,000

"Asset Protection Allowance for Families and Students—Continued

If there is one parent, and the age of that parent is, or if there are two parents, and the average age of both parents is—	And there are	
	One parent	Two parents
48	6,900	28,600
49	7,100	29,300
50	7,200	30,000
51	7,500	30,800
52	7,700	31,500
53	7,900	32,300
54	8,200	33,200
55	8,400	34,000
56	8,600	34,800
57	8,900	35,800
58	9,200	36,700
59	9,500	37,800
60	9,800	38,800
61	10,100	40,000
62	10,500	41,100
63	10,800	42,300
64	11,200	43,400
65 or more	11,600	44,900";

(5) in subsection (e)—

(A) by striking out "under section 479):" and inserting in lieu thereof "under section 478):"; and

(B) by amending the table therein to read as follows:

"Parents' Assessment From Adjusted Available Income (AAI)

If AAI is—	Then the assessment is—
Less than zero	zero
$0 to $9,400	22% of AAI
$9,401 to $11,800	$2,068 + 25% of AAI over $9,400
$11,801 to $14,200	$2,668 + 29% of AAI over $11,800
$14,201 to $16,600	$3,364 + 34% of AAI over $14,200
$16,601 to $19,000	$4,180 + 40% of AAI over $16,600

"Parents' Assessment From Adjusted Available Income (AAI)—Continued

If AAI is—	Then the assessment is—
$19,001 or more	$5,059 + 47% of AAI over $19,000";

(6) in subsection (g)—

(A) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—The minimum student contribution from available income is equal to the greater of—

"(A)(i) in the case of a student who has not completed the first year of undergraduate studies—

"(I) zero, if the parents' total income is $12,000 or less;

"(II) $500, if the parents' total income is between $12,001 and $15,000, inclusive; and

"(III) $700, if the parents' total income is $15,001 or more; and

"(ii) in the case of any other student—

"(I) zero, if the parents' total income is $12,000 or less;

"(II) $600, if the parents' total income is between $12,001 and $15,000, inclusive; and

"(III) $900, if the parents' total income is $15,001 or more; or

"(B) an amount equal to 70 percent of the student's total income (determined in accordance with section 480) minus the adjustment to student income (determined in accordance with paragraph (2));

"except that, if the amount determined in accordance with subsection (b)(1)(B) results in a negative amount, then such negative amount shall be converted to a positive number and increase the adjustment to student income (determined in accordance with paragraph (2)), except that the dependent student's contribution from income shall not be reduced to less than zero.";

(B) in paragraph (2)—

(i) in the paragraph heading, by striking out "(AND SPOUSE)";

(ii) by striking out "(and spouse)" each place it appears; and

(iii) in subparagraph (A), by striking out "estimated"; and

(C) in paragraph (4), by striking out "(and spouse)";

(7) in subsection (h)—

(A) in subsection heading, by striking out "(AND SPOUSE)";

(B) by striking out "(and spouse)" each place it appears; and

(C) by striking out "35 percent," through the end thereof and inserting in lieu thereof "35 percent,"; and

(8) in subsection (i), in the matter immediately preceding paragraph (1), by striking out "For" and inserting "Except for purposes of subpart 1 of part A, for".

FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITHOUT DEPENDENTS

SEC. 1826. Section 476 of the Act is amended—

(1) by amending the section heading to read as follows: "FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITHOUT DEPENDENTS";

(2) in subsection (a)—

(A) in the matter immediately preceding paragraph (1)—

(i) by inserting "married or single" immediately following "For each"; and

(ii) by striking out "(including a spouse)," and inserting in lieu thereof a comma;

(B) in paragraph (1), by inserting "(and spouse's)" immediately following "student's"; and

(C) in paragraph (2), by inserting "(and spouse's)" immediately following "student's";

(3) in subsection (b)—

(A) by amending the section heading to read as follows: "STUDENT'S (AND SPOUSE'S) CONTRIBUTION FROM INCOME.—"

(B) by amending paragraph (1) to read as follows:

"(1)(A) IN GENERAL.—Subject to subparagraph (B), the student's (and spouse's) contribution from income is determined by—

"(i) adding student's (and spouse's) adjusted gross income and any income earned from work but not reported on a Federal income tax return, and subtracting excludable income (as defined in section 480);

"(ii) computing the student's (and spouse's) available taxable income by deducting, from the amount determined under clause (i)—

"(I) Federal income taxes;

"(II) an allowance for State and local income taxes, determined in accordance with paragraph (2);

"(III) the allowance for social security taxes, determined in accordance with paragraph (3);

"(IV) an employment expense allowance, determined in accordance with paragraph (4); and

"(V) a maintenance allowance of up to $610 per month, during periods of non-enrollment, for the independent student without dependents, and $5,310 per year, for the spouse of the independent student without dependents, or amounts established by the Secretary in accordance with section 478;

"(iii) assessing such available taxable income in accordance with paragraph (5); and

"(iv) adding to the assessment resulting under clause (iii) the amount of the untaxed income and benefits of the student (and the student's spouse), determined in accordance with section 480(c).

"(B) The student's (and spouse's) minimum contribution from income shall be the greater of—

"(i)(I) zero, if the student's (and spouse's) total income is $6,000 or less;

"(II) $780, if the student's (and spouse's) total income is between $6,001 and $12,000, inclusive; and

"(III) $1,200, if the student's (and spouse's) total income is $12,001 or more; or

"(ii) the amount calculated under subparagraph (A).";

(C) in paragraph (3), by inserting "(and the student's spouse)" immediately following "student";

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

(E) by inserting immediately following paragraph (3) the following new paragraph:

"(4) EMPLOYMENT EXPENSE ALLOWANCE.—The employment expense allowance is determined as follows: If both the student and a spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,500 or 35 percent of the earned income of the student or spouse with the lesser earned income. For any award year after award year 1992–1993, this paragraph shall be applied by increasing the dollar amount specified to reflect increases in the amount and percent of the Bureau of Labor Standards' budget of the marginal costs for meals away from home, apparel and upkeep, transportation, and housekeeping services for a two-earner versus a one-worker family."; and

(F) in paragraph (5) (as redesignated by subparagraph (D))—

(i) in the matter preceding subparagraph (A)—

(I) by inserting "(and spouse's)" immediately following "student's"; and

(II) by striking out "paragraph (1)(A)" and inserting in lieu thereof "paragraph (1)(A)(i)";

(ii) in subparagraph (A), by striking out "$8,600," and inserting in lieu thereof "$10,800,"; and

(iii) in subparagraph (B), by striking out "$8,600,", "$6,020", and "$8,600." and inserting in lieu thereof "$10,800,", "$7,560", and "$10,800.", respectively; and

(4) in subsection (c)—

(A) in the subsection heading, by inserting "(AND SPOUSE'S)" immediately following "STUDENT'S";

(B) in paragraph (1), by inserting "(and spouse's)" after "student's" each place it appears;

(C) in paragraph (2)—

(i) in the paragraph heading, by inserting "(AND SPOUSE'S)" immediately following "STUDENT'S";

(ii) in the matter immediately preceding subparagraph (A) by inserting "(and spouse's)" immediately following "student's";

(iii) by amending subparagraph (B) to read as follows:

"(B) the net value of investments and real estate, including the net value of the principal place of residence, as defined in section 480(i); and

(iv) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"Adjusted Net Worth of Business or Farm Assets

If the net worth of business or farm assets is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	$0 + 40 percent of NW
$75,001–$225,000	$30,000 + 50 percent of NW over $75,000
$225,001–$375,000	$105,000 + 60 percent of NW over $225,000
$375,001 or more	$195,000 + 100 percent of NW over $375,000";

and

(D) by amending the table in paragraph (3) to read as follows:

"Asset Protection Allowance for Independent Students

If the age of the single student, or the average age of the student and spouse, is—	And the student is	
	Single	Married
	Then the asset protection allowance is—	
25 or less	$0	$0
26	400	1,600
27	700	3,200
28	1,100	4,800
29	1,500	6,400
30	1,900	8,000
31	2,200	9,600
32	2,600	11,200
33	3,000	12,800
34	3,400	14,400
35	3,700	16,000
36	4,100	17,600
37	4,500	19,200
38	4,900	20,800
39	5,200	22,400
40	5,600	24,000
41	5,800	24,600
42	5,900	25,100
43	6,000	25,700
44	6,200	26,100
45	6,300	26,800
46	6,500	27,400
47	6,700	28,000
48	6,900	28,600
49	7,100	29,300

"Asset Protection Allowance for Independent Students—Continued

If the age of the single student, or the average age of the student and spouse, is—	And the student is	
	Single	Married
50	7,200	30,000
51	7,500	30,800
52	7,700	31,500
53	7,900	32,300
54	8,200	33,200
55	8,400	34,000
56	8,600	34,800
57	8,900	35,800
58	9,200	36,700
59	9,500	37,800
60	9,800	38,800
61	10,100	40,000
62	10,500	41,100
63	10,800	42,300
64	11,200	43,400
65 or more	11,600	44,900";

FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITH DEPENDENTS

SEC. 1827. Section 477 of the Act is amended—

(1) by amending the section heading to read as follows: "FAMILY CONTRIBUTION FOR MARRIED OR SINGLE INDEPENDENT STUDENTS WITH DEPENDENTS";

(2) by amending subsection (a) to read as follows:

"(a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each married or single independent student with dependents, the expected family contribution is equal to—

"(1) the sum of—

"(A) the family's contribution from income (determined in accordance with subsection (b)); and

"(B) the family's income supplemental amount from assets (determined in accordance with subsection (c)); divided by

"(2) the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which assistance under this title is requested;

"except that the amount determined under this subsection shall not be less than zero.";

(3) in subsection (b)—

(A) by amending the subsection heading to read as follows: "FAMILY'S CONTRIBUTION FROM INCOME.—"

(B) by amending paragraph (1) to read as follows:

"(1)(A) IN GENERAL.—Subject to subparagraph (B), the family's contribution from income is determined by—

"(i) calculating the family's available income by deducting from total income (as defined in section 480)—

"(I) Federal income taxes;

"(II) an allowance for State and other taxes, determined in accordance with paragraph (2);

"(III) an allowance for social security taxes, determined in accordance with paragraph (3);

"(IV) a standard maintenance allowance, determined in accordance with paragraph (4);

"(V) an employment expense allowance, determined in accordance with paragraph (5);

"(VI) a medical-dental expense allowance, determined in accordance with paragraph (6); and

"(VII) an educational expense allowance, determined in accordance with paragraph (7); and

"(ii) assessing the family's available income in accordance with subsection (d).

"(B) The family's minimum contribution from income shall be the greater of—

"(i)(I) zero, if the family's total income is $6,000 or less;

"(II) $780, if the family's total income is between $6,001 and $12,000, inclusive; and

"(III) $1,200, if the family's total income is $12,001 or more; or

"(ii) the amount calculated under subparagraph (A).";

(B) in paragraph (4)—

(i) by striking out "section 479):" and inserting in lieu thereof "section 478):"; and

(ii) by amending the table therein to read as follows:

"Standard Maintenance Allowance

Family size (including student)	Number in College					
	1	2	3	4	5	For each additional subtract:
2	$10,520	$8,720				
3	13,100	11,310	$9,510			
4	16,180	14,380	12,590	$10,790		
5	19,090	17,290	15,500	13,700	$10,650	
6	22,330	20,530	18,740	16,940	15,150	$1,790
For each additional add:	2,520	2,520	2,520	2,520	2,520	";

(C) in paragraph (5)—

(i) by striking out "$2,100" each place it appears and inserting in lieu thereof "$2,500"; and

(ii) by striking out "1987–1988," and inserting in lieu thereof "1992–1993,"; and

(D) in paragraph (7), by striking out "instructional";

(4) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (C), by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(ii) by adding at the end thereof the following:

"except that the family's income supplemental amount from assets shall not be less than zero.";

(B) in paragraph (2)—

(i) by amending subparagraph (B) to read as follows:

"(B) the net value of investments and real estate, including the net value of the principal place of residence, as defined in section 480(i); and"; and

(ii) in subparagraph (C)—

(I) by striking out "a business or farm" and "such business or farm" and inserting in lieu thereof "business or farm assets" and "such business or farm assets", respectively; and

(II) by amending the table therein to read as follows:

"Adjusted Net Worth of Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$75,000	$0 + 40 percent of NW
$75,001–$225,000	$30,000 + 50 percent of NW over $75,000
$225,001–$375,000	$105,000 + 60 percent of NW over $225,000
$375,001 or more	$195,000 + 100 percent of NW over $375,000";

and

(C) by amending the table in paragraph (3) to read as follows:

"Asset Protection Allowance for Independent Students

If the age of the single student, or the average age of the student and spouse, is—	And the student is	
	Single	Married
	Then the asset protection allowance is—	
25 or less	$0	$0
26	400	1,600
27	700	3,200
28	1,100	4,800
29	1,500	6,400
30	1,900	8,000
31	2,200	9,600
32	2,600	11,200
33	3,000	12,800
34	3,400	14,400
35	3,700	16,000
36	4,100	17,600
37	4,500	19,200
38	4,900	20,800

"Asset Protection Allowance for Independent Students—Continued

If the age of the single student, or the average age of the student and spouse, is—	And the student is	
	Single	Married
39	5,200	22,400
40	5,600	24,000
41	5,800	24,600
42	5,900	25,100
43	6,000	25,700
44	6,200	26,100
45	6,300	26,800
46	6,500	27,400
47	6,700	28,000
48	6,900	28,600
49	7,100	29,300
50	7,200	30,000
51	7,500	30,800
52	7,700	31,500
53	7,900	32,300
54	8,200	33,200
55	8,400	34,000
56	8,600	34,800
57	8,900	35,800
58	9,200	36,700
59	9,500	37,800
60	9,800	38,800
61	10,100	40,000
62	10,500	41,100
63	10,800	42,300
64	11,200	43,400
65 or more	11,600	44,900";

and

(5) in subsection (d)—

(A) by striking out "adjusted";

(B) by striking out in the first parenthetical "subsection (a)(1) and hereafter referred to as 'AAI'" and inserting in lieu thereof "subsection (b)(1)(A)(i)"; and

(C) by amending the table therein to read as follows:

"Assessment From Available Income

If available income is—	Then the assessment is—
Less than zero	zero
$0 to $9,400	22% of AAI
$9,401 to $11,800	$2,068 + 25% of AAI over $9,400
$11,801 to $14,200	$2,668 + 29% of AAI over $11,800
$14,201 to $16,600	$3,364 + 34% of AAI over $14,200
$16,601 to $19,000	$4,180 + 40% of AAI over $16,600
$19,001 or more	$5,059 + 47% of AAI over $19,000";

UPDATED TABLES

SEC. 1828. Section 478 of the Act is amended—

(1) in the section heading, by striking out "REGULATIONS;";

(2) by striking out subsection (a);

(3) by striking out "academic year 1987–1988," and "1986" each place each appears and inserting in lieu thereof "academic year 1992–1993," and "1991", respectively;

(4) in subsection (b), by striking out "and 477(b)(4). Such revised table" and inserting in lieu thereof "and 477(b)(4), and revised maintenance allowances for purposes of section 476(b)(1)(B)(ii)(V). Such revisions";

(5) in subsection (c)(2), by striking out "'$24,000', '$84,000', and '$156,000'" and inserting in lieu thereof "'$30,000', '$105,000', and '$195,000'";

(6) by amending subsection (e) to read as follows:

"(e) ASSESSMENT SCHEDULES AND RATES.—For each academic year after academic year 1992–1993, the Secretary shall publish in the Federal Register revised tables of assessments for the purpose of sections 475(e), 476(b)(5), and 477(d). Such revised tables shall be developed—

"(1) by increasing each dollar amount that refers to adjusted available income, available taxable income, and available income in sections 475(e), 476(b)(5), and 477(d), respectively, by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between December 1991 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

"(2) adjusting the other dollar amounts to reflect the changes made pursuant to paragraph (1)."; and

(7) by redesignating subsections (b), (c), (d), (e), and (f) as subsections (a), (b), (c), (d), and (e), respectively.

AID ADMINISTRATOR DISCRETION

SEC. 1829. Section 479A of the Act is amended—

(1) in subsection (a)—

(A) by striking out the subsection designation and "IN GENERAL.—"; and

(B) by striking out "subparts 1 and 2" each place it appears and inserting in lieu thereof "subpart 2"; and

(2) by striking out subsections (b) and (c).

INDEPENDENT STUDENT AND OTHER NEED ANALYSIS DEFINITIONS

SEC. 1830. Section 480 of the Act is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking out "paragraphs (2) through (4)," and inserting in lieu thereof "paragraphs (2) and (3), and subsection (e),";

(B) in paragraph (2), by striking out "subpart 2 of part A and parts B, C, and E of";

(C) by striking out paragraph (3); and

(D) by redesignating paragraph (4) as paragraph (3);

(2) in subsection (b), by amending the matter preceding paragraph (1) to read as follows:

"(b) UNTAXED INCOME AND BENEFITS.—The term 'untaxed income and benefits' when applied to parent contributions and the contributions of dependent students or independent students (with or without dependents) means—";

(3) by striking out subsection (c), and inserting in lieu thereof the following new subsection:

"(c) SECRETARIAL ADJUSTMENTS OF DATA ELEMENTS FOR SPECIAL CIRCUMSTANCES.—The Secretary may prescribe regulations specifying situations in which the data elements considered in determining a student's expected family contribution may be modified to accommodate the special circumstances of the student.";

(4) in subsection (d)—

(A) in paragraph (1)(A), by striking out "24" and inserting in lieu thereof "26";

(B) in paragraph (2)—

(i) in subparagraph (C), by striking out "who declares" through the end thereof and inserting in lieu thereof a semicolon;

(ii) in subparagraph (D), by striking out "who declares" through the end thereof and inserting in lieu thereof a semicolon; and

(iii) by amending subparagraph (F) to read as follows:

"(F) is a single undergraduate student with no dependents who—

"(i) did not live with his or her parents for more than six weeks in the aggregate during the calendar year preceding the award year;

"(ii) will not live with his or her parents for more than six weeks in the aggregate during the first calendar year of the award year; and

"(iii) prior to the disbursal of assistance under this title, demonstrates to the student financial aid administrator self-sufficiency during each of the two calendar years preceding the award year by demonstrating annual total income (excluding resources from parents and student financial assistance and living allowances from programs established under the National and Community Service Act of 1990) that is equal to or exceeds the amount specified in the Department of Labor's Lower Living Standard Income Level, adjusted for a family size of one; or";

(C) by striking out paragraphs (3) and (4); and

(D) by adding at the end thereof the following new paragraph:

"(3) An individual who meets the requirements of paragraphs (1) and (2) may, in unusual circumstances, be determined to be a dependent student by a student financial aid administrator, provided that such determination is documented.";

(5) by striking out subsection (e);

(6) by redesignating subsections (f), (g), (h), and (i) as subsections (e), (f), (i), and (j), respectively;

(7) by inserting immediately following subsection (f) (as redesignated by paragraph (6)) the following new subsections:

"(g) FARM ASSETS.—The term 'farm assets' means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the consumption of the family, even if some income is derived from incidental sales.

"(h) BUSINESS ASSETS.—The term 'business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.";

(8) by amending subsection (i) as redesignated in paragraph (6) to read as follows:

"(i) NET VALUE.—The 'net value' of assets means the current market value at the time of application of the assets described in subsection (f), minus the outstanding liabilities or indebtedness against the assets, except that in the case of the principal place of residence, the net value of such residence shall be calculated by subtracting the outstanding liabilities or indebtedness from the lesser of—

"(1) the value of such residence; or

"(2) the total income of the parents (or the student and the student's spouse, as the case may be), multiplied by three."; and

(9) by adding at the end thereof the following new subsections:

"(k) DEPENDENT OF THE STUDENT.—Except as otherwise provided, the term 'dependent of the student' means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

"(l) DEPENDENT OF THE PARENT.—Except as otherwise provided, the term 'dependent of the parent' means the student, any of the student's dependent children, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this title, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

"(m) FAMILY SIZE.—(1) In determining family size in the case of a dependent student—

"(A) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

"(B) if the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

"(C) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining available income or the student's contribution from income.

"(2) In determining family size in the case of an independent student with dependents—

"(A) family members include the student, the student's spouse, and the dependents of the student; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

"(3) In determining family size in the case of an independent student without dependents—

"(A) family members include the student and the student's spouse; and

"(B) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student.".

STUDENT FINANCIAL ASSISTANCE DEFINITIONS

SEC. 1831. Section 481 of the Act is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A)—

(I) by striking out "Subject to subsection (e), for" and inserting in lieu thereof "For"; and

(II) by striking out "and part B," and inserting in lieu thereof a comma;

(ii) by striking out subparagraph (B); and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(B) by adding at the end thereof the following new paragraph:

"(4)(A) An institution whose cohort default rate, as defined in section 435(k)(1), is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this title for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue its participation in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

"During such appeal, the Secretary may permit the institution to continue to participate in a program under this title.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal years 1991 and 1992;

"(ii) 30 percent for fiscal year 1993; and

"(iii) 25 percent for any succeeding fiscal year.

"(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of the Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(2) in subsection (b), by adding at the end thereof the following: "If the Secretary determines that a particular category of proprietary institution of higher education does not meet the requirements of paragraph (4) because there is no nationally recognized accrediting agency or association qualified to accredit institutions in such category, the Secretary may, pending the establishment of such an accrediting agency or association, appoint an advisory committee, composed of persons specially qualified to evaluate training provided by institutions in such category, which shall make recommendations to the Secretary concerning the standards of content, scope, and quality that must be met in order to qualify institutions in such category to participate in programs under this title, and whether particular schools not meeting the requirements of paragraph (4) meet the standards established by the Secretary after review of the standards recommended by the advisory committee.";

(3) by striking out subsections (c) and (e); and

(4) by redesignating subsection (d) as subsection (c).

AWARD MAXIMUMS FOR SHORT TERM PROGRAMS

SEC. 1832. Part G of Title IV of the Act is further amended by inserting immediately after section 481 the following new section:

"AWARD MAXIMUMS FOR SHORT TERM PROGRAMS

"SEC. 481A. The maximum grant or loan amount that may be awarded under any grant or loan program under this title to a student enrolled in any course of study of less than one academic year (defined for this purpose as 24 semester or trimester hours, 36 quarter hours, or 900 clock hours) shall not exceed the amount that bears the same relation to the annual statutory maximum for such grant or loan as the course of study measured in semester, trimester, quarter or clock hours bears to one academic year.".

STUDENT ELIGIBILITY

SEC. 1833. Section 484 of the Act is amended—

(1) in subsection (a), by amending paragraph (2) to read as follows:

"(2) satisfy the minimum academic achievement standards specified in subsection (c);";

(2) in subsection (b)—

(A) by amending paragraph (4) to read as follows:

"(4) Notwithstanding subsection (a)(1), a student who is enrolled or accepted for enrollment in a program at an eligible institution that is necessary for a professional credential or certification in a State that is required for employment as a teacher in an elementary or secondary school in that State shall be eligible to apply for loans under part B of this title."; and

(B) by adding at the end thereof the following new paragraph:

"(5) In order to be eligible to receive a loan under part B of this title (other than a loan under section 428C) a student who is enrolled at an institution on a less than half-time basis (as determined by the institution) shall be—

"(A) enrolled in a program of study leading to a degree or certificate; or

"(B) enrolled in training to prepare students for gainful employment in a recognized occupation.";

(3) by amending subsection (c) to read as follows:

"(c) MINIMUM ACADEMIC ACHIEVEMENT STANDARDS.—For the purposes of subsection (a)(2), a student shall meet minimum academic achievement standards established by the institution. Such standards shall be established in accordance with the regulations of the Secretary and shall be at least as rigorous as the equivalent of a cumulative "C" average, unless the institution demonstrates to the satisfaction of the Secretary that a different standard is more appropriate for its students.";

(5) in subsection (d), by striking out "approved by the Secretary." and inserting in lieu thereof "that meets such standards for development, administration, and scoring as the Secretary may prescribe in regulations.";

(6) by striking out subsections (f), (h), (i), and (j); and

(7) by inserting immediately preceding subsection (g) the following new subsection:

"(f) VERIFICATION OF IMMIGRATION STATUS.—(1) The Secretary shall implement a system under which the statements and supporting documentation, if required, of an individual declaring that he or she satisfies the requirements of subsection (a)(5) shall be verified prior to the individual's receipt of grant, loan, or work assistance under this title.

"(2) The Secretary is authorized to verify such statements and supporting documentation through a data match, using an automated or other system, with other Federal agencies that may be in possession of information relevant to such statements and supporting documentation.".

REPEAL; INSTITUTIONAL REFUNDS

SEC. 1834. (a) Section 486 of the Act is repealed.

(b) Part G of the Title IV of the Act is amended by inserting immediately following section 485B the following new section:

"INSTITUTIONAL REFUNDS

"SEC. 486. (a) Each institution of higher education participating in a program under this title shall have in effect a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received grant, loan, or work assistance under this title, or whose parent received a loan made under section 428B on behalf of the student, if the student—

"(1) does not register for the period of attendance for which the assistance was intended; or

"(2) withdraws or otherwise fails to complete the period of enrollment for which the assistance was provided.

"(b) The institution shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and make its refund policy known to currently enrolled students. The institution shall include in its statement the procedures that a student must follow to obtain a refund, but whether or not the student follows those procedures, the institution shall, in accordance with subsection (e), pay to the lender the portion of a refund allocable to the student's loans made, insured, or guaranteed under section 427, 428, 428A, or 428B, and return the portion of the refund allocable to another program under title IV of the Act to the appropriate account for that program. If the institution changes its refund policy, it shall ensure that all students are made aware of the new policy.

"(c) The institution's refund policy shall be considered to be fair and equitable for purposes of this section if that policy provides for a refund in an amount of at least the largest of the amounts provided under—

"(1) the requirements of applicable State law;

"(2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary;

"(3) if no such standards exist, the specific refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; or

"(4) the pro rata refund calculation described in subsection (d), except that this paragraph will not apply to the institution's refund policy for any student whose date of withdrawal from the institution is after the halfway point (in time) in the period of en-

rollment for which the student has been charged.

"(d)(1) As used in this section, the term 'pro rata refund' means a refund by the institution of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100.

"(2) For purposes of paragraph (1), 'the portion of the period of enrollment for which the student has been charged that remains' shall be determined—

"(A) in the case of a program that is measured in credit hours, by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

"(B) in the case of a program that is measured in clock hours, by dividing the total number of clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

"(C) in the case of a correspondence program, by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

"(e) For purposes of this section, a refund shall be credited against grant, loan, or work assistance awarded under this title on a pro rata basis.".

(c) Section 485(a)(1)(F) of the Act is amended by inserting a comma and "in accordance with section 486," immediately following "institution".

PROGRAM PARTICIPATION AGREEMENTS

SEC. 1835. Section 487 of the Act is amended—

(1) in subsection (a), by adding at the end thereof the following new paragraph:

"(13) The institution acknowledges the authority of the Secretary, guaranty agencies, accrediting agencies, and State licensing bodies under section 1214 to share with each other any information pertaining to the institution's eligibility to participate in programs under this title.".

(2) in subsection (b)(2), by striking out "on the record";

(3) in subsection (c)—

(A) in paragraph (1)(D), by striking out "on the record," and inserting in lieu thereof a comma; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking out "on the record," and inserting in lieu thereof a comma; and

(ii) in subparagraph (B)(i), by striking out "on the record," and inserting in lieu thereof a comma.

DATA MATCHING

SEC. 1836. Section 489A of the Act is amended—

(1) in subsection (a)(1), by inserting a comma and "or of any State," immediately following "the United States";

(2) in subsection (b)—

(A) in paragraph (1), by inserting "or of a State" immediately following "the United States"; and

(B) in paragraph (3)(A), by inserting "or of a State" immediately following "the United States"; and

(3) by adding at the end thereof the following new subsection:

"(c) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary, in accordance with this section, to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.".

AMENDMENTS TO OTHER LAWS

SEC. 1837. Section 3(c) of the Higher Education Technical Amendments of 1991 (P.L. 102-26) is amended by striking out "that are brought before November 15, 1992".

HIGHER EDUCATION ACT DEFINITIONS

SEC. 1838. Section 1201(a) of the Act is amended—

(1) in paragraph (2), by adding at the end thereof the following: "subject to such minimum State licensing standards as the Secretary may prescribe in regulations, which the relevant State licensing body shall impose upon institutions that it licenses, and with which an institution of postsecondary education would be required to comply in order to be eligible to participate in programs under this Act,";

(2) by amending paragraph (5)(B) to read as follows:

"(B) if the Secretary determines that a particular category of institutions is not so accredited because there is no nationally recognized accrediting agency or association qualified to accredit institutions in such category, the Secretary may, pending the establishment of such an accrediting agency or association, appoint an advisory committee, composed of persons specially qualified to evaluate training provided by institutions in such category, which shall make recommendations to the Secretary concerning the standards of content, scope, and quality that must be met in order to qualify institutions in such category to participate in programs under this Act, and whether particular institutions not so accredited meet the standards established by the Secretary after review of the standards recommended by the advisory committee.";

(3) by inserting immediately following the second sentence the following: "For purposes of title IV, such term also includes any school which provides not less than a six month (or 600 clock hour) program of training to prepare students for gainful employment in a recognized occupation, which has been in existence for at least two years, and which meets the requirements of clauses (1), (2), (4), and (5).''; and

(4) by adding at the end thereof the following: "If an institution is accredited by more than one accrediting body, the institution shall, for purposes of eligibility under this Act, designate one such accrediting body as its primary accreditor, either on an institutionwide basis or by program, and if the institution's accreditation is withdrawn, revoked, or otherwise terminated for cause by the primary accreditor, or the institution withdraws from accreditation by the primary accreditor voluntarily under a show cause or suspension order, the institution (or a program thereof) shall no longer be deemed to meet the requirements of clause (5) for 24 months from the date of such withdrawal, revocation or termination, unless during such period of time the institution's accreditation is restored by the same accrediting agency which had accredited it prior to such withdrawal, revocation or termination.".

SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION

SEC. 1839. (a) Title XII of the Act is further amended by adding at the end thereof the following new section:

"SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION

"SEC. 1214. SHARING OF INSTITUTIONAL ELIGIBILITY INFORMATION.—Notwithstanding any other provision of Federal or State law, the Secretary, a guaranty agency, an accrediting agency, or a State licensing body—

"(1) may provide any information in the Secretary's or its possession, as the case may be, if that information is relevant to an institution of higher education's eligibility to participate in programs under this title, to the Secretary, or any other entity specified in this section that accredits, licenses, or serves as the primary guaranty agency for that institution; and

"(2) shall provide any such information to the Secretary, or any other entity specified in this section that accredits, licenses, or serves as the primary guaranty agency for that institution, as the case may be—

"(A) if the Secretary or other entity in possession of such information is considering, or preparing for, an action that would adversely affect an institution's eligibility to participate in programs under this title; or

"(B) upon the request of the Secretary or such other entity, if the Secretary or such other entity is considering, or preparing for, an action that would adversely affect an institution's eligibility to participate in programs under this title.".

INELIGIBILITY FOR DEFAULT ON FEDERAL OBLIGATION

SEC. 1840. (a) Title XII of the Act is further amended by adding at the end thereof the following new section:

"INELIGIBILITY FOR DEFAULT ON FEDERAL OBLIGATION

"SEC. 1215. INELIGIBILITY FOR DEFAULT ON FEDERAL OBLIGATION.—Notwithstanding any other provision of law, an individual who is in default on any loan made, insured, or guaranteed by the Federal Government shall not be eligible to receive any assistance under this Act unless satisfactory repayment arrangements are made with regard to such default.".

EFFECTIVE DATES

SEC. 1841. (a) Except as otherwise provided in this section, the amendments made by this title shall be effective on October 1, 1993.

(b) The amendments made by sections 1807 and 1810 shall be effective for loans made in accordance with section 427 or 428 on or after the date of enactment to cover periods of instruction beginning on or after October 1, 1992, or made on or after October 1, 1992 in the case of loans made in accordance with section 428A, 428B, or 428C of the Act.

(c) The amendments made by sections 1803, 1804, 1820 (1), (2), and (4), 1833, and 1838 shall be effective for periods of enrollment beginning on or after July 1, 1993.

(d) The amendments made by sections 1805 and 1821 through 1830, inclusive, shall be effective for determinations of need for periods of enrollment beginning on or after July 1, 1993.

(e) The amendments made by sections 1813, 1814, 1815, 1818, 1834, 1835, 1839, and 1840 shall be effective 90 days after enactment.

(f) The amendments made by sections 1809, 1836, and 1837 shall be effective on enactment.

(g) The amendments made by section 1808 shall be effective for a loan made, insured, or guaranteed under part B of title IV of the Act, whenever made, for which the student borrower's first payment is due on or after 90 days after enactment.

TITLE XIX—NATIONAL ENERGY STRATEGY ACT

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PART 1—CONSUMER AND COMMERCIAL PRODUCTS

DEFINITIONS

SEC. 1901. Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)) is amended—

(1) in paragraph (1) by inserting "electric lights and" after "includes";

(2) in paragraph (2) by inserting "commercial or" before "consumer";

(3) in paragraphs (4), (5), (7), (12), (13), (14), and (15) by striking "consumer" wherever it appears and inserting "covered" in its place;

(4) in paragraph (6)(A) by striking "covered" and inserting "consumer" in its place;

(5) in paragraph (27) by inserting ", other than a commercial water heater," after "product"; and

(6) by adding "(30) The term 'commercial product' means an article which, to any significant extent, is distributed in commerce for commercial use." after paragraph (29).

COVERAGE

SEC. 1902. Section 322 of the Energy Policy and Conservation Act (42 U.S.C. 6292) is amended—

(1) in subsection (a)—

(A) by striking "IN GENERAL" and inserting "CONSUMER PRODUCTS" in its place;

(B) by redesignating paragraph "(14)" as paragraph "(15)"; and

(C) by inserting "(14) Electric lights." after paragraph (13); and

(2) by adding the following subsection:

"(c) COMMERCIAL PRODUCTS.—The following commercial products are covered products:

"(1) Commercial space heating equipment.

"(2) Commercial space cooling equipment.

"(3) Commercial ventilation equipment.

"(4) Commercial water heaters.

"(5) Commercial refrigeration equipment.

"(6) Electric motors less than 25 horsepower.

"(7) Office equipment.".

TEST PROCEDURES

SEC. 1903. Section 323(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6293(b)(1)(B)) is amended—

(1) by inserting "commercial or" before "consumer"; and

(2) by striking "322(b)" and inserting "322(a)(14), (b), or (c)".

LABELING

SEC. 1904. Section 324 of the Energy Policy and Conservation Act (42 U.S.C. 6294) is amended—

(1) in subsection (a)(2) by adding the following subparagraph after subparagraph (B):

"(C) The Commission shall prescribe labeling rules under this section applicable to covered products specified in section 322(a)(14) or (c), except for a class of covered products for which the Commission determines—

"(i) under the second sentence of section 324(b)(5), labeling in accordance with this section is not technologically or economically feasible, or

"(ii) labeling in accordance with this section is not preferable to alternative approaches, including voluntary labeling programs, considering the benefits, burdens, and reliability of information of both approaches."; and

(2) in sections 324(a)(3), (b)(1)(B), (b)(3), and (b)(5) by striking "(14)" whenever it appears and inserting "(15)" in its place.

ENERGY CONSERVATION STANDARDS

SEC. 1905. Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended—

(1) in subsection (a)(2) by striking "covered" and inserting "consumer" in its place;

(2) in subsection (i) by striking "(14)" whenever it appears and inserting "(15)" in its place; and

(3) by adding the following subsection:

"(r) ELECTRIC LIGHTS AND COMMERCIAL PRODUCTS.—The Secretary shall not prescribe energy conservation standards for electric lights or a commercial product specified in section 322(c).".

CONFORMING AMENDMENT

SEC. 1906. The catchline for part B, title III of the Energy Policy and Conservation Act is amended by inserting "Commercial and" before "Consumer".

PART 2—FEDERAL ENERGY MANAGEMENT

UTILITY INCENTIVE PROGRAMS

SEC. 1907. Part 3 of Title V of the National Energy Conservation Policy Act (42 U.S.C. 8251–8259) is amended by adding the following after section 549—

"SEC. 550. UTILITY INCENTIVE PROGRAMS.—Notwithstanding any other law, an agency may participate in any program conducted by a gas or electric utility for the management of energy demand or for the application of energy conservation measures to Federal buildings and may accept, retain, and use, without further appropriations, any financial incentive available from a gas or

electric utility for the management of energy demand or for the application of energy conservation measures. Any cash incentive received from a gas or electric utility shall be credited to the same appropriations account from which an agency has paid, or is authorized to pay, funds needed to participate in the utility program.".

Subtitle B—Natural Gas

PART 1—NATURAL GAS PIPELINE REGULATORY REFORM

GAS DELIVERY INTERCONNECTION

SEC. 1908. Section 7(a) of the Natural Gas Act (15 U.S.C. 717f(a)) is amended to read as follows:

"(a)(1) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company or a person who has constructed, extended, or acquired, or is operating a facility under section 7(k) of this Act to extend or improve its transportation facilities; to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public; and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company or person, if the Commission finds that no undue burden will be placed upon the natural-gas company or person thereby.

"(2) Upon the petition of any person, the Commission, by order, may direct a natural-gas company or a person who has constructed, extended, or acquired, or is operating a facility under section 7(k) of this Act to establish, at petitioner's expense, physical connection of its transportation facilities with the petitioner's facilities in order to receive natural gas from the petitioner's facilities.

"(3) The Commission shall have no authority to—

"(A) compel the enlargement of transportation facilities for purposes described in paragraphs (1) and (2) of this subsection, or

"(B) compel a natural-gas company or a person who has constructed, extended, acquired, or who is operating a facility under section 7(k) of this Act to establish a physical connection or sell natural gas,

when to do so would impair its ability to render adequate service to its customers.".

NEPA COMPLIANCE

SEC. 1909. (a) Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding the following after paragraph (2):

"(3) For purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the authorization of construction or extension of facilities by issuance of a certificate of public convenience and necessity by the Commission is the only Federal action that is considered a major Federal action requiring a detailed statement on the environmental impact of the proposed action in connection with the construction or extension of facilities.".

(b) Notwithstanding any other law, the Commission may charge an applicant directly for environmental documentation costs the Commission incurs in processing applications filed for permission to construct and operate natural gas pipeline facilities under the Natural Gas Act (15 U.S.C. 717 et seq.) and applications filed for hydroelectric licenses and relicenses under the Federal Power Act (15 U.S.C. 791 et seq.). Such a charge shall not be applied against the Commission's annual appropriations.

AMENDMENT TO SECTION 311 OF THE NATURAL GAS POLICY ACT OF 1978

SEC. 1910. Section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3371) is amended by—

(1) amending the catchline to read as follows:

"SEC. 311. AUTHORIZATION OF CERTAIN SALES, TRANSPORTATION, AND CONSTRUCTION."

and

(2) in subsection (a)—

(A) amending paragraph (1)(A) to read as follows:

"(A) IN GENERAL.—The Commission shall authorize, by rule or order, any interstate pipeline to transport natural gas on behalf of—

"(i) any intrastate pipeline,

"(ii) any local distribution company, or

"(iii) any other person.";

(B) amending paragraph (2)(A) to read as follows:

"(A) IN GENERAL.—The Commission shall authorize, by rule or order, any intrastate pipeline to transport natural gas on behalf of—

"(i) any interstate pipeline,

"(ii) any local distribution company served by any interstate pipeline, or

"(iii) any other person."; and

(C) adding the following after paragraph (2):

"(3) CONSTRUCTION.—Upon 30 days notification to the affected State commission, an interstate pipeline may construct facilities for transportation service provided under this subsection. Rates, terms, and conditions for services provided through facilities constructed for transportation service authorized under this subsection are not subject to State regulation.".

OPTIONAL CERTIFICATE PROCEDURES

SEC. 1911. (a) Section 4 of the Natural Gas Act, (15 U.S.C. 717c) is amended—

(1) in subsection (a), by adding the following after "unlawful."—

"A rate or charge made, demanded or received by any natural gas company in connection with the transportation or sale of natural gas through facilities authorized under section 7(i) of this Act is just and reasonable and complies with subsection (b) of this section if the natural gas company and the person paying the rate or charge mutually agree to that rate or charge."; and

(2) by adding the following subsection after subsection (e)—

"(f) Subsections (c), (d), and (e) of this section do not apply to the transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(i) of this Act.".

(b) Section 5(a) of the Natural Gas Act, (15 U.S.C. 717d) is amended by adding the following after the period—

"This subsection does not apply to any rate, charge, or classification by a natural gas company in connection with transportation or sale of natural gas through facilities authorized by a certificate issued under section 7(i) of this Act.".

(c) Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended—

(1) in subsection (c)(1)(B), by striking the period after "interest" and inserting—

": *Provided further*, That the Commission shall issue a certificate for the construction, extension, or acquisition of facilities for the transportation or sale of natural gas and for the operation of those facilities for that purpose to a natural gas company that fulfills the terms and conditions contained in section 7(i) without requiring a hearing or further proof that the public convenience and necessity would be served by those facilities. Such a certificate shall be nonexclusive and nonprejudicial to an application for any other authorization under the Natural Gas Act or the Natural Gas Policy Act."; and

(2) by adding the following two subsections after subsection (h)—

"(i)(1) The Commission shall issue to an applicant a certificate of public convenience and necessity to undertake the construction or extension of any facilities if the following terms and conditions are attached to the issuance of the certificate and to the exercise of the rights granted under it—

"(A) The applicant shall not include any costs or expenses it incurs in relation to the operation, sale, service, construction, extension, or acquisition of facilities covered by the certificate issued under this subsection in the rates and charges of any schedule required to be filed with the Commission under section 4(c);

"(B) Notwithstanding section 15(a) of this Act, the holder of a certificate issued under this subsection shall not participate in any proceedings under this Act to consider the application for a certificate for the construction or extension of facilities that, upon completion, would serve the service area served by the facilities authorized by the holder's certificate issued under this subsection.

"(2) The Commission shall issue to any applicant a certificate of public convenience and necessity authorizing the acquisition or operation of any facilities for which a certificate for the construction or extension has been issued under this subsection or for which abandonment of facilities or services subject to the jurisdiction of the Commission, including any sales or service rendered by means of such facilities, has been approved by the Commission under subsection (b) of this section if the terms and conditions in paragraph (1)(A) and (B) are attached to the issuance of the certificate and to the exercise of the rights granted under it.

"(j)(1) If the Commission, after a hearing held upon the petition of a person who has made a bona-fide offer to enter into a contract, finds that the failure to provide a requested rate, charge, classification, or practice in connection with the transportation of natural gas through facilities constructed, extended, acquired, or operated under a certificate issued under either section 7(i) or section 7(k) of this Act is unduly discriminatory, the Commission, considering market conditions and, to the extent relevant, the entire range of rates and services provided to others for transportation through those facilities, shall determine the rates, charges, classifications, or practices which are not unduly discriminatory to be observed and in force with respect to transportation to be provided to the petitioner, and shall fix the same by order.

"(2) A petition filed with the Commission under subsection (j)(1) shall contain a description of the transportation service sought, including the rates, charges, classifications, or practices requested by the petitioner, and the basis for asserting that the failure to provide the requested rates, charges, classifications, or practices is unduly discriminatory. Unless the Commission determines that capacity, in whole or in part, is not available to provide the transportation service sought by the petitioner, it shall issue an order within sixty days after

the filing of the petition directing the requested transportation service to commence on the terms sought. However, if within sixty days of the filing of the petition, the person against whom the petition is filed responds by filing with the Commission the rates, charges, classifications, or practices which that person considers to be not unduly discriminatory for the service sought by the petitioner, the requested service shall commence sixty days after the filing of the petition, based upon the rates, charges, classifications, or practices filed in response, except to the extent the Commission finds capacity is not available. Any rate or charge collected on the basis of the response is subject to refund, with interest, by the person providing the transportation service for that portion which is collected in excess of rates or charges requested in the petition and which the Commission finds, after hearing, to be unduly discriminatory. The burden of proof to show that any rate or charge in excess of those filed in the petition is not unduly discriminatory is upon the person filing in response to the petition.".

NONJURISDICTIONAL OPTION

SEC. 1912. (a) Section 7 of the Natural Gas Act, (15 U.S.C. 717f) is amended as follows—

(1) in subsection (c)(1)(A) by striking "No" and inserting in its place "Except as provided in section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. 3371) or subsection (j) of this section, no", and

(2) adding the following after subsection (j), as added by this subtitle—

"(k)(1) A person may elect to construct, extend, acquire, or operate a facility for the transportation or sale of natural gas and engage in the transportation or sale of natural gas through that facility without a certificate of public convenience and necessity issued by the Commission under this section.

"(2) If a person elects under this subsection not to obtain a certificate of public convenience and necessity—

"(A) the person is not a natural-gas company for the purposes of this Act in relation to the construction, extension, acquisition, or operation of facilities under this subsection or any sales or services rendered by means of such facilities;

"(B) notwithstanding section 15(a) of this Act, the person shall not participate in any proceeding under this Act to consider an application for a certificate for the construction or extension of facilities that, upon completion, would serve the service area served by the facility or extension constructed under this subsection;

"(C) the construction or extension of a facility authorized under this subsection may be subject to regulation by a State; however, rates or charges for the transportation or sale of natural gas by means of a facility or extension authorized under this subsection are not subject to regulation by a State, except that they may be regulated if that facility or extension is engaged solely in activities described in section 1(c) of this Act (15 U.S.C. 717(c)).".

(b) Section 4 of the Natural Gas Act (15 U.S.C. 717c) is amended by adding after subsection (f) as added by this subtitle, the following new subsection—

"(g) After a hearing held upon the application of a natural-gas company, if the Commission finds that the natural-gas company has demonstrated that a market that the natural-gas company is authorized to serve is competitive and that the natural-gas company's transportation or sales services are offered in that market on a not unduly discriminatory basis, the Commission may issue an order finding that the rates and charges made, demanded, or received by the natural-gas company for or in connection with the transportation or sale of natural gas in that market are not subject to the jurisdiction of the Commission under this Act. A hearing held under this section is subject to section 15 of this Act.".

PART 2—NATURAL GAS IMPORT/EXPORT DEREGULATION

COVERAGE OF NATURAL GAS ACT

SEC. 1913. Section 1(c) of the Natural Gas Act (15 U.S.C. 717(c)) is amended by inserting "or exported from such State" after "State" the second time it appears.

DEFINITIONS

SEC. 1914. Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended—

(1) in paragraph (7) by inserting "including a foreign country," after "thereof," both places it appears, and

(2) by adding the following after paragraph (9):

"(10) "Importation" means the actions involved in bringing natural gas into the United States.

"(11) "Exportation" means the actions involved in taking natural gas out of the United States.".

NATURAL GAS IMPORTS AND EXPORTS

SEC. 1915. Section 3 of the Natural Gas Act (15 U.S.C. 717b) is amended to read as follows:

"EXPORTATION OR IMPORTATION OF NATURAL GAS

"SEC. 3. (a) Importation of natural gas is considered a first sale for purposes of this Act and the Natural Gas Policy Act of 1978 (15 U.S.C. 3301-3432).

"(b) Neither the Commission nor a State may prohibit on condition the exportation or importation of natural gas or treat exported or imported natural gas while it is within the United States differently than any other natural gas.

"(c) The President may prohibit or condition the exportation or importation of natural gas upon finding that it is in the national interest.

"(d) Upon finding that the exportation or importation of natural gas is in the national interest, the President may waive any law relating to the exportation or importation of natural gas or may specify, by schedule or otherwise, when a particular law relating to the exportation or importation of natural gas is considered satisfied if the appropriate Federal or State agency has not taken final action.".

PART 3—STRUCTURAL REFORM OF THE FEDERAL ENERGY REGULATORY COMMISSION

NATURAL GAS AND ELECTRICITY ADMINISTRATION

SEC. 1916. (a) Section 2(a) of the Department of Energy Organization Act (42 U.S.C. 7101(a)) is amended by striking ", including the Federal Energy Regulatory Commission".

(b) Section 204 of the Department of Energy Organization Act (42 U.S.C. 7134) is amended to read as follows:

"NATURAL GAS AND ELECTRICITY ADMINISTRATION

"SEC. 204. There shall be within the Department a Natural Gas and Electricity Administration established by title IV of this Act to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level III of the Executive Schedule under section 5314 of title 5, United States Code.".

(c) Section 301(b) of the Department of Energy Organization Act (42 U.S.C. 7151(b)) is amended to read as follows:

"(b) There are transferred to, and vested in, the Secretary the functions of the Federal Power Commission, the Federal Energy Regulatory Commission, and the members, officers, or components thereof.".

(d) Section 306 of the Department of Energy Organization Act (42 U.S.C. 7155) is amended by striking "Except as provided in title IV, there" and inserting in its place "There".

(e) Title IV of the Department of Energy Organization Act is amended to read as follows:

"TITLE IV—NATURAL GAS AND ELECTRICITY ADMINISTRATION APPOINTMENT AND ADMINISTRATION

"SEC. 401. (a) There is established with the Department an Administration to be known as the Natural Gas and Electricity Administration.

"(b) The Secretary is responsible for the executive and administrative operation of the Natural Gas and Electricity Administration, including functions of the Natural Gas and Electricity Administration with respect to the appointment and employment of hearing examiners in accordance with title 5, United States Code.

"(c) The Secretary may require that hearing examiners appointed under this section conduct hearings on any matter within the Secretary's jurisdiction.

RULEMAKING PROCEEDINGS FOR RATES AND CHARGES

"SEC. 402. (a) Any function transferred to the Secretary under section 301(b) or section 306 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act may be conducted by rulemaking procedures. Except as provided in subsection (b), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

"(b) with respect to any rule or regulation promulgated by the Secretary to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Secretary may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Secretary may establish a reasonable time for both the submission of questions and responses.".

(f) Section 501(a) of the Department of Energy Organization Act (42 U.S.C. 7191(a)) is amended—

(1) by striking "(1)";

(2) by striking "other than the Commission,"; and

(3) by striking paragraph (2).

(g) Section 502 of the Department of Energy Organization Act (42 U.S.C. 7192) is amended—

(1) in subsection (a) by striking ", the Commission"; and

(2) in subsection (c) by striking "Subject to the provisions of section 401 of this Act, and notwithstanding" and inserting in its place "Notwithstanding".

(h) Section 503 of the Department of Energy Organization Act (42 U.S.C. 7193) is amended—

(1) by amending subsection (c) to read as follows:

"(c) If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall stay the effect of the remedial order, unless the Secretary finds the public interest requires immediate compliance with the order. The Secretary, upon request, shall afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Secretary determines that the right of cross examination is required for a full and true disclosure of the facts, the Secretary shall afford it. The Secretary shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action."; and

(2) by striking subsection (d).

(i) Section 504 of the Department of Energy Organization Act (42 U.S.C. 7194) is amended—

(1) in subsection (b)(1) by striking "Commission" and inserting in its place "Secretary"; and

(2) in subsection (b)(2) to read as follows:

"(b)(2) The Secretary shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Secretary under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code.".

(j) Section 605(a)(3) of the Department of Energy Organization Act (42 U.S.C. 7215(a)(3)) by striking "or the Commission, as the case may be,".

(k) Section 649(a) of the Department of Energy Organization Act (42 U.S.C. 7259(a)) is amended by striking "and the Federal Energy Regulatory Commission" and "or the Commission".

(l)(1) Section 705 of the Department of Energy Organization Act (42 U.S.C. 7295) is amended—

(A) in subsection (a)(1) by striking "or the Commission"; and

(B) in subsection (a)(2) by striking "the Federal Energy Regulatory Commission,"; and

(C) in subsection (b)(2) by striking "and the Commission" and "or the Commission".

(2) For purposes of the transfer of functions from the Federal Energy Regulatory Commission to the Secretary of Energy by this Act, the phrases "the time this Act takes effect", "the date this Act takes effect", and "the date on which this Act takes effect" in section 705 of the Department of Energy Organization Act (42 U.S.C. 7295) are considered to refer to the date of enactment of this Act.

(m) Section 707 of the Department of Energy Organization Act (42 U.S.C. 7297) is amended by striking "the Federal Energy Regulatory Commission,".

(n) Section 708 of the Department of Energy Organization Act (42 U.S.C. 7298) is amended by striking "Except as provided in title IV, nothing" and inserting in its place "Nothing".

(o) Title 5, United States Code, is amended—

(1) in section 5314 by striking the following item: "Chairman, Federal Energy Regulatory Commission." and inserting in its place "Administrator, Natural Gas and Electricity Administration."; and

(2) in section 5315 by striking the following item: "Members, Federal Energy Regulatory Commission.".

(p) Section 901 of the Department of Energy Organization Act (42 U.S.C. 7341) is amended by striking "and the Commission" and "or the Commission".

(q) The Table of Contents of the Department of Energy Organization Act is amended—

(1) by striking the item for section 204 and inserting in its place "Natural Gas and Electricity Administration."; and

(2) by amending the items relating to title IV to read as follows:

"TITLE IV—NATURAL GAS AND ELECTRICITY ADMINISTRATION

"Sec. 401. Appointment and administration.
"Sec. 402. Rulemaking proceedings for rates and charges.".

Subtitle C—OIL

PART 1—NAVAL PETROLEUM RESERVE LEASING

SHORT TITLE

SEC. 1917. This part may be cited as the "Naval Petroleum Reserve Leasing Act".

LEASING AUTHORIZATION

SEC. 1918. (a) Notwithstanding any other law, if the President finds that control and use of Naval Petroleum Reserve Numbered 1 by the United States is not necessary for national defense purposes or to assure its exploration, development, and operation, the Secretary of Energy (the "Secretary") may lease any or all of that reserve. As determined by the Secretary, portions of chapter 641 of title 10, United States Code, shall cease to apply with respect to the reserve from the effective date to be specified in a lease, and to the extent and under conditions that may be provided for elsewhere in this part.

(b) The President shall submit a finding under this section to the Congress, together with a report on the basis for the finding, at least 60 days before the effective date of a lease of the reserve.

(c)(1) The Secretary may use the United States' share of lease proceeds received to satisfy contractual obligations directly related to the accomplishment of a lease and to pay any liabilities of the Department of Energy arising with respect to the interests leased at Naval Petroleum Reserve Numbered 1 and with respect to the settlement of issues under the Unit Plan Contract at Naval Petroleum Reserve Numbered 1, including any liabilities relating to payment of just compensation and under any Federal statute concerning the environment. The balance of funds received shall be utilized as provided in section 1922 of this part.

(2) Before entering into a lease under this part, the Secretary shall determine that the rental price represents fair market value.

(d)(1) The Secretary shall notify the Attorney General of each proposed lease under this part. The notification shall contain information that the Attorney General may require in order to advise the Secretary as to whether the lease may substantially lessen competition. Within thirty days after the notification, the Attorney General shall advise the Secretary whether the lease may substantially lessen competition.

(2) Nothing in this part confers on any person immunity from civil or criminal liability, or creates defenses to actions, under the antitrust laws.

(3) As used in this section, the term "antitrust laws" means—

(A) the Sherman Act (15 U.S.C. 1 et seq.);

(B) the Clayton Act (15 U.S.C. 12 et seq.);

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(D) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a, commonly referred to as the "Robinson-Patman Act").

(e) The Secretary shall conduct a leasing action under this part using competitive procedures and may reject any and all offers or bids for leases even if the offers or bids meet or exceed minimum acceptable levels.

(f) Any lease under this part shall require that a royalty payment equal to not less than 12.5 percent of the value, as determined by the Secretary, of the oil, natural gas, and other hydrocarbon resources of the production removed or sold from the lease be paid to the "Naval Petroleum Reserve Lease Proceeds Special Account," provided for in section 1922 of this part.

(g) Any lease contract authorized under this part shall be so structured as to require parties leasing the reserve or any interest in the reserve to—

(1) retain all records pertaining to the production, transportation and sale of production for a period of not less than 6 years, or such longer period as the Secretary by notice may require;

(2) make all such records available to the Secretary for audit; and

(3) provide that, in the event of late payment of royalties, partial payment of royalties, or failure to pay any royalties due, the Secretary shall require the payment of interest and penalties and may cancel the lease.

(h) Any lease authorized under this part shall be so structured as to require parties leasing the reserve to set aside a portion of the crude oil produced to sell to small refiners for processing or use in such refineries except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum; and

(3) the set-aside portion shall not exceed 25 percent of the estimated annual production at the reserve.

PROCEDURES TO ARRANGE AND CONDUCT A LEASING ACTION

SEC. 1919. (a) Before and after the President's finding under section 1918(a) of this Act, the Secretary may take the steps the Secretary considers necessary to arrange the lease of Naval Petroleum Reserve Numbered 1.

(b) In order to arrange and conduct a leasing action, the Secretary may:

(1) create new corporations, partnerships, or other business entities, and transfer the United States' interest to the new entities;

(2) enter into contracts with State or private entities, including contracts for technical, financial, auditing or other professional services; and

(3) use funds appropriated to the Department of Energy under the Department of the Interior and Related Agencies Appropriations Acts, but not to exceed five percent from the Naval Petroleum Reserves account. Resources and expertise of other Federal agencies shall be used to lease the Reserve when doing so will reduce the cost to the Federal government of leasing.

(c) Unless otherwise determined in accordance with section 1918(e), all lands to be leased shall be leased to the highest responsible qualified bidder or bidders by competitive bidding under general regulations issued by the Secretary. The Secretary may establish bidding and lease terms and conditions the Secretary considers necessary or appropriate, including, but not limited to, the es-

tablishment of the acreage and units of lands to be leased and the minimum rental or royalty rates.

(d) A lessee of any of the United States' interest in Naval Petroleum Reserve Numbered 1 is not liable for any claim of liability arising exclusively from or during the ownership and operation of the interest by the United States. Such a claim may be asserted only against the United States to the extent and in the manner provided by law.

PRIVATELY OWNED LANDS AND PHYSICAL IMPROVEMENTS

SEC. 1920. (a) Whenever the Secretary is otherwise unable to make arrangements the Secretary considers satisfactory for a lease of Naval Petroleum Reserve Numbered 1, the Secretary may acquire, by purchase, condemnation, or otherwise, privately owned lands or physical improvements within Naval Petroleum Reserve Numbered 1, as the Secretary considers necessary to facilitate the leasing action.

(b) Before condemnation proceedings are instituted, an effort shall be made to acquire the property by negotiation, unless, in the judgment of the Secretary, the effort to acquire the property by negotiation would be futile, unduly time consuming, or otherwise not in the public interest.

STRATEGIC PETROLEUM RESERVE TIE-IN; DEFENSE PETROLEUM INVENTORY

SEC. 1921. (a) In the event of a lease of any part of Naval Petroleum Reserve Numbered 1 under this subtitle, sections 160 (a), (b), and (d) of the Energy Policy and Conservation Act (42 U.S.C. 6240 (a), (b) and (d)) shall cease to apply to the reserve.

(b)(1) Title I, part B, of the Energy Policy and Conservation Act (42 U.S.C. 6215 et seq.) is amended by adding after section 167 a new section 168 as follows:

"DEFENSE PETROLEUM INVENTORY

"SEC. 168. (a) Notwithstanding any other provision of this part, the Secretary may acquire or construct, operate, and maintain storage and related facilities to meet petroleum product requirements of the Department of Defense, and may acquire and store therein a Defense Petroleum Inventory of crude oil. This acquisition and storage shall be in addition to any acquisition or storage of crude oil for the Strategic Petroleum Reserve required by any other law, and crude oil acquired and stored under this section shall not be counted as part of the Strategic Petroleum Reserve. In carrying out the functions authorized by this section, the Secretary may exercise any authority available under this part.

"(b) The Secretary shall obligate the U.S. share of funds available in the Naval Petroleum Reserve Lease Proceeds Special Account created by section 1922 of the Naval Petroleum Reserve Leasing Act for the acquisition of 10 million barrels of crude oil for the Defense Petroleum Inventory. Until the acquisition of 10 million barrels of crude oil for the Defense Petroleum Inventory has been completed, the Secretary shall dedicate to the Defense Petroleum Inventory, crude oil contained in the Strategic Petroleum Reserve in sufficient quantities to maintain the Defense Petroleum Inventory at a level determined by multiplying 10 million barrels times the percentage of the United States' interest in Naval Petroleum Reserve Numbered 1 leased under the Naval Petroleum Reserve Leasing Act. Any crude oil so dedicated shall be considered to remain in storage for the purposes of any law relating to the rate of fill of the Strategic Petroleum Reserve.

"(c) Notwithstanding any other provision of this part, upon the request of the Secretary of Defense, crude oil acquired for or dedicated to the Defense Petroleum Inventory shall be drawn down and distributed by the Secretary to, or on behalf of, the Department of Defense for use, sale, or exchange. Crude oil in the Defense Petroleum Inventory may be drawn down and distributed, used, sold, or exchanged, without regard to—

"(1) whether the crude oil has been commingled with petroleum products of the Strategic Petroleum Reserve;

"(2) the requirements of this part concerning drawdown of the Strategic Petroleum Reserve; or

"(3) otherwise applicable Federal contracting statutes and regulations.

The Secretary of Energy shall exercise the authority provided by this subsection in a manner which does not adversely affect drawdown of the Strategic Petroleum Reserve.

"(d) Upon the request of the Secretary of Defense, and subject to the availability of funds from the Department of Defense, the Secretary shall acquire and store in the Defense Petroleum Inventory crude oil to replace crude oil drawn down under subsection (c).

"(e) An amendment to the Strategic Petroleum Reserve Plan relating to the exercise of this authority shall not be required.

"(f) The Department of Defense shall reimburse the Department of Energy for—

"(1) drawdown and distribution services provided under this section, in amounts that the Secretary determines to be reasonable;

"(2) all costs of acquiring crude oil for the Strategic Petroleum Reserve to replace crude oil drawn down and distributed under subsection (c); and

"(3) all costs of acquiring and storing in the Defense Petroleum Inventory any crude oil in excess of the initial 10 million barrels acquired for it or dedicated to it.

"(g) Crude oil acquired for the Defense Petroleum Inventory under subsection (a) shall be transferred to the Strategic Petroleum Reserve, pursuant to subsection (f)(2), in reimbursement on a barrel-for-barrel basis for the cost of replacement petroleum products acquired for the Strategic Petroleum Reserve.".

(2) The Table of Contents of the Energy Policy and Conservation Act is amended by inserting after the entry for section 167 the following:

"Sec. 168. Defense Petroleum Inventory.".

NAVAL PETROLEUM RESERVE LEASE PROCEEDS SPECIAL ACCOUNT AND REVENUE SHARING WITH THE STATE OF CALIFORNIA

SEC. 1922. (a) There is established in the Treasury of the United States a fund called the "Naval Petroleum Reserve Lease Proceeds Special Account" (referred to as the "Special Account" in this part) which shall be available to the Department of Energy without fiscal year limitation to carry out the purposes, functions, and powers authorized by this part.

(b) There shall be deposited in the Special Account all proceeds realized under this part from the lease of all or any part of the United States' interest in Naval Petroleum Reserve Numbered 1, including bonus and royalty payments.

(c) Fifty percent of the proceeds received from royalty payments and seven percent of the bonus payments from Naval Petroleum Reserve Numbered 1 under this part shall, notwithstanding any other provision of law, be paid to the State of California (to be credited by the State in accordance with California Public Resources Code, section 8711 and allocated in the manner provided in California Statutes 1988 ch. 985, section 3, as amended from time to time). The portion of the proceeds accruing to the State of California from the bonus payment shall be paid to the State of California in seven annual payments, beginning one year from the date that the Federal Government receives the first installment of the bonus payment. No interest shall be due on these amounts to the State. Each of the seven annual payments shall be equal to one-seventh of the lease bonus payment due to the State.

(d) The Secretary may make expenditures from the Special Account without further appropriation and without fiscal year limitation, but within specific directives or limitations that may be included in appropriation acts, for any purposes necessary or appropriate to carry out section 168(b) of the Energy Policy and Conservation Act or to satisfy obligations related to the lease of Naval Petroleum Reserve Numbered 1 as specified in section 1918(c)(1).

(e)(1) Upon a written notification from the Secretary to the Secretary of the Treasury that the Special Account contains funds in excess of the amounts considered necessary to fulfill the purposes specified in subsections (c) and (d), excess funds specified by the Secretary may be transferred from the Special Account to the miscellaneous receipts account of the Treasury of the United States. In the event funds are no longer required to fulfill the purposes specified in subsections (c) and (d), the Special Account shall be abolished and all remaining funds credited to the miscellaneous receipts account of the Treasury of the United States.

(2) Following abolition of the Special Account under subsection (e)(1), proceeds realized under this part from the lease of all or any part of the United States' interest in Naval Petroleum Reserve Numbered 1 shall be deposited in the miscellaneous receipts account of the Treasury of the United States; except for the portion of royalty, interest and bonus payments specified in section 1922(c) to be paid to the State of California, which shall continue to be paid to that State regardless of the status of the Special Account.

(f) The Secretary may collect lease proceeds on behalf of any private owner of Naval Petroleum Reserve Numbered 1 and may pay the owner its share of lease proceeds.

CONGRESSIONAL CONSULTATION

SEC. 1923. Compliance with the procedures specified in sections 1918 (b) and (d) of this part is considered to satisfy the requirements of sections 7431(a) and 7431(b) of title 10, United States Code.

EFFECT ON SCHOOL LANDS GRANT

SEC. 1924. (a) The authority to lease under this part extends to sections 16 and 36 within Naval Petroleum Reserve Numbered 1.

(b) A payment may be made under section 1922(c) of this part only after—

(1) the State of California files, on behalf of all party plaintiffs, a motion to dismiss, with prejudice, the lawsuit it filed against the United States and certain agency officials in November 1987 in the United States District Court, Eastern District of California (No. CV-F-87-665-EDP), and

(2) the State of California, by written agreement, forfeits any rights under section 6 of the Act of March 3, 1853 (Chapter CXLV; 10 Stat. 246) to sections 16 and 36, Township 30 South, Range 23 East Mount Diablo Base

and Meridian, located within Elk Hills, including all rights to indemnity lands under Revised Statutes 2275 and 2276 (43 U.S.C. 851 and 852).

The agreement referred to in paragraph (2) of this subsection is subject to the concurrence of the Attorney General of the United States.

CONFORMING AMENDMENTS

SEC. 1925. (a) Section 501 of Public Law 101-45 (103 Stat. 103) is repealed.

(b) Sections 7422 (a) and (b) of title 10, United States Code, are amended to read as follows:

"(a) The Secretary, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves in his discretion, subject to the provisions of this chapter, except the authority to lease is not extended to Naval Petroleum Reserve Numbered 3.

"(b) Except as otherwise provided in this chapter, particularly subsection (c) of this section, and in the Naval Petroleum Reserve Leasing Act, the naval petroleum reserves shall be used and operated for—

"(1) the protection, conservation, maintenance, and testing of those reserves; or

"(2) the production of petroleum whenever and to the extent that the Secretary, with the approval of the President, finds that such production is needed for national defense purposes and the production is authorized by a joint resolution of Congress.".

(c) Section 7422(c)(1)(B) of title 10, United States Code, is amended to read as follows:

"(B) to produce such reserves at the maximum efficient rate consistent with sound engineering practices.".

(d) Sections 7422(c)(1)(C), 7422(c)(2), and 7426 (b), (c), (d), and (e) of title 10, United States Code, are repealed.

(e) Section 7430(a) of title 10, United States Code, is amended to read as follows:

"(a) In administering the naval petroleum reserves under this chapter, except for those reserves covered by leases executed pursuant to the Naval Petroleum Reserve Leasing Act, the Secretary shall use, store, or sell the petroleum produced from the naval petroleum reserves and lands covered by joint, unit, or other cooperative plans as provided in this section.".

(f) Section 7430(b)(1) of title 10, United States Code, is amended by striking "paragraph (2) and notwithstanding any other provision of law" and inserting "subsection (a) and paragraph (2)".

(g) Section 7430(f) of title 10, United States Code, is amended to read as follows:

"(f) The consultation and approval requirements of section 7431(a)(3) are waived for contracts to sell petroleum produced from Naval Petroleum Reserves Numbered 1, 2, and 3, and for contracts to sell petroleum from the Naval Oil Shale Reserves which is produced for their exploration, protection, conservation, maintenance, and testing.".

(h) Section 7430(1)(1) of title 10, United States Code is amended to read as follows:

"(1)(1) The Secretary, at the request of the Secretary of Defense, may provide any portion of the United States share of petroleum to the Department of Defense for its use, exchange, or sale in order to meet petroleum product requirements of the Department of Defense.".

(i) Section 7431(a) of title 10, United States Code, is amended by adding "Except for actions taken pursuant to the Naval Petroleum Reserve Leasing Act," at the beginning of the subsection.

(j) Sections 7431 (b) and (c) of title 10, United States Code, are amended by striking "During the period of production authorized by section 7422(c) of this title, the" and inserting "The".

(k) Section 7433(b) of title 10, United States Code, is amended to read as follows:

"(b) Except as provided in the Naval Petroleum Reserve Leasing Act, all money accruing to the United States from lands in the naval petroleum reserves shall be covered into the Treasury.".

PART 2—OIL PIPELINE DEREGULATION

SHORT TITLE

SEC. 1926. This subtitle may be cited as the "Oil Pipeline Regulatory Reform Act".

FINDINGS AND PURPOSES

SEC. 1927. (a) The Congress finds that—

(1) oil pipelines are of critical strategic and economic importance to the Nation;

(2) the Nation's interests are best served by encouraging the competitive and efficient operation of oil pipelines;

(3) economic regulation can impose unproductive costs, discourage and distort investment decisions, cause regulatory uncertainty, and often be only partially effective in achieving its goals;

(4) most markets served by oil pipelines are sufficiently competitive that, given application of the antitrust laws, economic regulation of pipelines in these markets is unnecessary to ensure reasonable rates and adequate service;

(5) for those oil pipeline markets for which competition and antitrust enforcement are not sufficient to ensure their efficient operation, continued economic regulation may be necessary to prevent abuse of significant market power;

(6) where continued economic regulation of oil pipelines remains necessary, that regulation must be reformed to maximize reliance on competition to benefit consumers, reduce regulatory costs, and encourage the efficient use and development of existing and new pipelines;

(7) for those oil pipeline markets for which continued economic regulation is necessary, consumers can best be protected, costs of regulation can best be reduced, and efficiency can best be enhanced by regulating the maximum rates that pipelines may charge and adjusting the maximum rates to reflect price changes in competitive markets while allowing pipelines freely to discount below those maximum rates; and

(8) this reformed rate regulation in markets in which there is significant market power will provide just compensation to a pipeline if the allowable rate is comparable to what that rate would be if the market were competitive and not subject to market power, as calculated by a method that establishes maximum rates, permits them to be revised if they had been enhanced by market power, and adjusts them over time by an index reflecting pipeline prices in competitive markets.

(b) It therefore is the policy of the Federal Government—

(1) to remove the burden of economic regulation from those oil pipeline markets that operate under competitive circumstances or for which that regulation would not be an effective or efficient remedy to constrain the exercise of market power; and

(2) to provide for continued economic regulation of only those oil pipeline markets for which regulation will increase economic efficiency and for which the benefits of regulation outweigh its costs.

REGULATORY REFORM AND DEREGULATION

SEC. 1928. The Department of Energy Organization Act (42 U.S.C. 7101-7352) is amended by adding after section 407 the following new sections:

"REGULATION OF PIPELINES

"SEC. 408. (a) As used in this section and sections 409 and 410—

"(1) 'adjudication' means an agency hearing, which, in the discretion of the Secretary, may be a hearing on the record governed by section 554 of title 5, United States Code;

"(2) 'Attorney General' means the Attorney General of the United States or the Attorney General's designee;

"(3) 'Commission rate regulation' means those functions and authorities set forth in section 410 of this Act;

"(4) 'existing Commission regulatory jurisdiction' means those functions and authorities transferred by sections 306 and 402(b) of the Department of Energy Organization Act (42 U.S.C. 7155, 7172(b));

"(5) 'existing pipeline' means a pipeline that was brought into service or was under construction before January 1, 1991;

"(6) 'interested person' means a person whose economic or business interests would be substantially affected by a finding that Commission rate regulation is in the public interest or that a base rate should be revised;

"(7) 'new pipeline' means a pipeline that was brought into service after January 1, 1991, and was not under construction before January 1, 1991;

"(8) 'pipeline' means a pipeline subject to existing Commission regulatory jurisdiction or which would be subject to existing Commission regulatory jurisdiction except for this section, but it does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or a pipeline directly or indirectly delivering oil to the Trans-Alaska Pipeline; and

"(9) 'rate' means the price for transportation by pipeline, including all charges that the pipeline requires its customers to pay for the transportation and for any ancillary services set forth as part of that pipeline's tariff on file with the Commission on January 1, 1991, or approved by the Commission after January 1, 1991.

"(b)(1) Existing Commission regulatory jurisdiction over pipelines terminates sixty days after the effective date of the Oil Pipeline Regulatory Reform Act. On that date, pipelines become subject to sections 408, 409, 410, and 411 of this Act.

"(2)(A) Within 120 days after the effective date of the Oil Pipeline Regulatory Reform Act, the Attorney General may petition the Secretary for an adjudication of whether Commission rate regulation of an existing pipeline in any market is in the public interest. Upon receipt of such a petition, the Secretary shall conduct an adjudication in accordance with subsection (b)(3). In deciding whether to bring a petition, the Attorney General shall be guided by the methods, assumptions, standards, and definitions underlying and set forth in the report of the United States Department of Justice dated May 1986 entitled "Oil Pipeline Deregulation." None of the findings and conclusions of the report, and none of the methods, assumptions, standards, and definitions underlying and set forth in the report are binding on the Secretary in an adjudication conducted under this section.

"(B) Within 180 days after the effective date of the Oil Pipeline Regulatory Reform Act, an interested person may petition the Secretary for an adjudication of whether Commission rate regulation of an existing

pipeline in any market is in the public interest. A person filing such a petition shall provide a reasonable basis for the conclusion that Commission rate regulation is in the public interest, and shall serve a copy of the petition on the Attorney General and on the pipeline for which Commission rate regulation is sought. Upon receipt of the petition, the Secretary, for good cause shown, may conduct an adjudication in accordance with subsection (b)(3). The Secretary may consult with the Attorney General in deciding whether to conduct an adjudication, and shall conduct an adjudication in accordance with subsection (b)(3) if the Attorney General so recommends.

"(C) Not later than 270 days after the effective date of the Oil Pipeline Regulatory Reform Act, the Secretary shall publish a list of all adjudications that the Secretary has determined will be held pursuant to this subsection, identifying in each case the pipeline and the market for which Commission rate regulation is sought. Pipeline rates for service to markets that are not identified in the list published by the Secretary shall no longer be subject to section 410 of this Act.

"(3)(A) The Secretary shall find that Commission rate regulation of an existing pipeline in a market is in the public interest only if it is demonstrated that regulation is necessary to constrain the exercise of substantial market power in the supply or demand of products transported by the pipeline in that market. If the Secretary finds that Commission rate regulation of an existing pipeline in a market is in the public interest, Commission rate regulation shall continue. If the Secretary finds that Commission rate regulation of an existing pipeline in a market is not in the public interest, regulation shall terminate at a time the Secretary designates, but in no event shall that regulation continue beyond sixty days after the Secretary issues the finding.

"(B) A finding under subsection (b)(3)(A) shall be issued within one year after the Secretary decides to conduct the adjudication, unless the Secretary, in the event of unusual circumstances, determines that the finding cannot be issued within one year. In such a case, the Secretary shall make specific findings as to the unusual circumstances necessitating the delay, and shall specify a date certain by which the Secretary will issue the finding, but in no event shall the Secretary's finding be issued more than two years after the Secretary decides to conduct the adjudication.

"(C) If parties to an adjudication conducted by the Secretary reach a settlement of the issues prior to the Secretary's finding that Commission rate regulation of a pipeline in a market is in the public interest, the settlement shall bind those parties. If all parties reach such a settlement, the Secretary shall terminate the proceeding by accepting the settlement.

"(c)(1) Upon petition of any interested person, the Secretary may conduct an adjudication of whether Commission rate regulation of an existing pipeline in any market subject to that regulation is in the public interest in accordance with subsection (b)(3). The Secretary shall notify the Attorney General of any petition for adjudication or decision to conduct an adjudication under this paragraph and may consult with the Attorney General in deciding whether to conduct an adjudication.

"(2) If the Secretary finds that Commission rate regulation of an existing pipeline in a market subject to that regulation is not in the public interest, Commission rate regulation over that pipeline in that market terminates when the Secretary designates, but in no event shall Commission rate regulation continue beyond sixty days after the Secretary issues the finding.

"(d) The Attorney General may participate in any adjudication initiated by petition from any interested person under this section, or upon the request of the Secretary. In participating, the Attorney General shall be guided by the methods, assumptions, standards, and definitions set forth in the report cited in section 408(b)(2)(A).

"(e) Except as provided under subsection (i), new pipelines are not subject to existing Commission regulatory jurisdiction or to Commission rate regulation, but are subject to section 409 of this Act.

"(f)(1) The termination pursuant to this section of existing Commission regulatory jurisdiction or Commission rate regulation does not apply to products transported before the termination.

"(2) Commission rate regulation of a pipeline in a market made subject to that regulation under this section shall be prospective only. Products transported by the pipeline before regulation becomes effective under this section shall not be subject to Commission rate regulation.

"(3) Existing Commission regulatory jurisdiction terminated under this section, including existing Commission regulatory jurisdiction over new pipelines, shall not revert back to, be delegated to, or otherwise transfer to, the Department of Energy, the Interstate Commerce Commission, or any other agency of the Federal Government except as provided under subsection (i).

"(4) Notwithstanding any other law, and except as otherwise provided in section 409 and 410 of this Act, no State, political subdivision of a State, or agency of the Federal Government may regulate a pipeline with respect to which existing Commission regulatory jurisdiction or Commission rate regulation has been terminated pursuant to this section, including existing Commission regulatory jurisdiction and Commission rate regulation over new pipelines, to the extent that the regulation is similar in nature to those functions and authorities constituting existing Commission regulatory jurisdiction or Commission rate regulation that are terminated under this section. This authority includes, but is not limited to, subsections 5(e) and 5(f) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(e) and (f)) and section 28(r) of the Mineral Leasing Act of 1920 (30 U.S.C. 185(r)). Nothing in this Act limits any authority vested in a State or political subdivision of a State to regulate pipelines engaged in intrastate commerce.

"(g) Notwithstanding section 501 of this Act (42 U.S.C. 7191), the Secretary and the Attorney General each may promulgate, in accordance with section 553 of title 5, United States Code, rules and regulations necessary or appropriate to carry out their respective responsibilities under this section. Rules and regulations proposed by the Secretary implementing this section or any other actions taken by the Secretary under this section are not subject to section 404 of this Act (42 U.S.C. 7174).

"(h)(1) Notwithstanding section 502 of this Act (42 U.S.C. 7192), the United States Court of Appeals for the District of Columbia Circuit has exclusive original jurisdiction over any petition for judicial review under this section.

"(2) Any action of the Attorney General under this section, including without limitation any participation of the Attorney General in any adjudication under this section, is an agency action committed to agency discretion by law, and is not subject to judicial review in any manner.

"(i)(1) The Secretary of Defense may petition the Secretary for an adjudication or whether Commission rate regulation of an unregulated pipeline would be in the national defense interest, except that the Secretary of Defense may not petition the Secretary earlier than two years after—

"(A) the termination of Commission rate regulation of a pipeline that is the subject of the petition, or

"(B) a prior adjudication under this section regarding a pipeline that is the subject of the petition.

"(2) In response to a petition under this subsection, the Secretary may hold an adjudication of whether Commission rate regulation of an unregulated pipeline would be in the national defense interest. If the Secretary finds that Commission rate regulation of the pipeline is in the national defense interest, the pipeline shall be subject to section 410 of this Act.

"COMMON CARRIER STATUS CONTINUED; CONTRACTS

"SEC. 409. (a) Notwithstanding any other provision of this Act, pipelines shall operate as common carriers, as follows:

"(1) provide transportation service to all persons upon reasonable demand and upon fair, equitable, and nondiscriminatory terms and conditions and establish through routes with other common carrier pipelines, except that a pipeline's charging different rates to different shippers does not constitute a violation of this paragraph;

"(2) establish and observe just and reasonable classifications of property for transportation and just and reasonable regulations and practices affecting that transportation, except that a pipeline's charging different rates to different shippers does not constitute a violation of this paragraph;

"(3) refrain from disclosing to any person, other than the shipper or consignee, without consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered.

"(b) Pipelines shall publish and file with the Commission schedules setting forth applicable terms and conditions of carriage, but excluding the rates to be charged for carriage.

"(c) Contracts between pipelines and other persons on terms and conditions other than those filed pursuant to subsection (b) as applicable to basic common carriage shall be presumed conclusively to be in the public interest as long as, in regulated markets, the regulated service is available at no more than the maximum rate.

"(d) The Commission shall enforce compliance with the obligations set forth in this section, and may adopt rules and regulations necessary or appropriate for that purpose.

"COMMISSION RATE REGULATION

"SEC. 410. (a) Notwithstanding any other law, the rates of any pipeline in any market subject to this section shall be regulated as follows:

"(1) The base rates of the pipeline in any market subject to this section are;

"(A) those rates that were in effect and not subject to investigation by the Commission on January 1, 1991, increased or reduced by the percentage change in the Producer Price Index for total finished goods calculated by the Bureau of Labor Statistics in the United States Department of Labor from that date

to the date that Commission rate regulation commenced pursuant to section 408(b)(1);

"(B) with respect to rates that were subject to investigation by the Commission on January 1, 1991, which investigation was not terminated by final adjudication or settlement approved by the Commission as of the termination of existing Commission regulatory jurisdiction pursuant to section 408(b)(1), those rates that were in effect upon the last rate change prior to January 1, 1991, that was not made subject to an investigation by the Commission, increased or reduced by the percentage change in the Producer Price Index from the effective date of that change to the date that Commission rate regulation commenced prior to section 408(b)(1);

"(C) with respect to rates that were subject to investigation by the Commission on or before January 1, 1991, which investigation was terminated by a final adjudication or a settlement approved by the Commission prior to the termination of existing Commission regulatory jurisdiction pursuant to section 408(b)(1), those finally adjudicated or settled rates, increased or reduced by the percentage change in the Producer Price Index from the effective date of the final adjudication or settlement to the date that Commission rate regulation commenced pursuant to section 408(b)(1);

"(D) with respect to pipelines not in service on January 1, 1991, those rates initially established by those pipelines.

"(2) The base rate for a pipeline subject to this section may be modified as follows—

"(A) Within 120 days after a finding by the Secretary pursuant to section 408(b) that Commission rate regulation of any pipeline in any market is in the public interest, the Attorney General may petition the Secretary for an adjudication of whether any base rate of that pipeline in that market should be reduced. Upon receipt of such a petition, the Secretary shall conduct an adjudication in accordance with subsection (a)(2)(D) of this section.

"(B) Within 180 days after a public interest finding, an interested person may petition the Secretary for an adjudication of whether any base rate of that pipeline in that market should be reduced. A person filing such a petition shall provide a reasonable basis for the conclusion that the base rate should be reduced, and shall serve a copy of the petition on the Attorney General and on the pipeline that is the subject of the petition. Upon receipt of such a petition, the Secretary, for good cause shown, may conduct an adjudication in accordance with subsection (a)(2)(D). The Secretary may consult with the Attorney General in deciding whether to conduct an adjudication, and shall conduct an adjudication if the Attorney General so recommends.

"(C) Not later than 270 days after a public interest finding, the Secretary shall publish a list of all adjudications that the Secretary has determined will be held pursuant to this paragraph, identifying in each case the pipeline, the market, and the base rate for which a reduction is sought.

"(D)(i) The Secretary shall order a reduction if the petitioner demonstrates that the pipeline's market power has resulted in a base rate that is significantly higher than the rate likely would be if the relevant market were not subject to market power. In making this finding, the Secretary shall consider only statistical evidence of rates charged by that pipeline in competitive markets, with appropriate recognition of the effects of factors such as the distance of a movement. For purposes of this subparagraph, a base rate is considered significantly higher than the rate likely would be if the relevant market were not subject to market power only if the difference is statistically significant under commonly accepted standards.

"(ii) A finding under clause (i) of this subparagraph shall be issued within one year after the Secretary decides to conduct an adjudication, unless the Secretary, in the event of unusual circumstances, determines that the finding cannot be issued within one year. In such a case, the Secretary shall make specific findings as to the unusual circumstances necessitating the delay, and shall specify a date certain by which the Secretary will issue the finding, but in no event shall the Secretary's finding be issued more than two years after the Secretary decides to conduct the adjudication.

"(iii) If parties to an adjudication conducted by the Secretary reach a settlement of the issues prior to the Secretary's finding, it shall bind those parties. If all parties reach such a settlement, the Secretary shall terminate the proceeding by accepting the settlement.

"(E) Any adjustment of a base rate ordered under this subsection shall be effective as of the date of the Secretary's finding pursuant to subsection (a)(2)(D)(ii).

"(F) The Attorney General may participate in any adjudication initiated by petition from any interested person under this section, and shall participate upon the request of the Secretary. In participating, the Attorney General shall be guided by the methods, assumptions, standards, and definitions set forth in the report cited in section 408(b)(2)(A).

"(3) The Commission shall calculate as follows a maximum rate for each rate subject to Commission rate regulation:

"(A) Following the commencement of Commission rate regulation pursuant to subsection 408(b)(1)—

"(i) For the first period, which shall be from the commencement of Commission rate regulation pursuant to subsection 408(b)(1) until the date of publication by the Secretary of the list of adjudications required by subsection 408(b)(2)(C), the maximum rate shall be the base rate established under section 410(a) (1) and (2).

"(ii) For each of the next two periods, each of which shall be six months, the maximum rate for pipeline rates serving markets which are subject to an adjudication shall be the base rate increased or reduced by the percentage change in the Producer Price Index from the date upon which the base rate became effective.

"(iii) For all subsequent six month periods, the maximum rate shall be the prior maximum rate increased or reduced by the percentage change in the Competitive Pipeline Price Index during the previous period, except that, with respect to a settlement approved by the Commission after January 1, 1991, which expressly governs maximum rates for any future period, the settlement rate shall be the maximum rate until the conclusion of that period. At the conclusion of that period, the rate in effect shall be the maximum rate increased or reduced by the percentage change in the Competitive Pipeline Price Index.

"(B)(i) The Secretary shall calculate a Competitive Pipeline Price Index to reflect relative changes in prices charged by pipelines in competitive markets not subject to Commission rate regulation. The Competitive Pipeline Price Index shall be derived from the average revenue per barrel-mile of a sample of pipelines in those markets. The Secretary shall select the sample of pipelines, markets, and revenues to be used in calculating the Competitive Pipeline Price Index, and the Secretary may exclude data from pipelines not subject to Commission rate regulation but whose rates for any reason may not reflect effective competition. The Secretary may require reports from pipelines for the purpose of calculating the Competitive Pipeline Price Index.

"(ii) The Secretary shall initially publish the Competitive Pipeline Price Index one year after the termination of existing Commission regulatory jurisdiction, and shall publish changes in it at intervals of not more than six months.

"(iii) The Secretary may substitute an appropriate existing index for the Competitive Pipeline Price Index if that substitute index accurately reflects increases in prices in competitive pipeline markets and if the Secretary determines that calculation of the Competitive Pipeline Price Index would be unduly burdensome.

"(4)(A) Any rate subject to Commission rate regulation under this section which does not exceed the maximum rate determined in accordance with subsection (a)(3) of this section is presumed conclusively to be lawful and is not subject to protest, complaint, suspension, investigation, or any other challenge or inquiry under Commission rate regulation.

"(B) Nothing in this Act makes it unlawful for a pipeline to charge a rate that is lower than the maximum rate determined in accordance with subsection (a)(3). A pipeline charging lower than the maximum rate to a shipper with which it is affiliated by means of common ownership or otherwise shall make the lower rate available to any shipper upon the same terms and conditions of service.

"(5) The Commission shall publish base rates, rate adjustments, and maximum rates determined in accordance with this section and make them available for public inspection.

"(b) A pipeline subject to Commission rate regulation in a market shall not condition pipeline services in that market on entering into any other transaction, or on taking or refraining from any action.

"(c)(i) In any market subject to Commission rate regulation, if a pipeline expands its available capacity, it may petition the Commission for a determination of the pre-existing capacity that will remain subject to Commission rate regulation. If such a determination is made, the additional capacity shall not be subject to Commission rate regulation. Interested persons may participate in the proceeding.

"(2) The Commission may promulgate any regulations necessary or appropriate to ensure that rights to use pre-existing capacity at rates governed by Commission rate regulation are allocated to shippers in a manner that both preserves the efficacy of Commission rate regulation of pre-existing capacity and is consistent with the requirements of section 409 of this Act.

"(d) The Commission shall enforce compliance with the obligations set forth in this section, and may adopt rules and regulations necessary or appropriate for that purpose.

"(e) Notwithstanding section 501 of this Act (42 U.S.C. 7191), the Secretary and the Attorney General each may promulgate in accordance with section 553 of title 5, United States Code, rules and regulations necessary or appropriate to carry out their respective

responsibilities under this section. Rules and regulations proposed by the Secretary implementing this section or any other actions taken by the Secretary under this section are not subject to section 404 of this Act (42 U.S.C. 7174).

"(f)(1) Notwithstanding section 502 of this Act (42 U.S.C. 7192), the United States Court of Appeals for the District of Columbia Circuit has exclusive original jurisdiction over any petition for judicial review under this section.

"(2) Any action of the Attorney General under this section, including without limitation any decision to petition or not to petition for an adjudication under this section, is an agency action committed to agency discretion by law, and is not subject to judicial review in any manner.

"REPORT TO CONGRESS

"SEC. 411. At the conclusion of the fifth year after the completion of all adjudications conducted under section 410 of this Act, the Secretary shall provide to the appropriate committee of Congress a report setting forth the findings and conclusions of the Secretary on the results of the Oil Pipeline Regulatory Reform Act and its impact on the public interest. In this report, the Secretary shall make any recommendations that the Secretary considers appropriate.".

CONFORMING AMENDMENTS

SEC. 1929. (a) Section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)), is amended by striking "There" and inserting in its place "Subject to sections 408, 409, 410, and 411 of this Act, there".

(b) Section 404(a) of the Department of Energy Organization Act (42 U.S.C. 7174(a)) is amended by striking "section 403" and by inserting in its place "sections 408 and 410".

(c) The Table of Contents of the Department of Energy Organization Act is amended by adding after the item for section 407 four new items as follows: "Sec. 408. Regulation of pipelines.", "Sec. 409. Common carrier status continued; contracts.", "Sec. 410. Commission rate regulation.", and "Sec. 411. Report to Congress.".

APPLICABILITY OF ANTITRUST LAWS

SEC. 1930. Nothing in this part affects the applicability to the transportation by pipeline of crude oil, refined oil, or other petroleum products of the laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade.

SEVERABILITY

SEC. 1931. If any provision of this part or its application to any person or circumstances is held invalid, neither the remainder of this part nor the application of the provision to other persons or circumstances shall be affected.

Subtitle D—Electricity Generation and Use

PART 1—PUBLIC UTILITY HOLDING COMPANY ACT REFORM DEFINITIONS

SEC. 1932. For the purposes of this part:

(1) "Exempt wholesale generator" means any person who is engaged directly, or indirectly, through one or more of that person's affiliates as defined under section 2(a)(11)(B) of the Act, exclusively in the business of owning or operating all or part of one or more eligible facilities and selling electric energy at wholesale. The term excludes a registered holding company affiliate in existence on the date of enactment of the National Energy Strategy Act, unless the Commission has consented to its inclusion.

(2) "Eligible facility" means a facility, wherever located, that is used for the generation of electric energy exclusively for sale at wholesale (including interconnecting transmission facilities necessary to effect sale at wholesale). For purposes of sections 1932 and 1933, "facility" includes a portion of a facility. This term does not include a facility if a rate or a charge for, or in connection with, its construction or for electricity it produces (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge) is in effect under the laws of any State.

(3) "Electric consumer" means any person, State or local authority or agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(4) As used in sections 1932 and 1933, "the Act" means the Public Utility Holding Company Act. All of the terms used in sections 1932 and 1933 and defined in the Act have the meaning given in the Act.

EXEMPT WHOLESALE GENERATORS

SEC. 1933. (a) An exempt wholesale generator is not considered an "electric utility company" under section 2(a)(3) of the Act and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, is exempt from the Act.

(b) Notwithstanding any provision of the Act, the eligibility of a holding company for exemption under section 3(a) of the Act is not affected by whether an associate company, affiliate, or subsidiary company is an exempt wholesale generator, unless the Commission, by order upon application of an affected State commission or other interested party, and considering among other relevant factors any views submitted by each affected State commission, terminates the exemption upon determining that—

(1) the holding company has not established appropriate means to determine the allocation of costs between the exempt wholesale generator and any associate company, affiliate, or subsidiary company that provides electric service to electric consumers; or

(2) the exempt wholesale generator is a party to a contract, either directly or through an associate company, for the sale of electric energy to an associate company, affiliate, or subsidiary company that provides electric service to electric consumers without each affected State commission having given its prior approval of the contract under State law.

(c) For the purposes of this section, an "affected State commission" is any State commission that has jurisdiction to regulate a holding company's associate company, affiliate, or subsidiary company that provides electric service to electric consumers.

(d) Notwithstanding any provision of the Act and the Commission's jurisdiction under subsection (e) of this section, a registered holding company may acquire and hold, directly or indirectly, the securities, or interest in the business, of one or more exempt wholesale generators without applying for or receiving approval from the Commission and without being subject to any other conditions under the Act, so long as the exempt wholesale generator is not a party to a contract, either directly or through an associate company, for the sale of electric energy to an associate company, affiliate, or subsidiary company that provides electric service to electric consumers, unless each affected State commission has given its prior approval of the contract under State law.

(e) The direct or indirect issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator; the direct or indirect guarantee of securities of an exempt wholesale generator by a registered holding company; the direct or indirect entering into service, sales, or construction contracts; and the direct or indirect creation or maintenance of any other relationship in addition to that described in subsection (d) between an exempt wholesale generator and a registered holding company, its affiliates, and associate companies, remain subject to the jurisdiction of the Commission under the Act, except that—

(1) section 11 of the Act does not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of the location of facilities owned or operated by the exempt wholesale generator), and that ownership is considered to be consistent with the operation of an integrated public utility system; and

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of the location of facilities owned or operated by the exempt wholesale generator) is considered to be reasonably incidental, or economically necessary or appropriate to the operations of an integrated public utility system.

OWNERSHIP OF EXEMPT WHOLESALE GENERATORS AND QUALIFYING FACILITIES

SEC. 1934. The ownership by a person of one or more exempt wholesale generators does not result in that person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (16 U.S.C. 796(17)(C)(ii) and (18)(B)(ii)).

FEDERAL AND STATE AUTHORITIES

SEC. 1935. (a) A rate or charge for the sale of electric energy at wholesale in interstate commerce by an exempt wholesale generator is not considered just and reasonable within the meaning of sections 205 and 206 of the Federal Power Act (16 U.S.C. 824d and 824e) if the rate or charge allows the exempt wholesale generator to receive undue advantage from the existence of an affiliate relationship between the exempt wholesale generator and the purchaser of that electric energy.

(b) A State commission may determine the prudence of a wholesale power purchase by an electric utility company that provides electric service to electric consumers and may disallow recovery of costs determined to be imprudently incurred, unless the wholesale purchaser has no alternative to accepting the amount of power or costs allocated to it by the Federal Energy Regulatory Commission in setting a wholesale rate or charge that is based on an allocation of power or costs among—

(1) companies of a registered holding company; or

(2) companies that operate on an integrated basis under an agreement approved by the Federal Energy Regulatory Commission.

Subtitle E—Nuclear Power

PART 1—LICENSING REFORM

COMBINED LICENSES

SEC. 1936. (a) Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by—

(1) adding "and Operating Licenses" after "Permits" in the catchline;

(2) adding a subsection designator "(a)" before "All"; and

(3) adding the following new subsections:

"(b)(1) After holding a public hearing under section 189 of this Act, the Commission shall

issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses that the licensee shall perform, and the acceptance criteria that the Commission shall use to determine their satisfactory completion.

"(2)(A) An application for a combined license shall include a State, local, or utility emergency plan. The combined license shall identify the inspections, tests, exercises, and analyses required for the emergency plan and the acceptance criteria for their satisfactory completion.

"(B) In finding reasonable assurance that adequate protective measures can and will be taken in a radiological emergency, the Commission may presume that States and localities in the emergency planning zones will use best efforts to protect their citizens by following an emergency plan determined by the Commission to be adequate.

"(C) Notwithstanding paragraph (4) of this subsection, questions which arise after combined license issuance, concerning offsite emergency planning issues relating to whether there is reasonable assurance of adequate protective measures including those from a decision by a State or locality not to participate in a previously approved State, local or utility plan, may be resolved only in a proceeding, either in response to a petition or at the initiative of the Commission, to modify or suspend operation under the combined license.

"(3) At appropriate intervals during construction or preoperational testing, the Commission shall publish in the Federal Register notices of the successful completion of inspections, tests, and analyses.

"(4)(A) Not less than 120 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined license, the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 30 days request the Commission to hold a hearing on whether the facility as constructed complied, or on completion will comply, with the acceptance criteria of the license.

"(B) A request for a hearing under this paragraph shall show, prima facie, that one or more of the acceptance criteria in the combined license have not been, or will not be, met, and the specific operational consequences of nonconformance that would be contrary to adequate protection of the public health and safety.

"(C) After receiving a request for a hearing under this paragraph, the Commission expeditiously shall either deny or grant the request. If a hearing is held, commencement of plant operation shall not be delayed pending decision after hearing unless the Commission determines, after considering petitioners' prima facie showing and any answers thereto, that petitioners are likely to succeed on the merits and, as a result, there will not be adequate protection of the public health and safety in the interval prior to the decision.

"(D) A hearing under this paragraph shall be informal, but parties shall be allowed to offer evidence, under oath or affirmation. Discovery and cross-examination of witnesses are not permitted, but the presiding official may direct questions to any party.

"(E) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 120 days of the publication of the notice provided by subparagraph (A) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to section 189(a)(1), but any final order of the Commission under this paragraph is subject to judicial review as provided in section 189(b).

"(5) The Commission also shall notify the Attorney General if significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under section 105 c. in connection with issuance of the combined construction and operating licenses for the facility so as to warrant further review under that section under such procedures as may be established by the Commission.

"(c) In acting on a request by the holder of a combined license for an amendment to the combined license, the Commission shall apply the same procedures and criteria as it would under section 189(a) of this Act to a licensee request for an amendment to an operating license for a utilization facility. The Commission shall not delay preoperational activities or operation of a facility pending completion of a proceeding under this paragraph if the Commission determines that the amendment involves no significant hazards considerations.".

RULEMAKING

SEC. 1937. The Nuclear Regulatory Commission shall propose regulations implementing this part of the National Energy Strategy Act within 1 year of the date of its enactment.

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1938. (a) Section 105(c)(2) of the Atomic Energy Act of 1954 is amended by inserting "or both construct and operate" after "operate" the first time it appears.

(b) Subsection 182(b) of the Atomic Energy Act of 1954 is amended to read as follows:

"(b) The Advisory Committee on Reactor Safeguards shall review:

"(1) an application under section 103 or section 104 b. for a construction permit, an operating license, or a combined construction and operating license for a facility;

"(2) an application under section 104 c. for a construction permit or an operating license for a testing facility;

"(3) an application under section 104 a. or c. specifically referred to it by the Commission; or

"(4) an application for an amendment to a construction permit, to an operating license, or to a combined construction and operating license under section 103 or 104 a., b., or c. specifically referred to it by the Commission;

The Advisory Committee on Reactor Safeguards shall submit a report on the application which shall be made a part of the record of the application and be made available to the public except to the extent that security classification prevents disclosure.".

(c) Section 186(a) of the Atomic Energy Act of 1954 is amended by inserting "and 185," after "sections 182,".

(d) The table of contents of the Atomic Energy Act of 1954 (42 U.S.C. 2011 prec.) is amended by amending the item relating to section 185 to read as follows:

"Sec. 185. Construction Permits and Operating Licenses.".

EFFECT ON PENDING PROCEEDINGS

SEC. 1939. Sections 1936 through 1938 of this part apply to all proceedings pending before the Nuclear Regulatory Commission on the date of enactment of this part.

PART 2—NUCLEAR WASTE MANAGEMENT

REPOSITORY SITE CHARACTERIZATION

SEC. 1940. Section 113(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10133(a)) is amended to read as follows:

"(a) IN GENERAL.—(1) The Secretary shall carry out, in accordance with this section, appropriate site characterization activities at the Yucca Mountain site. The Secretary shall consider fully the comments received under subsection (b)(2) of this section and section 112(b)(2) of this Act and shall, to the maximum extent practicable and in consultation with the Governor of the State of Nevada, conduct site characterization activities in a manner that minimizes any significant adverse environmental impacts identified in those comments or in the environmental assessment submitted under subsection (b)(1) of this section.

"(2) Notwithstanding any other law, for the purpose of site characterization activities, a Federal agency administering a law, ordinance, or regulation that imposes a requirement for a permit, license, right of way, certification, approval, or other authorization, shall administer the application of that law, ordinance, or regulation to site characterization activities conducted by the Secretary under this Act without regard to whether its administration has been, or could be, delegated to a State or superseded by a comparable State law.

"(3)(A) A requirement for a permit, license, right of way, certification, approval, or other authorization imposed by a State, local, or tribal law, ordinance, or regulation does not apply to site characterization activities under this Act.

"(B) The Secretary shall carry out site characterization activities under this Act notwithstanding a denial of, or refusal to act on, an application for a permit, license, right of way, certification, approval, or other authorization required by a State, local, or tribal law, ordinance, or regulation.

"(4) Notwithstanding paragraph (3), in carrying out site characterization activities under this Act, the Secretary shall consider the views of State, local, and tribal officials regarding the substantive provisions of State and local laws, ordinances, and regulations.

"(5) An action to contest the constitutionality of a provision of this subsection must be brought within 60 days of the date of the enactment of the National Energy Strategy Act. A court may not enjoin site characterization activities carried out by the Secretary under this Act in an action brought to contest the constitutionality of a provision of this subsection except as part of a final judgment.

"(6) Paragraphs (2), (3), (4), and (5) of this subsection apply only to site characterization activities conducted or begun before the Secretary submits to the Commission under section 114(b) of this Act (42 U.S.C. 10134(b)) an application for a construction authorization for a repository.

"(7) The exclusion or inclusion of any provisions contained in paragraphs (2), (3), (4), or (5) of this subsection in a negotiated proposed agreement developed under title IV of this Act shall not affect any determinations regarding either the reasonableness or appropriateness of such an agreement.".

MONITORED RETRIEVABLE STORAGE FACILITY

SEC. 1941. Sections 145(b) and 148(d) (1) and (2) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 1065(b) and 1068(d) (1) and (2)) are repealed.

Subtitle F—Renewable Energy

PART 1—PURPA SIZE CAP AND CO-FIRING REFORM

FEDERAL POWER ACT DEFINITIONS

SEC. 1942. Section 3(17) of the Federal Power Act (16 U.S.C. 796(17)) is amended—

(1) by amending paragraph (A) to read as follows:

"(17)(A) 'small power production facility' means a facility which—

"(i) is an 'eligible solar, wind, waste, biomass, hydroelectric, or geothermal facility';

"(ii) is an 'alternative power production facility'; or

"(iii)(I) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination of those energy sources; and

"(II) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;";

(2) in paragraph (E)—

(A) by inserting ", biomass, hydroelectric," after "waste" the first time it appears; and

(B) by striking "or geothermal resources, and which would otherwise not qualify as a small power production facility because of the power production capacity limitation contained in subparagraph (A)(ii)" and inserting ", biomass energy, hydroelectric power, or geothermal resources, regardless of power production capacity" in its place; and

(3) by adding the following paragraph:

"(F) 'alternative power production facility' means a facility, regardless of power production capacity, which produces electric energy by using solar energy, wind energy, waste resources, biomass energy, hydroelectric power, or geothermal resources, but only if—

"(i) either an application for certification of the facility as a qualifying small power production facility or a notice that the facility meets the requirements for qualification is submitted to the Commission;

"(ii) the electric capacity of the facility is acquired through competitive acquisition; and

"(iii) at least fifty percent of the energy source used to produce electric energy is obtained through the use of solar, wind, waste, biomass, hydroelectric power, geothermal resources, or any combination of those energy sources.".

UTILITY PURCHASING AND EXEMPTIONS

SEC. 1943. Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is amended—

(1) in subsection (a),

(A) by striking "and to encourage geothermal small power production facilities of not more than 80 megawatts capacity,"; and

(B) by inserting "In the case of an alternative power production facility, these rules shall require electric utilities to offer to purchase electric capacity from such a facility only through competitive acquisition." after "resale.";

(2) in subsection (e)(2) by striking "other than a qualifying small power production facility which is an eligible solar, wind, waste, or geothermal facility as defined in section 3(17)(E) of the Federal Power Act" and inserting "other than a qualifying small power production facility which is an alternative power production facility or an eligible solar, wind, waste, biomass, hydroelectric or geothermal facility" in its place; and

(3) in subsection (1) by inserting "alternative power production facility", "eligible solar, wind, waste, biomass, hydroelectric, or geothermal facility", "competitive acquisition", after ""qualifying small power producer",".

PART 2—HYDROELECTRIC POWER REGULATORY REFORM

REGULATORY REFORM

SEC. 1944. Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by—

(1) inserting ", and for the purposes of subsections (h), (i), and (j), the Commission shall" after "empowered"; and

(2) adding the following after subsection (g):

"(h) Require each applicant who files an application for a license under this part after December 31, 1992, before filing the application to consult, concerning studies to be undertaken in connection with the licensing process, with those Federal and State agencies and Indian tribes the Commission requires to be consulted and then to have the applicant submit to the Commission a plan and schedule for conducting the studies and a summary of its consultation activities. The Commission shall approve or modify the plan and schedule taking into consideration the cost of the studies, the potential value to the licensing determination of the information the studies are likely to produce, and any other factors the Commission considers relevant and shall ensure that the plan includes all studies necessary to evaluate the proposed projects. Once a plan is approved by the Commission, the Commission may modify it only after determining that the public interest would be affected if it were not modified. This determination may include a finding that additional information is needed in order to address the provisions of this Act or other applicable law. Approval of the study plan and schedule does not constitute a formal Commission decision and is not subject to appeal.

"(i) Coordinate a single, consolidated review, including review under the National Environmental Policy Act of 1969, of a hydropower project which is the subject of an application for a license under this part, by all Federal agencies, State agencies and affected Indian tribes interested in the project that is the subject of the application. The Commission shall give reasonable notice of the application and the consolidated review to all Federal agencies, State agencies, and affected Indian tribes that may be interested in the project that is the subject of the application. The Commission shall be the lead agency for purposes of compliance with the National Environmental Policy Act of 1969. A review under the National Environmental Policy Act of 1969 completed by the Commission as part of this consolidated review is the only documentation needed by an agency to satisfy the requirements of the National Environmental Policy Act of 1969 for the project subject to the review. The Commission's decision concerning issuance of a license and the terms, conditions, and prescriptions of the license shall take into account the results of the consolidated review. An agency's decision concerning its recommendations, terms, conditions, and prescriptions for the license and any approvals within its authority related to the project shall take into account the results of the consolidated review. The Commission may establish reasonable time limits for submission of recommendations, terms, conditions, prescriptions, and reports by a Federal agency, State agency, or Indian tribe as part of the consolidated review. If an agency does not meet the Commission's time limitations, the Commission may continue to process and to take any appropriate action on the application.

"(j)(1) Notwithstanding any other provision of this Act or other law, have exclusive authority to determine which recommendations, terms, conditions, prescriptions, permits, and certifications are included in a license issued under this part for a hydropower project at an existing dam or conduit. If the Commission does not adopt in whole or part a recommendation, term, condition, prescription, permit, or certification promulgated by a Federal or State agency or an Indian tribe, the Commission shall state fully its reasons for its action.

"(2) If there is a conflict between the terms of a license issued under this part for a hydropower project at an existing dam or conduit and the terms of a permit, license, certificate, or other authorization required by another Federal agency or a State agency for the same project, the terms of the license issued under this part prevail. If the hydropower project at an existing dam or conduit has been issued a license under this part and has been denied a permit, license, certificate, or other authorization by another Federal agency or State agency, the licensee of the project may proceed under the license issued under this part.".

REMOVAL OF COMMISSION AUTHORITY OVER FIVE MEGAWATT PROJECTS

SEC. 1945. Section 10(i) of the Federal Power Act (16 U.S.C. 803(i)) is amended to read as follows:

"(i)(1) A constructed or proposed hydropower project with an installed capacity of five megawatts or less that has not received a license under this part by the effective date of the National Energy Strategy Act is not subject to this part.

"(2) The licensee of a project with an installed capacity of five megawatts or less licensed under this part as of the effective date of the National Energy Strategy Act may elect not to be regulated under this part by applying to the Commission for permission to surrender the license. The Commission shall permit surrender of the license unless the Commission determines it is not in the public interest to do so.

"(3) Notwithstanding this subsection, section 401 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341) applies to a project with an installed capacity of five megawatts or less as it did before the date of enactment of the National Energy Strategy Act.".

Subtitle G—Alternative Fuel

PART 1—DUAL AND FLEXIBLE FUEL VEHICLE CREDITS

DUAL AND FLEXIBLE FUEL CAP REMOVAL

SEC. 1946. Section 513(g) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013(g)) is amended to read as follows:

"(g) AMENDMENT TO STANDARDS.—In carrying out section 502(a)(4) and (f) of this title, the Secretary shall not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles, and the Secretary shall consider dual energy automobiles and natural gas dual energy automobiles to be operated exclusively on gasoline or diesel fuel.".

PART 2—ALTERNATIVE TRANSPORTATION FUELS

DEFINITIONS

SEC. 1947. for the purposes of this part—

(1) "alternative fuel" means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquid petroleum gas; hydrogen; and electricity;

(2) "alternative fuel vehicle" means a motor vehicle that—

(A) operates solely on alternative fuel, or

(B) is a flexi-fueled vehicle;

(3) "covered person" means a person to whom section 1948 of this part applies;

(4) "fleet" means a number of motor vehicles, all or a part of which are centrally fueled or capable of being centrally fueled, that are owned, operated, leased, or otherwise controlled by a person. This term does not include—

(A) motor vehicles held for daily lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement vehicles;

(E) emergency vehicles;

(F) military tactical vehicles; or

(G) non-road vehicles, including farm and construction vehicles;

(5) "flexi-fueled vehicle" means a motor vehicle that can operate on alternative or non-alternative fuel;

(6) "person" has the meaning given that term in section 1 of title 1, United States Code, but also includes a State government and a local government;

(7) "Secretary" means the Secretary of Energy; and

(8) "urban bus" has the meaning given that term in section 219 of the Clean Air Act (42 U.S.C. 7554).

ACQUISITION OF ALTERNATIVE FUEL VEHICLES

SEC. 1948. (a)(1) This subsection applies to a person who owns, operates, leases, or otherwise controls a fleet that—

(A)(i) contains at least—

(I) 10 automobiles;

(II) 10 trucks, except multi-unit trucks over 26,000 pounds gross vehicle weight; or

(III) 10 buses, except intercity passenger buses and urban buses; or

(IV) a combination of at least 10 motor vehicles of these types; and

(ii) is located in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, which has been classified by the Environmental Protection Agency under part D of title I of the Clean Air Act as a serious, severe or extreme nonattainment area for ozone based on 1987, 1988, and 1989 data; or

(B)(i) contains at least—

(I) 20 automobiles;

(II) 20 trucks, except multi-unit trucks over 26,000 pounds gross vehicle weight;

(III) 20 buses, except intercity passenger buses and urban buses; or

(IV) a combination of 20 motor vehicles of these types; and

(ii) is located in any metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000.

(2) When a person to whom this subsection applies under paragraph (1) purchases, leases, or otherwise acquires vehicles for the fleet described in paragraph (1), in the years specified in this paragraph, the following percentage of the vehicles purchased, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

(A) in 1995, 10 percent;

(B) in 1996, 15 percent;

(C) in 1997, 25 percent;

(D) in 1998, 50 percent;

(E) in 1999, 75 percent; and

(F) in 2000 and afterwards, 90 percent.

(b)(1) This subsection applies to a person who owns, operates, leases, or otherwise controls a fleet that—

(A)(i) contains at least 10 urban buses, except intercity passenger buses, and

(ii) is located in an area described in subsection (a)(1)(A)(ii) of this section, or

(B)(i) contains at least 20 urban buses, except intercity passenger buses, and

(ii) is located in an area described in subsection (a)(1)(B)(ii) of this section.

(2) When a person to whom this subsection applies under paragraph (1) purchases, leases, or otherwise acquires vehicles for the fleet described in paragraph (1), in the years specified in this paragraph, the following percentage of the vehicles purchases, leased, or otherwise acquired shall be alternative fuel vehicles in the respective years—

(A) in 2000, 50 percent;

(B) in 2001, 75 percent;

(C) in 2002, 80 percent; and

(D) in 2003 and thereafter, 90 percent.

EXCEPTION

SEC. 1949. This part does not apply to a covered person if the Secretary determines that no alternative fuel vehicles meeting the fleet requirements for that person are available for purchase, lease, or acquisition by other means when the part becomes applicable to the covered person. This part applies to that covered person when alternative fuel vehicles become available. This part does not apply to a person subject to section 1948(b) if the Secretary determines that no alternative fuel vehicle that is an urban bus complies with the warranty standards for urban buses.

CREDITS

SEC. 1950. (a) The Secretary shall allocate a credit to a covered person if that person purchases an alternative fuel vehicle in excess of the number that person is required to purchase under this part or purchases an alternative fuel vehicle before the date that person is required to purchase an alternative fuel vehicle under this part.

(b) In allocating credits under subsection (a), the Secretary shall allocate one credit for each alternative fuel vehicle the covered person purchases that exceeds the number of alternative fuel vehicles that person is required to purchase under this part or that is purchased before the date that person is required to purchase an alternative fuel vehicle under this part. The credit shall be allocated for the same type of vehicle, including an urban bus, automobile, or other vehicle subject to the requirements of this part, as the excess vehicle or earlier purchased vehicle.

(c) At the request of a covered person allocated a credit under this section, the Secretary shall treat the credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by that person when determining whether that person has complied with this part in the year designated. A credit may be counted toward compliance for only one year.

(d) A covered person allocated a credit under this section or to whom a credit is transferred under this section, may transfer freely the credit to another person who is required to comply with this part. At the request of the person to whom a credit is transferred, the Secretary shall treat the transferred credit as the purchase of one alternative fuel vehicle of the type for which the credit is allocated in the year designated by the person to whom the credit is transferred when determining whether that person has complied with this part in the year designated. A transferred credit may be counted toward compliance for only one year.

REPORTS

SEC. 1951. The Secretary may require a person to file with the Secretary the reports the Secretary determines necessary to implement this part.

ENFORCEMENT

SEC. 1952. (a) A person who violates a requirement or prohibition of this part is subject to a civil penalty of not more than $100,000 per violation. Each month in which a violation occurs constitutes a separate violation, unless the violator establishes that the vehicle necessary to comply with this part could not be purchased, leased, or otherwise acquired in that month. The first month of a violation of the yearly acquisition requirement of section 1948 is the month in which a person purchases, leases, or otherwise acquires vehicles that result in noncompliance with the yearly alternative fuel vehicle purchase requirement under that section. Each month in which compliance has not been achieved after the first month is a separate violation.

(b) The Secretary may request the Attorney General to commence a civil action for a permanent or temporary injunction or to assess and recover any civil penalty under subsection (a) of this section. An action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business. The court in which the action has been brought may restrain a violation, require compliance, assess a civil penalty, collect any noncompliance assessment and nonpayment penalty owed the United States, and award any other appropriate relief. In such an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c)(1) Instead of commencing a civil action under subsection (b), the Secretary may assess an administrative penalty in the amount prescribed in subsection (a) of this section. The maximum amount of penalty sought against each violator in a proceeding under this subsection may not exceed $200,000, unless the Secretary and the Attorney General jointly determine that a larger amount is appropriate. A determination by the Secretary and the Attorney General on the appropriateness of a larger amount is not subject to judicial review.

(2) The Secretary shall assess an administrative penalty under this subsection by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5 of the United States Code. Before issuing such an order, the Secretary shall give to the person to be assessed an administrative penalty written notice of the Secretary's proposal to issue an order. That person has 30 days from the date the notice is received to request a hearing on the order. The Secretary shall issue rules for procedures for hearings under this subsection. The Secretary may compromise, modify, or remit, with or without conditions, an administrative penalty that the Secretary imposes under this subsection.

(3) An order issued under this subsection becomes final 30 days after its issuance un-

less a petition for judicial review is filed under paragraph (4).

(4) Within 30 days following the date an administrative penalty is issued under this subsection, a person against whom the administrative penalty is assessed may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, the person resides, or the person's principal place of business is located. That person shall send a copy of the filing seeking review by certified mail to the Secretary and the Attorney General on the day of the filing. Within 30 days of the date the Secretary receives a copy of the filing, the Secretary shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court shall not set aside or remand the order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Secretary's assessment of the penalty constitutes an abuse of discretion. In a proceeding under this subsection, the United States may seek to recover administrative penalties assessed under this subsection.

(5) If a person fails to pay an assessment of an administrative penalty imposed by the Secretary under this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Secretary.

the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed, plus interest at rates established under section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or the date of the final judgment, as the case may be. In this action, the validity, amount, and appropriateness of the penalty is not subject to review. A person who fails to pay on a timely basis the amount of an assessment of an administrative penalty under this section shall be required to pay, in addition to the amount and interest, the United States' enforcement expenses, including but not limited to, attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. This nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of the quarter.

(d) In determining the amount of a penalty to be assessed under this section, the Secretary or the court, as appropriate, shall take into consideration, in addition to other factors justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

IMPLEMENTATION

SEC. 1953. The Secretary of Energy shall issue regulations to implement this part.

Subtitle H—Innovation and Technology Transfer

STEVENSON-WYDLER ACT AMENDMENTS

SEC. 1954. (a) Section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) is amended by adding the following new subsection after subsection (g):

"(h) COPYRIGHT OF COMPUTER SOFTWARE.—Each Federal agency may secure copyright on behalf of the United States as author or proprietor in any computer software prepared in whole or in part by employees of the United States Government in the course of work under a cooperative research and development agreement entered into under the authority of subsection (a)(1) of this section, or under any other equivalent authority, notwithstanding the limitations contained in section 105 of title 17, United States Code; and may grant or agree to grant in advance to a collaborating party, licenses or assignments for such copyrights, or options thereto, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to reproduce, adapt, translate, distribute, and publicly perform or display the computer software throughout the world by or on behalf of the Government and such other rights as the Federal agency deems appropriate.".

(b) Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703) is amended by adding at the end the following new paragraph:

"(14) 'Computer software' means a computer program, as defined in section 101 of title 17, United States Code, and any associated documentation, supporting materials, or user instructions.".

ROYALTY PAYMENTS TO AUTHORS

SEC. 1955. (a) Sections 14(a)(1)(A), 14(a)(2), and 14(a)(3) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(A), (a)(2) and (a)(3) are amended—

(1) by inserting "or computer software" after "inventions" each place it appears;

(2) by inserting "or computer software" after "invention" each place it appears;

(3) by inserting "or author" after "inventor" each place it appears;

(4) by inserting "or co-author" after "co-inventor" each place it appears;

(5) by inserting "or authors" after "inventors" each place it appears;

(6) by inserting "or co-authors" after "co-inventors" each place it appears; and

(7) by inserting "or author's" after "inventor's" each place it appears.

(b) Section 14(a)(1)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(1)(B)) is amended—

(1) by inserting "or computer software" after "income from any invention";

(2) by inserting "or computer software was developed" after "the invention occurred";

(3) by inserting "or computer software" after "licensing of inventions" in clause (i);

(4) by inserting "or computer software which was developed" after "with respect to inventions" in clause (i); and

(5) by inserting "or computer software" after "organizations for invention" in clause (i).

(c) Section 14(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)), is amended by inserting "or author" after "including inventor".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 1956. Section 12(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)), is amended by inserting "or computer software" after "inventions" each place it appears.

Subtitle I—Tax Incentives

ENERGY INVESTMENT TAX CREDIT

SEC. 1957. (a) The Internal Revenue Code of 1986 is amended in section 48(a)(2)(B) by striking "June 30, 1992" and inserting "December 31, 1993".

(b) The amendment made by subsection (a) applies after June 30, 1992.

PERMANENCE OF THE RESEARCH CREDIT

SEC. 1958. (a) The Internal Revenue Code of 1986 is amended—

(1) by striking section 41(h); and

(2) by striking subparagraph (D) of section 28(b)(1).

(b) The amendments made by subsection (a) apply to taxable years beginning after June 30, 1992.

TITLE XX—ARCTIC COASTAL PLAIN COMPETITIVE OIL AND GAS LEASING ACT

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Subtitle A—Short Title and Statement of Purpose

SHORT TITLE

SEC. 2001. This title may be cited as the "Arctic Coastal Plain Competitive Oil and Gas Leasing Act".

STATEMENT OF PURPOSE

SEC. 2002. It is the purpose of this title to authorize competitive oil and gas leasing and development to proceed on the Coastal Plain in a manner consistent with protection of the environment, maintenance of fish and wildlife and their habitat, and the interests of the area's subsistence users.

Subtitle B—Definitions

DEFINITIONS

SEC. 2003. When used in this title—

(1) "Coastal Plain" means that area identified as such in the map entitled "Arctic National Wildlife Refuge", dated February, 1991, on file in the office of the Director of the United States Fish and Wildlife Service;

(2) "Secretary" means the Secretary of the Interior or the Secretary's designee; and

(3) "significant adverse effects" means those effects which, despite the reasonable application of mitigation measures, if any, involving appropriate technology, engineering, and environmental control measures, including siting and timing restrictions, would result in widespread long-term reductions in habitat quality or availability that cause, or are likely to cause, a widespread long-term reduction in the natural abundance of any species of fish, wildlife, or plant.

Subtitle C—Coastal Plain Competitive Leasing Program

LEASING PROGRAM FOR LANDS WITHIN THE COASTAL PLAIN

SEC. 2004. (a) The Secretary and other appropriate Federal officers and agencies shall take the actions necessary to establish and implement a competitive oil and gas leasing program that will provide for an environmentally sound program for the exploration, development, and production of the oil and gas resources of the Coastal Plain. Activities pursuant to such program shall be undertaken—

(1) in accordance with the standards for protection of the environment required by subtitle D of this title; and

(2) in a manner to ensure that the public receives fair market value for the lands to be leased.

(b) This title shall be the Secretary's sole legislative authority for authorizing and conducting an oil and gas leasing program on the Coastal Plain and related activities.

(c) The Coastal Plain shall be considered "Federal land" for purposes of the Federal Oil and Gas Royalty Management Act of 1982.

RULES AND REGULATIONS

SEC. 2005. (a) The Secretary shall prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this title, including, but not limited to, rules and regulations relating to protection of the environment of the Coastal Plan, as required by subtitle D of this title. Such rules and regulations shall be promulgated within nine months after the date of enactment of this title and shall, as of their effective date, apply to all operations conducted under a lease issued under the provisions of this subtitle and all operations on the Coastal Plain related to the exploration, development and production of oil and gas and related activities.

(b) In the formulation and promulgation of rules and regulations under this title, the Secretary shall consult with appropriate officials of the State of Alaska and the Government of Canada. The Secretary shall also consult with the Environmental Protection Agency and the Army Corps of Engineers in developing rules and regulations relating to the environment.

(c) The Secretary shall periodically review and, if in the Secretary's judgment it is appropriate, revise the rules and regulations issued under subsection (a) of this section to reflect any significant biological, environmental, or engineering data which come to the Secretary's attention.

ADEQUACY OF THE DEPARTMENT OF THE INTERIOR'S LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT

SEC. 2006. (a) The "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain prepared pursuant to section 1002 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3142), and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), is hereby found by the Congress to be compatible and consistent with the major purposes and policies of the National Environmental Policy Act of 1969 with respect to actions authorized to be taken by the Secretary to develop and promulgate the regulations for the establishment of a leasing program authorized by this title prior to conducting the first lease sale, and therefore, nothing in the National Environmental Policy Act of 1969 shall require any further environmental analysis or documentation in the development and promulgation of such regulations.

(b) Except as provided in subsection (a) of this section, nothing in this title shall be considered or construed as otherwise limiting, amending, or affecting in any way the applicability of section 102(2)(C) of the National Environmental Policy Act of 1969 or its implementing regulations to all phases of oil and gas leasing, exploration, development and production and related activities conducted under or associated with the leasing program authorized by this title, nor shall anything in this title, except as provided in section 2022 of this title, be considered or construed as in any way limiting, amending, or affecting the applicability of any other Federal law or State law not in conflict with Federal law relating to the protection of the environment.

LEASE SALES

SEC. 2007. (a) Lands may be leased pursuant to this title to any person qualified to obtain a lease for deposits of oil and gas under the Mineral Leasing Act, as amended (30 U.S.C. 181).

(b) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of sealed nominations for any area in the Coastal Plain for inclusion in, or exclusion from, a lease sale;

(2) public notice of and comment on designation of areas to be included in, or excluded from, a lease sale;

(3) review and comment by the State of Alaska and local governments in Alaska which may be affected by oil and gas exploration, development or production activities on the Coastal Plain on the schedule, configuration, and terms and conditions of each proposed lease sale; and

(4) periodic consultation with the State of Alaska and local governments in Alaska, oil and gas lessees, and representatives of other individuals or organizations engaged in activity in or on the Coastal Plain including those involved in subsistence uses and recreational activities.

(c) The Secretary shall, by regulation, provide for lease sales of lands on the Coastal Plain. When lease sales are to be held, they shall occur after the nomination process provided for in subsection (b) of this section. For the first least sale, the Secretary shall, consistent with the requirements set forth in subtitle D of this title, offer for lease those acres nominated pursuant to subsection (b), giving preference to those acres receiving the greater number of nominations, but not to exceed a total of three hundred thousand acres. If the total acreage nominated is less than three hundred thousand acres, the Secretary shall include in such sale any other acreage which the Secretary believes has the highest resource potential, but in no event shall more than three hundred thousand acres of the Coastal Plain be offered in such sale. Thereafter, no more than three hundred thousand acres of the Coastal Plain may be leased in any one lease sale. The initial lease sale shall be held within eighteen months of the issuance of final regulations by the Secretary. The second lease sale shall be held twenty-four months after the initial sale, with additional sales every twenty-four months thereafter so long as sufficient interest in development exists to warrant, in the Secretary's judgment, the conduct of such sales.

(d) Areas of the Coastal Plain deemed by the Secretary to be of particular environmental sensitivity may be excluded from leasing by the Secretary. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives ninety days in advance of excluding any such areas from leasing. If the Secretary later determines that exploration, development, or production will result in no significant adverse effect on fish and wildlife, their habitat, and the environment, the Secretary shall, consistent with the provisions of subsection (c) of this section, offer such lands for leasing.

GRANT OF LEASES BY THE SECRETARY OF THE INTERIOR

SEC. 2008. (a) Consistent with the provisions of section 2004(a)(2) of this title, the Secretary is authorized to grant to the highest responsible qualified bidder by sealed competitive cash bonus bid any lands to be leased on the Coastal Plain upon payment by the lessee of such bonus as may be accepted by the Secretary. The royalty shall be fixed in the lease and shall be not less than 12½ per cent in amount or value of the production removed or sold from the lease.

(b) The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this title to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established for any prior lease to which such requirements and standard applied. Prior to making such determination with respect to any such entity the Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned, the Secretary may issue an oil and gas lease to the entity under this title.

(c)(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids,

the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid or the imposition of terms or conditions on any lease, as may be appropriate to prevent any situation which may substantially lessen competition. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease would create or maintain a situation which may substantially lessen competition, the Secretary may—

(A) refuse to accept an otherwise qualified bid for such lease, or refuse to issue such lease, notwithstanding subsection (a) of this section; or

(B) modify or impose terms or conditions on the lease, consistent with advice provided by the Attorney General.

(4) The Secretary may issue a lease notwithstanding adverse advice from the Attorney General, or refuse to impose recommended terms or conditions, if the Secretary makes specific findings that approval of the lease is necessary to carry out the purposes of this title, that approval is consistent with the public interest, and that there are no reasonably available alternatives that would have significantly less anticompetitive effects. In such event, the Secretary must notify the lessee and the Attorney General of his findings.

(5) Nothing in this subsection shall restrict the authority of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(d) Nothing in this title shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(e) As used in this section, "antitrust review" means an "antitrust investigation" for the purpose of the Antitrust Civil Process Act (15 U.S.C. 1311).

LEASE TERMS AND CONDITIONS

SEC. 2009. An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not to exceed two thousand five hundred and sixty acres, or four surveyed or protracted sections, whichever is larger, which shall be as compact in form as possible: *Provided*, That the Secretary is authorized to lease on a case-by-case basis units of up to 3,840 acres when necessary to consolidate partial tracts adjacent to the external boundaries of the Coastal Plain;

(2) be for an initial period of ten years and shall be extended for so long thereafter as oil or gas is produced in paying quantities from the lease or unit area to which the lease is committed or for so long as drilling or reworking operations, as approved by the Secretary, are conducted on the lease or unit area;

(3) require the payment of royalty as provided for in section 2008 of this title;

(4) require approval of an exploration plan, as provided for in section 2010 of this title;

(5) require approval of a development and production plan, as required in section 2010 of this title;

(6) require posting of bond required by section 2011 of this title;

(7) provide for the suspension of the lease during the initial lease term or thereafter pursuant to section 2012 of this title;

(8) provide for the cancellation of the lease during the initial lease term or thereafter pursuant to section 2013 of this title;

(9) contain the terms and conditions relating to protection of fish and wildlife, their habitat, and the environment, as required by subtitle D of this title;

(10) forbid the flaring of natural gas from any well unless the Secretary finds that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations;

(11) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(12) contain such other provisions as the Secretary determines necessary to ensure compliance with this title and the regulations issued under it.

EXPLORATION AND DEVELOPMENT AND PRODUCTION PLANS

SEC. 2010. (a) All exploration activities pursuant to any lease issued or maintained under this title shall be conducted in accordance with an approved exploration plan or an approved revision of such plan. Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with this title and other applicable law.

(b) All development and production pursuant to a lease issued or maintained pursuant to this title shall be conducted in accordance with an approved development and production plan. Prior to commencing development or production pursuant to any oil and gas lease issued or maintained under this title, the holder thereof shall submit a development and production plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any region of the Coastal Plain, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if the Secretary finds that such plan is consistent with this title and other applicable law.

(c) Exploration plans and development and production plans shall include where applicable—

(1) the names and legal addresses of the following persons: the operator, contractors, subcontractors and the owners or lessees other than the operator;

(2) a map or maps showing—

(A) the location of a point of reference selected by the operator within the area covered by the plan of operations showing, in relation to that point, existing and proposed access routes or roads within the area, the boundaries of proposed surface disturbance and location of all survey lines;

(B) the location of proposed drilling sites, wellsite layout, and all surface facilities;

(C) sources of construction materials within the area including but not limited to water and gravel; and

(D) the location of ancillary facilities including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips. A point of reference selected by the operator within the area of operations shall be marked with a ground monument;

(3) a description of—

(A) all surface and ancillary facilities, including but not limited to camps, sanitary facilities, water supply, disposal facilities, pipelines, fuel storage facilities, storage facilities, base of operations, and airstrips;

(B) the major equipment to be used in the operations, including but not limited to equipment and methods of transporting all waters used in or produced by operations, and the proposed method of transporting such equipment within the area covered by the plan of operations including to and from the site; and

(C) construction materials within the area including but not limited to water and gravel;

(4) an estimated schedule for any phase of operations of which review by the Secretary is sought and the anticipated date of operation completion;

(5) the nature and extent of proposed operations;

(6) a description of all licenses and permits necessary to carry out the plan;

(7) plans for reclamation, including:

(A) the anticipated reclamation work to be performed;

(B) a proposed schedule of reclamation activities to be performed; and

(C) a detailed estimate of reclamation costs;

(8) methods for the storage and disposal of all wastes and hazardous and toxic substances;

(9) an affidavit stating that the operations planned will be in compliance with all applicable Federal, State, and local laws and regulations;

(10) contingency plans in case of spills, leaks, or other accidents;

(11) certification that the plan complies with the State of Alaska's approved coastal zone management program, if required by the Coastal Zone Management Act of 1972, as amended, and the date such certification was submitted to the appropriate State agency for review pursuant to section 307(c)(3) of that Act; and

(12) such additional information as may be required by the Secretary to ensure that the proposed activities are consistent with this title, as well as other applicable Federal and State environmental laws.

(d)(1) After an exploration or development and production plan is submitted for approval, the Secretary shall promptly publish notice of the submission and availability of the text of the proposed plan in the Federal Register and a newspaper of general circulation in the State of Alaska and provide an opportunity for written public comment.

(2) Within one hundred and twenty days after receiving an exploration or develop-

ment and production plan; or when consistency certification is required under the Coastal Zone Management Act of 1972, within thirty days after the State of Alaska concurs, or is conclusively presumed to concur, with the consistency certification accompanying the plan pursuant to section 307(c)(B) (i) or (ii) of the Coastal Zone Management Act of 1972 or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act, whichever period is later, the Secretary shall determine, after taking into account any comment received under paragraph (1) of this subsection, whether the activities proposed in the plan are consistent with this title and other applicable provisions of Federal law and State law not in conflict with Federal law. If that determination is in the affirmative, the Secretary shall return the plan along with a statement of any modification necessary for its approval. The Secretary, as a condition of approving any plan under this section—

(A) may require modifications to the plan that the Secretary considers necessary or appropriate to make it consistent with this title and other applicable law. The Secretary shall assess reasonable fees or charges for the reimbursement of all necessary and reasonable research, administrative, monitoring, enforcement, and reporting costs associated with reviewing the plan and monitoring its implementation; and

(B) shall require such periodic reports regarding the carrying out of the drilling and related activities as may be necessary or appropriate for purposes of determining the extent to which the plan is being complied with and the effectiveness of the plan in ensuring that the drilling and related activities are consistent with this title and other applicable provisions of Federal law and State law not in conflict with Federal law.

(e) If at any time while activities are being carried out under a plan approved under this section, the Secretary, on the basis of available information, determines that the continuation of any particular activity under the plan is likely to result in a significant adverse effect on fish or wildlife, or on their habitat, or on the environment, the Secretary, after consultation with the lessee, shall—

(1) make modifications to part or all of the plan as necessary or appropriate to avoid the significant adverse effect;

(2) temporarily suspend part or all of the drilling or related activity under the plan for such time as the Secretary considers necessary or appropriate to avoid significant adverse effect; or

(3) terminate and cancel the plan when actions under paragraphs (1) or (2) will not avoid the significant adverse effect.

BONDING REQUIREMENTS

SEC. 2011. (a) As a condition of approval of an exploration or development and production plan, the lessee shall be required to file with the Secretary a suitable performance bond. The bond shall be conditioned upon compliance with all the terms and conditions of the lease and all applicable laws. Such performance bond is in addition to and not in lieu of any bond or security deposit required by other regulatory authorities or required by any other provision of law. The lessee may file either a surety bond, or a personal bond consisting of cash or negotiable Treasury bonds of the United States. When negotiable Treasury bonds serve as the personal bond, they shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of a default in the performance of the terms and conditions of the lease.

(b)(1) The performance bond shall be in an amount—

(A) to be determined by the Secretary to provide for the estimated full cost of reclamation of the lease site in accordance with an approved or revised exploration or development and production plan; plus

(B) an amount set by the Secretary, consistent with the type of operations proposed, to cover the estimated costs to provide the means for rapid and effective cleanup, and to minimize damages resulting from an oil spill; the escape of gas, refuse, domestic wastewater, or hazardous or toxic substances; or fire caused by oil and gas activities.

(2) The Secretary shall review, and adjust if he determines necessary, the amount of the performance bond at least every three years to ensure its adequacy in accordance with paragraph (1) of this subsection.

(c) In the event that an approved exploration or development and production plan is revised, the Secretary may adjust the amount of the bond to conform to such modified plan.

(d) The responsibility and liability of the lessee and its surety under the bond or security deposit shall continue until such time as the Secretary, after consultation with affected Federal and State agencies, determines that there has been compliance with the terms and conditions of the lease and all applicable law.

(e) Within sixty days after determining that there has been compliance with the terms and conditions of the lease and all applicable laws, the Secretary shall notify the lessee that the period of liability under the bond or security deposit has been terminated.

LEASE SUSPENSION

SEC. 2012. The Secretary may direct or assent to the suspension of operations and production under any lease granted under the terms of this title—

(1) in the interest of conservation of the resource;

(2) where there is no available system to transport the resource; or

(3) where there is a threat of significant adverse effect upon fish or wildlife, their habitat or the environment.

If such a suspension is directed or assented to by the Secretary, any payment of rental prescribed by such lease shall be suspended during such period of suspension of operations and production, and the term of the lease shall be extended by adding any such suspension period thereto.

LEASE CANCELLATION

SEC. 2013. (a) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be canceled by the Secretary if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at the lease owner's record post office address.

(b) Whenever the owner of any producing lease fails to comply with any of the provisions of this title, or of any applicable provision of Federal or State environmental law, or of the lease, or of any regulation issued under this title, such lease may be forfeited and canceled by any appropriate proceeding brought by the Secretary in any United States district court having jurisdiction under this title.

(c)(1) In addition to the authority for lease cancellation provided for by subsections (a) and (b) of this section, any lease may be canceled at any time, if the Secretary determines, after a hearing, that—

(A) continued activity pursuant to such lease is likely to result in a significant adverse effect to fish or wildlife, their habitat, or the environment, or is likely to result in serious harm or damage to human life, to property, or to the national security or defense;

(B) the likelihood of a significant adverse effect will not disappear within a reasonable period of time or the threat of harm or damage will not disappear or decrease to any acceptable extent within a reasonable period of time; and

(C) the advantages of cancellation outweigh the advantages of continuing such lease.

(2) Such cancellation shall not occur unless and until operations under such lease shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease term continuously for a period of five years, or for a lesser period upon request of the lessee.

(3) Cancellation under this subsection shall entitle the lessee to receive such compensation as the lessee demonstrates to the Secretary to be equal to the lesser of—

(A) the fair market value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including the costs of compliance with all applicable regulations and operating orders; liability for cleanup costs or damages, or both, in the case of an oil spill or spill of other hazardous or toxic materials; fines, damages, penalties, or removal costs assessed pursuant to section 2018 of this title or other State or Federal environmental law; any fees paid pursuant to section 2031 of this title; and all other costs reasonably anticipated on the lease; or

(B) the excess, if any, over the lessee's revenues from the lease (plus interest thereon from the date of receipt to the date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee (exclusive of any fines, damages, penalties, or removal costs assessed pursuant to section 2018 of this title or other State or Federal environmental law, and any fees paid pursuant to section 2031 of this title) after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement).

(d) Cancellation of a lease under this section shall in no way release the owner of the lease from the obligation to provide for reclamation of the lease site.

ASSIGNMENT OR SUBLETTING OF LEASES

SEC. 2014. No lease issued under this title shall be assigned or sublet, except with the consent of the Secretary.

RELINQUISHMENT

SEC. 2015. The lessee may, at the discretion of the Secretary, be permitted at any time to make written relinquishment of all rights under any lease issued pursuant to this title. The Secretary shall accept the relinquishment by the lessee of any lease issued under this title where there has not been surface disturbance on the lands covered by the lease.

UNITIZATION

SEC. 2016. For the purpose of conserving the natural resources of any oil or gas pool,

field, or like area, or any part thereof and in order to avoid the unnecessary duplication of facilities, to protect the environment of the Coastal Plain, and to protect correlative rights, the Secretary shall require to the greatest extent practicable, that lessees unite with each other in collectively adopting and operating under a cooperative or unit plan of development for operation of such pool, field, or like area, or any part thereof including the construction of a common carrier pipeline to transport oil and gas to the exterior boundary of the Coastal Plain. The Secretary is also authorized and directed to enter into such agreements as are necessary and appropriate for the protection of the United States against drainage.

OIL AND GAS GEOLOGICAL AND GEOPHYSICAL INFORMATION

SEC. 2017. (a)(1) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this title shall provide the Secretary access to all geological and geophysical data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(2) If interpreted information provided pursuant to paragraph (1) of this subsection is provided in good faith by the lessee or permittee, such lessee or permittee shall not be responsible for any consequence of the use or of reliance upon such interpreted information.

(3) Whenever any geological or geophysical data or information is provided to the Secretary, pursuant to paragraph (1) of this subsection—

(A) by a lessee or permittee, in the form and manner of processing which is utilized by such lessee or permittee in the normal conduct of business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(B) by a lessee or permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information.

(b) The Secretary shall maintain the confidentiality of all geological and geophysical information obtained pursuant to subsection (a) of this section until such time as the Secretary determines that making such data available to the public would not be likely to damage the competitive position of the lessee or permittee.

REMEDIES AND PENALTIES

SEC. 2018. (a) Except as provided in section 2019 of this title, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with, any lease issued under this title. Proceedings may be instituted in the judicial district in which any defendant resides or has his principal place of business, or in the judicial district in which the Coastal Plain is located.

(b) At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which any defendant resides or has his principal place of business, or in the judicial district in which the Coastal Plain is located, for a permanent or temporary injunction, or, in addition to the Secretary's authority under subsection (c), to assess and recover a civil penalty of not more than $20,000 per day for each violation, or for any other appropriate remedy to enforce any provision of this title, any regulation or order issued under this title, or any term of a lease issued pursuant to this title.

(c)(1) Except as provided in paragraph (2), if any person fails to comply with any provision of this title, or any term of a lease issued pursuant to this title or any regulation or order issued under this title, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than $20,000 for each day of the continuance of such failure. The Secretary may assess, collect and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. The Secretary shall, by regulation at least every three years, adjust the penalty specified in this paragraph to reflect any increase in the Consumer Price Index (all items, United States average) as prepared by the Department of Labor.

(2) If a failure described in paragraph (1) constitutes or constituted a threat of an irreparable or immediate significant adverse effect on fish and wildlife or their habitat, property, any mineral deposit, or the marine, coastal plain, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

(d) Any person who knowingly—

(1) violates any provision of this title, any term of a lease issued pursuant to this title, or any regulation or order issued under this title designed to protect health, safety, or the environment or conserve natural resources;

(2) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any application, record, report or other document filed or required to be maintained under this title;

(3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this title; or

(4) reveals any data or information required to be kept confidential by section 2017 of this title,

shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than ten years, or both. Each day that a violation under paragraph (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in paragraph (3) of this subsection, shall constitute a separate violation for purposes of imposition of a fine under this subsection.

(e) Whenever a corporation or other entity is subject to prosecution under subsection (d) of this section, any officer or agent of such corporation or entity who knowingly authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both as provided for under subsection (d) of this section.

(f) The remedies and penalties prescribed in this title shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this title shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(g) In the case of any discharge of oil, hazardous or toxic substances, or any other pollutant that adversely affects the environment in the area of the Coastal Plain or adjacent waters from exploration, development, or production of oil or gas or related activities, conducted by, or on behalf of, a responsible party, each responsible party shall be jointly, severally and strictly liable for the removal costs and damages specified in this subsection that arise out of or directly result from such pollution. The Secretary shall make a determination with respect to such liability for all remedies and penalties prescribed in this title after notice to the responsible party and an opportunity for hearing. It is the responsibility of the responsible party adequately to control and remove the discharge consistent with the National Contingency Plan. Upon failure, inability or delay of the responsible party adequately to control and remove the pollutant, the Federal on scene coordinator, in cooperation with the Secretary, in the exercise of his discretion and in cooperation with other Federal, State, or local agencies or in cooperation with the responsible party, or both, shall have the right to accomplish the control and removal at the expense of the responsible party. Funds contained in the Coastal Plain Liability and Reclamation Fund, provided for by section 2031 of this title, may be used to accomplish such control and removal until such time as sufficient funds can be recovered from the responsible party. The removal costs and damages referred to in this subsection are the following—

(1) all removal costs incurred by the United States;

(2) damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by the Secretary for damages to Federal natural resources or the State of Alaska for damages to State natural resources;

(3) damages for injury to, or economic loss resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property;

(4) damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources;

(5) damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Secretary, where such damages are associated with Federal natural resources, or the State of Alaska, where such damages are associated with State natural resources;

(6) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant; and

(7) damages for net costs of providing increased or additional public services during or after the removal activities, including protection from fire, safety, or health hazards, caused by the discharge, which shall be recoverable by the Secretary, the State of Alaska, or a political subdivision of that State.

With respect to any removal costs and damages recoverable under this title from the Fund or any other Federal compensation and liability fund, until the Fund has been exhausted, no claimant may bring an action for removal costs of damages available under such other funds.

(h)(1) An action for damages under this title shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under subsection (g), the date of completion of the natural resources damage assessment.

(2) An action for recovery of removal costs referred to in subsection (g) must be commenced within 3 years after completion of the removal action.

JUDICIAL REVIEW

SEC. 2019. Any compliant filed seeking judicial review of an action of the Secretary in promulgating any regulation under this title may be filed only in the United States Court of Appeals for the District of Columbia, and such compliant shall be filed within ninety days from the date of such promulgation, or after such date if such compliant is based solely on grounds arising after such ninetieth day, in which case the compliant must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Except as provided in section 2021, any compliant seeking judicial review of any other actions of the Secretary under this title may be filed in any appropriate district court of the United States, and such compliant must be filed within ninety days from the date of the action being challenged, or after such date if such complaint is based solely on grounds arising after such ninetieth day, in which case the complaint must be filed within ninety days after the complainant knew or reasonably should have known of the grounds for the complaint. Action of the Secretary with respect to which review could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

ANNUAL REPORT TO CONGRESS

SEC. 2020. On March 1st of each year following the date of enactment of this title, the Secretary shall prepare and submit to the Congress an annual report on the leasing program authorized by this title.

INTERESTS OF ARCTIC SLOPE REGIONAL CORPORATION AND KAKTOVIK CORPORATION

SEC. 2021. (a) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Arctic slope Regional Corporation and the Kaktovik Inupiat Corporation within the Arctic National Wildlife Refuge, but outside the Coastal Plain are repealed.

(b) The prohibitions and limitations contained in section 1003 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3143) insofar as they have application to lands or interests therein owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation within the Coastal Plan are repealed as of the day after the first lease sale is held pursuant to this title. With respect to the lands and interests therein described in this subsection, no exploratory drilling activities shall be authorized until the day after such lease sale.

(c) The substantive provisions of the final regulations issued pursuant to this title which establish environmental stipulations, terms, and conditions for oil and gas leasing on the Coastal Plan shall apply to the exploration and development of all subsurface property interests owned by the Arctic Slope Regional Corporation within the Arctic National Wildlife Refuge: *Provided*, That prior to issuance of such regulations, oil and gas exploration and development activities on the land and interests therein described in subsection (a), shall be governed by the stipulations set forth in appendix 2 of the August 9, 1983, agreement between the Arctic Slope Regional Corporation and the United States.

(d) Any claims for money damages brought by Arctic Slope Regional Corporation or Kaktovik Inupiat Corporation alleging that the provisions of this title constitute a taking of property rights under the fifth amendment to the Constitution of the United States may be brought within one hundred and twenty days of its enactment. A claim shall be barred unless a compliant is filed within the time specified. Any such complaint shall be filed in the United States Claims Court in accordance with 28 U.S.C. 1491. Any such proceeding shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time, and shall be expedited in every way by such court. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

Subtitle D—Coastal Plain Environmental Protection

NO SIGNIFICANT ADVERSE EFFECT STANDARD TO GOVERN AUTHORIZED COASTAL PLAIN ACTIVITIES

SEC. 2022. (a) The Secretary shall administer this title through regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other provisions designed to ensure that the oil and gas exploration, development, and production activities on the Coastal Plain will be conducted in a manner that avoids significant adverse effect on fish and wildlife, their habitat, and the environment. Activities conducted under this title shall not be subject to findings or determinations of compatibility by the Secretary under the National Wildlife Refuge System Administration Act.

(b) The Secretary shall also require, with respect to any proposed drilling and related activities, that—

(1) a site-specific assessment be made of the probable effects, if any, that the drilling or related activities will have on fish and wildlife, their habitat, and the environment;

(2) a plan be implemented to mitigate any adverse effect assessed under paragraph (1) of this subsection; and

(3) the development of the mitigation plan shall occur after consultation with the agency or agencies having jurisdiction over matters mitigated by the plan.

REGULATIONS TO PROTECT THE COASTAL PLAIN'S FISH AND WILDLIFE RESOURCES, SUBSISTENCE USERS AND THE ENVIRONMENT

SEC. 2023. (a) Prior to implementing the leasing program authorized by subtitle C of this title, the Secretary shall prepare and promulgate regulations, lease terms, conditions, restrictions, prohibitions, stipulations, and other measures designed to ensure that the activities undertaken in the Coastal Plain authorized by this title are conducted in a manner consistent with the purposes and environmental requirements of this title.

(b) The proposed regulations, lease terms, conditions, restrictions, prohibitions, and stipulations for the leasing program authorized by subtitle C of this title shall require compliance with all applicable provisions of Federal and State environmental law and shall also require—

(1) as the Secretary deems appropriate, the safety and environmental mitigation measures set forth in items one through twenty-nine (1 through 29) at pages 167 through 169 of the "Final Legislative Environmental Impact Statement" (April 1987) on the Coastal Plain;

(2) seasonal limitations on exploration, development and related activities, where necessary, to avoid significant adverse effects during periods of concentrated fish and wildlife breeding, denning, nesting, spawning and migration;

(3) that exploration activities, except for surface geological and geophysical studies, be limited to the period between approximately November 1 and May 1 and that exploration activities will be supported by ice roads, winter trails with adequate snow cover, ice pads, ice airstrips, air transport methods, or any other method that would be at least as protective of the environment as the aforementioned: *Provided*, That such exploration activities may be permitted at other times if the Secretary determines, after affording an opportunity for public comment and review, that special circumstances exist necessitating that exploration activities be conducted at other times of the year and the Secretary finds that such exploration will have no significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain;

(4) design safety and construction performance standards for all pipelines and any access and service roads that—

(A) minimize adverse effects upon the passage of migratory species such as caribou to the maximum extent practicable; and

(B) minimize adverse effects upon the flow of surface water by requiring the use of culverts, bridges and other structural devices;

(5) prohibitions or restrictions on public access and use on all airfields, pipeline access, and service roads;

(6) stringent reclamation and rehabilitation requirements, consistent with the standards set forth in this title, requiring the removal from the Coastal Plain of all oil and gas development and production facilities, structures and equipment upon completion of oil and gas production operations: *Provided*, That the Secretary may exempt from the requirements of this paragraph those facilities, structures or equipment which the Secretary determines would assist in the management of the Arctic National Wildlife Refuge and which are donated to the United States for that purpose;

(7) appropriate prohibitions or restrictions on access by all modes of transportation;

(8) appropriate prohibitions or restrictions on sand and gravel extraction;

(9) consolidation of facility siting;

(10) appropriate prohibitions or restrictions on use of explosives;

(11) avoidance, to the extent practicable, of springs, streams and river systems; the protection of natural surface drainage patterns, wetlands, and riparian habitats; and the regulation of methods or techniques for developing or transporting adequate supplies of water for exploratory drilling;

(12) avoidance or reduction of air traffic-related disturbance to fish and wildlife;

(13) treatment and disposal of hazardous and toxic wastes, solid wastes, reserve pit fluids, drilling mud and cuttings, and domestic wastewater, in accordance with applicable Federal and State environmental law;

(14) fuel storage and oil spill contingency planning;

(15) research, monitoring and reporting requirements;

(16) field crew environmental briefings;

(17) minimization of adverse effect on subsistence hunting, fishing, and trapping by subsistence users;

(18) compliance with applicable air and water quality standards;

(19) appropriate seasonal and safety zone designations around well sites within which subsistence hunting and trapping would be limited;

(20) reasonable stipulations for protection of cultural and archaeological resources; and

(21) all other protective environmental stipulations, restrictions, terms, and conditions deemed necessary by the Secretary.

(c) In preparing and promulgating regulations, lease terms, conditions, restrictions, prohibitions, and stipulations under this section, the Secretary shall consider—

(1) the environmental protection standards which governed the initial Coastal Plain exploration program (50 Code of Federal Regulations 37.31–33);

(2) the land use stipulations for exploratory drilling on the KIC-ASRC private lands which are set forth in appendix 2 of the August 9, 1983, agreement between Arctic Slope Regional Corporation and the United States; and

(3) the operational stipulations for Koniag ANWR Interest lands contained in the draft agreement between Koniag, Incorporated and the United States of America on file with the Secretary on January 19, 1989.

SADLEROCHIT SPRING SPECIAL AREA

SEC. 2024. (a)(1) The Sadlerochit Spring Special Area, comprising approximately four thousand acres as depicted on the map referenced in section 2003 of this title, is hereby designated to be a special area. Such special area shall be managed so as to protect and preserve the area's unique and diverse character including its fish, wildlife, and subsistence resource values.

(2) Pursuant to subsection (d) of section 2007 of this title, the Secretary may exclude the Sadlerochit Spring Special Area from leasing.

(3) In the event that the Secretary leases the Sadlerochit Spring Special Area, or any part thereof, for purposes of oil and gas exploration, development, production, and related activities, there shall be no surface occupancy of the lands comprising the Special Area.

(b) The Secretary is authorized to designate other areas of the Coastal Plain as Special Areas if the Secretary determines that they are of unique character and interest so as to require such special protection. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives of the Secretary's intent to designate such areas ninety days in advance of making such designations. Any such areas designated as special areas shall be managed in accordance with the standards set forth in subsection (a) of this section.

FACILITY CONSOLIDATED PLANNING

SEC. 2025. (a) The Secretary shall, after providing for public notice and comment, prepare and update periodically a plan to govern, guide, and direct the siting and construction of facilities for the exploration, development, production, and transportation of Coastal Plain oil and gas resources. This plan shall have the following objectives—

(1) avoiding unnecessary duplication of facilities and activities;

(2) encouraging consolidation of common facilities and activities;

(3) locating or confining facilities and activities to areas which will minimize impact on fish and wildlife, their habitat, and the environment;

(4) utilizing existing facilities wherever practicable; and

(5) enhancing compatibility between wildlife values and development activities.

(b) The plan prepared under this section shall supplement any comprehensive conservation plan prepared pursuant to the requirements of section 304(g) of the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2394).

RIGHTS-OF-WAY ACROSS THE COASTAL PLAIN

SEC. 2026. The Secretary is authorized to grant under section 28 of the Mineral Leasing Act (30 U.S.C. 185) rights-of-way and easements across the Coastal Plain for the transportation of oil and gas under such terms and conditions as may be necessary so as not to result in a significant adverse effect on the fish and wildlife, their habitat, and the environment of the Coastal Plain. Such terms and conditions shall include requirements that facilities be sited or modified so as to avoid unnecessary duplication of roads and pipelines. The regulations issued pursuant to this title shall include provisions regarding the granting of rights-of-way across the Coastal Plain. The provisions of title XI of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3161 et seq.) and the provisions of the National Wildlife Refuge System Administration Act relating to rights-of-way and easements shall not apply to rights-of-way and easements across the Coastal Plain.

ENVIRONMENTAL STUDIES

SEC. 2027. In addition to any other environmental studies required by law, subsequent to exploring or developing any area or region of the Coastal Plain, the Secretary shall conduct such additional studies to establish environmental information as the Secretary deems necessary, and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide information which can be used for comparison with any previously-collected data for the purpose of identifying any effects on the fish or wildlife and their habitat and any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such effects or changes.

ENFORCEMENT OF SAFETY AND ENVIRONMENTAL REGULATIONS

SEC. 2028. (a) The Secretary shall diligently enforce all regulations, lease terms, conditions, restrictions, prohibitions, and stipulations promulgated pursuant to this title.

(b) It shall be the responsibility of any holder of a lease under this title to—

(1) maintain all operations within such lease area in compliance with regulations intended to protect persons and property on, and fish and wildlife, their habitat, and the environment of, the Coastal Plain; and

(2) allow prompt access at the site of any operations subject to regulation under this title to any appropriate Federal or State inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) The Secretary shall promulgate regulations to provide for—

(1) scheduled onsite inspection by the Secretary, at least twice a year, of each facility on the Coastal Plain which is subject to any environmental or safety regulation promulgated pursuant to this title or such provisions contained in any lease issued pursuant to this title to assure compliance with such environmental or safety regulations; and

(2) periodic onsite inspection by the Secretary at least once a year without advance notice to the operator of such facility to assure compliance with all environmental or safety regulations.

Subtitle E—Land Reclamation and Reclamation Liability Fund

LAND RECLAMATION

SEC. 2029. The holder of a lease or leases on lands within the Coastal Plain shall be fully responsible and liable for the reclamation of lands within the Coastal Plain and any other Federal lands adversely affected in connection with exploration, development, or transportation activities on a lease within the Coastal Plain. The holder of a lease shall also be responsible for conducting any land reclamation required as a result of activities conducted on the lease by any of the lease holder's subcontractors or agents. The holder of a lease may not delegate or convey, by contract or otherwise, this responsibility and liability to another party without the express written approval of the Secretary.

STANDARD TO GOVERN LAND RECLAMATION

SEC. 2030. The standard to govern the reclamation of lands required to be reclaimed under this title, following their temporary disturbance or upon the conclusion of their use or prolonged commercial production of oil and gas and related activities, shall be reclamation and restoration to a condition capable of supporting the uses which the lands were capable of supporting prior to any exploration, development, or production activities, or upon application by the lessee, to a higher or better use as approved by the Secretary; except that in the case of roads, drill pads, and other gravel-foundation structures, reclamation and restoration shall be to a condition as closely approximating the original condition of such lands as is feasible. Reclamation of lands shall be conducted in a manner that will not itself impair or cause significant adverse effects on fish or wildlife, their habitat, or the environment.

COASTAL PLAIN LIABILITY AND RECLAMATION FUND

SEC. 2031. (a) Within six months of a commercial discovery within the Coastal Plain, the Secretary shall establish the Coastal Plain Liability and Reclamation Fund (the "Reclamation Fund").

(b) The Secretary shall collect from the operator a fee of 5 cents per barrel on commercially produced crude oil from the Coastal Plain at the time and point where such crude oil first leaves the Coastal Plain. The collection of the fee shall cease when $50,000,000 has been accumulated in the Reclamation Fund, and it shall be resumed at any time that the accumulation of revenue in the Reclamation Fund falls below $45,000,000.

(c) All revenues collected under subsection (b) shall be paid into the Reclamation Fund. The Secretary is authorized to pay, to the extent provided in annual appropriation Acts, reasonable costs of administration of the Reclamation Fund from the revenues in the Reclamation Fund. All sums not needed for administration of the Reclamation Fund or making authorized payments out of the Reclamation Fund shall be invested by the Secretary of the Treasury, at the request of the Secretary, in public debt securities with maturities suitable to the needs of the Rec-

lamation Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Income from such securities shall be added to the principal of the Reclamation Fund.

(d) The revenues in the Reclamation Fund shall be available, to the extent provided in annual appropriations Acts and with the approval of the Secretary, for the following purposes:

(1) oil removal costs incurred by the United States;

(2) to compensate promptly any person or entity, public or private, for any direct damages caused by oil and gas exploration, development and production activities on or in the vicinity of the Coastal Plain;

(3) to reclaim any area of the Coastal Plain not reclaimed in accordance with the standard set forth in section 2030 of this title, by the operator or the holder of a lease or leases;

(4) up to $15,000,000 annually to reclaim and restore—

(A) any area of the Arctic National Wildlife Refuge or other North Slope Federal lands affected by past or future oil and gas exploration, development, or production; and

(B) North Slope non-Federal lands affected by future exploration, development, or production on the Coastal Plain which are not reclaimed and restored in accordance with applicable Federal law and with applicable State law not in conflict with Federal law;

(5) up to $2,000,000 annually to the Secretary to monitor and conduct research on fish and wildlife species which utilize the land and water resources of the Coastal Plain; and

(6) to reclaim at the conclusion of the period of exploration, development and production with respect to any lease, any area of the Coastal Plain and related lands which have not been properly reclaimed by the operator or lease holder.

(e) The United States shall have legal recourse against any party or entity who is responsible for the reclamation of any area within the Coastal Plain, to recover any funds expended under paragraphs (1), (2), (3), (4), and (6) of this subsection due to a failure by the responsible party to reclaim such area as required by this title: *Provided*, That such right of recovery shall not be available against any Alaska Natives conducting traditional subsistence use activities. Any funds so recovered shall be deposited in the Reclamation Fund.

(f) Any moneys remaining in the Reclamation Fund fifty years after the period of active oil and gas exploration, development, production, and reclamation has been concluded in the Coastal Plain shall be paid into the miscellaneous receipts of the Treasury of the United States.

Subtitle F—Disposition of Oil and Gas Revenues

DISTRIBUTION OF REVENUES

SEC. 2032. (a) Beginning the first month of fiscal year 1993 and continuing each following month, the Secretary shall deduct from all money received that month from competitive bids, sales, bonuses, royalties, rents, fees (other than fees collected under section 2010(d)(2)(A) and section 2031(b) of this part, interest charges, or other income (other than Federal income tax) derived from leasing oil and gas resources within the Coastal Plain an amount equal to the percentage of the unreimbursed costs incurred by the Department of the Interior in carrying out the oil and gas program authorized by this part that the Secretary determines appropriate. The Secretary shall deposit the amount deducted into the miscellaneous receipts account in the Treasury.

(b) Notwithstanding any other law, after deducting the amount under subsection (a), the Secretary shall deposit 50 percent of the remaining money into a special fund in the Treasury, to be immediately available without fiscal year limitation, for payment to the State of Alaska and 50 percent into the miscellaneous receipts account in the Treasury.

JUDICIAL REVIEW

SEC. 2033. (a) Notwithstanding section 2019 of this title, any legal action, including action for declaratory judgment, to challenge section 2032 of this title, shall be assigned for hearing and completed at the earliest possible date; shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time; and shall be expedited in every way by such court. Any such action shall be brought in an appropriate United States district court within ninety days of enactment of this title. Such action shall be barred unless a complaint is filed within the time specified. Any review of an interlocutory or final judgment, decree, or order of the United States district court in such action may be had only upon direct appeal to the Supreme Court of the United States.

(b) Nothing in this section shall be construed to grant causes of action to any person or to waive any defenses which may be available to the United States.

(c) If any action is brought in accordance with subsection (a), no lease sale shall occur under section 2007 of this title until a final nonappealable decision has been issued in any such action.

TITLE XXI—COASTAL COMMUNITIES IMPACT ASSISTANCE ACT OF 1992

SHORT TITLE

SEC. 2101. This title may be cited as the "Coastal Communities Impact Assistance Act of 1992".

FINDINGS AND PURPOSES

SEC. 2102. (a) The Congress finds that—

(1) The Outer Continental Shelf (OCS) contains significant quantities of natural gas and oil resources that should be developed to meet national energy and economic needs in an environmentally sound manner.

(2) It is in the interest of the Nation for both economic and national security reasons to provide for the orderly and expeditious development of OCS natural gas and oil resources.

(3) The benefits from development of natural gas and oil resources on the OCS mostly accrue to the nation as a whole, while the actual and potential impacts—on infrastructure, services, competing uses and natural resources—are often localized.

(4) Current programs, such as the Land and Water Conservation Fund and the Historic Preservation Fund, do not provide a direct flow of OCS receipts to the coastal communities that are affected by OCS development.

(b) Therefore, the Congress declares that it is the purpose of this title to provide coastal States and eligible counties with impact assistance from revenues derived from proximate OCS natural gas and oil production activities.

Subtitle A—Coastal Communities Impact Assistance

SEC. 2111. DEFINITIONS.—For purposes of this title, the term—

(a) "coastline" has the same meaning that it has in the Submerged Lands Act (43 U.S.C. 1301 et seq.);

(b) "county" means a unit of general government constituting the local jurisdiction immediately below the level of State government. This term includes, but is not limited to counties, parishes, villages and tribal governments which function in lieu of and are not within a county, and in Alaska, borough governments. If State law recognizes an entity of general government that functions in lieu of and is not within the county, the Secretary may recognize such other entities of general government as counties;

(c) "coastal State" means any State of the United States bordering on the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, the Bering Sea or the Gulf of Mexico;

(d) "distance" means minimum great circle distance, measured in statute miles;

(e) "leased tract" means a tract, leased under the Outer Continental Shelf Lands Act for the purposes of drilling for, developing and producing oil and natural gas resources (43 U.S.C. 1337), which is a unit consisting of either a block, a portion of a block, a combination of blocks and/or portions of blocks, as specified in the lease, and as depicted on an OCS Official Protraction Diagram;

(f) "new revenues" means monies received by the United States as royalties (including payments for royalty taken in kind and sold pursuant to 43 U.S.C. 1353), net profit share payments, and related late-payment interest from natural gas and oil leases issued pursuant to the Outer Continental Shelf Lands Act, but only from leased tracts from which such revenues are first received by the United States after the date of enactment of this title.

(g) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of "lands beneath navigable waters' as defined in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)), and of which the subsoil and sea bed are subject to the jurisdiction and control of the United States; and

(h) "Secretary" means the Secretary of the Interior or his designee.

IMPACT ASSISTANCE FORMULA AND PAYMENTS

SEC. 2112. (a) There is established a fund in the Treasury of the United States, which shall be known as the "Coastal Communities Impact Assistance Fund" (hereinafter referred to in this section as "the fund").

(b) The Secretary of the Treasury shall invest excess monies in the fund, at the request of the Secretary of the Interior, in public debt securities and maturities suitable to the needs of the fund, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(c) Notwithstanding section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338), amounts in the fund, together with interest earned from investment thereof, shall be paid at the direction of the Secretary as follows:

(1) The fund shall consist of amounts deposited in the fund from new revenues received beginning with October 1, 1992, representing the amounts determined to be attributable to eligible coastal States and eligible counties pursuant to the formula contained in this section.

(2) The Secretary shall determine the new revenues from any leased tract or portion of a leased tract lying seaward of the zone de-

fined and governed by section 8(g) of the Outer Continental Shelf Lands Act, (43 U.S.C. 1337(g)), the geographic center of which lies within a distance of 200 miles from any part of the coast line of any coastal State (hereinafter referred to as an "eligible coastal State").

(3) The Secretary shall determine the allocable share of new revenues determined under paragraph (2) by multiplying such revenues by 12.5 percent.

(4) The Secretary shall determine the portion of the allocable share of new revenues attributable to each eligible coastal State (hereinafter referred to as the "eligible coastal State's attributable share") based on a fraction which is inversely promotional to the distance between the nearest point on the coast line of the eligible coastal State and the geographic center of the leased tract or portion of the leased tract (to the nearest whole mile). Further, the ratio of an eligible State's attributable share to any other eligible State's attributable share shall be equal to the inverse of the ratio of the distance between the geographic center of the leased tract or portion of the leased tract and the coast lines of the respective eligible coastal States. The sum of the eligible coastal States' attributable shares shall be equal to the allocable share of new revenues determined under paragraph (3).

(5) The Secretary shall pay from the fund 50 percent of the eligible coastal States' attributable share, together with the portion of interest earned from investment of the fund which corresponds to that amount, to that State.

(6) Within 60 days of enactment of this title, the Governor of each eligible coastal State shall provide the Secretary with a list of all counties, as defined herein, that are to be considered for eligibility to receive impact assistance payments. This list must include all counties with borders along the State's coast line and may also include counties which are at the closest point no more than 60 miles from the State's coastline and which are certified by the Governor to have significant impacts from OCS-related activities. For any such county that does not have a border along the coastline, the Governor shall designate a point on the coastline of the nearest county that does have a border along the coastline to serve as the former county's coastline for the purposes of this section. The Governor of any eligible coastal State may modify this list whenever significant changes in OCS activities require a change, but no more frequently than once each year.

(7) The Secretary shall determine, for each county within the eligible coastal State identified by the Governor according to paragraph (6) for which any part of the county's coastline lies within a distance of 200 miles of the geographic center the leased tract or portion of the leased tract (hereinafter referred to as an "eligible county"), the portion of the remaining 50 per centum of the eligible coastal State's attributable share which is attributable to such county (hereinafter referred to as the "eligible county's attributable share") based on a fraction which is inversely proportional to the distance between the nearest point on the coast line of the eligible county and the geographic center of the leased tract or portion of the leased tract (to the nearest whole mile). Further, the ratio of any eligible county's attributable share to any other eligible county's attributable share shall be equal to the inverse of the ratio of the distances between the geographic center of the leased tract or portion of the leased tract and the coast lines of the respective eligible counties. The sum of the eligible counties' attributable shares for all eligible counties within each State shall be equal to 50 percent of the eligible coastal State's attributable share determined under paragraph (4).

(8) The Secretary shall pay from the fund the eligible county's attributable share, together with the portion of interest earned from investment of the fund which corresponds to that amount, to that county.

(9) Payments to eligible coastal States and eligible counties under this section shall be made not later than December 31 of each year from new revenues received and interest earned thereon during the immediately preceding fiscal year, but not earlier than one year following the date of enactment of this title.

(10) The remainder of new revenues and interest earned in the fund not paid to an eligible State or an eligible county under this section shall be disposed of according to the law otherwise applicable to receipts from leases on the Outer Continental Shelf.

REGULATIONS

SEC. 2113. The Secretary may promulgate any necessary or appropriate regulations to implement this title.

TITLE XXII—ALASKA POWER ADMINISTRATION SALE AUTHORIZATION ACT

SHORT TITLE

SEC. 2201. This title may be cited as the "Alaska Power Administration Sale Authorization Act".

SEC. 2202. (a) The Secretary of Energy may sell the Snettisham Hydroelectric Project (referred to in this title as "Snettisham") to the State of Alaska Power Authority (now known as the Alaska Energy Authority and referred to in this title as the "Authority") in accordance with the terms of this title and the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the United States Department of Energy and the Authority.

(b) The Secretary of Energy may sell the Eklutna Hydroelectric Project (referred to in this title as "Eklutna") to the Municipality of Anchorage doing business as Municipal Light and Power, the Chugach Electric Association, Inc., and the Matanuska Electric Association, Inc. (referred to in this title as "Eklutna Purchasers") in accordance with the August 2, 1989, Eklutna Purchase Agreement between the United States Department of Energy and the Eklutna Purchasers.

(c) The heads of other affected Federal departments and agencies including the Secretary of Defense, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture shall assist the Secretary of Energy in implementing the sales authorized by this title.

(d) The Secretary of Energy shall deposit sale proceeds in the Treasury of the United States to the credit of miscellaneous receipts.

(e) There are authorized to be expended such sums as are necessary to prepare or acquire Eklutna and Snettisham assets for sale and conveyance, such preparations to provide efficient title to ensure the beneficial use, enjoyment, and occupancy to the purchasers of the assets to be sold.

SEC. 2203. (a) After the sales authorized by this title take place, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of the Federal Power Act (16 U.S.C. 791a) including its requirements with respect to applications, permits, licenses, and fees, unless a future modification of Eklutna or Snettisham affects Federal lands not used for the two projects when this title takes effect. The foregoing exemptions are subject to the Memorandum of Agreement entered into between the State of Alaska, the Eklutna Purchasers, the Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, remaining in full force and effect. Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

(b) The United States District Court for the District of Alaska has jurisdiction to review decisions made under the Memorandum of Agreement and enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance. An action seeking review of a Fish and Wildlife Program of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought within 90 days of the time the Program is adopted by the Governor of Alaska, or be barred. An action seeking review of implementation of the Program shall be brought within 90 days of the challenged act implementing the Program, or be barred.

(c) With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

(A) at no cost to the Eklutna Purchasers;

(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

(C) sufficient for operation, maintenance, repair, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including land selected by the State of Alaska.

(2) If the Eklutna Purchasers subsequently sell or transfer Eklutna to private ownership, the Bureau of Land Management may assess reasonable and customary fees for continued use of the rights-of-way on lands managed by the Bureau of Land Management and military lands in accordance with current law.

(3) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to and selections of those lands are invalid or relinquished.

(4) With respect only to approximately 853 acres of Eklutna lands identified in paragraphs 1. a., b., and c. of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select and the Secretary of the Interior shall convey to the State improved lands under the selection entitlements in section 6(a) of the Act of July 7, 1958 (Public Law 85-508), and the North Anchorage Land Agreement of January 31, 1983. This conveyance is subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

(d) With respect to the approximately 2,671 acres of Snettisham lands identified in paragraphs 1. a. and b. of Exhibit A of the Snettisham Purchase Agreement, the State of Alaska may select and the Secretary of

the Interior shall convey to the State improved lands under the selection entitlements in section 6(a) of the Act of July 7, 1958 (Public Law 85-508).

(e) For purposes of section 147(d) of the Internal Revenue Code, "1st use" of Snettisham shall be considered to occur pursuant to acquisition of the property by or on behalf of the State of Alaska.

(f) No later than one year after both of the sales authorized in section 2202 of this title have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall:

(1) complete the business of, and close out, the Alaska Power Administration;

(2) prepare and submit to Congress a report documenting the sales; and

(3) return unused balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

(g) The Act of July 31, 1950 (64 Stat. 382), is repealed effective on the date, as determined by the Secretary of Energy, when all Eklutna assets have been conveyed to the Eklutna Purchasers.

(h) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date, as determined by the Secretary of Energy, when all Snettisham assets have been conveyed to the Authority.

(i) As of the later of the two dates determined in subsections (f) and (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

(1) in paragraph (1) by striking subparagraph (C) and redesignating subparagraphs (D), (E), and (F) as (C), (D), and (E) respectively; and

(2) in paragraph (2) by striking, "and the Alaska Power Administration" and inserting "and" after the "Southwestern Power Administration,".

(j) The Act of August 9, 1955, concerning water resources investigations in Alaska (69 Stat. 618), is repealed.

TITLE XXIII—ACCESS TO JUSTICE ACT OF 1992

SEC. 2300. SHORT TITLE.

This title may be cited as the "Access to Justice Act of 1992".

SEC. 2301. FEDERAL DIVERSITY JURISDICTION; SUM IN CONTROVERSY.

Section 1332 of title 28, United States Code, is amended by redesignating subsection (d) as subsection (g) and inserting after subsection (c) the following new subsections:

"(d) In determining whether a matter in controversy exceeds the sum or value of $50,000, the amount of damages for pain and suffering or metal anguish, punitive or exemplary damages, and attorney's fees or costs shall not be included.

"(e) On February 1 of each year, the monetary amounts referred to in subsections (a), (b), and (d) shall each be adjusted to the nearest thousand dollars to reflect the change in the Consumer Price Index for All Urban Consumers (CPI-U), United States City Average, All Items, under its current official reference base as designated by the Bureau of Labor Statistics, United States Department of Labor. The adjusted amounts shall be attained by multiplying the relevant monetary amount by the annual average CPI-U for the most recent calendar year, and then dividing that sum by the annual average CPI-U for 1992.".

SEC. 2302. DIVERSITY OF CITIZENSHIP JURISDICTION; AWARD OF ATTORNEY'S FEES TO PREVAILING PARTY.

Section 1332 of title 28, United States Code, is amended by adding after subsection (e) the following new subsection:

"(f) For the purposes of this section:

"(1) The prevailing party shall be entitled to attorney's fees only to the extent that such party prevails on any position or claim advanced during the litigation. The sum of entitled attorney's fees shall be paid by the non-prevailing party but shall not exceed the attorney's fees of the non-prevailing party with regard to such position or claim. If the non-prevailing party receives services under a contingent fee agreement, the sum of the entitled attorney's fee shall not exceed the reasonable value of those services.

"(2) Counsel of record in actions under this section shall maintain accurate, complete records of hours worked on the matter regardless of the fee arrangement with his client.

"(3) The term 'prevailing party' means a party to an action who obtains a favorable final judgment (other than by settlement), exclusive of interest, on all or a portion of the claims asserted during the litigation.

"(4) The court may, in its discretion, limit the fees recovered under paragraph (1) of this section if the court finds special circumstances that make payment of such fees unjust.

"(5) This subsection shall not apply to any action removed from a state court pursuant to section 1441 of title 28, United States Code, or to the United States or any state, agency of the United States or any state, or any official, officer or employee of a federal or state agency.".

SEC. 2303. AMENDMENT TO EQUAL ACCESS TO JUSTICE ACT.

(a) Subsection (d)(2)(A)(ii) of section 2412 of title 28, United States Code, is amended by striking out "or a special factor, such as the limited availability of qualified attorneys for the proceedings involved," and inserting in lieu thereof "as reflected by the change in the Consumer Price Index for All Urban Consumers (CPI-U), United States City Average, All Items, under its current official reference base as designated by the Bureau of Labor Statistics, United States Department of Labor.".

(b) Subsection (d) of Section 2412 of title 28, United States Code, is amended by adding the following new paragraph after paragraph (d)(5):

"(6)(A) If a court determines that the cost of living adjustment permitted by paragraph (d)(2)(a)(ii) should be made in a particular case, it shall calculate the adjustment in accordance with this paragraph. When compensable services are rendered in more than one calendar year, an adjustment shall be made for each year in which compensable services are rendered.

(i) When compensable services are rendered in the present calendar year, the hourly rate shall be calculated by multiplying $75 times the CPI-U for the month in which the last compensable services were rendered, and then dividing that sum by the CPI-U for October, 1991.

(ii) When compensable services are rendered in more than one calendar year, the adjustment for services rendered in the present calendar year shall be calculated using the formula set forth in (i) above. The hourly rate for services rendered in each previous calendar year shall be calculated by multiplying $75 times the annual average CPI-U for the year in which the services were rendered, and then dividing that sum by the CPI-U for October, 1981.".

SEC. 2304. PRIOR NOTICE AS A PREREQUISITE TO BRINGING SUIT IN THE UNITED STATES DISTRICT COURT.

Title 28 of the United States Code is amended by adding a new section 483 as follows:

"§ 483 Prior Notice To Suit

"(a) At least 30 days before filing suit, a claimant shall transmit written notice to the intended defendant or defendants of the specific claims involved, including the amount of actual damages and expenses incurred and to be incurred. The claimant shall transmit such notice to the intended defendant or defendants at an address reasonably calculated to provide actual notice to each such party. For purposes of this section, 'transmit' shall mean to mail by first class-mail, postage prepaid, or contract for delivery by any company which physically delivers correspondence as a commercial service to the public in its regular course of business. A certificate of service evidencing compliance with this subsection shall be filed with the court at the commencement of the action.

"(b) In the event the applicable statute of limitations for that action would expire during the period of notice, the statute of limitations shall expire on the thirtieth day from the date written notice was transmitted to the intended defendant or defendants. The parties may by written agreement extend the tolling period not to exceed 90 days.

"(c) The requirements of this section shall not apply—

"(1) in any action to seize or forfeit assets subject to forfeiture or in any bankruptcy, insolvency, receivership, conservatorship, or liquidation proceeding;

"(2) where the assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation or destruction, or where the defendant is subject to flight;

"(3) where a written notice prior to filing suit is otherwise required by law, or where the claimant has made a prior attempt in writing to settle the claim with the defendant;

"(4) in proceedings to enforce a civil investigative demand or an administrative summons;

"(5) in actions to foreclose liens; or

"(6) in actions pertaining to temporary restraining orders, preliminary injunctive relief, fraudulent conveyance of property, or in other types of actions which by their nature compel immediate resort to the courts.

"(d) In the event the district court finds that the requirements of subsection (a) of this section have not been fulfilled by the claimant, and such defect is asserted by the defendant within 60 days of service of the summons or complaint upon such defendant, the claim shall be dismissed without prejudice and the costs of such action, including attorney's fees, shall be imposed upon the claimant. Whenever an action is dimissed under this section, the claimant may refile such claim within 60 days after dismissal regardless of any statutory limitations period if: (1) during the 60 days after dismissal, notice is effected under subsection (a) of this section and, (2) the original action was timely filed in accordance with subsection (b).".

SEC. 2305. AWARD OF ATTORNEY'S FEES IN DISPUTES INVOLVING THE UNITED STATES.

Title 28 of the United States Code is amended by adding a new section 2412a following 2412 as follows:

"§ 2412a Award of Attorney's Fees in Disputes Involving the United States

"(a) Except as otherwise specifically provided by statute, the United States is authorized to enter into an agreement which provides that attorney's fees may be awarded against the United States or any other party to the litigation—

"(1) where the United States commenced the suit or

"(2) in civil litigation involving disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), including litigation before boards of contract appeals pursuant section 606 and 607 of title 41, United States Code; or

"(3) where the United States and another party have agreed to the use of outcome-determinative mediation, the mediation has resulted in a determination, and the United States or the other party has given notice pursuant to section 484(b)(8) of title 28, United States Code, pertaining to outcome-deteminative mediation, that either party accepts the determination. In this event, section 484(b)(8)(A)–(8)(C) of title 28, United States Code, pertaining to award of costs and attorney's fees, shall apply to the award of attorney's fees.

"(b) The following standards shall apply to the award of any attorney's fees pursuant to subsection (a) (1) or (2):

"(1) Attorney's fees may be awarded only to a prevailing party in the litigation, subject to paragraphs (b)(2) and (3). The prevailing party shall be entitled to attorney's fees from the non-prevailing party with respect to and only to the extent that such party prevails on any claim advanced during the litigation, except that the sum of entitled attorney's fees shall not exceed the attorney's fees of the non-prevailing party with regard to such claim.

"(2) In determining the amount of attorney's fees for a private party, the court or board shall take into account the degree of success obtained by that party relative to its original claim or claims, the prevailing market rates in the area for the kind and quality of the legal services furnished, and any other factors relevant to whether an award of attorney's fees would be reasonable and, if so, what a reasonable amount of attorney's fees would be.

"(3) In determining the amount of attorney's fees of the United States, the court or board shall determine the number of hours spent by the attorneys employed by the United States on the litigation multiplied by the salaries and benefits paid those attorneys, and an amount for overhead, computed as an hourly rate.

"(c) A party who files an application for an award of attorney's fees and expenses against the United States under any other provision of law may not pursue an award of attorney's fees under this section. A party who files an application for an award of attorney's fees under this section may not pursue an award of attorney's fees and expenses under any other provision of law. A party who agrees to mediation under section 484 of title 28, United States Code may seek an award of attorney's fees only under this section and section 484 of title 28, United States Code.

"(d) A party seeking an award of attorney's fees under this section shall file an application for fees within thirty days of final judgment in the action. The application shall show that the party is eligible to receive an award under this section and the amount sought, including an itemized statement from any attorney appearing on behalf of the party which sets forth the actual time expended and the rate at which fees are computed. Within thirty days after service of the fee application upon the party against whom the fees are sought to be awarded, that party may file a response setting forth its reasons why an award of fees would not be reasonable or why the amount of fees should be reduced. Where an award of attorney's fees is sought against any party, the attorney for that party shall submit a statement of the total amount of attorney's fees incurred in the litigation in order that the court or board may determine that the fees sought in the application do not exceed the amount of fees incurred by that party.

"(e) As provided in appropriations Acts, agreements may be entered into as authorized by this section. Awards of attorney's fees received by an agency on behalf of the United States pursuant to this section shall be credited to an appropriate account of that agency. To the extent provided in advance in appropriation Acts, such amounts shall be available only to pay awards of attorney's fees against that agency on behalf of the United States made pursuant to his section. Each such agency is authorized to pay any shortfall caused if amounts credited to such account are insufficient to pay amounts awarded against such agency on behalf of the United States from funds currently available in such account.

"(f) For the purposes of this section:

"(1) 'United States' includes any agency and any official of the United States acting in his or her official capacity;

"(2) 'final judgment' means a judgment that is final and not appealable; and

"(3) 'prevailing party' means a party to an action who obtains a favorable final judgment other than by settlement, exclusive of interest, on all or a portion of the claims asserted during the litigation.".

SEC. 2306. AVOIDANCE OF LITIGATION THROUGH MULTI-DOOR COURTHOUSES.

Title 28 of the United States Code is amended by adding a new section 484 as follows:

"§ 484 Multi-Door Courthouses

"(a) The chief judge of each Federal judicial circuit shall designate one district within the jurisdiction of the circuit to be a pilot Multi-Door Courthouse district; *Provided, however*, That the United States Court of Appeals for the District of Columbia Circuit shall not be included. The United States Court of Appeals for the Federal circuit shall designate the United States Claims Court to be a pilot Multi-Door Courthouse. Such designation, and the program established by this section, shall terminate at the expiration of a three-year period following such designation unless renewed by an Act of Congress.

"(b)(1) Every court which has been designated as a Multi-Door Courthouse, as set forth in subsection (a), shall, not later than 6 months after the effective date of this Act, establish an alternative dispute resolution plan.

"(2) The alternative dispute resolution plan shall include, but not be limited to—

"(A) procedures for limited discovery;

"(B) confidentiality of proceedings as to possible subsequent pretrial and trial actions; and

"(C) the selection, use, and payment of non-judicial personnel (also referred to in this section as neutrals, mediators, or arbitrators) who may be selected to conduct alternative dispute resolution procedures.

"(3) The plan shall also establish standards for determining which cases are appropriate for alternative dispute resolution, considering such factors as whether factual issues predominate over legal issues, whether the case involves complex or novel legal issues requiring judicial action, and any other factors the court considers relevant.

"(4) Each plan shall provide that each federal judge or, in a case assigned to a magistrate judge, magistrate judge in a Multi-Door Courthouse established under subsection (a) shall conduct a conference with counsel within 120 days after a complaint is filed to review non-binding, voluntary alternative dispute resolution procedures that may be used in lieu of litigation to resolve the claims in controversy.

"(5) Outcome-determinative mediation under this section means a procedure in which either a single mediator or a panel of three mediators selected by or under the direction of a federal district court provides the parties with a dollar amount determination that would be awarded if the case is tried.

"(6) Each plan shall authorize the parties, if they agree, to utilize non-binding alternative dispute resolution procedures that may be used in lieu of litigation to resolve the claims in controversy. These non-binding alternative dispute resolution procedures shall include, but are not limited to, early neutral evaluation, traditional mediation, outcome-determinative mediation, minitrials, summary jury trials, and arbitration.

"(7) Each plan shall provide that—

"(A) the parties may agree as to the use of any alternative dispute resolution procedure listed in the alternative dispute resolution plan to effectuate prompt resolution of the claims involved; and

"(B) the parties may choose to utilize the alternative dispute resolution procedures and neutrals made available by their court or may, if all parties and the court agree, utilize the services of other neutrals not designated in accordance with the court's alternative dispute resolution plan.

"(8) Each plan shall also provide that if the parties choose outcome-determinative mediation and in the event a determination is reached—

"(A) either or any party may give notice that it intends to accept that determination, while the other party or parties remain free to reject the determination and continue with the litigation. If all parties reject that determination, no costs or attorney's fees shall be assessed against any party;

"(B) a plaintiff, including the United States or an officer or agency thereof, who rejects the determination and fails to obtain a final judgment that is at least ten percent greater than the determination shall pay the defendant's costs, as set forth in section 1920 of title 28, United States Code, and reasonable attorney's fees, as set forth in section 2412a of title 28, United States Code, incurred after the rejection of the determination; and

"(C) a defendant, including the United States and officers and agencies thereof, who rejects the determination and fails to obtain a final judgment that is at least ten percent less than the determination shall pay the plaintiff's costs, as set forth in section 1920 of title 28, United States Code, and attorney's fees, as established in section 2412a of title 28, United States Code, incurred after rejection of the determination.

"(9) In carrying out their plans, the district courts are authorized to utilize the volunteer services of non-judicial personnel (also known as neutrals, mediators, and arbitrators) to conduct alternative dispute reso-

lution procedures. The courts are also authorized to establish and pay, subject to amounts provided in advance in appropriations acts and to limits set by the Judicial Conference of the United States, the amount of compensation, if any, that each neutral shall receive for services rendered in each case.".

SEC. 2307. FLEXIBLE ASSIGNMENT OF DISTRICT COURT JUDGES.

(a) Section 292(d) of title 28, United States Code, is amended by striking out "upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises." and inserting in lieu thereof "whenever the business of that court so requires.".

(b) Section 604(a) of title 28, United States Code, is amended—

(1) by striking out "; and" in paragraph (23) and inserting in lieu thereof ";";

(2) by redesignating the two paragraphs currently both designated as paragraph (24) as paragraph (25) and paragraph (26), respectively;

(3) by striking the period at the end of new paragraph (25) inserting in lieu thereof "; and"; and

(4) by adding the following new paragraph immediately after paragraph (23);

"(24) Secure information as to the courts' need for temporary judicial resources to ease overcrowded dockets (including information on delays being encountered in the maintenance of civil suits) and prepare and transmit annually to the Chief Justice, the chief judges of the circuits, the Congress and the Attorney General, statistical data, reports and recommendations summarizing the results of this inquiry;".

SEC. 2308. IMMUNITY OF STATE JUDICIAL OFFICERS.

(a) Section 1988 of title 42, United States Code, is amended by inserting before the period at the end of the second sentence the following: ", except that notwithstanding any other provision of law, no state judicial officer shall be held liable for any costs, including attorney's fees, in any proceeding brought against such judicial officer for an act or omission taken in an official capacity".

(b) Section 1983 of title 42, United States Code, is amended by adding before the period at the end of the first sentence: ", except that in any action brought against a judicial officer for an act or omission committed in such officer's official capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

SEC. 2309. AMENDMENT TO THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT.

(a) Section 1997e of title 42, United States Code, is amended by—

(1) amending (a)(1) to read as follows:

"In any action brought pursuant to section 1983 of title 42, United States Code, by any adult convicted of a crime confined in any jail, prison, or other correctional facility, the court shall continue such case for a period not to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.";

(2) redesignating paragraphs (b) (1) and (2) as paragraphs (b) (2) and (3), respectively; and

(3) adding a new paragraph (b)(1) immediately after paragraph (a)(2) to read as follows:

"(b)(1) Upon the request of a State or local corrections agency, the Attorney General of the United States shall provide the agency with technical advice and assistance in establishing plain, speedy, and effective administrative remedies for inmate grievances.".

(b) Subsection (d) of section 1915 of title 28, United States Code, is amended to read as follows:

"(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief can be granted or is frivolous or malicious.".

SEC. 2310. IMPROVEMENTS IN CASE MANAGEMENT.

Subsection (a) of section 623 of title, 28, United States Code, is amended—

(a) by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively; and

(b) by adding the following new paragraph immediately after paragraph (4):

"(5) study and determine ways in which case and docket management techniques (including alternative dispute resolution techniques) may be applied to improve the cost-effectiveness of litigation and to eliminate unjustified expense and delay, and include in the annual report required by paragraph (3) of this subsection details of the results of the studies and determinations made pursuant to this paragraph;".

SEC. 2311. ASSIGNMENT OF JUDGES; PANELS; HEARING; QUORUM

(a) Subsection (c) of section 46 of title 28, United States Code, is amended to read as follows:

"(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, except that any senior judge of the circuit shall be eligible to participate, at his election, and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member.".

(b) Section 6 of Public Law 95-486 (92 Stat. 1633), is amended to read as follows:

"SEC. 6. Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts.".

SEC. 2312. SEVERABILITY.

If any provision of this Act or the amendments made by this Act or the application of any provision or amendment to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of such provision and amendment to any other person or circumstance shall not be affected by that invalidation.

SEC. 2313. EFFECTIVE DATE.

Except as expressly otherwise provided, this Act shall become effective 90 days after the date of enactment. This Act shall not apply to litigation commenced prior to the effective date except that sections 2308 and 2309 shall apply to civil actions pending in any court on the date of enactment.

TITLE XXIV—HEALTH CARE LIABILITY REFORM AND QUALITY OF CARE IMPROVEMENT ACT

SEC. 2400. SHORT TITLE.

This title may be cited as the "Health Care Liability Reform and Quality of Care Improvement Act of 1992".

Subtitle A—Findings and Purpose

SEC. 2401. FINDINGS.

The Congress finds that:

(a) The Federal Government is a direct provider of health care to many Americans; a source of payment for the health care of a much larger number of Americans through Medicare, Medicaid and other programs; and a promoter of quality assurance efforts. As a result, the Federal Government has a major interest in health care issues, including the availability, cost, and quality of health care.

(b) The rising costs of malpractice insurance, litigation, and liability are contributing significantly to increases in the cost of health care. These and other health care liability problems have adversely affected health care consumers and created tensions among the medical and legal professions, the insurance industry and consumers.

(c) The fear of medical malpractice liability has caused some health care providers to practice unnecessary defensive medicine, adding to health care costs.

(d) This fear of liability and the increased costs adversely impact the ability of health care professionals to continue to practice in high risk specialty areas and certain geographic areas of the country.

(e) Improving the effectiveness of activities to reduce the incidence of health care injuries would reduce the incidence of medical malpractice as well as medical liability.

(f) Improving the effectiveness of the civil judicial system would not only deter frivolous actions which increase health care costs but would result in fair and expeditious compensation for meritorious claims of health care malpractice.

(g) The Federal Government is designing a pilot project, using the Federal Employees Health Benefits Program, to promote alternative dispute resolution procedures on a voluntary basis.

SEC. 2402. PURPOSE

It is the purpose of this title to:

(a) Provide incentives to States to enact health care liability tort reforms and establish alternative dispute resolution mechanisms to achieve efficient, cost effective and expeditious disposition of health care disputes;

(b) Provide incentives to States to adopt quality assurance reforms to reduce the incidence of malpractice; and

(c) Incorporate these reforms on the Federal level through amendments to the Federal Tort Claims Act.

Subtitle B—Health Care Liability Reforms

SEC. 2411. DEFINITIONS.

For purposes of subtitles B and D,

(a) The term "economic damages" means losses for health care facility and medical expenses, lost wages and income, lost employment, burial expenses, and other pecuniary losses incurred by an individual as a result of negligence in the provision of health care services as recognized by State law;

(b) The term "non-economic damages" means losses for physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, and loss of companionship, services, consortium and other non-pecuniary losses incurred by an individual as

a result of negligence in the provision of health care services as recognized by State law;

(c) The term "health care provider" means any individual and any organization or institution that is engaged in the delivery of health care services, and is required by State or Federal law or regulation to be licensed or certified to engage in the delivery of such health care services;

(d) The term "health care liability action" means a civil action or proceeding in any judicial tribunal brought pursuant to State law against a health care provider, alleging that injury was suffered by the plaintiff as the result of any act or omission by a health care provider without regard to the theory of liability asserted in the action. This term excludes civil penalty actions by any State or State agency or officer or by the United States or by any Federal agency or officer;

(e) The term "injury" means an injury, illness, disease, or other harm suffered by an individual as a result of the provision of health care services by a health care provider;

(f) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States.

(g) The term "Secretary" means the Secretary of Health and Human Services; and

(h) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

SEC. 2412. IN GENERAL.

To be eligible to participate in the incentive program provided for in section 2419, the States shall enact, adopt, or otherwise have in effect no later than three years from the date of enactment of this title the health care liability reforms set forth in sections 2413 through 2418.

SEC. 2413. JOINT AND SEVERAL LIABILITY.

(a) In any health care liability action, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount.

(b) Subsection (a) shall not apply with respect to those persons participating in joint conduct in a common scheme by two or more persons who consciously and deliberately agreed to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct resulting in a tortious act and where such acts proximately caused the injury complained of by the plaintiff and for which one or more of such persons is found liable for damages.

SEC. 2414. LIMITATION ON NON-ECONOMIC DAMAGES.

(a) Non-economic damages may not be awarded in an amount in excess of $250,000 in any health care liability action. The Secretary, for good cause, may waive the requirement of this Section in determining a State's compliance with this title pursuant to section 2419.

(b) For purposes of this section, in addition to the parties within the purview of section 2411(d), "any health care liability action" includes all actions (including multiple actions) for damages, and includes all plaintiffs and all defendants in such actions, which arise out of or were caused by the same personal injury or death, whether or not each defendant is a health care provider.

(c) COST-OF-LIVING.—The amount described in subsection (a) shall be adjusted every three years to reflect changes in the cost-of-living index utilized by the Secretary in determination of adjustment in Old Age, Survivors, and Disability Insurance benefits. The first such adjustment shall be made three years after the date of the enactment of this title.

SEC. 2415. COLLATERAL SOURCE BENEFITS.

(a) Except as provided in subsection (c), the total amount of damages received by a plaintiff shall be reduced, in accordance with subsection (b), by any other payment which has been made or which will be made to such plaintiff to compensate such plaintiff for an injury, including payments under—

(1) Federal or State disability or sickness programs;

(2) Federal, State, or private health insurance programs;

(3) private disability insurance programs;

(4) employer wage continuation programs; and

(5) any other source of payment intended to compensate such plaintiff for such injury.

(b) The amount by which an award of damages to a plaintiff for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) which have been made or which will be made to such plaintiff to compensate such plaintiff for such injury, less

(2) the cost of incurred by such plaintiff (or by the spouse, parent, or legal guardian of such plaintiff) to secure the payments described in clause (1).

(c) Subsection (a) shall not apply to any payment which the individual is required by law to repay out of any damages recovered from a negligent health care provider.

SEC. 2416. PERIODIC PAYMENT OF JUDGMENTS.

(a) In any health care liability action subject to this title in which damages for future economic damages are awarded, no health care provider shall be required to pay for such future damages in a single, lump-sum payment but shall be permitted to make periodic payments based on when the damages are found by the court to be likely to occur or at the time such damages accrue.

(b) The court may require such health care provider to purchase an annuity or fund a reversionary trust to make such periodic payments, if the court finds a reasonable basis for concluding that the health care provider may be unable to or will not make the periodic payments.

(c) The judgment of the court awarding such periodic payments may not be reopened at any time to contest, amend, or modify the schedule or amount of the payments in the absence of fraud or any ground permitting relief to be granted after entry of a final judgment.

(d) This subsection shall not be construed to preclude a settlement providing for a single, lump-sum payment.

SEC. 2417. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) IN GENERAL.—It is declared to be the policy of the United States to encourage—

(1) the creation, adoption, and use of alternative dispute resolution mechanisms to achieve the efficient, cost effective and expeditious disposition of civil disputes; and

(2) the modification of procedural and evidentiary rules to the extent feasible to accommodate such alternative dispute resolution techniques.

(b)(1) To encourage the resolution of claims prior to litigation of a health care liability action, the State shall establish at least one alternative dispute resolution mechanism. The Secretary, for the purpose of determining compliance under section 2419, shall deem a State to be in compliance with the requirements of this Section if the State has in effect at least one mediation or pretrial screening panel alternative dispute resolution mechanism specified in regulations issued by the Secretary in consultation with the Attorney General, or if the State has in effect another alternative dispute resolution mechanism which the Secretary, in consultation with the Attorney General, finds to be equally effective in deterring frivolous actions and resulting in fair and expeditious compensation for meritorious claims. The Secretary, in consultation with the Administrative Conference of the United States and the Attorney General, shall promulgate regulations that specify the Secretary's criteria for evaluating the effectiveness of these mechanisms.

(2) The time period during which a proceeding pursuant to this Section is pending shall not be included or counted in determining whether any statute of limitations bars a health care liability action.

SEC. 2418. QUALITY ASSURANCE REFORM.

(a) PROMOTE STATE COOPERATION WITH FEDERAL EFFECTIVENESS RESEARCH EFFORTS.—The State, through the appropriate health authority, shall cooperate with Federal research efforts with respect to patient outcomes, clinical effectiveness and clinical practice guidelines.

(b) IMPROVE THE PERFORMANCE OF STATE MEDICAL BOARDS.—(1) The State, through the appropriate health authority, shall collect, analyze and supply the Secretary with information and data, as specified in regulations to be promulgated by the Secretary, on staffing, revenue, disciplinary actions, expenditures, case-loads of the State Medical Board, and use of continuing medical education programs in order to demonstrate that the State medical boards meet performance criteria established by the Secretary in regulations.

(2) The State, through the appropriate health authority, shall impose a requirement on the State Medical Board to require a physician disciplined by the State Medical Board to take a certain number of continuing education courses as the board requires, with educational outcome measures required, in the subject areas in which the board determines that the physician's knowledge is deficient.

(c) ALTERNATIVE PROGRAMS.—The Secretary, for purposes of determining compliance under section 2419 of this title, shall deem a State in compliance with the requirements of this Section if the State has in effect, instead of the programs described in subsection (b), a program to reduce the incidence of negligence which the Secretary finds to be at least as effective in reducing the incidence of negligence as compliance with the Secretary's standards promulgated under section 2418(b). The Secretary shall promulgate regulations that specify the Secretary's criteria for evaluating the effectiveness of alternatives to section 2418(b), including, for example:

(1) Requirements for risk management systems to be carried out by institutions providing health care in the State.

(2) Quality assurance systems, administered by the State or professional bodies, which review the quality of care rendered by the physicians of the State.

(3) State programs for the promulgation of standards of care in areas of medical practice in which the risk of negligence is greatest and assurance of satisfactory levels of compliance with such standards.

SEC. 2419. STATE IMPLEMENTATION OF HEALTH CARE LIABILITY REFORMS.

(a) IMPLEMENTATION.—The States shall have three years from the effective date of this title in which to enact, adopt, or otherwise comply with the provisions as set forth in sections 2412 through 2418 of this title.

(b) NOTIFICATION.—

(1) Notification by the State shall be submitted to the Secretary, with a Certification by the Chief Executive Officer of the State that, on the date the Notification is submitted, the State has enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this title.

(2) The Notification shall be accompanied by documentation to support the Certification required by this subsection, including copies of relevant State statutes, rules, procedures, regulations, judicial decisions, State constitutional provisions, and opinions of the State Attorney General.

(3) The Notification shall contain such other information, be in such form, and be submitted in such manner, as the Secretary may require.

(c) REVIEW OF NOTIFICATION.—

(1) Within 90 days after receiving a Notification under subsection (b), the Secretary shall review the Notification and determine whether the Notification demonstrates that the State has enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this title.

(2) If the Secretary determines that the Notification makes such a demonstration, the Secretary shall approve the Notification, authorizing the State to participate in the incentive program provided for in subsection (f).

(3) If, after reviewing a Notification under this subsection, the Secretary determines that the Notification does not make the demonstration required under such subsection, the Secretary shall, within 15 days after making such determination, provide the State which submitted such Notification with a written notice specifying such determination and containing recommendations for revisions which would cause the Notification of the State to be approved.

(4) Within 30 days after receiving a revised Notification, the Secretary shall review the revised Notification and determine whether the Notification demonstrates that the State has enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this title. If the Secretary determines that the revised Notification makes such a demonstration, the Secretary shall approve the revised Notification, authorizing the State to participate in the incentive program provided for in subsection (f).

(d) NON-COMPLIANCE.—

(1) If a State fails to submit to the Secretary a Notification or revised Notification pursuant to this Section, the Secretary shall, within 15 days after the time period under subsection (b)(1) expires, send the State written notice of determination of noncompliance.

(2) If, during the time period determined by the Secretary under subsection (c), the Secretary determines that a revised Notification does not demonstrate that the State has enacted, adopted, or otherwise implemented the health care liability reforms set forth in this title, and that the State's revised Notification is not approved, or if a determination of noncompliance is made pursuant to subsection (d)(1)(A), the Secretary shall, within 15 days after making such determination, provide the State with written notice of noncompliance, including the determination of the Secretary and the reasons therefore.

(3) If, during any time period after a Notification is approved under subsection (c), the Secretary determines that the State does not have currently in effect the health care liability reforms upon which the Notification was approved, the Secretary shall within 30 days of making such determination provide the State with written notice of such determination and withdraw the approval of the Notification. Such notice shall specify—

(A) the determination of the Secretary and the reasons therefor;

(B) that the Secretary will require the State, within 60 days after receipt of such notice, to return all funds provided to the State under the incentive program provided for in this title in subsection (f) of this section which have not been expended by the State at the time such notice is received unless the State takes such corrective action as may be necessary to ensure that the State has such health care liability reforms in effect in the State and presents a Certification to this effect to the Secretary in accordance with subsection (b).

(e) CONSULTATION WITH THE ATTORNEY GENERAL.—In making determinations of compliance or noncompliance pursuant to this title, the Secretary shall consult with the Attorney General with respect to any issues of tort law or policy.

(f) INCENTIVE PROGRAM—DISTRIBUTION OF FUNDS.—The Secretary shall establish an administrative process to.—

(1) withhold from each State two percent of the amount computed under section 1396b(a)(7) of title 42, United States Code, and from each hospital one percent of the total amounts computed under section 1395ww(d)(1) of title 42, United States Code for each fiscal year beginning after the initial three-year period after the enactment of this title; and

(2) distribute that part of the withheld funds comprising two percent of the amount computed under section 1396b(a)(7) of title 42, United States Code, on a proportional basis among States whose Notifications have been approved by the Secretary pursuant to this Section, and that part of the withheld funds comprising one percent of the total amounts computed under section 1395ww(d)(1) of title 42, United States Code, on a proportional basis among hospitals otherwise entitled to those funds in States whose Notifications have been approved by the Secretary pursuant to this section.

"Proportional basis" means (i) with respect to funds withheld from amounts payable under section 1396b(a)(7) of title 42, United States Code, in proportion to the average Medicaid payments made to a State for the last three preceding fiscal years for which data is available to such payments to all States whose Notifications have been approved by the Secretary, and (ii) with respect to funds withheld from amounts computed under section 1395ww(d)(1) of title 42, United States Code, in proportion to the hospital's share of payments made under that section to all payments to hospitals operating in States whose Notifications have been approved by the Secretary.

(g) CONFORMING AMENDMENTS.—

(1) MEDICAID.—Section 1396b(a)(7) of title 42, United States Code is amended by adding at the end thereof the following sentence: "Effective the first day of the first fiscal year beginning at least three years after the enactment of the Health Care Liability Reform and Quality Care Improvement Act of 1992, a State shall only receive 98 percent of the amount of the payment to which it would otherwise be entitled under this paragraph."

(2) MEDICARE.—Section 1395ww(d)(1) of title 42, United States Code is amended by adding the following sentence at the end thereof: "Effective the first day of the first fiscal year beginning at least three years after the enactment of the Health Care Liability Reform and Quality of Care Improvement Act of 1992, a hospital shall only receive 99 percent of the amount of the payment to which it would otherwise be entitled under this paragraph."

SEC. 2420. In the case of any experimental, pilot, or demonstration project, as defined by regulations promulgated by the Secretary in coordination with the Attorney General, which, in the judgment of the Secretary, is likely to assist in promoting the objectives of this title, in a State or States, the Secretary may waive compliance with any of the requirements in this subtitle to the extent and for the period the Secretary finds necessary to enable such State or States to carry out such project.

Subtitle C—Federal Implementation of Health Care Liability Reforms

SEC. 2421. LIMITATIONS ON LIABILITY.

(1) Section 2674 of title 28, United States Code, is amended by inserting "(a)" at the beginning of the section, and by adding at the end of the section the following new subsections:

"(b)(1) Except as provided in paragraph (2) of this subsection, in any health care liability action the United States shall not be found jointly and severally liable for noneconomic damages, but shall be liable, if at all, only for those noneconomic damages directly attributable to its pro-rata share of fault or responsibility for the injury, and not for noneconomic damages attributable to the pro-rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action) for the injury, including any person bringing the action.

"(2) This subsection shall not apply as between the United States and any person with which it is acting in concert where the concerted action proximately caused the injury for which either the United States or that person is found liable.

"(3) For the purposes of this subsection, 'concerted action' and 'acting in concert' mean the conscious acting together in a common scheme of two or more persons who consciously and deliberately agreed to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct resulting in a tortuous act and where such acts proximately caused the injury complained of by the plaintiff and for which one or more of such persons is found liable for damages.

"(c)(1) Except as provided in paragraph (3), the total amount of damages received by an individual shall be reduced, in accordance with paragraph (2), by any other payment which has been made or which will be made to such individual to compensate such individual for an injury, including payments under—

"(i) Federal or State disability or sickness programs;

"(ii) Federal, State, or private health insurance programs;

"(iii) private disability insurance programs;

"(iv) employer wage continuation programs; and

"(v) any other source of payment intended to compensate such individual for such injury.

"(2) The amount by which an award of damages to an individual for an injury shall be reduced under paragraph (1) shall be—

"(i) the total amount of any payments (other than such award) which have been made or which will be made to such individual to compensate such individual for such injury, less

"(ii) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in clause (i).

"(3) Paragraph (1) shall not apply to any payment which the individual is required by law to repay out of any damages recovered from a negligent health care provider.

"(d)(1) No damages, other than damages for economic loss, shall be awarded in excess of $250,000 in any health care liability action against the United States.

"(2) For purposes of this Section, in addition to the parties within the purview of Section 2411(d) of the Health Care Liability Reform and Quality of Care Improvement Act of 1992, any 'health care liability action' includes all actions (including multiple actions) for damages, and includes all plaintiffs and all defendants in such actions, which arise out of or were caused by the same personal injury or death, whether or not each defendant is a health care provider.

"(3) COST-OF-LIVING.—The amount described in subsection (a) shall be adjusted every three years to reflect changes in the cost-of-living index. The first such adjustment shall be made three years after the date of the enactment of this title. For purposes of this subsection, the 'cost-of-living index' means the cost of living index utilized by the Secretary in determination of adjustment in Old Age, Survivors, and Disability Insurance Benefits."

SEC. 2422. PERIODIC PAYMENTS OF JUDGMENTS.

(1) Chapter 171 of title 28, United States Code, is amended by adding the following new section 2681:

"§ 2681. Periodic payments of judgments.

"In any health care liability action subject to this chapter in which the damages awarded for future economic loss exceed $100,000, the court shall, at the request of the United States, enter an order providing that damages for future economic loss be paid in whole or in part by periodic payments based on when the damages are found likely to occur rather than by a single lump-sum payment. The court shall make findings of fact as to the dollar amount, frequency and duration of the periodic payments. The United States at its discretion may pay the judgment periodically or purchase an annuity or fund a reversionary trust for the same purpose. The judgment of the court shall be final, and shall not be reopened at any time to contest, amend, or modify the schedule or amount of such payments in the absence of fraud or any ground permitting relief to be granted after entry of a final judgment."

(2) The table of sections of chapter 171 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"Sec. 2681. Periodic payments of judgments.".

SEC. 2423. APPLICABILITY OF AMENDMENTS.

(a) State alternative dispute revolution procedures shall not be applicable to the United States.

(b) For the purpose of subtitle C, the term "plaintiff" means any person who has allegedly suffered injury from professional services provided by a health care provider and who brings a health care liability action or who brings such an action on behalf of any person who has allegedly suffered injury from such professional services or who brings such an action because a person allegedly suffered injury from such services.

(c) The amendments made by this subtitle shall apply to all actions filed on or after, and all administrative claims pending on or presented on or after, the date of enactment of this title.

Subtitle D—Construction of Provisions

SEC. 2431. IN GENERAL.

Nothing in this title shall be construed—

(a) to waive or affect any defense of sovereign immunity asserted by any State under any law or by the United States;

(b) to preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(c) to affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;

(d) to create or vest jurisdiction in the district courts of the United States over any health care liability action subject to this title (which is not otherwise properly in Federal district court); or

(e) to prevent the States from enacting, adopting, or otherwise having in effect more comprehensive or additional health care liability reforms than those set forth in this title.

SEC. 2432. SEVERABILITY.

If any provision of this title or the amendments made by this title or the application of the provision to any person or circumstance is held invalid, the remainder of this title and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.

SEC. 2433. EFFECTIVE DATE.

This title shall become effective on its date of enactment.

TITLE XXV—PRODUCT LIABILITY FAIRNESS ACT

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Subtitle A

SHORT TITLE

SEC. 2501. This title may be cited as the "Product Liability Fairness Act".

DEFINITIONS

SEC. 2502. As used in this Act, the term—

(1) "Claimant" means any person who brings a civil action pursuant to this title, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(3) "collateral benefits" means all benefits and advantages received or entitled to be received (regardless of any right any other person has or is entitled to assert for recoupment through subrogation, trust agreement, lien, or otherwise) by any claimant harmed by a product or by any other person as reimbursement of loss because of harm to person or property payable or required to be paid to the claimant, under—

(A) any Federal law or the laws of any State (other than through a claim for breach of an obligation or duty); or

(B) any life, health, or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance, or any benefit received or to be received as a result of participation in any prepaid medical plan or health maintenance organization;

(4) "commerce" means trade, traffic, commerce, or transportation (A) between a place in a State and any place outside of that State; or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(5) "commercial loss" means economic injury, whether direct, incidental, or consequential, including property damage and damage to the product itself;

(6) "economic loss" means any pecuniary loss resulting from harm which is allowed under State law;

(7) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution, and judgment that society expects of its members for the protection of their own interests and the interests of others;

(8) "harm" means any harm recognized under the law of the State in which the civil action is maintained, other than loss or damage caused to a product itself, or commercial loss;

(9) "manufacturer" means (A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product); (B) a product seller with respect to all aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or (C) any product seller not described in clause (B) which holds itself out as a manufacturer to the user of a product;

(10) "noneconomic loss" means loss caused by a product other than economic loss or commercial loss;

(11) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(12) "preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(13) "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state (A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient; (B) which is produced for introduction into trade or commerce; (C) which has intrinsic economic value; and (D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(14) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs, or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(15) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision thereof.

PREEMPTION

SEC. 2503. (a) This title governs any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this title and shall be governed by applicable commercial or contract law.

(b) This title supersedes any State law regarding recovery for harm caused by a product only to the extent that this title establishes a rule of law applicable to any such recovery. Any issue arising under this title that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(c) Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law, except the Federal Employees Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment, or the threat of such contamination or pollution.

(d) As used in this section, "environment" has the meaning given to such term in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(E) This title shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdiction.

JURISDICTION OF FEDERAL COURTS

SEC. 2504. The district courts of the United States shall not have jurisdiction over any civil action pursuant to this title, based on section 1331 or 1337 of title 28, United States Code.

EFFECTIVE DATE

SEC. 2505. (a) This title shall take effect on the date of its enactment and shall apply to all civil actions pursuant to this title commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this title.

(b) If any provision of this title would shorten the period during which a manufacturer or product seller would otherwise be exposed to liability, the claimant may, notwithstanding the otherwise applicable time period, bring any civil action pursuant to this title within one year after the effective date of this title.

Subtitle B

EXPEDITED PRODUCT LIABILITY SETTLEMENTS

SEC. 2511. (a) Any claimant may bring a civil action for damages against a person for harm caused by a product pursuant to applicable State law, except to the extent such law is superseded by this title.

(b) Any claimant may, in addition to any claim for relief made in accordance with State law, include in such claimant's complaint an offer of settlement for a specific dollar amount.

(c) The defendant may make an offer of settlement for a specific dollar amount within sixty days after service of the claimant's complaint or within the time permitted pursuant to State law for a responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the defendant may tender such relief to the claimant within ten days after the court's determination regarding such motion.

(d) In any case in which an offer of settlement is made pursuant to subsection (b) or (c) of this section, the court may, upon motion made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than sixty days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(e) If the defendant, as offeree, does not accept the offer of settlement made by a claimant in accordance with subsection (b) of this section within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within thirty days after the court's determination regarding such motion, and a verdict is entered in such action equal to or greater than the specific dollar amount of such offer of settlement, the court shall enter judgment against the defendant and shall include in such judgment an amount for the claimant's reasonable attorney's fees and costs. Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the verdict.

(f) If the claimant, as offeree, does not accept the offer of settlement made by a defendant in accordance with subsection (c) of this section within thirty days after the date on which such offer is made and a verdict is entered in such action equal to or less than the specific dollar amount of such offer of settlement, the court shall reduce the amount of the verdict in such action by an amount equal to the reasonable attorney's fees and costs owed by the defendant to the defendant's attorney by reason of the verdict, except that the amount of such reduction shall not exceed that portion of the verdict which is allocable to noneconomic loss and economic loss for which the claimant has received or will receive collateral benefits.

(g) For purposes of this section, attorney's fees shall be calculated on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 2512. (a) In lieu of or in addition to making an offer of settlement under section 2511 of this subtitle, a claimant or defendant may, within the time permitted for the making of such an offer under section 2511 of this subtitle, offer to proceed pursuant to any voluntary alternative dispute resolution procedure established or recognized under the law of the State in which the civil action for damages for harm caused by a product is brought or under the rules of the court in which such action is maintained.

(b) If the offeree refuses to proceed pursuant to such alternative dispute resolution procedure and the court determines that such refusal was unreasonable or not in good faith, the court shall assess reasonable attorney's fees and costs against the offeree.

(c) For the purposes of this section, there shall be created a rebuttable presumption that a refusal by an offeree to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, if a verdict is rendered in favor of the offeror.

Subtitle C

CIVIL ACTIONS

SEC. 2521. A person seeking to recover for harm caused by a product may bring a civil

action against the product's manufacturer or product seller pursant to applicable State or Federal law, except to the extent such law is superseded by this title.

UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY

SEC. 2522. (a) Notwithstanding the provisions of section 2521 of this subtitle, in any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant;

(B) the product seller failed to exercise reasonable care with respect to the product; and

(C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product;

(B) the product failed to conform to the warranty; and

(C) the failure of the product to conform to the warranty caused the claimant's harm.

(b)(1) In determining whether a product seller is subject to liability under subsection (a)(1) of this section, the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

A product seller shall not be liable in a civil action subject to this subtitle based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with those warnings and instructions which it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this subtitle except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) A product seller shall be treated as the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES

SEC. 2523. (a) Punitive damages may, if otherwise permitted by applicable law, be awarded in any civil action subject to this subtitle to any claimant who establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a manufacturer's or product seller's conscious, flagrant indifference to the safety of those persons who might be harmed by a product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings is not of itself such conduct. Except as provided in subsection (b) of this section, punitive damages may not be awarded in the absence of a compensatory award.

(b) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

(c)(1) Punitive damages shall not be awarded pursuant to this section against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(A) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(B) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations. The provisions of this paragraph shall not apply (i) in any case in which the defendant withheld from or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government information that is material and relevant to the performance of such drug or device, or (ii) in any case in which the defendant made an illegal payment to an official of the Food and Drug Administration for the purpose of securing approval of such drug or device.

(2) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft which caused the claimant's harm where—

(A) such aircraft was subject to pre-market certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft which caused the claimant's harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft;

(B) the aircraft was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.); and

(C) the manufacturer of the aircraft complied, after delivery of the aircraft to a user, with Federal Aviation Administration requirements and obligations with respect to continuing airworthiness, including the requirement to provide maintenance and service information related to airworthiness whether or not such information is used by the Federal Aviation Administration in the preparation of mandatory maintenance, inspection, or repair directives.

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Federal Aviation Administration information that is material and relevant to the performance or the maintenance or operation of such aircraft.

(d) At the request of the manufacturer or product seller, the trier of fact shall consider in a separate proceeding (1) whether punitive damages are to be awarded and the amount of such award, or (2) the amount of punitive damages following a determination of punitive liability. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) In determining the amount of punitive damages, the trier of fact shall consider all relevant evidence, including—

(1) the financial condition of the manufacturer or product seller;

(2) the severity of the harm caused by the conduct of the manufacturer or product seller;

(3) the duration of the conduct or any concealment of it by manufacturer or product seller;

(4) the profitability of the conduct to the manufacturer or product seller;

(5) the number of products sold by the manufacturer or product seller of the kind causing the harm complained of by the claimant;

(6) awards of punitive or exemplary damages to persons similarly situated to the claimant;

(7) prospective awards of compensatory damages to persons similarly situated to the claimant;

(8) any criminal penalties imposed on the manufacturer or product seller as a result of the conduct complained of by the claimant; and

(9) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the claimant.

UNIFORM TIME LIMITATIONS ON LIABILITY

SEC. 2524. (a) Any civil action subject to this subtitle shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b)(1) Any civil action subject to this subtitle shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive compensation under any State or Federal workers' compensation law for harm caused by the product.

(2) A motor vehicle, vessel, aircraft, or railroad used primarily to transport passengers for hire shall not be subject to the provisions of this subsection.

(3) As used in this section, the term—

(A) "time of delivery" means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold;

(B) "capital good" means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which was—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or for other similar purposes; and

(C) "toxic harm" means harm which is functional impairment, illness, or death of a human being resulting from exposure to an object, substance, mixture, raw material, or physical agent of particular chemical composition.

(c) Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

UNIFORM STANDARDS FOR OFFSET OF WORKERS' COMPENSATION BENEFITS

SEC. 2525. (a) In any civil action subject to this subtitle in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, any damages awarded shall be reduced by the sum of the amount paid as workers' compensation benefits for such harm and the present value of all workers' compensation benefits to which the employee is or would be entitled for such harm. The determination of workers' compensation benefits by the trier of fact in a civil action subject to this subtitle shall have no binding effect on and shall not be used in evidence in any other proceeding.

(b) A claimant in a civil action subject to this subtitle who is or may be eligible to receive compensation under any State or Federal workers' compensation law must provide written notice of the filing of the civil action to the claimant's employer within 30 days of the filing. The written notice shall include information regarding the date and court in which the civil action was filed, the names and addresses of all plaintiffs and defendants appearing on the complaint, the court docket number if available, and a copy of the complaint which was filed in the civil action. A copy of written notice shall be filed with the court and served upon all parties to the action. A claimant's failure to comply with the requirements of this subsection shall suspend the deadlines for filing responsive pleadings and commencing discovery in the civil action, until the claimant complies with the requirements of this subsection.

(c) In any civil action subject to this subtitle in which damages are sought for harm for which the person injured is entitled to receive compensation under any State or Federal workers' compensation law, the action shall, on application of the claimant made at claimant's sole discretion, be stayed until such time as the full amount payable as workers' compensation benefits has been finally determined under such workers' compensation law.

(d)(1) Except as provided in paragraph (2) of this subsection, unless the manufacturer or product seller has expressly agreed to indemnify or hold an employer harmless for harm to an employee caused by a product, neither the employer nor the workers' compensation insurance carrier of the employer shall have a right of subrogation, contribution or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller if the harm is one for which a civil action for harm caused by a product may be brought pursuant to this title.

(2) Paragraph (1) of this subsection shall not apply if the employer or the workers' compensation insurer of the employer establishes, and the trier of fact determines, that the claimant's harm was not in any way caused by the fault of the claimant's employer or coemployees. In order to establish this fact an employer or the workers' compensation insurer of the employer may intervene in a civil action filed by an employee at any time after the filing of a complaint. In the event that the civil action is resolved prior to obtaining a verdict by the trier of fact, any resolution of the action by settlement or other means shall afford the employer or the workers' compensation insurer of the employer an opportunity to participate and to assert a right of subrogation, contribution, or implied indemnity if the claimant's harm was not in any way caused by the fault of the claimant's employer or coemployees.

(e)(1) Except as provided in subsection (f), in any civil action subject to this subtitle in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third-party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee, or the exclusive representative of the person who was injured.

(2) Nothing in this title shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee, or the exclusive representative of the person who was injured. Any action other than such a workers' compensation claim shall be prohibited, except that nothing in this title shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

(f) Subsection (e) shall not apply and applicable State law shall control if the employer or the workers' compensation insurer of the employer, in a civil action subject to this subtitle, asserts or attempts to assert, because of subsection (d), a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller.

SEVERAL LIABILITY FOR NONECONOMIC DAMAGES

SEC. 2526. (a) In any product liability action, the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b) of this section. A separate judgment shall be rendered against such defendant for that amount.

(b) For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(c) as used in this section, the term—

(1) "noneconomic damages" means subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation; the term does not include objectively verifiable monetary losses including, but not limited, medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, rehabilitation and training expenses, loss of employment, or loss of business or employment opportunities; and

(2) "product liability action" includes any action involving a claim, third-party claim, cross-claim, counterclaim, or contribution claim in a civil action in which a manufacturer or product seller is found liable for harm caused by a product.

DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS

SEC. 2527. (a) In any civil action subject to this title in which all defendants are manufacturers or product sellers, it shall be a complete defense to such action that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(b) In any civil action subject to this title in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug and that as a result of such intoxication or the influence of the alcohol or drug the claimant was more than 50 percent responsible for the accident or event which resulted in such claimant's harm.

(c)(1) For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

(2) As used in this section, the term "drug" means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

TITLE XXVI—CIVIL LIBERTIES ACT AMENDMENTS OF 1992

SHORT TITLE

SEC. 2601. This title may be cited as the "Civil Liberties Act Amendments of 1992".

SEC. 2602. The Civil Liberties Act of 1988 (Public Law 100-383, is amended in section 104(e) by replacing the amount "$1,250,000,000" with the amount "$1,500,000,000".

SEC. 2603. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 Stat 903 (1988)) is amended in section 105(e) by deleting the phrase "when the Fund terminates" and inserting in lieu thereof the phrase "within 180 days after the termination of the Fund."

SEC. 2604. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 Stat. 903 (1988)) is amended in section 108 by—

(a) deleting the word "and" at the end of subsection 5;

(b) replacing the period at the end of subsection 6 with "; and"; and

(c) inserting the following new subsection:

"(7) the term of 'of Japanese ancestry' includes non-Japanese spouses and parents who were interned with their spouses or children of Japanese ancestry during World War II.".

SEC. 2605. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 Stat. 903 (1988)) is amended in section 105(a)(7) by inserting the following new subparagraph after subparagraph (C):

"(D) Any person asserting a claim under the Act on account of an individual who is deceased shall be required to certify to the Department of Justice the names of any living spouse, child or parent of the decedent on account of whom the claim is asserted. In any case where the Federal Government pays compensation to a claimant based upon his or her certification that the claimant has informed the government of the identities of all living spouses, children or parents, the exclusive remedy of omitted spouses, children or parents, shall be against the claimant who received the payment.".

SEC. 2606. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 Stat. 903 (1988)) is amended in section 105 by inserting at the conclusion of that section the following new subsection;

"(g) A claimant may seek judicial review of a denial of compensation solely in the United States Claims Court, which shall review the denial upon the administration record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.".

SEC. 2607. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 stat. 903 (1988)) is amended in section 104(d) by deleting the phrase "10 years after the date of the enactment of this Act." and inserting in lieu thereof the phrase "September 30, 1994.".

SEC. 2608. The Civil Liberties Act of 1988 (Public Law 100-383, title I, 102 Stat. 903 (1988)) is amended—

(a) in section 104(c) by deleting the phrase "and by the Board under Section 106" and adding a period after the phrase "under section 105";

(b) in section 105(a)(4) by deleting the phrase "the amount of such payment shall remain in the Fund and";

(c) in section 105(a)(7) by deleting the sentence "If there is no surviving spouse, children, or parents described in clauses (i), (ii), and (iii), the amount of such payment shall remain in the Fund, and may be used only for the purposes set forth in section 106(b).";

(d) in section 108 by: inserting "and" after the semicolon in subsection (4); deleting subsection (5); and redesignating subsection (6) as subsection (5); and

(e) by deleting section 106 and redesignating the remaining section in title I as sections 106, 107, and 108, respectively.

SEC. 2609. Public Law 100-383 (102 Stat. 903 (1988)) is amended by deleting section 1(3) and redesignating subsections (4) through (7) as subsections (3) through (6), respectively.

TITLE XXVII—FEDERAL CREDIT AND DEBT MANAGEMENT ACT OF 1992

SEC. 2701. This title may be cited as the "Federal Credit and Debt Management Act of 1992".

SEC. 2702. Subsection 3701(c) of title 31, United States Code, is amended to read as follows:

"(c)(1) In sections 3711, 3716, 3717, 3720A, and 3720B of this title, "person" includes:

(A) an individual; and

(B) a sole proprietorship, partnership, corporation, non-profit organization, or other form of business association.

"(2) In sections 3711, 3716, 3717, 3720A, and 3720B of this title, "person" does not include an agency if the United States Government, a State government, or a unit of general local government.".

SEC. 2703. Subsection 3711(a) of title 31, United States Code, is amended—

(a) by amending paragraph (1) to read as follows:

"(1) shall take all appropriate and cost-effective actions to collect aggressively all claims of the United States Government for money or property arising out of the activities of, or referred to, the agency;".

SEC. 2704. Section 3720A of title 31, United States Code, is amended—

(a) by amending subsection (a) to read as follows: "(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of all such debt, including debt administered by a third party acting as an agent for the Federal government, at least once a year.";

(b) by striking "and" from paragraph (b)(3);

(c) by striking "and that the agency has made reasonable efforts to obtain payment of such debt." from paragraph (b)(4) and inserting in lieu thereof "; and"; and

(d) by adding the following paragraph at the end of subsection (b):

"(5) certifies that reasonable efforts have been made to obtain payment of such debt.".

SEC. 2705. Subsection 3720A of title 31, United States Code, is amended by adding at the end of the present text of subsection (c) the following sentence: "Such address information may be used by the Federal agency or the Department of Justice for any Federal agency-administered debt collection purpose in collecting or compromising that Federal debt, including, but not limited to, use for demand letters; by agency work-out groups; for tax refund offset, salary offset, and administrative offset; and for referral to the Department of Justice for litigation.".

SEC. 2706. Title 31, United States Code, is amended by adding Section 3720B, as follows:

"§ 3720B. Barring Delinquent Federal Debtors From Obtaining Federal Loans or Loan Guarantees

"Unless waived by the head of the agency, no person may obtain any Federal financial assistance in the form of a loan (except for a Commodity Credit Corporation price support loan) or loan guarantee if such person has an outstanding debt with an executive agency which is in a delinquent status as determined under standards prescribed by the Secretary of the Treasury. The head of the agency may delegate the waiver authority to the agency Chief Financial Officer. The waiver authority may not be redelegated. Any such person may obtain additional Federal financial assistance only after such delinquency is resolved under standards prescribed by the Secretary of the Treasury. Each executive agency shall develop a data base of information on outstanding debt which is in a delinquent status as determined under standards to be prescribed by the Secretary of the Treasury and may make such information available upon request to any other Federal agency for credit management and debt collection purposes.".

SEC. 2707. Section 4 of the Debt Collection Act of 1982 is amended to read as follows:

"(4)(a) Each Federal agency shall require any person doing business with the Federal government as—

(1) a lender or servicer in its guaranteed or insured loan programs;

(2) an applicant in its guaranteed, insured, or direct loan programs;

(3) a grant recipient;

(4) an insurance or license recipient; or

(5) a contractor—

to furnish such person's taxpayer identifying number. The Federal agency must disclose to the person its intent to use the taxpayer identifying number for purposes of collecting or reporting on any delinquent amounts arising out of the person's relationship with the Federal Government and must provide any other disclosure required by the Privacy Act of 1974, section 552a of title 5, United States Code.

"(b) For the purposes of this section, the term 'taxpayer identifying number' has the meaning given to such term by section 6109 of the Internal Revenue Code of 1986.".

SEC. 2708. Title 31, United States Code is amended by adding Section 3720C, as follows:

"§ 3720C. Guaranteed Loan Program Management

"(a) Except where waived by the Secretary of the Treasury, the head of each Federal agency guaranteeing or insuring loans shall:

"(1) establish agreements with lenders and loan servicers or guarantee agencies which cover requirements for program participation including requirements for originating, servicing, and collecting loans; requirements for providing agencies with timely and useful portfolio data; collateral requirements; and quantifiable lender performance standards;

"(2) monitor and collect information on the status of guaranteed loans from lenders and loan servicers or guarantee agencies; and

"(3) monitor and collect information regarding the performance of lenders and loan servicers or guarantee agencies and require lenders and loan servicers or guarantee agencies to provide quarterly reports on the status and condition of their guaranteed loan portfolio.

"(b) Except where prohibited by statute or waived by the Secretary of the Treasury, the head of each Federal agency guaranteeing or insuring loans may:

"(1)(A) certify and periodically recertify lenders, loan servicers, and guarantee agencies for participation in Federally guaranteed loan programs; and

"(B) assess and collect fees from lenders, loan servicers, and guarantee agencies to cover the cost of certification, recertification, and review of lenders, loan servicers, and guarantee agencies;

"(2) establish lender review boards, where economically feasible, to levy sanctions and penalties upon lenders, loan servicers, and guarantee agencies for failure to comply with agency regulations and provide lenders, loan servicers, and guarantee agencies with due process rights; and

"(3) establish a list of qualified loan servicers, require lenders to use qualified loan servicers, and establish penalties for failure to comply.

"(c) The head of each Federal agency guaranteeing or insuring loans shall establish any such procedures and systems required to carry out the provisions of subsections (a) and (b) in accordance with regulations promulgated by the Secretary of the Treasury.

"(d) The Secretary of the Treasury, in consultation with the Director of the Office of Management and Budget shall—

"(1) promulgate regulations detailing specific Governmentwide information requirements regarding paragraphs (a)(2) and (a)(3) of this section; and

"(2) establish minimum standards to be followed by the agencies regarding paragraph (a)(1) and subsection (b) of this section.

"(e) This section is not intended to create any right or benefit, substantive or procedural, enforceable at law or in equity, and no court shall have jurisdiction to review any agency's compliance or noncompliance with the terms of this section.".

SEC. 2709. Section 3717 of title 31, United States Code, is amended to read as follows:

"§ 3717. Late Fee on Claims

"(a)(1) The head of an executive or legislative agency, or his designee, shall charge a late fee, in addition to scheduled principal and interest, on amounts of claims owed by a person that are in a delinquent status as determined under standards promulgated by the Secretary of the Treasury. The minimum late fee on an annual basis shall be equal to the Treasury bill rate for the four week period ending July 31 of the prior fiscal year plus 20 percentage points, rounded to the nearest whole percent. The Secretary of the Treasury or his designee shall publish such rate each year not later than August 31 and such rate shall become effective at the start of the next fiscal year, October 1.

"(2) In addition to the late fee provided in paragraph (a)(1), the head of an executive or legislative agency, or his designee, shall assess, with respect to delinquent claims owed by persons, any amounts necessary to cover the charges levied by another executive or legislative agency or a private contractor for collecting the agency's delinquent claims through Federal salary offset, tax refund offset, or private debt collection contractors, or other such explicit fees or charges.

"(b) The late fee and charges provided for under paragraphs (a)(1) and (a)(2) shall not apply if an applicable statute or a regulation required by statute either prohibits the charging of a late fee or charges or establishes the late fee or charges which apply to the claims arising under such statute or regulation required by statute. The head of an executive or legislative agency, or his designee, shall promulgate regulations identifying circumstances appropriate to waive charging or collection of the late fee in conformity with such standards as may be promulgated by the Secretary of the Treasury. Action in accordance with such regulations shall constitute compliance with the requirements of paragraphs (a)(1) and (a)(2).

"(c) This section shall not apply to any claim under a contract which is executed before the effective date of this section and which is in effect on that date. Such contracts shall be governed by the provisions of Section 3717 in effect immediately prior to the date of enactment of this Title.

"(d)(1) Subject to paragraph (e), the late fee under paragraph (a)(1) shall accrue—

"(A) except as provided in paragraph (d)(2), from the date on which notification of the amount due on the claim is first mailed to the debtor (using the most current address of such debtor that is available to the agency head);

"(B) if such notification was first mailed before the date of enactment of this Act, from the date on which notification was first mailed after such date of enactment;

"(C) where a debtor has entered into a written agreement for the repayment of the amount of a claim, from the date specified for payment in the agreement; or

"(D) where the claim has arisen as the result of a defaulted loan under a loan guarantee, from the date on which the agency pays the guarantee claim filed by the lender, or assumes assignment of or responsibility for the claim from the lender, whichever is earlier.

"(2) The late fee to be charged on a claim under paragraph (a)(1) shall be the rate in effect on the date from which the late fee accrues on the claim under subsection (d) and shall continue to accrue until such time as the late fee or claim is waived, a judgment is obtained, a court-imposed fee is levied, or the claim is written off or otherwise resolved. For reporting purposes, the agency shall cease recording the fee in its general ledger or reports to the Office of Management and Budget and the Department of the Treasury at the time the claim on which the fee is being charged is accelerated by the agency or at six months from the date the claim became delinquent, whichever is earlier.

"(e) The late fee under paragraph (a)(1) shall not be charged if the amount due on the claim is paid within thirty days after the date from which the late fee accrues under subsection (d). The head of an executive or legislative agency, or his designee, may extend such thirty-day period.

"(f) The late fee charged, under paragraph (a)(1) shall not be compounded or accrue on any charges assessed pursuant to paragraph (a)(2) of this subsection.

"(g) An executive or legislative agency shall report annually late fees charged under paragraph (a)(1), but subsequently written off, as income to the debtor to the Internal Revenue Service in such format as the Secretary of the Treasury shall determine.

"(h) Consistent with guidance issued by the Director of the Office of Management and Budget, agencies are authorized to retain one half of the late fees collected under these authorities, provided that:

"(1) these amounts are a direct result of executing the authorities provided under paragraphs (a)(1) and (a)(2) of this section, as determined by the Director;

"(2) retention of any amounts will be consistent with requirements of the Credit Reform Act of 1990, as determined by the Director;

"(3) the amounts will only be available for obligation in the year following collection, as apportioned by the Office of Management and Budget; and

"(4) after the one year of availability, unobligated amounts will be deposited to the miscellaneous receipts or the the appropriate trust fund of the Treasury.

"(i) Amounts retained under subsection (h) may be used by the agency (along with any amounts otherwise available for these purposes) only for the following purposes:

(1) the training of personnel in the agency in credit management and debt collection;

"(2) the purchasing or leasing of equipment or operating software for credit management and debt collection;

"(3) the purchasing of debt collection and/or additional/adjunct services provided by contracted collection services;

"(4) the purchasing of credit reports or other financial information, asset searches, debtor investigations, and related credit management and debt collection activities; or

"(5) reimbursable agreements with or charges levied by Federal or state agencies for services or service contracts for offset, skip-tracing, and related credit management/debt collection activities.".

SEC. 2710. Section 3711 of title 31, United States Code, is amended by amending subsection (f) to read as follows:

"(f)(1) The head of an executive or legislative agency shall disclose to a credit reporting agency information from a system of records on all persons responsible for claims of the Federal Government, except claims owed by State and local governments and claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States. The head of the executive or legislative agency shall disclose information on all commercial and consumer claims related to Federal debt originated or previously guaranteed by that agency, without regard to whether the status of the account is current or delinquent. The information disclosed to the credit reporting agency is limited to—

"(A) information necessary to establish the identity of the individual or business association, including name, address, and taxpayer identification number;

"(B) the amount, status, and history of the claim; and

"(C) the agency or program under which the claim arose.

"(2) Claims will be disclosed under paragraph (1) when—

"(A) the head of the agency has reviewed the claim and decided that the claim is valid;

"(B) the head of the agency has established procedures to report all new claims within 60 days of the creation of the claim, including claims arising from the repayment, purchase, or assignment of a defaulted guarantee; and

"(C) the head of the agency has established procedures to—

"(i) disclose monthly for consumer claims and quarterly for commercial claims, to each credit reporting agency to which the original disclosure was made, a change in the status of the claim; and

"(ii) verify or correct promptly information about the claim on request of a credit reporting agency for verification of information disclosed; and

"(D) the Secretary of the Treasury has received satisfactory assurances (in a form to be determined by the Secretary) from each credit reporting agency that such agency is complying with laws of the United States related to providing credit information, as specified in regulations issued by the Secretary.

"(3) Information on delinquent consumer claims may not be disclosed unless—

(A) the head of the agency has notified the individual in writing—

(i) that payment of the claim is overdue;

(ii) that within not less than 60 days after sending the notice, the head of the agency intends to disclose to a credit reporting agency that the individual is responsible for the claim;

(iii) of the specific information to be disclosed to the credit reporting agency; and

(iv) of the rights of the individual to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim; and

(B) the individual has not—

(i) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the head of the agency has agreed to;

(ii) filed for review of the claim under paragraph (4) of this subsection.

"(4) The head of an executive or legislative agency shall provide, on request of a person alleged by the agency to be responsible for the claim, for a review of the obligation of the individual or form of business association.

"(5) For the purposes of subsection (f)—

"(A) the term 'credit reporting agency' means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer or commercial credit or other information on persons for the purposes of furnishing credit reports to third parties;

"(B) the term 'system of records' has the meaning given such term under section 552a(a)(5) of title 5, United States Code; and

"(C) the term 'head of the agency' includes a designee of the head of the agency.".

SEC. 2711. Section 3718 of Title 31, United States Code, is amended by—

(a) amending subsection (b) to read as follows:

"(b) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of fee to be paid to the private counsel under such contract or the method for calculating that fee, which may include a percentage of the amount recovered.";

(b) striking out subsection (c); and

(c) renumbering subsections "(d)" and "(e)" as subsections "(c)" and "(d)", respectively.

TITLE XXVIII—REDUCE CERTAIN COMMODITY CREDIT CORPORATION SUBSIDIES TO THOSE WITH OFF-FARM INCOME OF $100,000 OR MORE

SEC. 2801. PAYMENT ELIGIBILITY.

Notwithstanding any other provision of law, no payments (as defined in section 2802(a)) shall be made to any person (as defined in section 2802(b)) with an adjusted gross income of $100,000 or more which is obtained from nonfarm sources, as determined by the Secretary of Agriculture. In addition, payments to entities specified in section 2802 (b)(2) shall be reduced in proportion to the ownership interests of any person whose adjusted gross income from non-farm sources is $100,000 or more.

SEC. 2802. DEFINITIONS.

(a) As used in this title, the term "payments" means the following payments and benefits made by the Commodity Credit Corporation with respect to wheat, feed grains, upland and extra long staple cotton, honey, rice, wool, mohair, oilseeds and any other agricultural commodity:

(1) deficiency payments;

(2) paid land diversion payments;

(3) price support loans or purchases;

(4) production incentive payments; and

(5) loan deficiency payments.

The term "payments" shall not include any disaster program payment or any conservation program payment

(b) For purposes of this title, the term "person" includes—

(1) an individual, except that—

(i) a married couple shall be considered to be a person in the same manner in which they elect in accordance with section 1001(5)(b)(iii) of the Food Security Act of 1985, as amended;

(ii) a minor and the parent or anyone appointed by a court who is responsible for the minor shall be considered to be one person;

(iii) an irrevocable trust which has a sole income beneficiary shall be considered one person with such income beneficiary—where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person;

(iv) if a deceased individual who leaves an estate would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir; and

(v) a revocable trust is considered to be one person with the grantor of the trust; and

(2) any business entity including—

(i) a corporation;

(ii) an association;

(iii) a partnership; and

(iv) Any other legal entity required to file a Federal income tax return.

(c) In defining the terms "adjusted gross income" and "taxable income," the Secretary of Agriculture shall, to the maximum extent practicable, use such terms as they are defined in the Internal Revenue Code, except that the undistributed income of any legal entity in which a person or payment entity has an ownership interest must be included in calculating adjusted gross income or taxable income in proportion to such person's ownership interest.

TITLE XXIX—FARM CREDIT SYSTEM FINANCIAL ASSISTANCE CORPORATION REPAYMENT ACT OF 1992

SEC. 2901. SHORT TITLE.

This title may be cited as the "Farm Credit System Financial Assistance Corporation Repayment Act of 1992".

SEC. 2902. REFERENCES TO THE FARM CREDIT ACT OF 1971.

Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 2903. CAPITAL PRESERVATION.

Section 6.9(e)(3)(D) (12 U.S.C. 2278a-9(e)(3)) is amended to read as follows:

"(D) ANNUAL PAYMENTS.—

"(i) IN GENERAL.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which—

"(I) the bank will make annual payment to the Financial Assistance Corporation, beginning no later than October 31, 1992, in amounts designed to accumulate, in total, including earnings thereon, the obligation. Through September 30, 1999, such annual amounts shall be equal to 0.00057 times the bank's and its affiliated associations' average accruing retail loan volume in the previous year. Starting in fiscal year 2000, the Financial Assistance Corporation shall have authority to adjust the annual payment as necessary to accrue sufficient funds to retire debt issued under this subsection; and

"(II) the Financial Assistance Corporation will partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment.

"(ii) INVESTMENT OF FUNDS.—The funds received by the Financial Assistance Corporation pursuant to agreements under this subparagraph shall be invested in Treasury securities. The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection.".

SEC. 2904. REPAYMENT OF TREASURY-PAID INTEREST.

Paragraph (5) of section 6.26(c) (12 U.S.C. 2278b-6(c)(5)) is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of all annual interest charges on the debt obligations that Farm Credit System institutions, including the Financial Assistance Corporation, have not previously paid. The Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank on or about October 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual amount equal to 0.0008 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year. Starting in fiscal year 2003, the Financial Assistance Corporation shall have authority to adjust the annual payment as necessary to accrue sufficient funds to make full repayment by the due date. Upon receipt, the Financial Assistance Corporation shall promptly pay annual amounts collected under this subsection to the Secretary of the Treasury.".

TITLE XXX—RECOVER COSTS OF CARRYING OUT FEDERAL MARKETING AGREEMENTS AND ORDERS

SEC. 3001. Effective October 1, 1992, section 10(b)(2) of the Agricultural Adjustment Act of 1933, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 610(b)(2)), is amended by redesignating subparagraph (iii) as subparagraph (iv) and by inserting a new subparagraph (iii) as follows:

"(iii) The Secretary shall recover the costs of carrying out the provisions of this Act by prescribing and collecting fees from handlers. Any such fees shall be apportioned among all handlers subject to marketing agreements or marketing orders by such method of apportionment as the Secretary finds will be equitable, giving due consideration to differences among the several marketing agreements and orders. Upon failure to pay such fees, a late payment penalty shall be assessed and such overdue fees shall accrue interest as required by section 3717 of title 31, United States Code. Such fees, late payment penalties, and accrued interest collected shall be payable to the authority or agency established to administer the marketing agreement or marketing order and shall be transmitted by each such authority or agency to the Secretary. Upon receipt by the Secretary, such fees, late payment penalties, and accrued interest collected shall be credited to the accounts that incur the cost, and shall be available without fiscal year limitation for the expenses incurred in carrying out this Act. Fees and charges so prescribed shall be effective with respect to each marketing agreement and each marketing order affected thereby and shall have the same force and effect with respect to handlers as though incorporated in such marketing agreement or marketing order. In the event that the expenses of carrying out the provisions of this Act are not recovered from

the fees authorized by this subparagraph, and to provide operating capital prior to receipt of fees, such sums in amounts sufficient to cover such expenses may be transferred from the fund established pursuant to Section 32 of Public Law No. 320, 74th Congress, 49 Stat. 774 (7 U.S.C. 612c) without regard to limitations on the use of such fund contained in any appropriation Act: *Provided:* That sums so transferred shall be reimbursed to the fund established pursuant to section 32 from subsequent assessment of fees, except for costs associated with a proposed marketing order that is not approved or favored by producers as provided in section 8c of this Act or with a proposed marketing agreement that is not executed as provided in section 8b of this Act and except for accrued liabilities.".

TITLE XXXI—ELIMINATE PROVISIONS FOR PERMANENT ANNUAL APPROPRIATIONS TO SUPPORT LAND GRANT UNIVERSITIES

SEC. 3101. The Act of August 30, 1890, ch. 841, 26 Stat. 417 (commonly known as the "Second Morrill Act"), is amended:

(1) in section 1, by deleting "annually appropriated" and inserting in lieu thereof "annually authorized to be appropriated", by deleting "appropriation" and inserting in lieu thereof "authorization", by deleting "to be paid" the second time it appears and inserting in lieu thereof "authorized to be paid";

(2) in section 2, by deleting "appropriated" and inserting in lieu thereof "authorized to be appropriated", and in the proviso by deleting "the appropriation herein made" and inserting in lieu thereof "any appropriation herein authorized";

(3) in section 4, by deleting "the annual appropriation" and inserting in lieu thereof "any appropriation".

SEC. 3102. The tenth and eleventh paragraphs under the heading "Emergency Appropriations" of the Act of March 4, 1907, ch. 2907. 34 Stat. 1256, 1281–1282, are amended:

(1) by deleting "appropriated" where it first appears in each paragraph and inserting in lieu thereof "authorized to be appropriated";

(2) by deleting "appropriation" and inserting in lieu thereof "authorization"; and

(3) by deleting "to be paid" the second time it appears and inserting in lieu thereof "authorized to be paid".

TITLE XXXII—POWER MARKETING ADMINISTRATION TIMELY PAYMENT ACT

SEC. 3201. This title may be cited as the "Power Marketing Administration Timely Payment Act".

DEFINITIONS

SEC. 3202. For purposes of this subtitle—

(1) "Power marketing administration" means the Bonneville Power Administration, the Southeastern Power Administration, and the Western Area Power Administration.

(2) "Power investment" means a capital investment or other capitalized expenditure made by the United States that—

(A) is made using Federal appropriations;

(B) is for a project or separable feature of a project that is placed in service;

(C) is allocated to power and required by law to be repaid from the power revenues of a power marketing administration;

(D) is not allocated or suballocated to irrigation; and

(E) excludes an investment made using funds borrowed under section 13 of the Federal Columbia River Transmission System Act (16 U.S.C. 838k).

(3) "Interest rate" means:

(A) for power investments placed in service after September 30, 1992, a rate determined by the Secretary of the Treasury based on the average market yields on outstanding marketable obligations of the United States with the remaining periods to maturity comparable to the applicable repayment period during the month preceding the fiscal year in which the power investment is placed in service; and

(B) for power investments placed in service before October 1, 1992, the yield of long-term government securities for the year the power investment was placed in service, as shown in the following table:

Year	Yield	Year	Yield	Year	Yield	Year	Yield
1921	5.09	1939	2.36	1957	3.47	1975	7.00
1922	4.30	1940	2.21	1858	3.43	1976	6.78
1923	4.36	1941	1.95	1959	4.07	1977	7.06
1924	4.06	1942	2.46	1960	4.02	1978	7.89
1925	3.86	1943	2.47	1961	3.90	1979	8.74
1926	3.68	1944	2.48	1962	3.95	1980	10.81
1927	3.34	1945	2.37	1963	4.00	1981	12.87
1928	3.33	1946	2.19	1964	4.15	1982	12.23
1929	3.60	1947	2.25	1965	4.21	1983	10.84
1930	3.29	1948	2.44	1966	4.65	1984	11.99
1931	3.34	1949	2.31	1967	4.85	1985	10.75
1932	3.68	1950	2.32	1968	5.26	1986	8.14
1933	3.31	1951	2.57	1969	6.12	1987	8.63
1934	3.12	1952	2.68	1970	6.58	1988	8.98
1935	2.79	1953	2.95	1971	5.74	1989	8.59
1936	2.65	1954	2.55	1972	5.64	1990	8.50
1937	2.68	1955	2.84	1973	6.31	1991	8.37
1938	2.56	1956	3.08	1974	6.98	1992	7.23

(4) "Compound-interest repayment schedule" means a series of level annual payments of the principal and interest on the power investment paid over the repayment period. For each power investment, the level annual payment of principal and interest is derived by dividing the unpaid principal balance of the power investment by the interest factor for the present value of an annuity.

REPAYMENT OF PRINCIPAL

SEC. 3203. (a) Notwithstanding any other law, each power marketing administration shall provide for timely repayment to the Treasury of the United States of principal for power investments. A repayment of principal, to be made at or before the end of each fiscal year, shall be in an amount that is not less than would be determined under a compound-interest repayment schedule as defined in section 3202(4) for each power investment, with the schedule beginning on October 1, 1992, or the date the investment is placed in service, whichever is later. In computing the compound-interest repayment schedule—

(1) for each power investment placed in service after September 30, 1992, the repayment period for the unpaid power investment is the estimated average service life of the investment, as determined by the power marketing administration, not to exceed 50 years; and

(2) for each power investment placed in service before October 1, 1992, the repayment period for the unpaid power investment is the remaining average service life of the power investment or the number of years remaining in a 50 year repayment period which started on the date the power investment was placed in service, whichever is less.

(b) If in any year the principal payments made are more than the annual scheduled amounts, the excess payment shall be credited toward payments required in subsequent years. Until a power marketing administration, at its discretion, credits the excess payment toward payments in subsequent years, the excess payment accrues an interest credit at a rate as calculated in section 3204(c).

(c) Bonneville Power Administration's payments of principal as specified by this section and interest as specified by section 3204 of this Act are payable exclusively from Bonneville Power Administration's "net proceeds" as that term is defined in section 13(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838k(b)), after deducting Bonneville Power Administration's payments under section 11(b)(8) of the Federal Columbia River Transmission System Act (16 U.S.C. 838i(b)(8)).

PAYMENT OF INTEREST

SEC. 3204. (a) Notwithstanding any other law, each power marketing administration shall provide for the timely payment to the Treasury of the United States, at or before the end of each fiscal year, of interest on the unpaid principal of power investments, and of interest on any unpaid deferrals of principal and interest payments.

(b) The annual interest payments on the unpaid principal of power investments shall be computed based on the interest rate determined under section 3202(3).

(c) If in any year the interest or principal payments made are less than the amounts scheduled under this title, the shortfall shall be accounted for separately and paid before the scheduled payment in subsequent fiscal years together with interest calculated at a rate determined by the Secretary of the Treasury based on average market yields on outstanding marketable obligations of the United States with remaining periods to maturity of one year occurring during the last month of the fiscal year in which the shortfall occurred. A shortfall in principal or interest payments shall not affect the payment schedule for subsequent years, except as provided in section 3205.

CHANGING A SCHEDULE OF PAYMENTS

SEC. 3205. Notwithstanding any other law, a power marketing administration may establish a new schedule of payments of principal and interest on an unpaid power investment when there is a significant reduction in the availability of hydro-power resources because of unexpected natural events. Before changing a schedule of payments, in whole or in part, a power marketing administration shall submit a justification for the change to the Federal Energy Regulatory Commission for approval. Within 30 days from receipt of all necessary justification documents, the Federal Energy Regulatory Commission shall approve or reject a power marketing administration's request for a change in the schedule of payments. Interest on a rescheduled payment, even if the rescheduling is approved by the Federal Energy Regulatory Commission, shall be paid in accordance with section 3204 of this Act. This section does not apply to the Bonneville Power Administration.

EFFECTIVE DATE

SEC. 3206. This subtitle takes effect October 1, 1992.

TITLE XXXIII—EMERGING TELECOMMUNICATIONS TECHNOLOGIES ACT OF 1992

SEC. 3301. SHORT TITLE.

This title may be cited as the "Emerging Telecommunications Technologies Act of 1992".

SEC. 3302. FINDINGS.

The Congress finds that—

(1) spectrum is a valuable natural resource;

(2) it is in the national interest that this resource be used more efficiently;

(3) the spectrum below 6 gigahertz (GHz) is becoming increasingly congested, and, as a result entities that develop innovative new

spectrum-based services are finding it difficult to bring these services to the marketplace;

(4) scarcity of assignable frequencies can and will—

(A) impede the development and commercialization of new spectrum-based products and services;

(B) reduce the capacity and efficiency of the United States telecommunications system; and

(C) adversely affect the productive capacity and international competitiveness of the United States economy;

(5) the United States Government presently lacks explicit authority to use excess radiocommunications capacity to satisfy non-United States Government requirements;

(6) more efficient use of the spectrum can provide the resources for increased economic returns;

(7) many commercial users derive significant economic benefits from their spectrum licenses, both through the income they earn from their use of the spectrum and the returns they realize upon transfer of their licenses to third parties; but under current procedures, the United States public does not sufficiently share in these benefits;

(8) many United States Government functions and responsibilities depend heavily on the use of the radio spectrum, involve unique applications, and are performed in the broad national and public interest;

(9) competitive bidding for spectrum can yield significant benefits for the United States economy by increasing the efficiency of spectrum allocations, assignment, and use; and for United States taxpayers by producing substantial revenues for the United States Treasury; and

(10) the Secretary, the President, and the Commission should take appropriate steps to foster the more efficient use of this valuable national resource, including the reallocation of a target amount of 200 megahertz (MHz) of spectrum from United States Government use under section 305 of the Communications Act (47 U.S.C. 305) to non-United States Government use pursuant to other provisions of the Communications Act and the implementation of competitive bidding procedures by the Commission for some new assignments of the spectrum.

SEC. 3303. NATIONAL SPECTRUM PLANNING.

(a) PLANNING ACTIVITIES.—The Secretary and the Chairman of the Commission shall, at least twice each year, conduct joint spectrum planning meetings with respect to the following issues—

(1) future spectrum needs;

(2) the spectrum allocation actions necessary to accommodate those needs, including consideration of innovation and marketplace developments that may affect the relative efficiencies of different portions of the spectrum; and

(3) actions necessary to promote the efficient use of the spectrum, including proven spectrum management techniques to promote increased shared use of the spectrum as a means of increasing non-United States Government access; and innovation in spectrum utilization including means of providing incentives for spectrum users to develop innovative services and technologies.

(b) REPORTS.—The Secretary and the Chairman of the Commission shall submit a joint annual report to the President on the joint spectrum planning meetings conducted under subsection (a) and any recommendations for action developed in such meetings.

(c) OPEN PROCESS.—The Secretary and the Commission will conduct an open process under this section to ensure the full consideration and exchange of views among any interested entities, including all private, public, commercial, and governmental interests.

SEC. 3304. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

(a) IDENTIFICATION REQUIRED.—The Secretary shall prepare and submit to the President the reports required by subsection (d) to identify bands of frequencies that—

(1) are allocated on a primary basis for United States Government use and eligible for licensing pursuant to section 305(a) of the Communications Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the United States Government;

(3) can feasibly be made available during the next fifteen years after enactment of this Act for use under the provisions of the Communications Act for non-United States Government users;

(4) will not result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from the potential non-United States Government users; and

(5) are likely to have significant value for non-United States Government uses under the Communications Act.

(b) AMOUNT OF SPECTRUM RECOMMENDED.—

(1) IN GENERAL.—The Secretary shall recommend as a goal for reallocation, for use by non-United States Government stations, bands of frequencies constituting a target amount of 200 MHz, that are located below 6 GHz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). If the Secretary identifies (as meeting such criteria) bands of frequencies totaling more than 200 MHz, the Secretary shall identify and recommend for reallocation those bands (totaling not less than 200 MHz) that are likely to have the greatest potential for non-United States Government uses under the Communications Act.

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which the Secretary recommends be partially retained for use by United States Government stations, but which are also recommended to be reallocated and made available under the Communications Act for use by non-United States Government stations, may be counted toward the target 200 MHz of spectrum required by paragraph (1) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the amount targeted by paragraph (1) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to United States Government stations under section 305 of the Communications Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such United States Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential non-United States Government use to be made; and

(C) the operational sharing permitted under this paragraph shall be subject to procedures which the Commission and the Department of Commerce shall establish and implement to ensure against harmful interference.

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE UNITED STATES GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2));

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of United States Government services and operations;

(ii) excessive costs to the United States Government and civilian users of such Government services; and

(iii) identification of any bands for reallocation that are likely to be subject to substitution for the reasons specified in section 3305(b)(2)(A) through (C).

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

(A) assume such frequencies will be assigned by the Commission under section 303 of the Communications Act (47 U.S.C. 303) over the course of fifteen years after the enactment of this Act;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) determine the extent to which the reallocation or reassignment will relieve actual or potential scarcity of frequencies available for non-United States Government use;

(D) seek to include frequencies which can be used to stimulate the development of new technologies; and

(E) consider the cost to reestablish United States Government services displaced by the reallocation of spectrum during the fifteen year period.

(3) COSTS TO THE UNITED STATES GOVERNMENT.—In determining whether a frequency band meets the criteria specified in subsection (a)(4), the Secretary shall consider—

(A) the costs to the United States Government of reaccommodating its services in order to make spectrum available for non-United States Government use, including the incremental costs directly attributable to the loss of the use of the frequency band; and

(B) the benefits that could be obtained from reallocating such spectrum to non-United States Government users, including the value of such spectrum in promoting—

(i) the delivery of improved service to the public;

(ii) the introduction of new services; and

(iii) the development of new communications technologies.

(4) NON-UNITED STATES GOVERNMENT USE.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is commercially available that is capable of utilizing the band; and

(B) the proximity of frequencies that are already assigned for non-United States Government use.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT TO IDENTIFY AN INITIAL 45 MHZ TO BE MADE AVAILABLE IMMEDIATELY FOR REALLOCATION, AND TO PROVIDE PRELIMINARY AND FINAL REPORTS ON ADDITIONAL FREQUENCIES TO BE REALLOCATED.—

(A) Within six months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a report which specifically identifies an initial 45 MHz of spectrum, to be made available for reallocation upon issuance of this report, and to be distributed by the Commission pursuant to competitive bidding procedures;

(B) Within twelve months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a preliminary report to identify reallocable bands of frequencies meeting the criteria established by this section;

(C) Within twenty-four months after the date of enactment of this Act, the Secretary shall prepare and submit to the President a final report which identifies the target 200 MHz for reallocation (which shall encompass the initial 45 MHz previously designated under subsection (d)(1)(A)); and

(D) The President shall publish the reports required by this section in the Federal Register.

(2) CONVENING OF PRIVATE SECTOR ADVISORY COMMITTEE.—Not later than twelve months after the enactment of this Act, the Secretary shall convene a private sector advisory committee to—

(A) review the bands of frequencies identified in the preliminary report required by subsection (d)(1)(B);

(B) advise the Secretary with respect to—

(i) the bands of frequencies which should be included in the final report required by subsection (d)(1)(C); and

(ii) the effective dates which should be established under subsection (e) with respect to such frequencies;

(C) receive public comment on the Secretary's preliminary and final reports under subsection (d); and

(D) prepare and submit the report required by paragraph (d)(4) of section 3304.

The private sector advisory committee shall meet at least quarterly until each of the actions required by section 3305(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN.—The private sector advisory committee shall include—

(A) the Chairman of the Commission, and the Secretary, or their designated representatives, and two other representatives from two different United States Government agencies that are spectrum users, other than the Department of Commerce, as such agencies may be designated by the Secretary; and

(B) persons who are representative of—

(i) manufacturers of spectrum-dependent telecommunications equipment;

(ii) commercial users;

(iii) other users of the electromagnetic spectrum; and

(iv) other interested members of the public who are knowledgeable about the uses of the electromagnetic spectrum to be chosen by the Secretary.

A majority of the members of the committee shall be members described in subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The private sector advisory committee shall, not later than twenty-four months after its formation, submit to the Secretary, the Commission, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate, such recommendations as the committee considers appropriate for the reform of the process of allocating the electromagnetic spectrum between United States Government users and non-United States Government users, and any dissenting views thereon.

(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—The Secretary shall, as part of the final report required by subsection (d)(1)(C), include a timetable for the effective dates by which the President shall, within fifteen years after enactment of this Act, withdraw or limit assisgnments on frequencies specified in the report. The recommended effective dates shall—

(1) permit the earliest possible reallocation of the frequency bands, taking into account the requirements of section 3306(a);

(2) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(3) be based on the need to coordinate frequency use with other nations; and

(4) avoid the imposition of incremental costs on the United States Government directly attributable to the loss of the use of frequencies or the changing to different frequencies that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequencies.

SEC. 3305. WITHDRAWAL OF ASSIGNMENT TO UNITED STATES GOVERNMENT STATIONS.

(a) IN GENERAL.—The President shall—

(1) within three months after receipt of the Secretary's report under section 3304(d)(1)(A), withdraw or limit the assignment to a United States Government station of any frequency on the initial 45 MHz which that report recommends for immediate reallocation;

(2) with respect to other frequencies recommended for reallocation by the Secretary's report in section 3304(d)(1)(C), by the effective dates recommended pursuant to section 3304(e) (except as provided in section 3305(b)(4)), withdraw or limit the assignment to a United States Government station of any frequency which that report recommends be reallocated or available for mixed use on such effective dates;

(3) assign or reassign other frequencies to United States Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(4) publish in the Federal Register a notice and description of the actions taken under this subsection.

(b) EXCEPTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in section 3305(b)(2) exists, the President—

(A) may, within one month after receipt of the Secretary's report under section 3304(d)(1)(A), and within six months after receipt of the Secretary's report under section 3304(d)(1)(C), substitute an alternative frequency or band of frequencies for the frequency or band that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency or band in the manner required by subsection (a); and

(B) shall publish in the Federal Register a statement of the reasons for taking the action described in subparagraph (A).

(2) GROUNDS FOR SUBSTITUTION.—For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national security interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important United States Governmental needs;

(C) the reassignment would seriously jeopardize public health or safety; or

(D) the reassignment will result in incremental costs to the United States Government that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reassigned frequency.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the final report of the Secretary under section 3304(d)(1)(C) unless the substituted frequency also meets each of the criteria specified by section 3304(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective dates recommended by the Secretary pursuant to section 3304(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 3306, the President may—

(A) withdraw or limit the assignment to United States Government stations on a later date that is consistent with such plan, by providing notice to that effect in the Federal Register, including the reason that withdrawal at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(c) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE UNITED STATES GOVERNMENT; APPROPRIATIONS AUTHORIZED.—Any United States Government licensee, or non-United States Government entity operating on behalf of a United States Government licensee, that is displaced from a frequency pursuant to this section may be reimbursed not more than the incremental costs it incurs, in such amounts as provided in advance in appropriation acts, that are directly attributable to the loss of the use of the frequency pursuant to this section. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(d) There are authorized to be appropriated to the affected licensee agencies such sums as may be necessary to carry out the purposes of this section.

SEC. 3306. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

(a) PLANS SUBMITTED.—

(1) With respect to the initial 45 MHz to be reallocated from United States Government to non-United States Government use under section 3304(d)(1)(A), not later than twenty-four months after enactment of this Act, the Commission shall complete a public notice and comment proceeding regarding the allocation of this spectrum and shall form a plan to assign such spectrum pursuant to competitive bidding procedures, pursuant to section 3309 of this Act, during fiscal years 1995 through 1997.

(2) With respect to the remaining spectrum to be reallocated from United States Government to non-United States Government use under section 3304(e), not later than two years after issuance of the report required by section 3304(d)(1)(C), the Commission shall complete a public notice and comment proceeding; and the Commission shall, after consultation with the Secretary, prepare and submit to the President a plan for the distribution under the Communications Act of the frequency bands reallocated pursuant to the requirements of this Act. Such plan shall—

(A) not propose the immediate distribution of all such frequencies, but, taking into account the timetable recommended by the Secretary pursuant to section 3304(e), shall propose—

(i) gradually to distribute the frequencies remaining, after making the reservation required by subparagraph (ii), over the course of a ten-year period beginning on the date of submission of such plan; and

(ii) to reserve a significant portion of such frequencies for distribution beginning after the end of such ten-year period;

(B) contain appropriate provisions to ensure—

(i) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Communications Act (47 U.S.C. 157); and

(ii) the availability of frequencies to stimulate the development of such technologies; and

(C) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

(b) AMENDMENT TO THE COMMUNICATIONS ACT.—Section 303 of the Communications Act is amended by adding at the end thereof the following new subsection (u) (indicating that the Commission shall):

"(u) Have authority to assign the frequencies reallocated from United States Government use to non-United States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1992': *Provided*, That any such assignment shall expressly be made subject to the right of the President to reclaim such frequencies under the provisions of section 3308 of the 'Emerging Telecommunications Technologies Act of 1992'.".

SEC. 3307. APPROPRIATION ACTION.

Of the initial 45 MHz to be reallocated from the United States Government to non-United States Government use under section 3304(d)(1)(A), 20 MHz shall be reallocated and made available for assignment by the Commission only to the extent provided in appropriations acts.

SEC. 3308. AUTHORITY TO RECLAIM REASSIGNED FREQUENCIES.

(A) AUTHORITY OF PRESIDENT.—The President may reclaim reallocated frequencies for reassignment to United States Government stations in accordance with this section.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

(1) UNASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have not been assigned by the Commission, the President may reclaim them based on the grounds described in section 3305(b)(2) of this Act.

(2) ASSIGNED FREQUENCIES.—If the frequencies to be reclaimed have been assigned by the Commission, the President may reclaim them based on the grounds described in section 3305(b)(2) of this Act, except that the notification required by section 3305(b)(1) shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for their utilization; and

(B) an estimate of the cost of displacing the licensees.

(c) COSTS OF RECLAIMING FREQUENCIES.—Any non-United States Government licensee that is displaced from a frequency pursuant to this section shall be reimbursed the incremental costs it incurs that are directly attributable to the loss of the use of the frequency pursuant to this section.

(d) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Communications Act (47 U.S.C. 606).

SEC. 3309. COMPETITIVE BIDDING.

(a) COMPETITIVE BIDDING AUTHORIZED.—Section 309 of the Communications Act is amended to add a new subsection (j) providing that:

"(j)(1) The Commission shall use competitive bidding for awarding all initial licenses or new construction permits, including licenses and permits for spectrum reallocated for non-United States Government use pursuant to the 'Emerging Telecommunications Technologies Act of 1992', subject to the exclusions listed in subsection (j)(2).

"(A) The Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to submit a second-stage application. Upon determining that such application is acceptable for filing and that the applicant is qualified pursuant to subsection (j)(1)(B), the Commission shall grant a permit or license.

"(B) No construction permit or license shall be granted to an applicant selected pursuant to subsection (j)(1)(A) unless the Commission determines that such applicant is qualified pursuant to section 308(b) and section 309(a) of the Communications Act, on the basis of the information contained in the first- and second-stage applications submitted under subsection (j)(1)(A).

"(C) Each participant in the competitive bidding process is subject to the schedule of charges contained in section 8 of the Communications Act (47 U.S.C. 158).

"(D) The Commission shall have the authority in awarding construction permits or licenses under competitive bidding procedures to (i) define the geographic and frequency limitations and technical requirements, if any, of such permits to licenses; (ii) establish minimum acceptable competitive bids; and (iii) establish other appropriate conditions on such permits and licenses that will serve the public interest.

"(E) The Commission shall, within eighteen months after enactment of the 'Emerging Telecommunications Technologies Act of 1992', following public notice and comment proceedings, adopt rules establishing competitive bidding procedures under this subsection, including the method of bidding and the basis for payment (such as flat fees, fixed or variable royalties, combinations of flat fees and royalties, or other reasonable forms of payment); and a plan for applying such competitive bidding procedures to the initial 45 MHz reallocated from United States Government to non-United States Government use under section 3304(d)(1)(A) of the 'Emerging Telecommunications Technologies Act of 1992,' to be distributed during the fiscal years 1995 through 1997.

"(2) Competitive bidding shall not apply to:

"(A) license renewals;

"(B) the United States Government and State or local government entities;

"(C) amateur operator services, public radio broadcast services, public television broadcast services, public safety services, and radio astronomy services;

"(D) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user licenses;

"(E) any license grant to a non-United States Government licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the 'Emerging Telecommunications Technologies Act of 1992';

"(F) any other service, class of services, or assignments that the Commission determines, after conducting public comment and notice proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption.

"(3) Monies received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the United States Treasury, pursuant to the provisions enacted in appropriations acts."

"(b) RANDOM SELECTION NOT TO APPLY WHEN COMPETITIVE BIDDING REQUIRED.—Section 309(i)(1) of the Communications Act (47 U.S.C. 309) is amended by deleting the period after the word "selection" and inserting in lieu thereof: ", except in instances where competitive bidding procedures are required under section 309(j) of the Communications Act.".

"(c) SPECTRUM ALLOCATION DECISIONS.—Section 303 of the Communications Act is amended to add a new subsection (v):

"(v) In making spectrum allocation decisions among services that are subject to competitive bidding, the Commission is authorized to consider as one factor among others taken into account in making its determination, the relative economic values and other public interest benefits of the proposed uses as reflected in the potential revenues that would be collected under its competitive bidding procedures.".

SEC. 3310. DEFINITIONS.

As used in the Emerging Telecommunications Technologies Act of 1992:

(1) The term "Act" means the Emerging Telecommunications Technologies Act of 1992.

(2) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(3) The term "assignment" means an authorization given by the Commission or the United States Government for a radio station to use a radio frequency or radio frequency channel.

(4) The term "Commission" means the Federal Communications Commission.

(5) The term "Communications Act" means the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

(6) The term "Secretary" means the Secretary of Commerce.

TITLE XXXIV—ENTERPRISE FOR THE AMERICAS ACT OF 1992

SEC. 3401. This title may be cited as the "Enterprise for the Americas Initiative Act of 1991".

SEC. 3402. PROVISIONS RELATING TO THE ENTERPRISE FOR THE AMERICAS INVESTMENT FUND AT THE INTER-AMERICAN DEVELOPMENT BANK.

(a) UNITED STATES CONTRIBUTION.—

(1) CONTRIBUTION AGREEMENT.—The Secretary of the Treasury (hereinafter the "Secretary") is hereby authorized to contribute and to make payment of a grant of $500,000,000 to the Enterprise for the Americas Investment Fund (hereinafter the "Fund") to be administered by the Inter-American Development Bank (hereinafter the "IDB").

(2) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary without fiscal year limitation and for the purposes of subsection (1), $500,000,000, to be paid in five annual installments of $100,000,000 each, beginning in Fiscal Year 1992.

(b) PURPOSE OF THE FUND.—The purpose of the Fund shall be to provide program and

project grants that will advance specific, market-oriented investment policy initiatives and reforms to encourage domestic and foreign investment in Latin America and the Caribbean. The Fund will also finance technical assistance for privatizing government-owned industries; enterprise development and business infrastructure; and worker training and education programs to develop supporting human capital.

(c) CONTRIBUTIONS FROM OTHER COUNTRIES.—The Secretary may seek contributions to the Fund from other countries.

SEC 3403. ENTERPRISE FOR THE AMERICAS FACILITY.

(a) ESTABLISHMENT.—There is hereby established in the Department of the Treasury the Enterprise for the Americas Facility (hereinafter in this title referred to as the "Facility").

(b) PURPOSE.—The purpose of the Enterprise for the Americas Initiative is to encourage and support improvement in the lives of the people of Latin America and the Caribbean through market-oriented reforms and economic growth with interrelated actions to promote debt reduction, investment reforms, trade liberalization, and community-based conservation and sustainable use of the environment. The Facility will support these objectives through administration of debt reduction operations for those countries that meet investment reforms and other policy conditions.

(c) ELIGIBILITY FOR BENEFITS UNDER THE FACILITY.—

(1) REQUIREMENTS.—To be eligible for benefits under the Facility, a country must—

(A) be a Latin American or Caribbean country;

(B) have in effect, have received approval for, or, as appropriate in exceptional circumstances, be making significant progress toward—

(i) an International Monetary Fund ("IMF") standby arrangement, extended IMF arrangement, or an arrangement under the structural adjustment facility or enhanced structural adjustment facility, or in exceptional circumstances, an IMF monitored program or its equivalent; and

(ii) as appropriate, structural or sectoral adjustment loans from the International Bank for Reconstruction and Development or the International Development Association;

(C) have put in place major investment reforms in conjunction with an Inter-American Development Bank loan or otherwise be implementing, or making significant progress toward, an open investment regime; and

(D) if appropriate, have agreed with its commercial bank lenders on a satisfactory financing program, including, as appropriate, debt or debt service reduction.

(2) ELIGIBILITY DETERMINATIONS.—The President shall determine whether a country is an eligible country for purposes of paragraph (1).

SEC. 3404. DEBT REDUCTION.

(a) REDUCTION OF CERTAIN DEBT.—

(1) AUTHORITY TO REDUCE DEBT.—

(A) AUTHORITY.—The President may reduce the amount owed to the United States (or any agency of the United States) that is outstanding as of January 1, 1991, as a result of concessional loans made by the United States pursuant to the Foreign Assistance Act of 1961 (or predecessor foreign economic assistance legislation) to a country eligible for benefits under the Facility.

(B) LIMITATION.—The authority of this section may be exercised beginning in fiscal year 1992 and only to such extent as provided for in advance in appropriations acts for fiscal year 1992 or thereafter.

(C) CERTAIN PROHIBITIONS INAPPLICABLE.—

(i) A reduction of debt pursuant to this section shall not be considered assistance for purposes of any provision of law limiting assistance to a country.

(ii) The authority of this section may be exercised notwithstanding section 620(r) of the Foreign Assistance Act of 1961 and section 321 of the International Development and Food Assistance Act of 1975.

(D) DEFINITION.—Hereinafter in this title, a country with respect to which the authority of sub-paragraph (A) is exercised is referred to as the beneficiary country.

(2) IMPLEMENTATION OF DEBT REDUCTION.—

(A) IN GENERAL.—Any debt reduction authorized pursuant to subsection (1) shall be accomplished at the direction of the Facility by the exchange of a new obligation for obligations outstanding as of January 1, 1991.

(B) EXCHANGE OF OBLIGATIONS.—The Facility shall notify the Agency for International Development of the agreement with a beneficiary country to exchange a new obligation for outstanding obligations pursuant to this subsection; and at the direction of the Facility, the old obligations shall be canceled and a new debt obligation for the country shall be established, and the Agency for International Development shall make an adjustment in its accounts to reflect the debt reduction.

(b) REPAYMENT OF PRINCIPAL.—

(1) CURRENCY OF PAYMENT.—The principal amount of each new obligation issued pursuant to subsection 3404(a)(2) shall be repaid in United States dollars.

(2) DEPOSIT OF PAYMENTS.—Principal repayments of new obligations shall be deposited in the United States Government account established for principal repayments of the obligations for which those obligations were exchanged.

(c) INTEREST ON NEW OBLIGATIONS.—

(1) RATE OF INTEREST.—New obligations issued by a beneficiary country pursuant to subsection 3404(a)(2) shall bear interest at a concessional rate.

(2) CURRENCY OF PAYMENT; DEPOSITS.—

(A) LOCAL CURRENCY.—If the beneficiary country has entered into an Environmental Framework Agreement under subsection 3405(b), interest shall be paid in the local currency of the beneficiary country and deposited in the Environmental Fund provided for in subsection 3405(a)(1). Such interest shall be the property of the beneficiary country, until such time as it is disbursed pursuant to subsection 3405(a)(4). Such local currencies shall be used for the purposes specified in the Environmental Framework Agreement.

(B) UNITED STATES DOLLARS.—If the beneficiary country has not entered into an Environmental Framework Agreement under subsection 3405(b), interest shall be paid in United States dollars and deposited in the United States Government account established for interest payments of the obligations for which the new obligations were exchanged.

(3) INTEREST ALREADY PAID.—If a beneficiary country enters into an Environmental Framework Agreement subsequent to the date on which interest first became due on the newly issued obligation, any interest already paid on such new obligation shall not be redeposited into the Environmental Fund established for that beneficiary country pursuant to subsection 3405(a)(1).

SEC. 3405. ENTERPRISE FOR THE AMERICAS ENVIRONMENTAL FUNDS.

(a) ESTABLISHMENT OF, DEPOSITS INTO, AND DISBURSEMENTS FROM ENVIRONMENTAL FUNDS.—

(1) ESTABLISHMENT.—Each beneficiary country that enters into an Environmental Framework Agreement under subsection 3405(b) shall be required to establish an Enterprise for the Americas Environmental Fund (referred to in this title as the "Environmental Fund") to receive payments in local currency pursuant to subsection 3404(c)(2)(A).

(2) DEPOSITS.—Local currencies deposited in an Environmental Fund shall not be considered assistance for purposes of any provision of law limiting assistance to a country.

(3) INVESTMENT.—Deposits made in an Environmental Fund shall be invested until disbursed. Notwithstanding section 3302(b) of title 31, United States Code, any return on such investment may be retained by the Environmental Fund, without deposit in the Treasury of the United States and without further appropriations by Congress.

(4) DISBURSEMENTS.—Funds in an Environmental Fund shall be disbursed only pursuant to an Environmental Framework Agreement under subsection 3405(b).

(b) ENVIRONMENTAL FRAMEWORK AGREEMENTS.—

(1) AUTHORITY.—The President is authorized to enter into an agreement (referred to in this title as an "Environmental Framework Agreement") with any country eligible for benefits under the Facility concerning the operation and use of the Environmental Fund for that country. In the negotiation of such agreements, the President should consult with the Environment for the Americas Board in accordance with subsection 3405(c).

(2) CONTENTS OF AGREEMENTS.—An Environmental Framework Agreement with a beneficiary country shall—

(A) require that country to establish an Environmental Fund;

(B) require that country to make interest payments under subsection 3404(c)(2)(A) into an Environmental Fund;

(C) require that country to make prompt disbursements from the Environmental Fund to the administering body described in subsection 3405(b)(3);

(D) when appropriate, seek to maintain the value of the local currency resources of the Environmental Fund in terms of United States dollars;

(E) specify, in accordance with subsection 3405(b)(4), the purposes for which the Environmental Fund may be used; and

(F) contain reasonable provisions for the enforcement of the terms of the agreement.

(3) ADMINISTERING BODY.—

(A) IN GENERAL.—Funds disbursed from the Environmental Fund in each beneficiary country shall be administered by a body constituted under the laws of that country (referred to in this title as the "administering body").

(B) COMPOSITION.—The administering body shall consist of—

(i) one or more individuals appointed by the President,

(ii) one or more individuals appointed by the government of the beneficiary country, and

(iii) individuals who represent a broad range of environmental nongovernmental organizations of the beneficiary country, local community development nongovernmental organizations of the beneficiary country, and scientific or academic organizations or institutions of the beneficiary country.

A majority of the members of the administering body shall be individuals described in sentence (iii).

(C) RESPONSIBILITIES.—The administering body—

(i) shall receive proposals for grant assistance from eligible grant recipients (as determined under subsection 3405(b)(5)) and make grants to eligible grant recipients in accordance with the priorities agreed upon in the Environmental Framework Agreement, consistent with subsection 3405(b)(4);

(ii) shall be responsible for the management of the program and oversight of grant activities funded from resources of the Environmental Fund;

(iii) shall be subject to fiscal audits by an independent auditor on an annual basis;

(iv) shall present an annual program for review each year by the Environment for the Americas Board; and

(v) shall submit a report each year on the activities that it undertook during the previous year to the Environment for the Americas Board and to the government of the beneficiary country.

(4) ELIGIBLE ACTIVITIES.—Grants from an Environmental Fund shall be used for activities that link the conservation and sustainable use of natural resources with local community development, including activities described in section 463 of chapter 7 of part I of the Foreign Assistance Act of 1961, Public Law 87-195, as added by the Global Environmental Protection Act of 1989, Public Law 101-240, title VII, section 711; 103 Stat. 2322.

(5) GRANT RECIPIENTS.—Grants made from an Environmental Fund shall be made to—

(A) nongovernmental environmental, conservation, development, educational, and indigenous peoples organizations of the beneficiary country;

(B) other appropriate local or regional entities; and

(C) in appropriate circumstances, the government of the beneficiary country.

(6) REVIEW OF LARGER GRANTS.—Any grant of more than $100,000 from an Environmental Fund shall be subject to veto by the Government of the United States or the government of the beneficiary country.

(c) ENVIRONMENT FOR THE AMERICAS BOARD.—

(1) ESTABLISHMENT.—There is hereby established an Environment for the Americas Board (hereafter in this title referred to as the "Board").

(2) MEMBERSHIP.—The Board shall be composed of 11 members appointed by the President as follows:

(A) 6 officers or employees of the United States Government; and

(B) 5 individuals who are representatives of private nongovernmental environmental, community development, scientific, or academic organizations that have experience and expertise in Latin America and the Caribbean.

The chair of the Board shall be designated by the President from among the members of the Board appointed pursuant to subparagraph (2)(A).

(3) RESPONSIBILITIES.—The Board shall—

(A) advise the President on the negotiations of Environmental Framework Agreements;

(B) ensure, in consultation with—

(i) the government of the beneficiary country,

(ii) nongovernmental organizations of the beneficiary country,

(iii) nongovernmental organizations of the region (if appropriate),

(iv) environmental, scientific, and academic leaders of the beneficiary country, and

(v) environmental, scientific, and academic leaders of the region (as appropriate),

that a suitable administering body is identified for each Environmental Fund; and

(C) review the programs, operations, and fiscal audits of each administering body.

(d) OVERSIGHT.—The President may designate appropriate United States agencies to review the implementation of programs under this title and the fiscal audits relating to such programs. Such oversight shall not constitute active management of an Environmental Fund.

(e) ENCOURAGING MULTILATERAL DEBT DONATIONS.—

(1) ENCOURAGING DONATIONS FROM OFFICIAL CREDITORS.—The President should actively encourage other official creditors of a beneficiary country whose debt is reduced under this title to provide debt reduction to such country.

(2) ENCOURAGING DONATIONS FROM PRIVATE CREDITORS.—The President should make every effort to ensure that Environmental Funds established pursuant to subsection 3405(a) are able to receive donations from private and public entities and from private creditors of the beneficiary country.

SEC. 3406. SALES, REDUCTIONS, OR CANCELLATIONS OF LOANS OR ASSETS.

(a) LOANS OR ASSETS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) Notwithstanding any other provision of law, the President may, in accordance with this section—

(A) sell to any eligible purchaser any loan or portion thereof of an eligible country (as determined pursuant to subsection 3403(c) or any agency thereof, that was made pursuant to the Export-Import Bank Act of 1945, as amended;

(B) sell to any eligible purchaser any asset or portion thereof which is acquired by the Commodity Credit Corporation as a result of its status as a guarantor of credits in connection with export sales to an eligible country (as determined pursuant to subsection 3403(c), in accordance with export credit guarantee programs authorized pursuant to the Commodity Credit Corporation Charter Act, as amended, or section 4(b) of the Food for Peace Act of 1966, as amended; and

(C) upon receipt of payment from an eligible purchaser, reduce or cancel any loan or the amount of any asset or portion thereof reference in subparagraphs (A) or (B) of paragraph 1 of this subsection.

provided that any such loan or asset that is sold, reduced, or canceled under this subsection was made or acquired prior to January 1, 1991, and such sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan or asset.

(2) Notwithstanding any other provision of law, the President shall establish the terms and conditions under which loans or assets may be sold, reduced, or canceled pursuant to this section.

(3) Any sale made pursuant to this section by the Export-Import Bank of the United States or the Commodity Credit Corporation of a loan or asset (including any interest therein) to an eligible purchaser under subsection 3406(c) shall be a transaction not required to be registered pursuant to section 5 of the Securities Act of 1933. For purposes of the Securities Act of 1933, neither the Export-Import Bank of the United States nor the Commodity Credit Corporation shall be deemed to be an issuer or underwriter with respect to any subsequent sale of other disposition of such loan or asset (including any interest therein) or any security received by an eligible purchaser pursuant to any debt-for-equity swap, debt-for-development swap, or debt-for-nature swap.

(4) The Facility shall notify the Export-Import Bank of the United States or the Commodity Credit Corporation of purchasers the President has determined to be eligible under subsection 3406(c), and shall direct the Export-Import Bank of the United States or the Commodity Credit Corporation to carry out the sale, reduction, or cancellation of a loan or asset pursuant to this section. Such agency shall make an adjustment in its accounts to reflect the sale, reduction, or cancellation.

(5) The authorities of this subsection may be exercised beginning in fiscal year 1992 and only to such extent as provided for in advance in appropriations acts for fiscal years 1992 or thereafter, as necessary to implement section 13201 of the Budget Enforcement Act of 1990.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan or asset sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account(s) established for the repayment of such loan or asset.

(c) ELIGIBLE PURCHASER.—A loan or asset may be sold pursuant to this section only to a purchaser who presents plans satisfactory to the President for using such loan or asset for the purpose of engaging in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps. A loan or asset may be reduced or canceled pursuant to this section only for the purpose of facilitating debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATION.—Prior to the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section of any loan made to an eligible country, or asset acquired as the result of a credit guarantee made in connection with export sales to an eligible country, the President should consult with that country concerning, among other things, the amount of loans or assets to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

SEC. 3407. REPORTS.

(a) ANNUAL REPORT TO CONGRESS.—Not later than December 31 of each year, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate an annual report on the operation of the Facility for the prior fiscal year.

TITLE XXXV—REPEAL THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

SEC. 350. Subsection (b) of section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended to read as follows:

"(b)(1) No technical assistance may be provided under chapter 3 and no duty shall be imposed under section 287 after September 30, 1992. Except as provided in paragraph (2) of this subsection, no assistance, vouchers, allowances or other payments may be provided under chapter 2 after September 30, 1992.

"(2) To effectuate the provisions of paragraph (1) of this subsection in an orderly manner, notwithstanding any provision of chapter 2—

"(A) No petition for certification of eligibility to apply for adjustment assistance may be filed under section 221 after June 30, 1992, and any petition received by the Secretary of Labor after such date shall be dismissed and returned with written notice of

such dismissal to the petitioner or petitioners;

"(B) A worker covered under a certification of eligibility to apply for adjustment assistance shall be paid (to the extent appropriated funds are available) for weeks which begin after September 30, 1992, any assistance, allowance or other payment the worker is determined to be entitled to receive under the provisions of such chapter 2 subject to the following additional conditions and limitations—

"(i) the worker shall be entitled to trade readjustment allowances for which the worker is otherwise eligible for weeks which begin after September 30, 1992, if the worker received a payment of a trade readjustment allowance to which the worker was entitled under such chapter 2 with respect to the last week which commenced immediately prior to September 30, 1992: *Provided*, that no payment shall be made under this clause for any week which ends after September 30, 1993;

"(ii) the worker shall be entitled to have the costs of training which is approved under section 236(a)(1) paid on his behalf (as provided in such section 236(a)) if such training is commenced and the funds to pay the full costs of the training were obligated prior to September 30, 1992, and shall be entitled to transportation and subsistence expenses during such training as provided under section 236(b): *Provided*, that no funds appropriated for carrying out activities under section 236 shall be used to pay for any training (or transportation or subsistence) with respect to any week which ends after September 30, 1993;

"(iii) the worker shall be entitled to payment of job search allowances as provided under section 237 if such expenses were incurred on or before September 30, 1992; and

"(iv) the worker shall be entitled to payment of a relocation allowance as provided under section 238 if such payment is approved on or before September 30, 1992, and the relocation is completed not more than thirty days after the date of such approval.".

TITLE XXXVI—VA MEDICAL CARE COST RECOVERY AMENDMENT OF 1992

SEC. 3601. This title may be cited as the "Medical Care Cost Recovery Amendment of 1992".

SEC. 3602. Section 1729 of title 38, United States Code, is amended in subsection (a)(2)(E) by striking out "before October 1, 1993,".

TITLE XXXVII—VETERANS' HOME LOAN IMPROVEMENT ACT OF 1992

SEC. 3701. This title may be cited as the "Veterans' Home Loan Improvement Act of 1992".

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

REVISION OF LOAN FEE

SEC. 3702. (a) Section 3729(a)(2) is amended by—

(1) Striking out "Except as provided in paragraph (6) of this subsection, the" and inserting in lieu thereof, "The";

(2) In clause (A)—

(A) Inserting "(other than a case referred to in clause (E) of this paragraph)," immediately after "case"; and

(B) Striking out "title or for any purpose specified in section 3712 of this";

(3) In clause (B)—

(A) Inserting "(other than a case referred to in clause (E) of this paragraph)" immediately after "case"; and

(B) Striking out "and" at the end of such clause;

(4) In clause (C)—

(A) Inserting "(other than a case referred to in clause (E) of this paragraph)" immediately after "case"; and

(B) Striking out "amount." and inserting in lieu thereof "amount;"; and

(5) Inserting at the end thereof the following new clauses

"(D) in the case (other than a case referred to in clause (E) of this paragraph) of a loan made for any purpose specified in section 3712 of this title, the amount of the fee shall be two percent of the total loan amount; and

"(E)(i) except as provided in subclause (ii) of this clause, in the case of a veteran who has previously obtained a loan guaranteed under this chapter, or made under section 3711 of this title, notwithstanding any other provision of this paragraph, and without respect to the purpose for which the loan is obtained or the amount of any downpayment made by the veteran, the amount of such fee shall be 2.5 percent of the total loan amount.

"(ii) This clause shall not apply to a person on active duty at the time the loan is closed, or to a loan obtained for the purpose specified in sections 3710(a)(8) or 3733(a) of this title.".

(b) Section 3729(a) is amended by striking out paragraph (6) in its entirety.

PROCEDURES ON DEFAULT

SEC. 3703. Section 3732(c)(1)(C)(ii) is amended by striking out "resale," and inserting in lieu thereof "resale (including losses sustained on the resale of the property),".

MANUFACTURED HOME LOAN DOWNPAYMENT

SEC. 3704. Section 3712(c)(5) is amended by striking out "95" and inserting in lieu thereof "90".

DOWNPAYMENT FOR MULTIPLE USE

SEC. 3705. Section 3710(b) is amended by—

(a) In clause (5) striking out "clause (7) or (8)" and inserting in lieu thereof "clause (7), (8) or (9)";

(b) In clause (8), striking out "title." and inserting in lieu thereof "title; and"; and

(c) Inserting at the end thereof the following new clause

"(9)(A) except as provided in subclause (B) of this clause, in the case of a veteran who has previously obtained a loan guaranteed under this chapter, or made under section 3711 of this title, notwithstanding any other provision of this subsection, and without respect to the purpose for which the loan is obtained, the amount of the loan to be guaranteed under this section or made under section 3711 of this title does not exceed 90 percent of the reasonable value of the dwelling or farm residence securing the loan as determined pursuant to section 3731 of this title;

"(B) this clause shall not apply to a person on active duty at the time the loan is closed, or to a loan obtained for the purpose specified in subsection (a)(8) of this section.".

EFFECTIVE DATES

SEC. 3706. (a) The amendments made by sections 3802, 3804, and 3805 of this Act shall apply to all loans closed on or after October 1, 1992.

(b) The amendments made by section 3803 of this Act shall apply to all liquidation sales conducted on or after October 1, 1992.

TITLE XXXVIII—PERMANENT EXTENSION OF CERTAIN VETERANS-RELATED INCOME VERIFICATION AND PENSION PROVISIONS IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 3801. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) Section 6103(1)(7) of the Internal Revenue Code of 1986 is amended by striking out "Clause (viii) shall not apply after September 30, 1992." at the end thereof.

(b) Section 5317 of title 38, United States Code, is amended by striking out subsection (g).

SEC. 3802. REDUCTION IN PENSION FOR CERTAIN VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE.

Section 5503(f) of title 38, United States Code, is amended by striking out paragraph (6).

TITLE XXXIX—TARGET ENTITLEMENT FOR VOCATIONAL REHABILITATION BENEFITS TO VETERANS WITH SERVICE-CONNECTED DISABILITIES RATED 30 PERCENT OR MORE; AND ADJUST MILITARY PAY REDUCTION FOR MONTGOMERY GI BILL PARTICIPANTS

SEC 3901. REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) REFERENCES TO TITLE 38.—Whenever in the 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 title 38, United States Code.

SEC. 3902. LIMITATION OF REHABILITATION PROGRAM ENTITLEMENT TO SERVICE-DISABLED VETERANS RATED AT 30 PERCENT OR MORE.

(a) IN GENERAL.—Section 3102 (1) is amended by striking out "20 percent" each place it appears and inserting in lieu thereof "30 percent".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to veterans and other persons originally applying for assistance under chapter 31 of title 38, United States Code, on or after October 1, 1992.

SEC 3903. INCREASE IN BASIC MILITARY PAY REDUCTION FOR CHAPTER 30 MONTGOMERY GI BILL PARTICIPANTS.

(a) Chapter 30 of title 38, United States Code, is amended—

(1) in sections 3011(b) and 3012(c), by strking out "be reduced by $100" each place it appears and inserting in lieu thereof "(1) in the case of an individual who first entered on active duty before October 1, 1992, be reduced by $100, and (2) in the case of an individual who first entered on active duty on or after October 1, 1992, be reduced by $117,", respectively; and

(2) in section 3018A(b), by inserting before the period the following: "in the case of an individual whose involuntary separation is effective before October 1, 1992, and by $1400 in the case of an individual whose involuntary separation is effective on or after October 1, 1992."

TITLE XL—RETIREMENT MODIFICATION ACT OF 1992

SEC. 4001. This title may be cited as the "Retirement Modification Act of 1992".

SEC. 4002. Chapter 83 of title 5, United States Code, is amended—

(1) in section 8334—

(A) in section (a)(1)—

(i) by amending the first sentence to read as follows: "The employing agency shall deduct and withhold from the basic pay of an employee, a Congressional employee, a Mem-

ber, a law enforcement officer, a firefighter, a bankruptcy judge, a judge of the United States Court of Military Appeals, a United States Magistrate, and a Claims Court judge, the appropriate percentage specified in subsection (c).''; and

(ii) by striking out the period at the end of the second sentence and inserting in lieu thereof '', provided that such amount shall not exceed the amount that would have been required to be contributed in accordance with the percentage in effect under subsection (c) for service performed on December 31, 1992.''; and

(B) by amending subsection (c) to read as follows:

''(c) Deductions from the basic pay of each employee, Congressional employee, Member, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Military Appeals, United States magistrate, and Claims Court judge shall be made in accordance with the following table. Each individual credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his or her basic pay received for that service:

	''Percentage of basic pay	Service period
''Employee	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1992.
	8	January 1, 1993, to December 31, 1993.
	9	After December 31, 1993.
''Member or employee for Congressional employee service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7½	January 1, 1970, to December 31, 1992.
	8½	January 1, 1993, to December 31, 1993.
	9½	After December 31, 1993.
''Member for Member service.	1½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to August 1, 1946.
	6	August 2, 1946, to October 31, 1956.
	7½	November 1, 1956, to December 31, 1969.
	8	January 1, 1970, to December 31, 1992.
	9	January 1, 1993, to December 31, 1993.
	10	After December 31, 1993.
''Law enforcement officer for law enforcement service and firefighter for firefighter service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1974.
	7½	January 1, 1975, to December 31, 1992.
	8½	January 1, 1993, to December 31, 1993.
	9½	After December 31, 1993.
Bankruptcy judge	2½	August 1, 1920, to June 30, 1926.
	3½	July 3, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1983.
	8	January 1, 1984, to December 31, 1992.
	9	January 1, 1993, to December 31, 1993.
	10	After December 31, 1993.
''Judge of the United States Court of Military Appeals for service as a judge of that court.	6	May 5, 1950, to October 31, 1956.
	6½	November 1, 1956 to December 31, 1969.
	7	January 1, 1970, to September 23, 1983.
	8	September 24, 1983, to December 31, 1992.
	9	January 1, 1993 to December 31, 1993.
	10	After December 31, 1993.
''United States magistrate.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1987.
	8	October 1, 1987, to December 31, 1992.
	9	January 1, 1993, to December 31, 1993.
	10	After December 31, 1993.
''Claims Court judge	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1988.
	8	October 1, 1988, to December 31, 1992.
	9	January 1, 1993, to December 31, 1993.
	10	After December 31, 1993.

''Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) if the employee's pay had been subject to that subsection during such period.'';

(2) in section 8342(a) by striking out ''section 8343a or'';

(3) by repealing section 8343a; and

(4) in the analysis by striking out the item relating to section 8343a.

SEC. 4003. Chapter 84 of title 5, United States Code, is amended—

(1) by repealing section 8420a;

(2) in section 8424(a) by striking out ''Except as provided in section 8420a, payment'' and inserting in lieu thereof ''Payment''; and

(3) in the analysis by striking out the item relating to section 8420a.

SEC. 4004. The Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.) is amended by repealing section 807(e).

SEC. 4005. The Central Intelligence Agency Retirement Act of 1964 for Certain Employees (78 Stat. 1043; 50 U.S.C. 403 note) is amended in part K of title II by repealing section 294.

TITLE XLI—CONFORM THE DEFINITION OF COMPENSATION UNDER THE RAILROAD RETIREMENT TAX ACT TO THAT UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT

SEC. 4101. Section 3231(e)(1) of the Internal Revenue Code is amended by striking out ''money remuneration'' in the first sentence and inserting in lieu thereof the phrase ''remuneration, including the cash value of all remuneration (including benefits) paid in any medium other than cash,''.

SEC. 4102. Section 3231(e)(3) of the Internal Revenue Code of 1986 is amended by striking all that comes before the word ''term'' and inserting in lieu thereof ''The''.

SEC. 4103. (a) Section 3231(e)(4)(A) of the Internal Revenue Code of 1986 is amended by striking all that comes before the word ''the'' the first place it appears and inserting in lieu thereof ''In''.

(b) Section 3231(e)(4)(B) of the Internal Revenue Code is amended by striking ''the sections specified in subparagraph (A),'' and inserting in lieu thereof ''sections 3201(a), 3211(a), and 3221(a),''.

SEC. 4104. Section 3231(e)(6) of the Internal Revenue Code of 1986 is amended by inserting the period ''or 129''.

SEC. 4105. Section 3231(e) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new paragraphs:

''(10) MOVING EXPENSES.—The term 'compensation' shall not include remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)).

''(11) PAYMENTS ON ACCOUNT OF DEATH, DISABILITY OR RETIREMENT.—The term 'compensation' shall not include any payment or series of payments by an employer to an em-

ployee or any of his dependents which is paid—

"(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

"(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.

"(12) PAYMENT TO AN ESTATE.—The term 'compensation' shall not include any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died."

SEC. 4106. Section 3231(h) of the Internal Revenue Code of 1986 is revised to read as follows:

"(h) TIPS INCLUDED FOR BOTH EMPLOYEE AND EMPLOYER TAXES.—For purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment (and deemed to have been paid by the employer for purposes of section 3221). Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; except that, in determining the employer's liability in connection with the taxes imposed by section 3221 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary."

SEC. 4107. Section 3231 of the Internal Revenue Code of 1986 is amended by adding a new subsection (j) to read as follows:

"(j) CONFORMING THE DEFINITION OF WAGES AND COMPENSATION.—Any time chapter 21 of Internal Revenue Code (Federal Insurance Contributions Act) is amended to include in the definition of 'wages' under that chapter or to exclude from the definition of 'wages' under that chapter remuneration previously not included or excluded, such shall be included in or excluded from, as the case may be, the definition of 'compensation', except as otherwise provided under this chapter, in the same manner as if chapter 21 applied to such remuneration."

SEC. 4108. The term "compensation" as defined in section 1(h) of the Railroad Retirement Act and section 1(i) of the Railroad Unemployment Insurance Act shall include or exclude, as the case may be, remuneration which is included in or excluded from the term "compensation" by reason of amendments made by this title, except that the term "compensation" as defined in section 1(i) or "remuneration" in section 1(j) of the Railroad Unemployment Insurance Act shall not include payments considered to be "compensation" under section 3231(c)(4) of the Internal Revenue Code of 1986.

SEC. 4109. The above amendments shall apply with respect to compensation paid after September 30, 1992.

TITLE XLII—EXTEND THE DURATION OF THE PATENT AND TRADEMARK OFFICE USER FEE SURCHARGE THROUGH 1997

SEC. 4201. Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended as follows:

(a) Subsection (a) is amended by striking "1995" and inserting therefor "1997".

(b) Subsection (b)(2) is amended by striking "1995" and inserting therefor "1997".

(c) Subsection (c) is amended—

(1) by striking "1995" in the first instance and inserting therefor "1997", and

(2) by inserting the following new subsections:

"(6) $107,000,000 in fiscal year 1996.

"(7) $107,000,000 in fiscal year 1997.".

TITLE XLIII—EXPAND EXISTING ARMY CORPS OF ENGINEERS USER FEES FOR USE OF DEVELOPED RECREATIONAL SITES

SEC. 4301. The second sentence of section 210 of the Flood Control Act of 1968 (82 Stat. 746; 16 U.S.C. 460d-3) is amended to read: "Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965, as amended (78 Stat. 897; 16 U.S.C. 460*l*-6a(b)), the Secretary of the Army is authorized to charge fees for the use of developed recreation sites and facilities, including, but not limited to, campsites, swimming beaches, and boat launching ramps; however, the Secretary shall not charge fees for the use or provision of drinking water, wayside exhibits, general purpose roads, overlook sites, toilet facilities, or general visitor information. The fees shall be deposited into the special Treasury account for the Corps of Engineers that was established by section 4(i) of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*-6a(i)).".

SEC. 4302. Section 4 of the Land and Water Conservation Fund Act of 1965, as amended (78 Stat. 897; 16 U.S.C. 460*l*-6a) is further amended by deleting the next to the last sentence of subsection (b).

TITLE XLIV—EXTEND AUTHORITY TO COLLECT ABANDONED MINE RECLAMATION FEES

SEC. 4401 ABANDONED MINE RECLAMATION FEE.

Section 402(b) of the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1232(b)), is amended by striking "September 30, 1995" and inserting in lieu thereof "September 30, 1997".

TITLE XLV—FCC USER FEES

SEC. 4501. This Title may be cited as the "Federal Communications Commission User Fee Act of 1992."

SEC. 4502. In fiscal year 1993, and each year thereafter, the Federal Communications Commission (FCC) shall collect, subject to section 3302 of title 31, United States Code, fees, which shall be set at a level sufficient to cover the total nonapplication processing operational costs of the Commission. Such fees shall be assessed against each class of FCC licensees and other users of these Commission services.

TITLE XLVI—LIMITATION ON MANDATORY SPENDING

SEC. 4601. AMENDMENTS TO THE BUDGET ENFORCEMENT ACT TO LIMIT MANDATORY SPENDING.

The Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding the following new section after Section 252:

"§ 252A LIMITATIONS ON DIRECT SPENDING.

"(a) ENFORCEMENT.—The purpose of this section is to assure that any increase in the annual amount of direct spending exceeding the amount resulting from the increase in beneficiary population, and changes in the consumer price index, plus 2.5 percent per year (1.6 percent after enactment of comprehensive health reform), will trigger an offsetting sequestration.

"(b) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session and on the same day as a sequestration (if any) under sections 251 and 252, and prior to any sequestration under section 253, there shall be a sequestration to offset the amount of any excess direct spending in that fiscal year. The amount of excess direct spending shall be calculated by OMB by subtracting from the aggregate of the baseline amounts for each direct spending account (excluding spending of the Social Security (OASDI) trust funds) for the fiscal year the amount of direct spending in such account for the previous fiscal year increased (or decreased) by a percentage equaling the sum of—

"(1) growth in beneficiary population (for programs with a beneficiary population) measured in percent per year, for that fiscal year compared to the previous fiscal year; and

"(2) growth in the consumer price index (all urban) in percent per year for that fiscal year compared to the previous fiscal year; and

"(3) 2.5 percent (1.6 percent in the fiscal years (or portion of fiscal year) following the effective date of legislation enacting comprehensive health reform).

"(c) ELIMINATING EXCESS DIRECT SPENDING.—The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from direct spending accounts. Each direct spending account shall be reduced by the uniform percentage necessary to make the reduction in direct spending required. The uniform reduction required shall be made without application of the exemptions, limitations and special rules set forth in sections 255 and 256, except for the following: Sections 255(a); 255(c); prior legal obligations of the government in sections 255(g)(1) and 255(g)(2); 256(g); 256(h); and 256(l).

"(d) REPORTS.—The requirements of Section 254 for reports and orders that are applicable to section 252 shall also apply to this section except that such reports and orders for this section shall refer to and apply the requirements, calculations, and sequestrations of this section.

"(e) RECONCILIATION PROCESS TO AVOID SEQUESTRATION.—Whenever an update report for this section indicates that a sequester would be necessary to eliminate excess direct spending, the special reconciliation process set forth in section 258(c) shall apply for consideration of alternatives to the order envisioned by such report."

TITLE XLVII—EXTENSION OF BUDGET ENFORCEMENT ACT AND APPLICATION TO CREDIT PROGRAMS

SEC. 4701. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) Section 601(a)(1) of the Congressional Budget Act of 1974 is amended by:

(1) deleting "and" at the end of paragraph (D); and

(2) adding after paragraph (E) as following new paragraph:

"(F) with respect to fiscal year 1996, $284,300,000,000; and

(G) with respect to fiscal year 1997, $300,400,000,000;"

(b) Section 601(a)(2) of said Act is amended by:

(1) amending paragraphs (D) and (E) to read as follows:

"(D) with respect to fiscal year 1994—

"(i) for the defense category: $281,921,000,000 in the new budget authority and $283,657,000,000 in outlays;

"(ii) for the international category: $21,788,000,000 in new budget authority and $21,382,000,000 in outlays; and

"(iii) for the domestic category: $203,519,000,000 in new budget authority and $229,300,000,000 in outlays;

"(E) with respect of fiscal year 1995—

"(i) for the defense category: $284,672,000,000 in new budget authority and $283,506,000,000 in outlays;

"(ii) for the international category: $21,300,000,000 in new budget authority and $21,335,000,000 in outlays, and

"(iii) for the domestic category: $202,871,000,000 in new budget authority and $232,184,000,000 in outlays;"

(2) adding after paragraph (E) the following new paragraphs:

"(F) with respect to fiscal year 1996—

"(i) for the defense category: $286,353,000,000 in new budget authority and $286,515,000,000 in outlays;

"(ii) for the international category: $21,981,000,000 in new budget authority and $22,017,000,000 in outlays; and

"(iii) for the domestic category: $209,354,000,000 in new budget authority and $239,604,000,000 in outlays; and

"(G) with respect to fiscal year 1997—

"(i) for the defense category: $291,080,000,000 in new budget authority and $289,754,000,000 in outlays;

"(ii) for the international category: $22,674,000,000 in new budget authority and $22,711,000,000 in outlays; and

"(iii) for the domestic category: $215,956,000,000 in new budget authority and $247,160,000 in outlays;".

(c) The amounts set forth in the amendments made by subsections (a) and (b) reflect adjustments through the OMB fiscal year 1993 sequestration preview report in the President's fiscal year 1993 Budget.

(d) Section 601(a) of said Act is amended by adding the following new paragraph at the end:

"(3) AGGREGATE CREDIT LIMITS.—The term "aggregate credit limit" means—

"(A) with respect to fiscal year 1993: $4,339,000,000 in subsidy costs; $17,787,000,000 in direct loan obligations; and $129,719,000,000 in loan guarantee commitments;

"(B) with respect to fiscal year 1994: $4,833,000,000 in subsidy costs; $17,432,000,000 in direct loan obligations; and $131,059,000,000 in loan guarantee commitments;

"(C) with respect to fiscal year 1995: $5,037,000,000 in subsidy costs; $17,333,000,000 in direct loan obligations; and $134,466,000,000 in loan guarantee commitments;

"(D) with respect to fiscal year 1996: $5,217,000,000 in subsidy costs; $17,284,000,000 in direct loan obligations; and $136,732,000,000 in loan guarantee commitments; and

"(E) with respect to fiscal year 1997: $5,329,000,000 in subsidy costs; $17,171,000,000 in direct loan obligations; and $139,750,000,000 in loan guarantee commitments;

as adjusted in strict conformance with sections 251, 252, and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(e) Section 601(b)(1) of said Act is amended by:

(1) deleting "or 1995" and inserting "1995, 1996, or 1997"; and

(2) deleting "1992 or 1993" and inserting "1992 through 1997".

(f) Section 602(c) of said Act is amended by deleting "1995" and inserting "1997".

(g) Section 602(d) of said Act is amended by:

(1) deleting "1995" in the heading and inserting "1997"; and

(2) deleting "1995" and inserting "1997".

(h) Section 606(a) of said Act is amended by deleting "or 1995" and inserting "1995, 1996, and 1997".

(i) Section 606(d) of said Act is amended by deleting "and 1995" and inserting "1995, 1996, and 1997".

(j) Section 607 of said Act is amended by deleting "1995" and inserting "1997".

SEC. 4702. AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

(a) Section 250(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by deleting "1995" and inserting "1997".

(b) Section 250(c) of said Act is amended:

(1) in paragraph 3 by inserting a colon after "which", by inserting "(i)" before "new budget authority," replacing the period with a semicolon followed by "or", and by inserting the following:

"(ii) subsidy costs, direct loan obligations, or loan guarantee commitments for that year is above the aggregate credit limit for subsidy costs, direct loan obligations, or loan guarantee commitments for that year, as the case may be."

(2) by deleting paragraph (4) (except for the final sentence thereof) and inserting:

"(4) The term 'category' means, for fiscal years 1991 through 1997, any of the following subsets of discretionary appropriations: defense, international, or domestic. Discretionary appropriations in each of the three categories shall be those so designated in the joint statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990. New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.";

(3) in paragraph (6)(B) by deleting "or 1995" and inserting "1995, 1996, or 1997"; and

(4) in paragraph (14) by deleting "1995" and inserting "1997".

(c) Section 251(a) of said Act is amended:

(1) by deleting "1995" in the heading and inserting "1997";

(2) in paragraph (1) by inserting before the period "or in aggregate credit limits";

(3) in paragraph (2) by changing "(A)" to "(i)" and "(B)" to "(ii)", inserting "(A)" before "Each", and inserting the following new paragraphs at the end:

"(B) For a breach in aggregate credit limits, within each nonexempt credit account, the amount of subsidy costs, direct loan obligations, or loan guarantee commitments, as the case may be, shall be reduced by taking such of the following actions as are necessary to eliminate the breach—

"(i) first, with respect to each direct loan program: increase down-payments or upfront fees; increase interest rates on loans; decrease maximum loan levels for individual direct loans; decrease loan volume; and with respect to each loan guarantee program: reduce Federal guarantee as a percent of a guaranteed loan; reduce the maximum individual loan amount that can be guaranteed; increase fees or premiums; decrease the volume of loans that can be guaranteed; and

"(ii) second, reduce the budgetary resources available for subsidy costs by a dollar amount calculated by a uniform percentage.

"(C) Reporting requirements in this Act pertaining to budget authority and outlays under the discretionary spending limits shall also apply to subsidy costs, direct loan obligations, and loan guarantee commitments under the aggregate credit limits."

(d) Section 251(b) of said Act is amended:

(1) in paragraph (1):

(A) by deleting "or 1995" and inserting "1995, 1996, or 1997";

(B) by deleting "through 1995" and inserting "through 1997";

(2) in paragraph (2):

(A) by deleting "or 1995" and inserting "1995", 1996, or 1997";

(B) in subparagraph (D) by deleting "or 1995" and inserting "1995, 1996, or 1997"; and

(C) in subparagraph (F) by (i) deleting "or 1993" and inserting "1993, 1994, 1995, 1996, or 1997", and (ii) by deleting "and not to exceed $6,500,000,000 in fiscal year 1994 or 1995".

(e) Section 252 of said Act is amended:

(1) in subsection (a) by deleting "1995" in the heading and inserting "1997";

(2) in subsection (d) by deleting "1995" and inserting "1997";

(3) in subsection (e) by deleting "or 1995" and inserting "1995, 1996, or 1997" and by deleting "through 1995" and inserting "through 1997".

(f) Section 253 said Act is amended:

(1) in subsection (b) by deleting "or 1995" and inserting "1995, 1996, or 1997";

(2) in subsection (g)(1)(B) by deleting "and 1995" and inserting "1995, 1996, and 1997";

(3) in subsection (h)(1) by deleting "and fiscal year 1995" and inserting "through fiscal year 1997"; and

(4) in subsection (h)(2) by deleting "and fiscal year 1995" and inserting 1995, 1996, and 1997".

(g) Section 254 of said Act is amended:

(1) in subsection (d)(2) by deleting "1995" and inserting "1997";

(2) in subsection (g)(2)(A) by deleting "1995" and inserting "1997"; and

(3) in subsection (g)(3) by deleting "1995" and inserting "1997".

(h) Section 275(b) of said Act is amended by deleting "1995" and inserting "1997".

TITLE XLVIII—CONGRESSIONAL BUDGET REFORM ACT OF 1992

SECTION 4801. SHORT TITLE.

This title may be cited as the "Congressional Budget Reform Act of 1992".

SECTION 4802. AMENDMENTS TO THE BUDGET ACT TO CHANGE CONCURRENT BUDGET RESOLUTIONS INTO JOINT BUDGET RESOLUTIONS.

(a) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking out "concurrent" each place it occurs therein and by inserting in lieu thereof "joint" and by striking out "Concurrent" and by inserting in lieu thereof "Joint" in the item relating to section 303.

(b) DEFINITIONS.—

Paragraph (4) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking out "concurrent" each place it occurs therein and by inserting in lieu thereof "joint".

(c) TITLE III OF THE BUDGET ACT.—Title III of the Congressional Budget Act of 1974 is amended by striking out "concurrent" each place it occurs therein and by inserting in lieu thereof "joint" and by striking out "Concurrent" and by inserting in lieu thereof "Joint" in the heading of section 303.

(d) TITLE IV OF THE BUDGET ACT.—Section 401(b)(2) of the Congressional Budget Act of 1974 is amended by striking out "concurrent" and by inserting in lieu thereof "joint".

(e) TITLE VI OF THE BUDGET ACT.—Title VI of the Congressional Budget Act of 1974 is amended by striking out "concurrent" each place it occurs therein and by inserting in lieu thereof "joint".

(f) TITLE IX OF THE BUDGET ACT.—Section 904(d) of the Congressional Budget Act of 1974 is amended by striking out "concurrent" and by inserting in lieu thereof "joint".

SEC. 4803. TECHNICAL AND CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES.

(a) RULE X.—Clauses 1(e)(2), 4(a)(2), 4(b)(2), 4(g), 4(h), and 4(i) of rule X of the Rules of the House of Representatives are amended by striking out "concurrent" each place it appears therein and by inserting in lieu thereof "joint".

(b) RULE XXIII.—Clause 8 of rule XXIII of the Rules of the House of Representatives is amended by striking out "concurrent" each place it appears therein and by inserting in lieu thereof "joint".

(c) RULE XLIX.—Rule XLIX of the Rules of the House of Representatives is repealed.

SEC. 4804. TECHNICAL AND CONFORMING AMENDMENTS TO THE DEFICIT CONTROL ACT OF 1985.

(a) SECTION 254.—Section 258C(b)(1) of the Deficit Control Act of 1985 is amended by striking out "concurrent" and by inserting in lieu thereof "joint".

SEC. 4805. EFFECTIVE DATE.

This Act and the amendments made by it shall apply with respect to fiscal years beginning after September 30 of the calendar year of enactment of this title.

TITLE XLIX—LEGISLATIVE LINE ITEM VETO ACT OF 1992

SECTION 4901. SHORT TITLE.

This title may be cited as the "Legislative Line Item Veto Act of 1992".

SEC. 4902. ENHANCEMENT OF SPENDING CONTROL BY THE PRESIDENT.

The Impoundment Control Act of 1974 is amended by adding at the end thereof the following new title:

"TITLE XI—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

"PART A—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

"GRANT OF AUTHORITY AND CONDITIONS

"SEC. 1101. (a) IN GENERAL.—Notwithstanding the provisions of part B of title X and subject to the provisions of part B of this title, the President may rescind all or part of any budget authority, if the President—

"(1) determines that—

"(A) such rescission would help balance the Federal budget, reduce the Federal budget deficit, or reduce the public debt;

"(B) such rescission will not impair any essential Government functions; and

"(C) such rescission will not harm the national interest; and

"(2)(A) notifies the Congress of such rescission by a special message not later than 20 calendar days (not including Saturdays, Sundays, or holidays) after the date of enactment of a regular or supplemental appropriations Act or a joint resolution making continuing appropriations providing such budget authority; or

"(B) notifies the Congress of such rescission by special message accompanying the submission of the President's budget to Congress and such rescissions have not been proposed previously for that fiscal year.

The President shall submit a separate rescission message for each appropriations bill under paragraph (2)(A).

"(b) RESCISSION EFFECTIVE UNLESS DISAPPROVED.—(1)(A) Any amount of budget authority rescinded under this title as set forth in a special message by the President shall be deemed canceled unless during the period described in subparagraph (B), a rescission disapproval bill making available all of the amount rescinded is enacted into law.

"(B) The period referred to in subparagraph (A) is—

"(i) a Congressional review period of 20 calendar days of session under part B, during which Congress must complete action on the rescission disapproval bill and present such bill to the President for approval or disapproval;

"(ii) after the period provided in clause (i), an additional 10 days (not including Sundays) during which the President may exercise his authority to sign or veto the rescission disapproval bill; and

"(iii) if the President vetoes the rescission disapproval bill during the period provided in clause (ii), an additional 5 calendar days of session after the date of the veto.

"(2) If a special message is transmitted by the President under this section during any Congress and the last session of such Congress adjourns sine die before the expiration of the period described in paragraph (1)(B), the rescission shall not take effect. The message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the review period referred to in paragraph (1)(B) (with respect to such message) shall run beginning after such first day.

"DEFINITIONS

"SEC. 1102. For purposes of this title the term 'rescission disapproval bill' means a bill or joint resolution which only disapproves a rescission of budget authority, in whole, rescinded in a special message transmitted by the President under section 1101.

"PART B—CONGRESSIONAL CONSIDERATION OF LEGISLATIVE LINE ITEM VETO RESCISSIONS

"PRESIDENTIAL SPECIAL MESSAGE

"SEC. 1111. Whenever the President rescinds any budget authority as provided in section 1101, the President shall transmit to both Houses of Congress a special message specifying—

"(1) the amount of budget authority rescinded;

"(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

"(3) the reasons and justifications for the determination to rescind budget authority pursuant to section 1101(a)(1);

"(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the rescission; and

"(5) all facts, circumstances, and considerations relating to or bearing upon the rescission and the decision to effect the rescission, and to the maximum extent practicable, the estimated effect of the rescission upon the objects, purposes, and programs for which the budget authority is provided.

"TRANSMISSION OF MESSAGES; PUBLICATION

"SEC. 1112. (a) DELIEVERY TO HOUSE AND SENATE.—Each special message transmitted under sections 1101 and 1111 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committees of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

"(b) PRINTING IN FEDERAL REGISTER.—Any special message transmitted under sections 1101 and 1111 shall be printed in the first issue of the Federal Register published after such transmittal.

"PROCEDURE IN SENATE

"SEC. 1113. (a) REFERRAL.—(1) Any rescission disapproval bill introduced with respect to a special message shall be referred to the appropriate committees of the House of Representatives or the Senate, as the case may be.

"(2) Any rescission disapproval bill received in the Senate from the House shall be considered in the Senate pursuant to the provisions of this section.

"(b) FLOOR CONSIDERATION IN THE SENATE.—

"(1) Debate in the Senate on any rescission disapproval bill and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(2) Debate in the Senate on any debatable motion or appeal in connection with such a bill shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(3) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 1, not counting any day on which the Senate is not in session) is not in order.

"(c) POINT OF ORDER.—(1) It shall not be in order in the Senate or the House of Representatives to consider any rescission disapproval bill that relates to any matter other than the rescission of budget authority transmitted by the President under section 1101.

"(2) It shall not be in order in the Senate or the House of Representatives to consider any amendment to a rescission disapproval bill.

(3) Paragraphs (1) and (2) may be waived or suspended in the Senate only by a vote of three-fifths of the members duly chosen and sworn.".

By Mr. COATS (for himself and Mr. D'AMATO):

S. 2218. A bill to amend section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 to authorize local governments that have financed a housing project that has been provided a financial adjustment factor under section 8 of the U.S. Housing Act of 1937 to use 50 percent of any recaptured amounts available from refinancing of the project for housing activities; to the Committee on Banking, Housing, and Urban Affairs.

USE OF CERTAIN RECAPTURED HOUSING FUNDS BY LOCAL GOVERNMENTS

• Mr. COATS. Mr. President, I rise today to ask my colleagues to support a measure I am introducing that will save the Federal Government millions of dollars and, at the same time, provide local public housing authorities [PHA's] with additional funds to improve their communities and empower

their residents. This bill serves to correct an oversight which, in effect, excluded PHA's from a provision of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

Between 1979 and 1984, thousands of low-income housing units were financed with tax-exempt bonds. The Department of Housing and Urban Development subsidized these projects with section 8 Federal housing assistance payments contracts, thereby guaranteeing monthly rental payments on behalf of low-income tenants directly to the project owners. Both State housing finance agencies and local public housing authorities served as issuers of the bonds.

When tax-exempt interest rates climbed to 10 to 13 percent in 1982, HUD awarded additional section 8 budget authority to developers in return for a 4-percent upfront fee. These projects became known as FAF projects because of this financial adjustment factor. In 1987, tax-exempt interest rates fell, and HUD began to spur refundings to recapture significant savings in section 8 subsidy.

In 1988, the McKinney Act was amended to allow State housing finance agencies to split with HUD the savings from FAF refinancings. Due to a technical oversight, local PHA's were not included in this provision. While the McKinney Ac does not specifically prohibit splitting savings with public housing authorities, HUD has consistently refused to grant such requests without explicit congressional direction. As a result, PHA's have no incentive to refinance these bonds at the lower interest rates. Thousands of units are still being subsidized at the high rates, and millions of tax dollars are being wasted.

In addition to saving the Federal Government approximately $130 million, allowing public housing authorities to share section 8 savings would enable them to create new housing, rehabilitate existing units, and implement innovative programs that empower residents to move out of public housing.

The Evansville Housing Authority [EHA], in my own State of Indiana, has created the Resident Initiative Program which would assist residents in starting their own businesses. Currently, the housing authority does not have the resources to get this program off the ground; however, if the housing authority were to refinance its bonds and split the savings with HUD, it would receive as much as $100,000 which could be used to implement the Resident Initiative Program.

On behalf of Senator D'AMATO and myself, I ask my colleagues to support the bill I am introducing today to correct the oversight in the 1988 McKinney Act and grant public housing authorities the opportunity to share in savings from FAF refinancings.•

• Mr. D'AMATO. Mr. President, I am pleased to cosponsor the legislation being introduced today by my colleague from Indiana. By providing incentives to local governments to refinance certain tax-exempt bonds, Congress can save more than $130 million. Under this bill, these savings would be used to reduce the deficit by $65 million and generate $65 million to provide affordable housing for low-income households.

This legislation will achieve this by extending to local housing finance agencies a cost-saving mechanism that has been available to State housing finance agencies since 1988. Extending this mechanism to local housing finance agencies creates Federal budget savings by encouraging local housing authorities to refinance existing bonds at lower interest rates.

Because the Federal Government is making payments to support the interest cost of these bonds, refinancing at lower interest rates saves the Federal Government money. However, State and local housing finance agencies previously had no incentive to refinance these bonds because they wouldn't receive any savings. In the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, we allowed State housing finance agencies to share the savings generated by refunding financial adjustment factor [FAF] bonds. The McKinney law also requires that States use the income generated from the refunding for low-income housing programs.

The bill my colleague from Indiana and I are introducing today will encourage local housing finance agencies to refund their bonds at lower interest rates by applying the same revenue-sharing system to local housing finance agencies. HUD has indicated that between 1982 and 1983, 389 local agency FAF projects were financed, with an original section 11(b) tax-exempt bond total of $1.47 billion. The average bond yield is 11.57 percent. Since May 1989, more than 71 bond issues have been refunded, reducing debt service costs by $100 million.

This means that there are many eligible bonds held by State and local housing finance agencies that could be refunded. This bill will allow more than 20 communities within my State, with total bond amounts of approximately $78 million, to share in the savings from bond refundings, saving taxpayers' money and obtaining about $8 million for local housing programs. Nationwide, there are hundreds of eligible bonds that could be refunded at lower interest rates, saving the taxpayers money and providing additional housing resources.

This is a win-win situation for local governments and taxpayers. HUD supports this legislation, estimating that it will reduce debt service costs by approximately $130 million. I expect that this legislation will be included in this year's housing reauthorization or other appropriate legislation this session.•

By Mr. KASTEN:

S. 2219. A bill to make amendments to the Liability Risk Retention Act, as amended, and for other purposes; to the Committee on Commerce, Science, and Transportation.

LIABILITY RISK RETENTION ACT AMENDMENTS

• Mr. KASTEN. Mr. President, this morning I am introducing amendments to the Liability Risk Retention Act. The amendments have been developed by the administration based on a comprehensive report on the operations of the act since the adoption of amendments during the liability insurance crisis in 1986. The original act covered only product liability, but now covers virtually all types of commercial and professional liability insurance.

The Liability Risk Retention Act provides an important alternative insurance mechanism for business and professional organizations unable to find adequate insurance coverage in the standard marketplace. The Commerce Department has reported that problems in the operation of the act have restricted the formation of risk retention groups and purchasing groups under the act. During this period of a relatively calm, open casualty insurance market, the defects in the act have had a somewhat limited impact. Experience shows that the insurance market is cyclical and return to the hard conditions experienced in 1984 to 1986 could be just around the corner. It is important that we take advantage of this period of relative stability to consider these needed amendments.

During the past few years, we have seen several commercial insurers become insolvent as a result of bad management or failed investments coupled with adverse claims experience. While there is no indication of widespread financial collapse in the insurance industry as we have seen in banking, there has been heightened interest in the solvency of all insurers. There should be no less interest in the solvency of the companies using this act.

I am therefore pleased that the administration's amendments address the issue of solvency, particularly for the insurers of purchasing groups. Experience has shown that some small, undercapitalized insurers—both alien and domestic—have been insuring multiple purchasing groups. State insurance commissioners have expressed concerns about these operations and the potential losses to the public and policyholders if a failed insurer is unable or unavailable to cover claims. There is concern also that risk retention groups maintain adequate capital to meet obligations to their policyholder/owners. When we enacted this legislation, State regulation was to be the primary safeguard to the solvency

of these groups. But we fully expected the self interest of the policyholder/owners to provide a strong dose of self regulation in the operations of these specialty insurers licensed in one State but able to operate in all States. Now we want to make certain that the group members maintain control of their organizations and that insurance regulators in all States are able to assess the financial condition of groups operating in their States.

The main elements of the proposal would amend the act to:

Require that the members themselves control both risk retention groups and purchasing groups so that they can achieve the bargaining power they need.

Permit single-State regulation of purchasing groups and their insurers while preserving the ability of other States to challenge the financial solvency of any group. Single-State regulation permits the realization of cost savings for groups and reduces regulatory redundancy.

Regulate purchasing group insurers through the establishment of minimum qualifying criteria to promote the use of financially sound insurers while maintaining a streamlined regulatory regime.

Strengthen notice and reporting requirements for risk retention groups and purchasing groups and their insurers.

There cannot be absolute certainty about the success or failure of any enterprise. But there can be clear ground rules that will at least enhance survival. Through passage of the Risk Retention Act we have opened new opportunities for liability insurance buyers to obtain needed, affordable coverage. Now we have the benefit of the experience gained over the past several years and we can fine tune the ground rules to assure a properly functioning act.

I ask unanimous consent that a copy of the bill, a section-by-section summary, and a copy of the changes that would be made to current law be printed in the CONGRESSIONAL RECORD immediately following my remarks.

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

S. 2219

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

SECTION 1. SHORT TITLE; REFERENCE.

(a) This Act may be cited as the Liability Risk Retention Act Amendments of 1992.

(b) Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be considered to be a reference to the Liability Risk Retention Act (15 U.S.C. 3901 *et seq*).

SEC. 2. DEFINITIONS.

(a) Section 2(a) is amended

(1) in subsection (1) by striking the phrase "surplus lines insurance,";

(2) in subsection (2)(B) by adding at the end the phrase "and employers liability insurance in excess of the minimum policy limits required under applicable State workers' compensation laws";

(3) in subsection (4)(E)(i) by adding after the words "its owners" the phrase "and is controlled by";

(4) in subsection (4)(E)(ii) by adding after the words "its sole owner" the phrase "and is controlled by";

(5) in subsection (4)(G)(ii) to add after "liability exposure of" the phrase "its own members";

(6) in subsection (5) by adding the word "and" at the end of subsection (D) and adding a new subsection (E) as follows:

"(E) is controlled by its members;"

(7) in subsection (6) by adding after "United States" the phrase ", the Commonwealth of Puerto Rico,";

(8) in subsection (7) by adding after "risk retention group" the phrase "or purchasing group insurer";

(9) by adding three new subsections as follows:

"(8) 'principal place of business' of a purchasing group means the State which has been designated by the purchasing group as its principal place of business and in which the purchasing group maintains an office and has and continues to have members;

"(9) a risk retention group or purchasing group is 'controlled' by its members when they retain the power to direct the affairs of the group and to enter at arms length into transactions with insurers and other suppliers of goods and services;

"(10) a 'purchasing group insurer' is any insurer providing insurance to a purchasing group pursuant to this Act."

SEC. 3. RISK RETENTION GROUPS.

(a) Section 3(a) is amended

(1) in subsection (1)(B) by striking the phrase "and surplus lines insurers, brokers, or policyholders";

(2) in subsection (1)(E) by striking subparagraph (ii) and inserting in lieu thereof the following:

"(ii) any such examination is coordinated to avoid unjustified repetition but no risk retention group shall be required to submit to more than one financial examination during any calendar year unless ordered to do so by a Federal court of competent jurisdiction upon a showing of reasonable cause to believe that the risk retention group may be in a hazardous financial condition or financially impaired and on a finding that a new examination would not be unjustifiably duplicative;"

(3) in subsection (1)(H) by adding the phrase "at least" before the phrase "10 point type".

(4) by striking subsection (1)(C) and redesignating subsections (1)(D)(1)(I) and the reference in subsection (1)(F)(i) accordingly.

(5) at the end of subsection (3) by striking the phrase "residing in the State";

(6) by redesignating subsection (4) as subsection (6) and adding new subsections (4) and (5) as follows:

"(4) prohibit a risk retention group from ceding any or all of the insurance issued to its members to any reinsurer which meets the requirements of the risk retention group's chartering State for allowing balance sheet credit;

"(5) refuse to recognize as an asset a letter of credit that has been issued by a bank that is a member of the Federal Reserve System and listed by the NAIC Security Valuation Office as meeting NAIC standards, if the letter of credit is drafted in a form that has been approved by the commissioner of the State in which the group is licensed as an insurer and that commissioner has recognized the letter of credit as an asset of the group;"

(b) Section (3)(c) is amended to read as follows:

"(c) A State may require licensing or qualification of a person acting or offering to act as an agent or broker for a risk retention group subject to the following—

"(1) Officers, directors and full time employees of a risk retention group may engage in the direct sale and servicing of insurance to members without regard to the brokers' and agents' licensing requirements of any State.

"(2) Other persons acting or offering to act as an agent or broker for a risk retention group must obtain a license from the chartering State. That State may not:

"(A) impose any qualification or requirement which discriminates against a nonresident insurance agent;

"(B) impose licensing requirements different from those applicable to insurance agents generally in that State; or

"(C) require such risk retention group to appoint a licensed insurance agent where no person is acting or offering to act in that capacity;

"(3) Any insurance agent licensed by the State in which a risk retention group is chartered may act as an insurance agent on behalf of such group in all States where it does business whether or not the insurance agent is licensed by such other States."

(c) Section (3) is amended by inserting new subsections (d) and (e) as follows:

"(d) A risk retention group may provide liability insurance coverage to a nonmember as an additional named insured under coverage issued to a member in order to provide insurance for the liability of such nonmember assumed under any contract entered into during the course of the business or activity described in Section 2(a)(4)(F) of this Act.

* * * * *

"(G) shall certify that all members of the purchasing group are engaged in similar or related business or activities as regards their liability exposure."

(d) Subsection (f) is stricken in its entirety and subsections (g) and (h) are redesignated accordingly.

A new section is inserted after SECTION 4 as follows:

"SEC. 5. PURCHASING GROUP INSURERS.

"QUALIFICATIONS AND CONDITIONS

"(a) Admitted insurers, approved surplus lines insurers and non-admitted insurers shall be permitted to provide insurance under this Act to purchasing groups pursuant to the following conditions and qualifications and subject to the other provisions of this chapter:

"(1) An insurer will be considered qualified to write purchasing group insurance under this Act if the insurer:

"(A) is admitted in at least one State, and:

"(i) has the capital and surplus required of an admitted insurer doing the same kind and amount of business under the laws and regulations of each State in which it is writing insurance for a purchasing group or its members;

"(ii) retains risk net of reinsurance in an amount less than the maximum permitted admitted insurers under the laws and regulations of each State in which it is writing insurance for a purchasing group or its members;

"(iii) maintains a premium to surplus ratio no greater than 3 to 1; and

"(iv) maintains minimum capital and surplus of at least $3 million as determined in

accordance with the statutory accounting principles in the principal place of business of the purchasing group; or

"(B) is domiciled in a State certified by the NAIC as meeting NAIC financial regulatory standards; or

"(C) is an alien insurer and is listed on the most recent NAIC "Non-Admitted Insurers Quarterly Listing" or has been approved for listing subsequent to publication of the NAIC's most recent listing.

"REGULATION OF PURCHASING GROUP INSURERS

"(b) The provision of insurance to a purchasing group by a qualified purchasing group insurer shall be regulated by the State in which the purchasing group has its principal place of business and the authority of other States in which such insurance is provided to any group member is limited to those matters authorized by this section; provided, however, that the State of domicile of a domestic purchasing group insurer shall retain all its customary oversight responsibility of the purchasing group insurer as a licensee of the State.

"(1) The State in which a purchasing group has its principal place of business shall, with regard to the insurer's provision of purchasing group insurance, and subject to the exemptions contained in §4(a), apply the policy form, coverage and rating laws and regulations of the State in the same manner as if the purchasing group insurer were an admitted carrier in that State;

"(2) Any State may require a purchasing group insurer to—

"(A) comply with the unfair claim settlement practices law of the State;

"(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of the State;

"(C) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

"(D) submit to an examination by the State insurance commissioner in any State in which the purchasing group insurer is doing purchasing group business to determine the group's financial condition, if—

"(i) the commissioner of the jurisdiction in which the purchasing group insurer is domiciled has not begun or has refused to initiate an examination of the insurer; and

"(ii) any such examination is coordinated to avoid unjustified duplication and unjustified repetition but no purchasing group insurer shall be required to submit to more than one financial examination during any calendar year unless ordered to do so by a Federal court of competent jurisdiction upon a showing of reasonable cause to believe that the purchasing group insurer may be in a hazardous financial condition or financially impaired and upon a finding that a new examination would not be unjustifiably duplicative;

"(E) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;

"(F) comply with any State law regarding deceptive, false or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in the subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(G) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the purchasing group insurer is in hazardous financial condition or is financially impaired; and

"(H) provide the following notice, in at least 10 point type, in any insurance policy issued to a purchasing group:

NOTICE

"This policy is issued by your purchasing group insurer which may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds may not be available for your purchasing group insurer.

"(3) No State may:

"(A) require any insurance policy issued to a purchasing group or any member of the group to be countersigned by an insurance agent or broker, or

"(B) require the submission of declinations or certificates of non-availability prior to or as a condition of writing purchasing group insurance;

"(C) require a purchasing group insurer to use a licensed agent with respect to the provision of insurance to a purchasing group if the purchasing group is represented by an agent qualified under section 4(c); or

"(D) otherwise discriminate against a purchasing group insurer, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

"(4) No State, other than the State in which the purchasing group has its principal place of business shall have the right to regulate policy forms, rates or coverage provided the purchasing group except as otherwise provided by Sec. 8 of this Act.

NOTICE REQUIREMENTS

"(c) Purchasing group insurers shall furnish

"(1) to the insurance commissioner of the State in which the purchasing group has its principal place of business—

"(A) the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the insurer intends to offer the purchasing group and its members; and

"(B) a copy of the insurer's annual financial statement, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(i) a member of the American Academy of Actuaries, or

"(ii) a qualified loss reserve specialist approved by the insurance commissioner of the purchasing group insurer's State of domicile for a domestic purchasing group insurer or by the insurance commissioner of the purchasing group's principal place of business for an alien purchasing group insurer; and

"(C) such other information as the commissioner may require.

"(2) copies of all documents filed with the State in which the purchasing group has its principal place of business to its State of domicile and to all other States in which it is doing business. States other than that of the purchasing group's principal place of business may not require a purchasing group insurer to make any filings or provide any other information or submissions other than the submission of copies of documents filed with the State in which the purchasing group has its principal place of business except that:

"(A) any State may require that a purchasing group insurer doing business in the State conform to the National Association of Insurance Commissioners' standard when filing the Annual Statement; and

"(B) any State may require a purchasing group insurer doing business in the State to make submissions necessary to comply with those State laws from which purchasing group insurers are not exempt.

POWER OF COURTS TO ENJOIN CONDUCT

"(d) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a purchasing group insurer to any person who is not eligible for membership in such group;

"(2) the solicitation or sale of insurance by, or operation of, a purchasing group insurer that is in hazardous financial condition or is financially impaired, or

"(3) any false, deceptive or fraudulent conduct by a purchasing group, purchasing group insurer, agents or brokers.

STATE POWERS TO ENFORCE STATE LAWS

"(e)(1) Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group insurer is not exempt under this chapter.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (d) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

STATES' AUTHORITY TO SUE

"(f) Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

DESIGNATION OF AGENT FOR SERVICE OF DOCUMENTS AND PROCESS

"(g) A purchasing group insurer shall register with and designate the State insurance commissioner of each State in which the purchasing group has insured members as its agent solely for the purpose of receiving service of legal documents or process."

SEC. 5. SECURITIES LAWS.

(a) Section 5 is redesignated Section 6 and is amended

(1) in subsection (a) by striking subsections (1) and (2) and by striking the dash (—) and by adding in lieu thereof the words, "deemed to be exempted securities for purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934."

SEC. 6. CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY.

(a) Section 6 is redesignated as Section 7.

(b) Subsection (a) is amended by adding after the words "a risk retention group" the phrase ", purchasing group insurer."

(c) Subsection (b) is amended by adding after the words "a risk retention group" the phrase "or a purchasing group insurer" and adding after the words "by any such group" the phrase "or insurer"

(d) Subsection (c) is amended by adding after the words "risk retention group" the phrase "or purchasing group insurer pursuant to this Act"

(e) Subsection (d) is amended to read as follows:

"(d) Subject to the provisions of Sections 3(a)(5), 4(a)(8), and 5(b)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license or permit to undertake specified activities.".

(f) A new subsection (e) is added following subsection (d) as follows:

"(c) Any law, rule or regulation which would make unlawful the forming or joining

of a risk retention group or a purchasing group by a State or any local government or agency or political subdivision thereof is preempted by this chapter in the absence of State legislation expressly prohibiting such forming or joining.

SEC. 7. INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS.

(a) Section 7 is redesignated Section 8 and is amended by adding after the words "enjoining a risk retention group" the phrase "or purchasing group insurer".

SECTION-BY-SECTION SUMMARY: PROPOSED LEGISLATION TO AMEND THE LIABILITY RISK RETENTION ACT

SECTION 1: SHORT TITLE

This section provides that this Act may be cited as the Liability Risk Retention Amendments of 1992.

SECTION 2: DEFINITIONS

The following definitions are amended:

1. "Insurance."

The Sec. 2(a)(1) definition of "insurance" is amended by striking the reference to "surplus lines insurance". This change should have no substantive effect; it simply eliminates superfluous language.

2. "Liability."

The Sec. 2(a)(2) definition of "liability" is amended to clarify the fact that employers' liability insurance in excess of minimum policy limits required under workers' compensation statutes can be covered under the Act.

3. "Risk retention group."

The Sec. 2(a)(4) definition of "risk retention group" is amended to require that a risk retention group is not only owned by its members who are also provided insurance (or by an organization comprised of such members) but that it is also "controlled" by these members. "Controlled" is defined in a new section 2(a)(9) as occurring when the members of a risk retention group or purchasing group "retain the power to direct the affairs of the group and to enter at arm's length into transactions with insurers and other suppliers of goods and services."

The primary purpose of the amendment is to clarify the fact that risk retention groups are to be controlled by members, not outsiders. While non-members may run day-to-day activities of the organization, the power to direct the affairs of the group should rest with the members. This definition carries the concept of "shared control" among the members of the group but a specific formula was not deemed desirable. The definition of "risk retention group" is also amended in subsection (G)(ii) to clarify that risk retention groups can reinsure their own members.

4. "Purchasing group."

The Sec. 2(a)(5) definition of "purchasing group" is amended to add a requirement that a purchasing group be controlled by its members. The definition of "controlled" is the same as for risk retention groups. The issue of control is of particular concern with regard to purchasing groups. As detailed in the two Commerce reports on the Act, some purchasing groups are being formed and controlled by insurance entities whose interests may differ from those of purchasing group members. Insurance companies, agents and brokers may provide management services and assist in establishing purchasing groups but control should rest with the group members if the purpose of the Act and the needs of the members are to be well served. Insurer-controlled purchasing groups lack independence and cannot achieve the bargaining power a group needs to obtain sound insurance on the best terms.

5. "State."

The Sec. 2(a)(6) definition of "State" is amended to include Puerto Rico. The significance of this change is that it permits Puerto Rico to be the chartering State for a risk retention group or the principal place of business of a purchasing group.

6. "Hazardous financial condition."

The Sec. 2(a)(7) definition of "hazardous financial condition" is amended to extend its coverage to purchasing group insurers.

Three new definitions are provided as follows:

1. "Principal place of business."

The "principal place of business" of a purchasing group is referred to in the existing law but is not defined. The new definition, Section 2(a)(8), defines it as the State which has been designated as the principal place of business by the purchasing group and in which the group has and continues to have members and in which the group maintains an office. The purpose for the definition is to clearly identify the State with regulatory authority and to ensure that a purchasing group has a real connection to the State which will provide the regulation of its insurance coverage.

2. "Controlled."

The existing law does not address the issue of control of risk retention groups or purchasing groups. The new definition defines "controlled" as being when members retain the power to direct the affairs of the group and enter at arm's length into transactions with insurers and other suppliers of goods and services. The purpose of the definition is to clarify that both risk retention groups and purchasing groups are not only owned but are also controlled by their members.

3. "Purchasing Group Insurer."

The existing law does not directly address the insurers of purchasing groups. A new section on purchasing group insurers provides which insurers can insure purchasing groups under the Act and under what conditions. The new definition defines "purchasing group insurer" as any insurer providing insurance to a purchasing group pursuant to the Act.

SECTION 3. RISK RETENTION GROUPS

1. Exemptions and Requirements.

Section 3(a) itemizes the State laws, rules, regulations and orders from which a risk retention group is exempt and indicates what States may require of a group. The amendments modify three of the provisions, strike one and add two new provisions.

A. Premium Taxes.

Subsection (1)(B) currently provides that any State may require a risk retention group to pay premium and other taxes which are levied on admitted insurers, surplus lines insurers, brokers or policyholders. The amendments limit the taxing authority to those taxes levied on admitted insurers. This change will provide certainty and uniformity by assuring that all States treat risk retention groups the same by taxing them the same as admitted insurers.

B. Joint Underwriting Associations (JUA's).

Subsection (1)(C) currently allows a State to require risk retention groups to participate in JUA's. The amendments strike this subsection. The JUA provision is inconsistent with the definition of a risk retention group which requires that all insureds be owners and bars coverage to non-members. Risk retention groups are limited purpose insurers of specified liability coverage, generally in fields where availability and affordability of insurance are problems, therefore it does not seem that they should be forced to use funds to cover other problem areas.

C. Financial Examinations.

Subsection (1)(E)—to be revised as (1)(D)—requires a risk retention group to submit to financial examinations under certain conditions. The amendment limits such examinations to no more than one in any calendar year unless a Federal Court requires more. The purpose of the amendment is to permit risk retention groups to avoid harassment by the imposition of multiple financial examinations while at the same time permitting additional financial review with the approval of a Federal court.

D. Countersignature.

Subsection (3) provides that a risk retention group is exempt from any provision which would require an insurance policy issued to a risk retention group or member to be countersigned by an insurance agent or broker residing in the State. The amendment, by striking the words, "residing in the State", prohibits any countersignature requirement.

E. Ceded Insurance.

The amendments add a new Subsection (4) which allows a risk retention group to cede insurance to its reinsurer if it meets the requirements of the risk retention group's chartering State. The existing law does not specifically address this issue although many believe that ceding insurance is implicitly authorized if the chartering State allows it. This amendment would prevent regulators in other than the chartering State from challenging a group's financial condition solely on the grounds that it ceded insurance. Financial challenges should be based on the overall financial condition.

F. Letters of Credit.

The amendments add a new Subsection (5) that prohibits States from refusing to recognize a letter of credit as an asset provided that it meets specified conditions. Some States recognize letters of credit assets; others do not. The amendments reflect the position that, if the chartering State permits the use of letters of credits as assets, other States in which the group is doing business should also recognize them. At the same time, the amendment puts some qualifications on this by requiring that the letters be: 1) issued by a bank that is a member of the Federal Reserve System, 2) listed by the NAIC Security Valuation Office as meeting NAIC standards, 3) recognized by the commissioner of the licensing State and 4) approved as an asset of the group by the licensing commissioner. These conditions should provide the security necessary while permitting some latitude in the use of letters of credit as assets.

2. Licensing of Agents and Brokers.

The current language of Section 3(c) relating to the licensing of agents or brokers for risk retention groups is replaced by a new provision. The existing language permits a State to require an agent or broker for a risk retention group to obtain a State license but prohibits States from discriminating against nonresident agents or brokers.

The provision permits States to require licensing of agents and brokers for risk retention groups but provides some limitations; it exempts officers, directors, and full-time employees of risk retention groups from licensing; it requires others to get licenses but provides that the State may not discriminate against nonresident agents, impose different licensing requirements or require the appointment of a licensed agent when no one is acting in that capacity. It also permits an agent licensed in the chartering State to act on behalf of the group in all States in which it does business without requiring additional licensing.

3. Contractual liability coverage.

A new subsection 3(d) provides that a risk retention group may provide liability coverage to a nonmember under a member's coverage under certain limited conditions. This amendment is added to respond to certain situations where businesses such as hospitals and hotels have incurred contractual obligations to cover liability for contractors and retailers.

4. Determination of membership qualifications.

A new subsection 3(e) provides that only the chartering State has the authority to examine the membership qualifications of the risk retention groups. Non-chartering States can also seek clarification regarding the membership qualifications of a group from the group's chartering State and, as appropriate, can request the chartering State to conduct an examination of the qualifications.

5. Documents for submission to State insurance commissioners.

Subsection (d)—now (f)—identifies the documents to be submitted to a risk retention group's chartering State and to the other States in which it is doing business. The amendment modifies subsection (3)(B) by requiring that the qualified loss reserve specialist referred to be "approved by the insurance commissioner of the chartering State." The amendment also adds a new subsection (4) which requires risk retention groups to file copies of all documents filed with the chartering State with all other States in which it is doing business and limits the additional information those States can request.

6. Power of Courts to enjoin conduct.

This section is amended to add a new subsection (3) which indicates that thee is no restraint on the authority of any Federal or State court to enjoin false, deceptive or fraudulent conduct by a risk retention group, its agents or its brokers. The Act as currently written is generally believed to have the same effect. This amendment is intended to clarify the issue and emphasize that States retain the right to challenge false, deceptive and fraudulent conduct in risk retention groups.

SECTION 4. PURCHASING GROUPS

1. Exemptions.

Subsection (a) lists purchasing group exemptions. The amendments modify two of the subsections. Subsection (a)(2) is amended to indicate that an insurer may use a purchasing group's exposure as a basis for providing advantages to the purchasing group. Subsection (a)(7) is amended to exempt purchasing groups from any countersignature requirements.

2. Agent and broker licensing.

The amendments substitute a provision like that provided for risk retention groups. It allows States to require licensing of agents and brokers for purchasing groups but provides some imitations; it exempts officers, directors and full-time employees of purchasing groups from licensing; it requires others to get licenses but provides that the State may not discriminate against nonresident agents, impose different licensing requirements or require the appointment of a licensed agent when no one is acting in that capacity. It also permits an agent licensed in the State in which the purchasing group has its principal place of business to act on behalf of the group in all States in which it does business without requiring additional licensing.

3. Notice.

The amendments expand the information required to be provided in the required notice of intent to do business. The additional information includes the address and telephone number of the insurer, the principals or officers of the purchasing group and the identity and address of any managing or servicing organization. The purchasing group is also required to certify as to the membership qualifications of the members of the group.

4. Purchase of insurance.

Subsection (f) is stricken. This subsection was very ambiguous and resulted in conflicting opinions among the States regarding the regulation of insurers of purchasing groups. In lieu of this subsection, a new section dealing with the regulation of purchasing group insurers is provided.

SECTION 5. PURCHASING GROUP INSURERS

This is an entirely new section. As currently written, the law does not address the regulation of purchasing group insurers. The new section establishes qualifications for insurers writing purchasing group business and provides a system of regulation that is essentially the same as that provided for risk retention groups.

1. Qualifications and conditions.

Section 5(a) provides that, to qualify as a purchasing group insurer entitled to write purchasing group business subject to single-state regulation, an insurer must: 1) be admitted in at least one State and meet the minimum financial standards itemized in the subsection; 2) be domiciliied in a State certified by the NAIC as meeting NAIC financial regulatory standards; or, 3) be listed or approved for listing on the NAIC's Non-Admitted Insurers Quarterly Listing. The qualifying standards are intended to strike the balance necessary to preclude financially-precarious insurers from providing insurance for purchasing groups while at the same time permitting smaller, specialized insurers to write the multi-state purchasing group coverage unlikely to be covered in the conventional market.

2. Regulation of purchasing group insurers.

Section 5(b) applies the same single-state regulation to purchasing group insurers as Section 3 applies to risk retention groups. The State in which the purchasing group has its principal place of business regulates the provision of insurance to a purchasing group by a qualified purchasing group insurer. That State may apply the policy form, coverage and rating laws and regulations of the State in the same manner as if the purchasing group insurer were an admitted carrier in the State. Other States in which the group has insured members may require the purchasing group insurer to comply with the unfair claim settlement practices law, pay taxes as levied on admitted insurers, register with the State, submit to financial examinations under certain conditions, comply with court orders and provide a specified notice. No State may require countersignatures or declinations or require the insurer to use a licensed agent if the purchasing group is represented or otherwise discriminate against a purchasing group insurer. Only the State in which the purchasing group has its principal place of business has the authority to regulate the policy forms, rates and coverage provided to the purchasing group and its members. The section also provides that the State of domicile of a domestic purchasing group insurer retains all its customary oversight responsibility for the purchasing group insurer as a licensee of the State.

3. Notice requirements.

The section 5(c) notice requirements for purchasing group insurers are essentially the same as for risk retention groups with the State in which the purchasing group has its principal place of business entitled to be furnished the same information as is given by a risk retention group to its chartering State. Furthermore, copies of documents must be provided to all States in which the purchasing group is doing business and also with the State of domicile of a domestic purchasing group insurer or the State which is the principal place of business of the purchasing group for an alien purchasing group insurer.

4. Power of courts to enjoin conduct.

These section 5(d) powers are identical to those contained in the risk retention section. The provisions emphasize that the section does not affect the authority of any Federal or State court to enjoin: 1) the solicitation or sale of insurance to an ineligible member; 2) the solicitation or sale of insurance by a purchasing group insurer in hazardous financial condition or financially impaired, or, 3) false, deceptive or fraudulent conduct by a purchasing group insurer.

5. State powers to enforce State laws.

Section 5(e) contains provisions which are identical to the risk retention group provisions.

6. States' authority to sue.

Section 5(f) provides that nothing in the section affects the authority of any State to bring an action in Federal or State court. This is identical to the risk retention group provision.

7. Designation of agent.

Also identical to the risk retention group provision, Section 5(g) provides for a purchasing group insurer to register with and designate the insurance commissioner of each State in which the purchasing group has insured members as its agent for service of process.

SECTION 6. SECURITIES LAWS

This section is amended to clarify that the ownership interests of members in a risk retention group are to be deemed exempted securities.

SECTION 7. CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

1. Subsections (a)-(c) are amended to extend their application to purchasing group insurers.

2. Financial responsiblity.

The second sentence is subsection (d) is stricken for purposes of clarity.

3. Public entities.

A new subsection (e) is added which preempts laws, rules of regulations which would prevent public entities from using the Act to join risk retention groups or purchasing groups. Such preemption is only to occur in the absence of State legislation expressly prohibiting public entities from participating in such groups.

SECTION 8. INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS.

The only change made in this section is to add a reference to indicate its applicability to purchasing group insurers as well as risk retention groups.

LIABILITY RISK RETENTION ACT OF 1986

[15 U.S.C. 3901-3906 (1981, as amended 1986)]

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

Sec.

3901. DEFINITIONS

3902. RISK RETENTION GROUPS

(a) Exemptions from State laws, rules, regulations, or orders

(b) Scope of exemptions

(c) Licensing of agents or brokers for risk retention groups

(d) Contractual liability coverage

(e) Determination of membership qualifications

(f)[(d)] Documents for submission to State insurance commissioners

(g)[(e)] Power of courts to enjoin conduct

(h)[(f)] State powers to enforce State laws

(i)[(g)] States' authority to sue

(j)[(h)] State authority to regulate or prohibit ownership interests in risk retention groups

3903. PURCHASING GROUPS

(a) Exemptions from State laws, rules, regulations, or orders

(b) Scope of exemptions

(c) Licensing of agents or brokers for purchasing groups

(d) Notice to State insurance commissioners of intent to do business

(e) Designation of agent for service of documents and process

(f) [Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws] *Purchasing group insurers*

(g) State powers to enforce State laws

(h) States' authority to sue

3904. PURCHASING GROUP INSURERS

(a) Qualification and conditions

(b) Regulation of purchasing group insurers

(c) Notice requirements

(d) Power of courts to enjoin conduct

(e) State powers to enforce State laws

(f) States' authority to sue

(g) Designation of agent for service of documents and process

3905[3904]. SECURITIES LAWS

(a) Ownership interests of members in risk retention groups

(b) *Broker/Dealer licenses*

(c)[(b)] Investment companies

(d)[(c)] State blue sky laws

3906[3905]. CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

(a) State motor vehicle no-fault and motor vehicle financial responsibility laws

(b) Applicability of exemptions

(c) Prohibited insurance policy coverage

(d) State authority to specify acceptable means of establishing financial responsibility

(e) Public entities

3907[3906]. INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

§3901. DEFINITIONS

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, [surplus lines insurance,] and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to the property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), permises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 *et seq.*) *and employers liability insurance in excess of the minimum policy limits required under applicable State workers' compensation laws;*

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibility or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Island and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Act of 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(i) has as its owners *and is controlled by* only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner *and is controlled by* an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of *its own members or* any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".

(5) "purchasing group" means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State; *and*

(E) is controlled by its members;

(6) "State" means any State of the United States, *the Commonwealth of Puerto Rico*, or the District of Columbia;

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group or purchasing group insurer is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business;

(8) *"principal place of business" of a purchasing group means the State which has been designated by the purchasing group as its principal place of business and in which the purchasing group maintains an office and has and continues to have members;*

(9) *a risk retention group or purchasing group is "controlled" by its members when they retain the power to direct the affairs of the group and to enter at arms length into transactions with insurers and other suppliers of goods and services.*

(10) *A "purchasing group insurer" is any insurer providing insurance to a purchasing group pursuant to this Act.*

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

§3902. RISK RETENTION GROUPS

Exemptions from State laws, rules, regulations, or orders

(a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers [and surplus lines insurers, brokers, or policyholders] under the laws of the State;

[(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;]

(C)[(D)] register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(D)[(E)] submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun

or has refused to initiate an examination of the group; and

(ii) any such examination *is* [shall be] coordinated to avoid unjustified duplication and unjustified repetition *but no risk retention group shall be required to submit to more than one financial examination during any calendar year unless ordered to do so by a Federal court of competent jurisdiction upon a showing of reasonable cause to believe that the risk retention group may be in a hazardous financial condition or financially impaired and upon a finding that a new examination would not be unjustifiably duplicative;*

(E)[(F)] comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph *(D)*[(E)]; or

(ii) in a voluntary dissolution proceeding;

(F)[(G)] comply with any State law regarding deceptive, false or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in the subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(G)[(H)] comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is hazardous financial condition or is financially impaired; and

(H)[(I)] provide the following notice, in *at least* 10 point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker [residing in the State];

(4) prohibit a risk retention group from ceding any or all of the insurance issued to its members to any reinsurer which meets the requirements of the risk retention group's chartering State for allowing balance sheet credit;

(5) refuse to recognize as an asset a letter of credit that has been issued by a bank that is a member of the Federal Reserve System and listed by the NAIC Security Valuation Office as meeting NAIC standards, if the letter of credit is drafted in a form that has been approved by the commissioner of the State in which the group is licensed as an insurer and that commissioner has recognized the letter of credit as an asset of the group;

(6)[(4)] otherwise discriminate against a risk retention group, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

Scope of exemptions

(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(a) such group; or

(b) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services,

(B) management, operations, and investment activities, or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group)

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

Licensing of agents or brokers for risk retention groups

(c) [A State may require that a person acting or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.] *A State may require licensing or qualification of a person acting or offering to act as an agent or broker for a risk retention group subject to the following—*

(1) Officers, directors and full time employees of a risk retention group may engage in the direct sale and servicing of insurance to members without regard to the brokers' and agents' licensing requirements of any State.

(2) Other persons acting or offering to act as an agent or broker for a risk retention group must obtain a license from the chartering State. That State may not:

(A) impose any qualification or requirement which discriminates against a nonresident insurance agent;

(B) impose licensing requirements different from those applicable to insurance agents generally in that State; or

(C) require such risk retention group to appoint a licensed insurance agent where no person is acting or offering to act in that capacity;

(3) Any insurance agent licensed by the State in which a risk retention group is chartered may act as an insurance agent on behalf of such group in all States where it does business whether or not the insurance agent is licensed by such other States.

Contractual liability coverage

(d) A risk retention group may provide liability insurance coverage to a nonmember as an additional named insured under coverage issued to a member in order to provide insurance for the liability of such nonmember assumed under any contract entered into during the course of the business or activity described in Section 3901(a)(4)(F) of this act.

Determination of membership qualifications

(e) No State, other than the jurisdiction in which a risk retention group is chartered, may require a risk retention group to submit to an examination for the purpose of determining whether its members are engaged in similar businesses or activities pursuant to Section 3901(a)(4)(F) of this Act.

Documents for submission to State insurance commissioners

(f)[*d*] Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist *approved by the insurance commissioner of the chartering State*

(4) copies of all documents filed with the chartering State to all other States in which it is doing business. States other than the chartering State may not require risk retention groups to make any filings or provide any other information or submissions other than the submission of copies of documents filed with the chartering State except that:

(A) any State may require that a risk retention group doing business in the State conform to the National Association of Insurance Commissioners' standard when filing the Annual Statement; and

(B) any State may require a risk retention group doing business in the State to make submissions necessary to comply with those State laws from which risk retention groups are not exempt.

Power of courts to enjoin conduct

(g)[(e)] Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group, [or]

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired; *or*

(3) any false, deceptive or fraudulent conduct by a risk retention group or its agents or brokers.

State powers to enforce State laws

(h)[(f)] (1) Subject to the provisions of subsection (a)(1)*(F)*[(G)] of this section (relating to injunctions) and paragraph *(h)*(2) nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection *(g)*[(e)] of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

States' authority to sue

(i)[(g)] Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

State authority to regulate or prohibit ownership interests in risk retention groups

(j)[(h)] Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

§3903. PURCHASING GROUPS

Exemptions from State laws, rules, regulations, or orders

(a) Except as provided in this section and section [3905] of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their *exposure and their* loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker [residing in that State]; or

(8) otherwise discriminate against a purchasing group or any of its members.

Scope of exemptions

(b) The exemptions specified in subsection (a) of this section apply to—

(1) liability insurance, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing member of the group.

Licensing of agents or brokers for purchasing groups

(c) [A state may require that a person acting or offering to act, as an agent or broker for a purchasing group obtain a license from the State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.] *A State may require licensing or qualification of a person acting or offering to act as an agent or broker for a purchasing group subject to the following—*

(1) Officers, directors and full time employees of a purchasing group may engage in the direct sale and servicing of insurance to members without regard to the brokers' and agents' licensing requirements of any State.

(2) Other persons acting or offering to act as an agent or broker for a purchasing group must obtain a license from the State that is the principal place of business of the group. That State may not:

(A) impose any qualification or requirement which discriminates against a nonresident insurance agent;

(B) impose licensing requirements different from those applicable to insurance agents generally in the State; or

(C) require such purchasing group to appoint a licensed insurance agent where no person is acting or offering to act in that capacity;

(3) Any insurance agent licensed by the State in which the purchasing group has its principal place of business may act as an insurance agent on behalf of such purchasing group in all States where it does business whether or not the insurance agent is licensed by such other States.

Notice to State insurance commissioners of intent to do business

(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and *the address, telephone number and* domicile of such company; [and]

(D) shall identify the principal place of business of the group;

(E) shall identify the principals or officers of the purchasing group;

(F) shall identify any organization engaged to manage or service the operation of the purchasing group and the address of any such organization; and

(G) shall certify that all members of the purchasing group are engaged in similar or related business or activities as regards their liability exposure.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

Designation of agent for service of documents and process

(e) A purchasing shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after September 25, 1981; in any State of the United States;

(2) which—

(A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

[Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws]

[(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.]

State powers to enforce State laws

(f)[(g)] Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

States' authority to sue

(g)[(h)] Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

§3904. PURCHASING GROUP INSURERS

Qualifications and conditions

(a) Admitted insurers, approved surplus lines insurers and non-admitted insurers shall be permitted to provide insurance under this Act to purchasing groups pursuant to the following conditions and qualifications and subject to the other provisions of this chapter:

(1) An insurer will be considered qualified to write purchasing group insurance under this Act if the insurer:

(A) is admitted in at least one State, and:

(i) has the capital and surplus required of an admitted insurer doing the same kind and amount of business under the laws and regulations of each State in which it is writing insurance for a purchasing group or its members;

(ii) retains risk net of reinsurance in an amount less than the maximum permitted admitted insurers under the laws and regulations of each State in which it is writing insurance for a purchasing group or its members;

(iii) maintains a premium to surplus ratio no greater than 3 to 1; and

(iv) maintains minimum capital and surplus of at least $3 million as determined in accordance with the statutory accounting principles in the principal place of business of the purchasing group; or

(B) is domiciled in a State certified by the NAIC as meeting NAIC financial regulatory standards; or

(C) is an alien insurer and is listed on the most recent NAIC "Non-Admitted Insurers Quarterly Listing" or has been approved for listing subsequent to publication of the NAIC's most recent listing.

Regulation of Purchasing Group Insurers

(b) The provision of insurance to a purchasing group by a qualified purchasing group insurer shall be regulated by the State in which the purchasing group has its principal place of business and the authority of other States in which such insurance is provided to any group member is limited to those matters authorized by this section; provided, however, that the State of domicile of a domestic purchasing group insurer shall retain all its customary oversight responsibility of the purchasing group insurer as a licensee of the State.

(1) The State in which a purchasing group has its principal place of business shall, with regard to the insurer's provision of purchasing group insurance, and subject to the exemptions contained in §3909(a), apply the policy form, coverage and rating laws and regulations of the State in the same manner as if the purchasing group insurer were an admitted carrier in that State;

(2) Any State may require a purchasing group insurer to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers under the laws of the State;

(C) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(D) submit to an examination by the State insurance commissioner in any State in which the purchasing group insurer is doing purchasing group business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the purchasing group insurer is domiciled has not begun or has refused to initiate an examination of the insurer; and

(ii) any such examination is coordinated to avoid unjustified duplication and unjustified repetition but no purchasing group insurer shall be required to submit to more than one financial examination during any calendar year unless ordered to do so by a Federal court of competent jurisdiction upon a showing of reasonable cause to believe that the purchasing group insurer may be in a hazardous financial condition or financially impaired and upon a finding that a new examination would not be unjustifiably duplicative;

(E) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(F) comply with any State law regarding deceptive, false or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in the subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(G) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the purchasing group insurer is in hazardous financial condition or is financially impaired; and

(H) provide the following notice, in at least 10 point type, in any insurance policy issued to a purchasing group.

NOTICE

This policy is issued by your purchasing group insurer which may not be subject to all of the insurance laws and regulations of your State, State insurance insolvency guaranty funds may not be available for your purchasing group insurer.

(3) No State may:

(A) require any insurance policy issued to a purchasing group or any member of the group to be countersigned by an insurance agent or broker, or

(B) require the submission of declinations or certificates of non-availability prior to or as a condition of writing purchasing group insurance; or

(C) require a purchasing group insurer to use a licensed agent with respect to the provision of insurance to a purchasing group if the purchasing group is represented by an agent qualified under section 3903(c); or

(D) otherwise discriminate against a purchasing group insurer, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(4) No State, other than the State in which the purchasing group has its principal place of business, shall have the right to regulate policy forms, rates or coverage provided the purchasing group except as otherwise provided by Sec. 3906 of this Act.

Notice Requirements

(c) Purchasing groups insurers shall furnish

(1) to the insurance commissioner of the State in which the purchasing group has its principal place of business—

(A) the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the insurer intends to offer the purchasing group and its members; and

(B) a copy of the insurer's annual financial statement, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(i) a member of the American Academy of Actuaries, or

(ii) a qualified loss reserve specialist approved by the insurance commissioner of the purchasing group insurer's State of domicile for a domestic purchasing group insurer or by the insurance commissioner of the purchasing group's principal place of business for an alien purchasing group insurer; and

(C) such other information as the commissioner may require.

(2) copies of all documents filed with the State in which the purchasing group has its principal place of business to its State of domicile and to all other States in which it is doing business. States other than that of the purchasing group's principal place of business may not require a purchasing group insurer to make any filings or provide any other information or submissions other than the submission of copies of documents filed with the State in which the purchasing group has its principal place of business except that:

(A) any State may require that a purchasing group insurer doing business in the State conform to the National Association of Insurance Commissioners' standard when filing the Annual Statement; and

(B) any State may require a purchasing group insurer doing business in the State to make submissions necessary to comply with those State laws from which purchasing group insurers are not exempt.

Power of courts to enjoin conduct

(d) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation of sale of insurance by a purchasing group insurer to any person who is not eligible for membership in such group;

(2) the solicitation or sale of insurance by, or operation of, a purchasing group insurer that is in hazardous financial condition or is financially impaired; or

(3) any false, deceptive or fraudulent conduct by a purchasing group, purchasing group insurer, agents or brokers.

State powers to enforce State laws

(1) Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group insurer is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (d) of this section, such injunction must be obtained from the Federal or State court.

States' authority to sue

(f) Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

Designation of agent for service of documents and process

(g) A purchasing group insurer shall register with and designate the State insurance commissioner of each State in which the purchasing group has insured members as its agent solely for the purpose of receiving service of legal documents or process.

§ 3905[3904]. SECURITIES LAWS

Ownership interests of members in risk retention groups

(a) The ownership interests of members in a risk retention group or proposed risk retention group shall be *deemed to be exempted securities for purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934.*

[(1) considered to be exempted securities for purposes of section 77q of this title and for purposes of section 78 of this title.]

[(2) considered to be securities for purposes of section 77q of this title and the provisions of section 78q of this title.]

Investment companies

(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

State blue sky laws

(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

§ 3906[3905]. CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

State motor vehicle no-fault and motor vehicle financial responsibility laws

(a) Nothing in this chapter shall be construed to exempt a risk retention group, *purchasing group insurer* or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

Applicability of exemptions

(b) The exemptions provided under this chapter shall apply only to the provision of the liability insurance by a risk retention group *or a purchasing group insurer* or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group *or insurer.*

Prohibited insurance policy coverage

(c) The terms of any insurance policy provided by a risk retention group *or purchasing group insurer pursuant to this Act* or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

State authority to specify acceptable means of establishing financial responsibility

(d) Subject to the provisions of section 3902(a)[(4)]*(5), 3903(a)(8), and 3904(b)(4)* of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license or permit to undertake specified activities. [Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.]

Public Entities

(e) Any law, rule or regulation which would make unlawful the forming or joining of a risk retention group or a purchasing group by a State or any local government or agency or political subdivision thereof is preempted by this chapter in the absence of State legislation expressly prohibiting such forming or joining.

§ 3907[3906]. INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

Any district court of the United States may issue an order enjoining a risk retention group *or purchasing group insurer* from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent or employee, if such other person has actual notice of such order.●

By Mr. LAUTENBERG (for himself, Mr. BOREN, and Mr. RIEGLE):

S. 2220. A bill to amend the Internal Revenue Code of 1986 to make the targeted jobs tax credit available for a 1-year period to employers who hire long-term unemployed individuals; to the Committee on Finance.

LONG-TERM UNEMPLOYMENT REDUCTION ACT

• Mr. LAUTENBERG. Mr. President, today, along with the distinguished Senator from Oklahoma, Senator BOREN, and the distinguished Senator from Michigan, Senator RIEGLE, I am introducing legislation, the Long-Term Unemployment Reduction Act, to promote the hiring of the long-term unemployed.

The bill proposes a 1-year expansion of the targeted jobs tax credit, or TJTC, to include individuals who have been receiving unemployment compensation for at least 6 months.

Mr. President, our Nation is in an economic crisis. About 9 million Americans are out of work. Millions more are teetering on the edge.

Of those out of work, many have been jobless for several months or more, and have few realistic prospects. As bills mount and savings run dry, the pressures facing these Americans and their families are enormous.

The consequences of long-term unemployment are serious, both for the jobless themselves, and for the Nation as a whole. Studies indicate that unemployed people commit more crimes. They have more family and medical problems. And they have higher rates of suicide.

They also find themselves caught in a Catch-22. The longer they're out of work, the less attractive they become to prospective employers. Even in a recession, too many employers still think that if you've been out of work for a long time, there must be something wrong with you. That's not fair, but that's the reality. And so, the longer you're out of work, the harder it becomes to find a job. It's a vicious cycle that's very hard to escape.

The long-term unemployed need a helping hand to break out of that cycle. Particularly in our current economic climate.

This legislation provides that helping hand.

The bill is very simple, and builds on a well-established, existing program, the targeted jobs tax credit.

Under current law, the TJTC is available to employers who hire from among nine targeted groups. These include economically disadvantaged youth, Vietnam-era veterans, ex-convicts, vocational rehabilitation participants, AFDC recipients, and others. The credit generally is calculated by taking 40 percent of the first $6,000 of qualifying first year wages. In other words, when an employee earns at least $6,000 in the first year, the tax credit typically is worth $2,400.

Our legislation simply includes the long-term unemployed among the targeted groups for the TJTC. Under the proposal, employers who hire people who have been receiving unemployment compensation for at least 6 months will get the same benefits as those who hire ex-convicts or welfare recipients.

To qualify, employers must take reasonable steps to recruit the long-term unemployed, such as contacting their local employment service or JTPA office. In addition, employers must retain workers hired under the program for at least 120 days. The credit is available for workers whose wages are up to 130 percent of average wage rates, as determined by the Secretary of Labor.

Mr. President, encouraging employment of the long-term unemployed is more than a matter of basic compassion. It's also good economic and social policy.

The long-term unemployed represent what might be considered wasted human capital—resources that should be contributing to economic growth, but are not. Putting these people back to work, and increasing their spending power, should help stimulate the economy to the benefit of all Americans.

Moreover, the long-term unemployed impose real costs on working Americans. We lost the tax contributons they would normally make. And they require additional government outlays, through unemployment compensation, AFDC, and other social welfare programs.

In addition, reducing long-term unemployment should reduce the social problems associated with long-term joblessness, including spousal and child abuse, and other violent crimes.

Mr. President, this proposal will not, by itself, solve the problem of long-term unemployment. Much more must be done. I also have introduced legislation that would increase investment in our transportation infrastructure. That would mean not only more new jobs immediately, but greater national productivity in the long term. Many other proposals also will be considered in the weeks ahead.

Our legislation, however, has several notable advantages over some other antirecession plans.

First, this is a bill that can produce results quickly. It's a simple proposal. It's based on an existing program that has been in effect for well over a decade. It doesn't require a lot of planning, or development of new regulations by Government officials. And it can be understood by beneficiaries and businesses without a great deal of education and assistance.

Second, this bill would not require the establishment of an immense Government bureaucracy. That means greater efficiency and lower costs to taxpayers. It also ensures that we will not be stuck with an entrenched Government bureaucracy of limited usefulness once the economy turns around.

Third, the bill is well targeted. It helps those who have tried to help themselves. The bill is limited to those who have been receiving unemployment compensation. This will help ensure that beneficiaries were laid off against their will, and have been actively seeking employment.

Fourth, the bill proposes a temporary solution to deal with what we all expect will be a temporary problem. It will not create a permanent drain on the Federal Treasury. In fact, by pulling the long-term unemployed into the labor force, the legislation may well help generate additional revenues for Federal, State and local governments well into the future.

Finally, I am hopeful that this proposal can avoid the intense partisan wrangling that has characterized the debate on so many economically related proposals. the TJTC enjoys strong, bipartisan support in both houses of Congress. There are 53 cosponsors of Senator BOREN's legislation to make the credit permanent, and 269 cosponsors of companion House legislation. Cosponsors include many members of both parties. President Bush called for an extension of the TJTC in his fiscal year 1993 budget.

I offer this legislation in the hope that it will contribute to the upcoming debate on how to respond to our serious economic problems. As I said, it is not a comprehensive approach to the unemployment problem, and much more needs to be done. But it does represent a realistic, practical approach to a serious national problem that demands immediate action.

I hope my colleagues will support the bill, and 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. 2220

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 Unemployment Reduction Act".

SEC. 2. TAX CREDIT FOR HIRING LONG-TERM UNEMPLOYED.

(a) ALLOWANCE OF CREDIT.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 (defining members of targeted groups) is amended by striking "or" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", or", and by adding at the end the following new subparagraph:

"(K) a long-term unemployed individual."

(b) LONG-TERM UNEMPLOYED.—Section 51(d) of such Code is amended by adding at the end thereof the following new paragraph:

"(17) LONG-TERM UNEMPLOYED.—

"(A) IN GENERAL.—The term 'long-term unemployed individual' means an individual—

"(i) who has been receiving unemployment compensation at all times during the 6-month period ending with the last day of the month preceding the hiring date, or

"(ii) who—

"(I) was receiving unemployment compensation but exhausted all rights to such compensation, and

"(II) has remained unemployed during the period beginning on the date such rights were exhausted and ending on the day before the hiring date.

"(B) EFFECTIVE PERIOD.—Notwithstanding subsection (c)(4), in the case of a long-term unemployed individual, the term 'wages' shall include amounts paid or received for individuals who begin work for the employer during the 1-year period beginning on the date of the enactment of this paragraph.

"(C) UNEMPLOYMENT COMPENSATION.—For purposes of this paragraph, the term 'unemployment compensation' has the meaning given such term by section 85(b)."

(c) CERTAIN INDIVIDUALS ELIGIBLE.—Section 51(i) of such Code (relating to certain individuals ineligible) is amended by adding at the end of the following new paragraph:

"(4) SPECIAL RULES FOR LONG-TERM UNEMPLOYED.—

"(A) IN GENERAL.—No wages shall be taken into account under subsection (a) with respect to any long-term unemployed individual (as defined in subsection (d)(17)) unless—

"(i) notwithstanding paragraph (3), the individual is employed by the employer at least 120 days,

"(ii) at no time during the 120-day period do the hourly wages paid to the individual exceed 130 percent of the average hourly wages for nonfarm labor (as determined by the Secretary of Labor) for the calendar year preceding the calendar year in which the hiring date occurs in the State in which the principal place of employment is located (or, if greater, such average hourly wages for the standard metropolitan statistical area in which such place is located), and

"(iii) the employer certifies on the return of tax for the taxable year for which credit is claimed that the individual was hired after the employer took reasonable actions to specifically recruit long-term unemployed individuals.

"(B) REDUCTION IN WAGES.—If the requirements of subparagraph (A)(ii) would not be met for an individual if '120 percent' were substituted for '130 percent', the wages otherwise taken into account with respect to such individual under subsection (a) shall be reduced by 10 percent for each 1 percent (or fraction thereof) by which such individual's hourly wages exceed 120 percent of the average hourly wages applicable under subparagraph (A)(ii).

"(C) PERSONS PAID ON NONHOURLY BASIS.—If an individual's wages are not computed on an hourly basis, the hourly equivalent of such wages shall be used for purposes of this paragraph."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals hired on and after the date of the enactment of this Act.

• Mr. BOREN. Mr. President, I am pleased to introduce, with Mr. LAUTENBERG, legislation that presents an innovative expansion of the targeted jobs tax credit to address an immediate and serious problem in this country—the problem of long-term unemployment. My colleague has detailed the enormity of the problem: 9 million Americans are unemployed, and, as the recession drags on, more of our citizens will join their ranks. The challenge for the Congress is to provide them hope and help.

This legislation is one way to offer such aid. It expands a government program that is already very successful. Since the targeted jobs tax credit was enacted into law, it has resulted in the employment of over 4½ million Americans. This program has been an extraordinarily effective tool in encouraging the employment of members of target groups with severe barriers to employment, including economically disadvantaged youth, disabled persons, Vietnam veterans, ex-offenders, and AFDC, SSI, and general assistance recipients.

I have always been a great supporter of the tax credit. Indeed, I have introduced legislation that is pending before this Congress to make this credit permanent for the current targeted groups. My objective is to take a program that has been proven to be effective and to extend it so that it can help combat other unemployment problems.

The legislation we introduce today is consistent with that objective. It adds as a target group the long-term unemployed. Employers who hire people who have been receiving unemployment for at least 6 months will receive a 40-percent tax credit for the first $6,000 of qualifying first-year wages. It is temporary to deal with a short-term problem caused by the current economic downturn.

Together with other initiatives, this expansion of TJTC can begin to combat the problem of unemployment in these recessionary times. I urge my colleagues to study and support the bill.•

By Mr. KENNEDY (for himself and Mr. KERRY):

S. 2221. A bill to amend the Emergency Unemployment Compensation Act of 1991 to correct certain inconsistencies between State and Federal unemployment compensation rules and assure that all eligible individuals will receive full unemployment benefits; to the Committee on Finance.

UNEMPLOYMENT BENEFITS ASSURANCE ACT

Mr. KENNEDY. Mr. President, I am today introducing legislation to correct a serious flaw in the design of the extended unemployment benefit program that has the anomalous effect of penalizing unemployed workers who have taken part-time jobs to help feed and house their families while they continue their search for full-time jobs.

Workers who have been unemployed for more than 1 year are finding that if they had earnings above a certain level from part-time work during the previous year, they are no longer eligible for Federal extended benefits. Instead they must revert to collecting regular State unemployment benefits, but at a level based on their part-time earnings rather than on what they were earning at their full-time jobs.

In Massachusetts, nearly 1,000 unemployed workers have had their benefits reduced by more than 50 percent, merely because they managed to earn more than $1,200 from part-time work during 1991. Those numbers will increase—in Massachusetts and many other high unemployment States—as more and more workers enter their second year of unemployment.

Current law requires workers who have had earnings over a certain specified amount in the year since they filed their initial claim for unemployment to file a new claim for benefits. At that point their benefits are recalculated, not on the basis of their earnings in their previous, full-time jobs, but on the basis of any income earned during the year.

The unfairness of this situation is illustrated by comparing the situation of two hypothetical workers who were laid off in January 1991. Each collected State unemployment benefits of $280 a week until benefits ran out in August. One, who desperately needed income while looking for full-time work, took the only job available, a part-time job in a restaurant paying $100 a week. The other passed up the chance for part-time work and continued to look full-time for a permanent job.

In November, when the Federal extended benefit program was enacted, both began collecting extended benefits of $280 a week. But in January, the worker with part-time earnings was informed that she no longer qualified for Federal extended benefits and instead could only receive State benefits of $25 a week, calculated on the basis of her 1991 part-time earnings. The other unemployed worker continues to collect extended benefits of $280 a week.

It was never Congress' intent to penalize unemployed workers who are enterprising enough and fortunate enough to find part-time work to help tide them over while they look for full-time employment. The legislation I am introducing today will correct that anomaly by giving workers who have come to the end of their first year of unemployment the option to continue to receive Federal extended benefits before they receive their State benefits. With this change, unemployed workers who, because of part-time earnings, would otherwise have their benefits slashed can receive the full benefits that Congress intended when it enacted the extended benefits program.

I urge my colleagues to correct this injustice by enacting this legislation at the earliest possible date, and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2221

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 "Unemployment Benefits Assurance Act of 1992".

SEC. 2. ASSURANCE OF FULL BENEFITS.

(a) SPECIAL RULE FOR COMPUTING WEEKLY BENEFIT AMOUNT.—Section 101 of the Emergency Unemployment Compensation Act of 1991 (Public Law 102-164, as amended) is amended by adding at the end thereof the following new subsection:

(f) SPECIAL RULE.—Notwithstanding any other provision of this section, an individual, who is receiving emergency unemployment compensation and who is eligible under State law to file a new claim for regular compensation (because such individual has sufficient wages or employment, or both) on the basis of which a subsequent benefit year can be established, may elect (notwithstanding any State law to the contrary) to continue to receive the maximum weekly benefit amount established for such individual pursuant to this Act, if such individual files a new claim for regular compensation and elects not to receive such regular compensation under any State law for a week of unemployment to which such new claim applies. Such election shall remain in effect until the individual has exhausted all rights to emergency unemployment compensation under this subsection."

(b) EMERGENCY UNEMPLOYMENT COMPENSATION ACCOUNT.—Section 102 of the Emergency Unemployment Compensation Act of 1991 is amended by adding at the end thereof the following new subsection:

(h) SPECIAL RULES.—No State shall establish a new emergency unemployment compensation account for any individual receiving emergency unemployment compensation under section 101(f) until such individual exhausts all rights to regular compensation as provided by section 101(c)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to weeks of unemployment to which the Emergency Unemployment Compensation Act of 1991 applies.

By Mr. BREAUX:

S. 2222. A bill to amend the Internal Revenue Code of 1986 to encourage the formation of, and donation of contributions to, apprenticeship education organizations; to the Committee on Finance.

LEADING EMPLOYERS INTO APPRENTICESHIP PARTNERSHIPS ACT

• Mr. BREAUX. Mr. President, I rise today to introduce the LEAP bill, leading employers into apprenticeships programs. This bill is identical to H.R. 2550 a bill introduced by Representatives GRANDY and RANGEL.

Mr. President, our children are our future. We need to make critical investments in human capital. There are many proposals now pending to help students going to college which I support. But this only takes care of half of our students. We also need to help those students that want to learn skills and go directly to the workforce after high school.

This bill is intended to bring together school, business, and community leaders to develop youth apprenticeship programs. These programs match high school students with businesses. An example of a youth apprenticeship program follows:

During 10th grade, interested students would be taken to tour various companies and see what types of jobs are available and what types of skills are needed. They could choose to take a youth apprenticeship track during the 11th and 12th grade, meaning they would spend part of their time taking their core graduation requirements and part of their time working for a minimum wage in a company and providing training. At the end of the apprenticeship, the student would receive a "Certificate of Apprenticeship" and be able to go right to work.

Mr. President, the key to a successful youth apprenticeship program is getting the business community involved.

The bill allows the establishment of a 501(c) tax exempt organization. Businesses would get a "super deduction" for contributing to the organization, meaning they could recover up to 50 cents on the dollar for contributions made to the youth apprenticeship organization. The tax exempt organization would be composed of State, local, officials, education officials, and members of the business community. They would be responsible for putting together qualified apprenticeship programs and for placing students with businesses.

Mr. President, I plan to work to revise this legislation, but wanted to introduce it today so that it can be considered as the Congress deliberates economic growth proposals. Let's not forget that human capital is the most important form of capital we have, and we need to invest in our people.•

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S.J. Res. 254. Joint Resolution commending the New York Stock Exchange on the occasion of its bicentennial; to the Committee on the Judiciary.

BICENTENNIAL OF THE NEW YORK STOCK EXCHANGE

Mr. MOYNIHAN. Mr. President, on May 17 of this year, the New York Stock Exchange will mark its 200th year of operation. Today I am introducing, together with my distinguished colleague from New York, Senator D'AMATO, a joint resolution to commemorate the bicentennial of the New York Stock Exchange.

Like many great institutions, the New York Stock Exchange was born in crisis—the financial and fiscal crisis that followed the American Revolution. State governments were virtually immobilized, having been impoverished by the war. In order to restore creditors' confidence, Alexander Hamilton proposed in his report on the public credit that the new National Government assume the Revolutionary War debt of each State. He recommended that $80 million in Federal Government bonds, or public stock as they were called at the time, be sold to refinance the debt.

Initially, the Southern States opposed Hamilton's plan. Virginia, which pretty much spoke for the South, had arranged to repay its debt. The Northern States had not paid theirs—and also had more debt—nearly a third of the battles of the Revolutionary War were fought on New York soil. Northern financiers had bought up a good deal of this debt in the form of much discounted bonds, and stood to profit handsomely if the new Federal Government assumed the obligation.

Also in dispute at the time was whether the Nation's capital would remain in New York or move south. Not just region but mores were at issue. Was ours to be a country run by southern farmers or by northern financiers? Something large and enduring was at stake.

On or about June 20, 1790, Thomas Jefferson, then Secretary of State, Alexander Hamilton, the Secretary of the Treasury, and James Madison, Member of the House of Representatives for the Fifth District of Virginia, met over Jefferson's dinner table at 57 Maiden Lane, in Manhattan. There they reached one of the momentous agreements of American political history.

Jefferson made the deal. The war debt would be assumed. In return, the capital would move to a swamp on the banks of the Potomac which turned malarial in April. Any congressman who lingered on into May might not be back in December, when Congress at that time convened.

The Compromise of 1790, as historians refer to the Jefferson-Hamilton agreement, resulted in the issuance of some $80 million in Federal Government bonds to refinance the States' war debts. These new Federal bonds, along with shares in a few banks and insurance companies, encouraged the growth of trading on downtown Manhattan's streets, which had gotten started earlier with the States' war bonds. But there were problems. Trading took place in assorted coffeehouses, auction rooms and offices. It was unorganized and liquidity was far from assured.

On May 17, 1792, 24 brokers and dealers in securities signed the Buttonwood Agreement, named after the buttonwood, or sycamore, tree on Wall Street that shaded the spot where they conducted business. The signers agreed to charge fixed commission rates and to abide by rules of fair practice. In 1817 the successors of the Buttonwood signers incorporated the New York Stock & Exchange Board which in 1863 became the New York Stock Exchange.

The exchange, which used to conduct all of its trading in a rented room at 40 Wall Street, today can handle volume of up to 800 million shares thanks to advances in electronic and computer technology. The largest stock exchange in existence, it is the best known symbol throughout the country and the world of America's free enterprise system. The NYSE model—a competitive agency-auction market, where buyers and sellers interact to establish price—

has inspired newly emerging stock exchanges in Asia, Eastern Europe, and Latin America.

As the New York Stock Exchange enters its third century, it continues to help finance the growth of our country's economy, contributing to job creation and the development of the Nation's industry, technology and infrastructure. I invite my fellow Senators to join me in commemorating the bicentennial of this distinguished national institution.

I ask unanimous consent that the full text of the resolution be printed at this point.

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

S.J. RES. 254

Whereas, on May 17, 1792, the New York Stock Exchange was founded by twenty-four merchants and brokers who gathered under a buttonwood tree in lower Manhattan to establish a reliable market for the trading of securities;

Whereas the New York Stock Exchange has helped finance American's growth from its very beginning, significantly contributing to job creation and to the development of the Nation's industry and technology;

Whereas the New York Stock Exchange is both the Nation's and the world's best known symbol of America's free enterprise system;

Whereas the New York Stock Exchange has committed its energy and expertise to advance our Nation's free market philosophy to other countries around the world; and

Whereas the New York Stock Exchange is a quasi-public institution, dedicated to the promotion of individual and institutional investor protection, and to just and equitable principles of trade: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the New York Stock Exchange is hereby commended on the occasion of its bicentennial. The President is authorized and requested to issue a proclamation acknowledging and commending this occasion.

Mr. D'AMATO. Mr. President I am pleased to cosponsor a joint resolution introduced by the senior Senator from New York [Mr. MOYNIHAN] to commemorate the New York Stock Exchange as it celebrates its 200th year in 1992. We urge other Senators to join us in cosponsoring this resolution.

The New York Stock Exchange has its origins in the so-called Buttonwood Agreement of May 17, 1792. On this day, 24 brokers and dealers in stocks and bonds agreed to trade with each other and to adhere to certain rules of fair practice.

The Buttonwood Agreement marks the commencement of an organized securities market. The New York Stock Exchange has, in turn, set the standard for securities trading around the world. Over the last 200 years, the New York Stock Exchange has maintained an open auction market—allowing buyers and sellers to determine the price of a security listed on the Big Board.

This open market is one of integrity and is ostensibly the inspiration for many emerging stock exchanges in such developing countries as Asia, Eastern Europe, and Latin America.

The story of the New York Stock Exchange is a prime illustration of the success of America's free market economy. The New York Stock Exchange allows large and small investors the opportunity to share in the growth of the finest companies in America and abroad.

Shares of 1,800 companies currently trade on the New York Stock Exchange. These shares represent an aggregate value of more than $3 trillion. Rapid advances in electronics and computer technology have helped make possible huge increases in trading volume. This trading system is supported by advanced electronic surveillance and self-regulatory safeguards. The exchange's electronic system withstood its toughest challenge on October 20, 1987, when 608 million shares changed hands. Currently, the New York Stock Exchange has the capacity to handle peak volume days of 800 million shares.

Approximately 40 billion shares of stock change hands in the stock market every year, a significant measure of the breadth and enormous liquidity available to American's 51 million investors.

As the New York Stock Exchange begins its third century of operation, I urge my colleagues to cosponsor this resolution that marks the celebration of the achievements of the American free enterprise system.

ADDITIONAL COSPONSORS

S. 101

At the request of Mr. SANFORD, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 101, a bill to mandate a balanced budget, to provide for the reduction of the national debt, to protect retirement funds, to require honest budgetary accounting, and for other purposes.

S. 301

At the request of Mr. LEVIN, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 301, a bill to amend the Trade Act of 1974 to strengthen and expand the authority of the U.S. Trade Representative to identify trade liberalization priorities, and for other purposes.

S. 843

At the request of Mr. BREAUX, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of 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.

S. 1423

At the request of Mr. DODD, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 2064

At the request of Mr. HATFIELD, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 2064, a bill to impose a one-year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period.

S. 2070

At the request of Mr. MOYNIHAN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 2070, a bill to provide for the management of judicial space and facilities.

S. 2094

At the request of Mr. SIMON, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2094, a bill to repeal sections 601 and 604 of the Emergency Unemployment Compensation Act of 1991, relating to certain student loan provisions.

S. 2176

At the request of Mr. KASTEN, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 2176, a bill to provide that Federal tax reduction legislation enacted in 1992 be effective January 1, 1992.

S. 2183

At the request of Mr. SHELBY, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2183, a bill to prohibit the Secretary of Veterans Affairs from carrying out the Rural Health Care Initiative.

S. 2185

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 2185, a bill to suspend the forcible repatriation of Haitian nationals fleeing after the coup d'etat in Haiti until certain conditions are met.

SENATE JOINT RESOLUTION 113

At the request of Mr. LAUTENBERG, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating the oak as the national arboreal emblem.

SENATE JOINT RESOLUTION 218

At the request of Mr. MITCHELL, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Idaho [Mr. CRAIG], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 218, a joint resolution designating the calendar year 1993 as the "Year of American Craft: A Celebration of the Creative Work of the Hand."

SENATE JOINT RESOLUTION 224

At the request of Mr. SIMON, the names of the Senator from New Mexico

[Mr. DOMENICI], the Senator from Missouri [Mr. DANFORTH], the Senator from Wisconsin [Mr. KOHL], the Senator from Hawaii [Mr. INOUYE], the Senator from North Dakota [Mr. CONRAD], the Senator from California [Mr. CRANSTON], the Senator from North Dakota [Mr. BURDICK], the Senator from Delaware [Mr. BIDEN], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Indiana [Mr. COATS], the Senator from Ohio [Mr. GLENN], the Senator from Washington [Mr. ADAMS], the Senator from Illinois [Mr. DIXON], the Senator from Alabama [Mr. HEFLIN], the Senator from Massachusetts [Mr. KERRY], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 224, a joint resolution designating March 1992 as "Irish American Heritage Month."

SENATE JOINT RESOLUTION 230

At the request of Mr. REID, the names of the Senator from Utah [Mr. GARN] and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of Senate Joint Resolution 230, a joint resolution providing for the issuance of a stamp to commemorate the Women's Army Corps.

SENATE JOINT RESOLUTION 241

At the request of Mr. SPECTER, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of Senate Joint Resolution 241, designating October 1992 as "National Domestic Violence Awareness Month."

SENATE JOINT RESOLUTION 242

At the request of Mr. SPECTER, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Joint Resolution 242, a joint resolution to designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week."

SENATE JOINT RESOLUTION 247

At the request of Mr. DOLE, the names of the Senator from Wisconsin [Mr. KOHL], the Senator from Virginia [Mr. WARNER], the Senator from Arizona [Mr. DECONCINI], the Senator from Texas [Mr. BENTSEN], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of Senate Joint Resolution 247, a joint resolution designating June 11, 1992, as "National Alcoholism and Drug Abuse Counselors Day."

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE CONCURRENT RESOLUTION 89

At the request of Mr. KERRY, the names of the Senator from Virginia [Mr. WARNER], the Senator from Maryland [Mr. SARBANES], and the Senator from Delaware [Mr. BIDEN] were added as cosponsors of Senate Concurrent Resolution 89, a concurrent resolution to express the sense of the Congress concerning the United Nations Conference on Environment and Development.

SENATE RESOLUTION 246

At the request of Mr. DOLE, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of Senate Resolution 246, a resolution on the recognition of Croatia and Slovenia.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

SENATE RESOLUTION 256—RELATIVE TO ASSISTANCE TO THE REPUBLICS OF THE FORMER SOVIET UNION

Mr. KASTEN (for himself, Mr. LEAHY, Mr. KOHL, Mr. HEFLIN, Mr. D'AMATO, Mr. DURENBERGER, Mr. JEFFORDS, Mr. WOFFORD, and Mr. GRASSLEY) submitted the following resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 256

Whereas the President announced a major emergency humanitarian assistance program to the republics of the former Soviet Union called "Operation Provide Hope";

Whereas "Operation Provide Hope" aims to airlift food and medical supplies to each of the 12 newly independent republics of the former Soviet Union;

Whereas the objectives of "Operation Provide Hope" is to accelerate rapidly the disbursement of critically needed food and medical supplies;

Whereas food shortages due to shortfalls in agricultural production and to failures in distribution are causing hardship in the newly independent states, especially in large industrial cities and remote areas;

Whereas there are available to the republics of the former Soviet Union $165,000,000 in Department of Agriculture grant food assistance and $45,000,000 in Department of Defense donations of surplus food stocks, totaling $210,000,000 of food grants as part of the humanitarian assistance program to those republics;

Whereas the republics of the former Soviet Union have requested milk to feed their peoples' infants and children;

Whereas milk is a nutritional product that is crucial to the most vulnerable population in the republics of the former Soviet Union—the elderly, infants, and children;

Whereas the Commodity Credit Corporation stocks of nonfat dry milk (NDM) are 139.2 million pounds, as of January 1, 1992; and

Whereas nonfat dry milk is high in protein and is an extremely storable and stable product: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) dairy products from United States Government stocks should be used as part of the humanitarian assistance provided to the republics of the former Soviet Union;

(2) there is an immediate need by the peoples in the republics of the former Soviet Union for nonfat dry milk;

(3) nonfat dry milk from Commodity Credit Corporation-owned stocks should be used for "Operation Provide Hope";

(4) dairy farmers across the United States are barely surviving on the current prices they receive for their milk; and

(5) reducing United States Government surpluses of nonfat dry milk should inevitably promote higher milk prices for American dairy farmers; and

(6) "Operation Provide Hope" is the ideal opportunity for the United States to reach out and help families abroad, while at the same time helping American family farmers.

• Mr. KASTEN. Mr. President, all Americans can be proud of President Bush's decisive leadership on aid to the Commonwealth of Independent States, or CIS. On January 23, the administration announced Operation Provide Hope—a major emergency humanitarian assistance program to the former Soviet Union.

Shortfalls in agricultural production and failures in distribution are causing food shortages and serious hardship in the new independent states—especially in large industrial cities and remote areas. Operation Provide Hope will help provide emergency humanitarian food aid to help meet the critical food needs of the people in these areas.

Milk is one product that is essential to the health and nutrition of the most vulnerable citizens of the CIS—the elderly, infants, and children. This resolution encourages the administration to make these essential dairy products a central component of its emergency aid program.

One product that could be especially helpful in nonfat dry milk [NDM]. NDM is high in protein, and is an extremely stable and storable product. While all dairy products are needed and should be used for the humanitarian effort, I believe that NDM will be especially effective in helping address the immediate needs of the people in the new independent states.

As of January 1, 1992, the Commodity Credit Corporation owned an inventory of 139 million pounds of NDM. Partly as a result of this surplus, dairy farmers in Wisconsin and across the Nation are barely surviving on the current prices they receive for their milk. By reducing the Government surplus, we will inevitably promote higher prices for American farmers.

Operation Provide Hope is the ideal opportunity for the United States to reach out and help other families abroad, while at the same time helping some of our most valuable and threatened agricultural producers.

In the interest of avoiding famine in the CIS—and in the interest of our own

family farmers—I urge my colleagues to support this resolution.●

SENATE RESOLUTION 257—RESOLUTION RELATIVE TO THE ALBANIAN POPULATION OF THE FORMER YUGOSLAV REPUBLIC OF KOSOVA

Mr. D'AMATO (for himself, Mr. DOLE, and Mr. PELL) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 257

Whereas since February 28, 1989, the Government of Serbia has imposed a state of martial law on Kosova, where two million Albanians live;

Whereas the Yugoslav Federal Constitution of 1974 affirmed the autonomous status of Kosova and defined it as one of the eight constituent territorial units of the Yugoslav Federation;

Whereas the Government of the Republic of Serbia illegally abolished the autonomous status of Kosova and the parliament of Kosova without the consent of the people of Kosova;

Whereas the Government of the Republic of Serbia has denied the majority Albanian population fundamental human rights, including the rights of free speech and free assembly;

Whereas a popular clandestine referendum was held in Kosova during the period of September 26–30, 1991, in which an overwhelming majority of those who participated voted in favor of declaring Kosova independent of the Socialist Federal Republic of Yugoslavia;

Whereas Albanian representatives of Kosova have been denied a seat at the EC Conference on the future of Yugoslavia;

Whereas the Albanian representatives of Kosova have informed the EC Conference and its Chairman Lord Carrington, of their wish for Kosova to be recognized as an independent state;

Whereas the United States has traditionally supported the rights of peoples to peaceful and democratic self-determination: Now, therefore, be it

Resolved, That it is the sense of the Senate of the United States—

(1) Press for the immediate inclusion of an Albanian representative from Kosova in the EC Peace Conference on Yugoslavia.

(2) Condemn the Government of Serbia on the occasion of the third anniversary of the imposition of martial law on the people of Kosova.

(3) Urge the United Nations to immediately send observers to Kosova to monitor the human rights situation there.

(4) Strongly support the aspirations of the Albanian people in Kosova for democracy and self-determination.

● Mr. D'AMATO. Mr. President, I rise today, along with Senators DOLE and PELL, to submit a resolution calling attention to the plight of the Albanian population in the former Yugoslav Republic of Kosova.

Like the people of Croatia, Slovenia, and Bosnia-Hercegovina, Albanians in Kosova suffer under the totalitarian boot of Serbian dictator Slobodan Milosevic. The Butcher of Belgrade has trounced upon the basic human rights of the Albanians. Kosova's Albanians have been subjected to arbitrary shootings, summary arrests and administrative detention without charge, denial of fair trials, forced job loss, and numerous other obscene violations of basic human rights.

Albanians form the third largest ethnic group in the former Yugoslav nation. While accounting for only 12 percent of the population, Albanians, however, comprise some 90 percent of the nation's political prisoners. Over 5,000 Albanians have been convicted and sentenced on criminal charges, serving long-term sentences solely for their political beliefs.

Over 300 Albanians, most from the intelligentsia, have been placed under isolation procedure in prison, without warrant or trial. Often they are beaten and abused.

Finally, over 37,000 Albanians have been dismissed from their jobs due to their political unfitness. Simply put, the treatment of the Albanian minority, at the hands of Serbian authorities, is a disgrace and a blot on humanity. Milosevic has assumed the role of Stalin in Yugoslavia.

Denied the rights of free speech and free assembly, and subjected to martial law, Albanians held a clandestine referendum in September 1991, and overwhelmingly voted to declare Kosova an independent republic. Even with this, they have been denied a seat at the European Community Conference on the future of Yugoslavia.

In all, the plight of the Albanians in Kosova is dismal. Their treatment is disgraceful and wrong. We must send the message that discrimination against the Albanian minority in Yugoslavia is wrong. It must end. As Yugoslavia breaks apart, we must recognize that there is no place in our world for the systematic dehumanizing treatment of a people. The Albanians of Yugoslavia deserve better. I encourage my colleagues to join us in cosponsoring this important resolution.●

SENATE RESOLUTION 258—RELATIVE TO SOMOLIA

Mr. SIMON (for himself, Mrs. KASSEBAUM, Mr. WOFFORD, Mr. WELLSTONE, Mr. LEAHY, and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 258

Whereas factional fighting continues to destroy the capital city of Mogadishu, and Somalia has been divided into separate spheres of influence with no recognized national government;

Whereas at least one-half of Somalia's population of eight million is considered at risk, about one-half million people are facing immediate starvation, and an unknown number of starvation deaths have already occurred, yet the provision of the needed level of humanitarian assistance is said to be blocked by the fighting in Mogadishu;

Whereas substantial numbers of needy Somalis live in areas which are relatively peaceful and secure, such as portions of the rural northwest, northeast, south, and central regions;

Whereas the United States Department of State, commendably, condemned the violence in Somalia in the strongest terms and has urged all parties to the conflict to adopt a cease-fire, and the call for a cease-fire has also been made by the United Nations, the Organization of African Unity, the Arab League, and numerous other states and organizations, but none of these appeals has yet met with success;

Whereas the visit of United Nations Undersecretary James Jonah to Somalia on January 3–4, 1992, revealed that the leaders of nearly all Somali factions are favorably disposed toward the United Nations role in promoting national reconciliation;

Whereas, on January 23, 1992, the United Nations Security Council, commendably, instituted an international arms embargo and requested the appointment of a special coordinator for humanitarian assistance, but the United Nations has yet developed a field plan for its activities, nor made arrangements to send a full-time, experienced, and neutral negotiations team to Somalia to implement the Security Council's call for a political settlement; and

Whereas, on January 31, 1992, the United Nations Security Council held a special summit for world leaders which supported the strengthening of the United Nations role in preventive diplomacy, peacemaking, and peacekeeping, as well as encouraged the United Nations Secretary General to identify potential threats to peace, and Somalia represents an immediate challenge for this stronger mandate: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should—

(1) again urge all parties to the conflict in Somalia to declare an immediate cease-fire so that negotiations may proceed and the needs of wounded and hungry civilians may be addressed;

(2) urge the United Nations to remain committed to the diplomatic and peacekeeping tasks in Somalia which fall under its mandate;

(3) urge the United Nations, as a matter of highest priority, to facilitate the distribution of emergency assistance, in conjunction with private voluntary organizations and in a manner which assures that it will reach those in need rather than being used as an additional weapon of war, to those areas of Somalia which are peaceful, and to explore options for assisting people in nonsecure areas;

(4) urge the United Nations to appoint mediators who will seek to identify the root causes of the violence in Somalia and the political goals of the combatants, so as to facilitate the achievement of the earliest possible cease-fire; and

(5) encourage, as well, other neutral mediation efforts, including those by Somali leaders not involved in the conflicts, by nongovernmental organizations and by regional organizations such as the Organization of African Unity, the Arab League, and the Islamic Conference Organization.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

● Mr. SIMON. Mr. President, I rise to introduce a resolution which would set forth the sense of the Senate on Somalia, a nation in the Horn of Africa in the midst of severe civil strife. This is a war which has not received as much

attention as the civil war in Yugoslavia, yet nevertheless a war which is endangering the lives of hundreds of thousands of innocent civilians whom the International Committee of the Red Cross has said are in immediate danger of starvation. The war has forced nearly all relief organizations to leave Somalia, and slowed to a trickle the delivery of food aid. Adding to this over 20,000 war casualties to date in Mogadishu alone, and the continued failure of Somali and regional calls for peace, the situation is one of urgency.

I have been greatly concerned about Somalia. At the beginning of this year, I coauthored, with Senator KASSEBAUM, an opinion piece in the New York Times, which I would also like to introduce into the record. Later the two of us, along with several of our colleagues in both the Senate and the House, sent a letter to Secretary of State Baker, and then a letter to two of the combatants in Somalia. Most recently, I have held a hearing on Somalia in the Africa Subcommittee of the Senate Foreign Relations Committee. The principal focus of these efforts has been to encourage greater United Nations involvement.

The United Nations has been criticized by some nongovernmental organizations as having been slow to react to this situation. Although the latest phase in the civil war erupted in mid-November, it was only on January 23 that the Security Council passed a resolution which urged a cease-fire, established an arms embargo, and asked the new Secretary General to contact the parties to the conflict.

This resolution will demonstrate our support for administration efforts to encourage the United Nations to take the next steps in addressing this brutal conflict. In addition to calling for a cease-fire, we need to be providing the mechanism for successful negotiations. I believe that this calls for the naming of a special envoy for Somalia.

A representative of the International Medical Corps, the last American private voluntary organization remaining in Mogadishu, described the city's war this way: The conflict has gone so far that no one knows how to stop. At the various points since November, one Somali faction or another has called for a cease-fire. But they are not trusted by the other parties to the conflict. There is no one who is credible and trustworthy to all sides who can arrange contacts between the parties, or who can create and police safety zones which will enable civilians to shelter from the fighting and incidentally may help to draw combatants out of the war zones.

I understand that U.N. Secretary General Boutros-Ghali is trying to set up a peace meeting with some of the factions in New York. I commend all the energy and effort Mr. Boutros-Ghali has put into the Somalia problem thus far, sending Undersecretary James Jonah on a 2-day mission last month and helping to bring about the Security Council resolution. But there are doubts that all the combatants will be willing to leave Somalia, in the midst of a war, to travel overseas. Further, those who are not invited, be they in Mogadishu or in other regions of Somalia, may resent this choice of location.

Somalia has already made one major effort to secure an interim government and peace, and this was the Djibouti Conference held last July. The anger of those who did not participate in or agree to the outcome of this conference has led to the present breakdown of the state.

I hope that all the combatants will accept Mr. Boutros-Ghali's invitation and that this will lead to a cease-fire. I think we should also encourage the United Nations to facilitate negotiations and reconciliation meetings in Somalia.●

AMENDMENTS SUBMITTED

NATIONAL ENERGY SECURITY ACT

CHAFEE AMENDMENT NO. 1610

Mr. JOHNSTON (for Mr. CHAFEE) proposed an amendment to the bill (S. 2166) to reduce the Nation's dependence on imported oil, to provide for the energy security of the Nation, and for other purposes, as follows:

On page 327, line 22 strike ", including HCFC-22." and insert ".".

DOMENICI (AND MCCAIN) AMENDMENT NO. 1611

Mr. JOHNSTON (for Mr. DOMENICI, for himself and Mr. MCCAIN) proposed an amendment to the bill S. 2166, supra, as follows:

On page 33, section 4202(4) strike line 16 and insert in lieu thereof: "sources of electric current, including, photovoltaic arrays;".

KASTEN AMENDMENT NO. 1612

Mr. JOHNSTON (for Mr. KASTEN) proposed an amendment to the bill S. 2166, supra, as follows:

On page 331, line 3 insert the following new paragraph:

"(3) Hybrid power trains incorporating an electric motor and recyclable battery technology charged by an onboard liquid fuel engine, designed to significantly improve fuel economies while maintaining comparable acceleration characteristics."

On page 331, line 21, after "technology," insert "and optimization of near-term technology."

MCCAIN AMENDMENT NO. 1613

Mr. JOHNSTON (for Mr. MCCAIN) proposed an amendment to the bill S. 2166, supra, as follows:

Page 109, line 10, add new subsection (e) as follows "(e) the provisions of this section shall apply to the United States Congress."

Page 109, line 11, between "Federal agency" and "shall adopt" insert, "and the Architect of the Capitol".

MCCAIN (AND CHAFEE) AMENDMENT NO. 1614

Mr. JOHNSTON (for Mr. MCCAIN, for himself and Mr. CHAFEE) proposed an amendment to the bill S. 2166, supra, as follows:

On page 108, line 20, strike "code, and" and insert "code;"

On page 108, line 23, strike the period and insert "; and".

On page 108, between lines 23 and 24, insert the following new paragraph:

"(3) consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate contain, measures to mitigate the levels of radon and other indoor air pollutants in cases where such pollutants may exist."

On page 110, line 18, strike "and".

On page 110, between lines 18 and 19, insert the following:

"(4) assistance in identifying appropriate measures to mitigate the levels of radon and other indoor air pollutants; and"

On page 110, line 19, strike "(4) and insert "(5)".

On page 111, line 4, before the comma, insert the following: "including measures needed to mitigate the levels of radon and other indoor air pollutants in cases where such air pollutants may exist."

MCCAIN AMENDMENT NO. 1615

Mr. JOHNSTON (for Mr. MCCAIN) proposed an amendment to the bill S. 2166, supra, as follows:

Page 88, line five, after "in the United States" add, "including activities of the United States Government.".

WIRTH AMENDMENT NO. 1616

Mr. JOHNSTON (for Mr. WIRTH) proposed an amendment to the bill S. 2166, supra, as follows:

On page 109, line 19, amend section 6101(a)(2) by striking "guarantees" and inserting in lieu thereof the following: "expends Federal funds, or guarantees or insures a loan or".

On page 109, line 20, amend section 6101(a)(2) by inserting the following "other than a building covered by subsection (d)," after the word "building".

On page 109, line 22, amend section 6101(a)(2) by inserting after subsection (c), the following new subsections to section 306 of the Energy Conservation and Production Act (P.L. 94-385):

"(d) The head of each Federal agency that expends Federal funds, or guarantees or insures a loan or a mortgage, for a newly constructed residential building shall adopt procedures necessary to assure that, beginning on January 1, 1993, any such residential building meets the standards established in the most recent version of the Model Energy Code of American Building Officials that is effective on January 1 of the year in which construction of such building commenced.".

HATCH (AND OTHERS) AMENDMENT NO. 1617

Mr. JOHNSTON (for Mr. HATCH, for himself, Mr. SIMPSON, and Mr. WALLOP)

proposed an amendment to the bill S. 2166, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . RADIATION EXPOSURE COMPENSATION.

Section 6 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended by adding at the end the following new subsection:

"(1) JUDICIAL REVIEW.—An individual whose claim for compensation under this Act is denied may seek judicial review solely in a district court of the United States. The court shall review the denial on the administrative record and shall hold unlawful and set aside the denial if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.".

DOLE AMENDMENT NO. 1618

Mr. WALLOP (for Mr. DOLE) proposed an amendment to the bill S. 2166, supra, as follows:

On page 344, between lines 18 and 19, insert the following new section:

SEC. 13120. MIDCONTINENT ENERGY RESEARCH CENTER.

(a) FINDING.—Congress finds that petroleum resources in the midcontinent region of the United States are very large but are being prematurely abandoned.

(b) PURPOSES.—The purposes of this section are to—

(1) improve the efficiency of petroleum recovery;

(2) increase ultimate petroleum recovery; and

(3) delay the abandonment of resources.

(c) ESTABLISHMENT.—The Secretary shall establish the Midcontinent Energy Research Center at the University of Kansas in Lawrence, Kansas (referred to in this section as the "Center"), to—

(1) conduct research in petroleum geology and engineering focused on improving the recovery of petroleum from existing fields and established plays in the upper midcontinent region of the United States; and

(2) ensure that the results of the research described in paragraph (1) are transferred to users.

(d) RESEARCH.—

(1) IN GENERAL.—In conducting research under this section, the Center shall, to the extent practicable, cooperate with agencies of the Federal Government, the States in the midcontinent region of the United States, and the affected industry.

(2) PROGRAMS.—Research programs conducted by the Center may include—

(A) data base development and transfer of technology;

(B) reservoir management;

(C) reservoir characterization;

(D) advanced recovery methods; and

(E) development of new technology.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

LEVIN AMENDMENT NO. 1619

Mr. JOHNSTON (for Mr. LEVIN) proposed an amendment to the bill S. 2166, supra, as follows:

On page 31, line 20, after the period, insert the following new sentence: "The regulations governing compliance with sections 4102, 4103, and 4104 shall be developed in consultation with the Secretary of Commerce and shall require that the procurement practices of manufacturers of alternative fuel vehicles and diesel trucks that are purchased, leased, or otherwise acquired in order to meet the requirements of such sections do not discriminate against United States manufacturers of motor vehicle parts.".

On page 38, between lines 8 and 9, insert the following new paragraph:

(2) the openness of a manufacturer's procurement practices to United States manufacturers of vehicle parts;

On page 38, line 9, strike "(2)" and insert "(3)".

On page 38, line 17, strike "(3)" and insert "(4)".

On page 38, line 22, strike "(4)" and insert "(5)".

On page 39, line 3, strike "(5)" and insert "(6)".

On page 39, line 11, strike "(6)" and insert "(7)".

On page 39, line 14, strike "(7)" and insert "(8)".

On page 39, line 20, strike "(8)" and insert "(9)".

On page 40, between lines 4 and 5, insert the following new paragraph:

(2) the procurement practices of the manufacturer do not discriminate against United States manufacturers of vehicle parts;

On page 40, line 22, strike "(2)" and insert "(3)".

On page 40, line 22, strike "(3)" and insert "(4)".

On page 41, line 3, strike "(4)" and insert "(5)".

On page 334, between lines 13 and 14, insert the following new subsection:

(g) DOMESTIC PARTS MANUFACTURERS.—In carrying out this section, the Secretary, in consultation with the Secretary of Commerce, shall issue regulations to ensure that the procurement practices of participating vehicle and associated equipment manufacturers do not discriminate against United States manufacturers of vehicle parts.

On page 334, line 14, strike "(g)" and insert "(h)".

On page 334, line 22, strike "(h)" and insert "(j)".

On page 335, line 22, strike "(i)" and insert "(j)".

SANFORD (AND OTHERS) AMENDMENT NO. 1620

Mr. JOHNSTON (for Mr. SANFORD, for himself, Mr. BOND, Mrs. KASSEBAUM, and Mr. RIEGLE) proposed an amendment to the bill S. 2166, supra as follows:

On page 392, line 11, strike the quotation marks and the final period.

On page 392, between lines 11 and 12, insert the following:

"(C) Notwithstanding any other provision of Federal law, nothing in this paragraph shall prevent a State regulatory authority from taking such action, including action with respect to the allowable capital structure of exempt wholesale generators, as such State regulatory authority may determine to be in the public interest as a result of performing evaluations under the standards of subparagraph (A).

"(D) Notwithstanding section 124 and paragraphs (1) and (2) of section 112(a), each State regulatory authority shall consider and make a determination concerning the standards of subparagraph (A) in accordance with the requirements of subsections (a) and (b) of this section, without regard to any proceedings commenced prior to the enactment of this paragraph.

"(E) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standards set out in subparagraph (A) not later than one year after the date of enactment of this paragraph.".

On page 391, line 7, before "consider," insert "hold a proceeding to".

On page 390, line 12, delete "incremental".

At the end of line 14 on page 390, add the following: ": (A)", and on line 22, after "utilities", add "(B) the impact on consumers arising from the fact that the exempt wholesale generator will own the eligible facility at the end of the term of a power sales contract."

NICKLES (AND BURNS) AMENDMENT NO. 1621

Mr. JOHNSTON (for Mr. NICKLES, for himself and Mr. BURNS) proposed an amendment to the bill S. 2166, supra, as follows:

It is the sense of the Senate that the Senate Committee on Finance should review the impact on the alternative minimum tax on domestic oil and gas producers and domestic oil and gas production and take such action as may be appropriate to promote domestic production.

GLENN (AND JOHNSTON) AMENDMENT NO. 1622

Mr. JOHNSTON (for Mr. GLENN, for himself and Mr. JOHNSTON) proposed an amendment to the bill S. 2166, supra, as follows:

At the end of title VI, subtitle B, add the following new section:

SEC. 6305. ENERGY AUDIT TEAMS.

(a) ENERGY AUDIT TEAMS.—The Secretary shall assemble from existing personnel with appropriate expertise, or, with particular utilization of the national laboratories, and make available to all Federal agencies, one or more energy audit teams which shall be equipped with instruments and other advanced equipment needed to perform energy audits of Federal facilities. Particular attention shall be given to exploiting expertise and resources that are not generally available in the private sector.

(b) MONITORING PROGRAMS.—The Secretary shall also assist in establishing, at each site that has utilized an energy audit team, a program for monitoring the implementation of energy efficiency improvements based upon energy audit team recommendations, and for recording the operating history of such improvements.

GLENN (AND KOHL) AMENDMENT NO. 1623

Mr. JOHNSTON (for Mr. GLENN, for himself and Mr. KOHL) proposed an amendment to the bill S. 2166, supra, as follows:

At the end of title VI, subtitle B, add the following new section:

SEC. 6305. GOVERNMENT CONTRACT INCENTIVES.

(a) ESTABLISHMENT OF CRITERIA.—Each agency, in consultation with the Federal Acquisition Regulations Council, shall establish criteria for the improvement of energy efficiency in Federal facilities operated by Federal government contractors or subcontractors.

(b) UTILIZATION OF CRITERIA.—To encourage Federal contractors, and their subcontractors, which manage and operate federally-owned facilities, to adopt and utilize energy conservation measures designed to reduce energy costs in Government-owned and contractor-operated facilities and which are ultimately borne by the Federal Government. Each agency head shall utilize the criteria developed under subsection (a) in all cost-plus-award-fee contracts.

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that hearings have been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The first hearing will take place on Tuesday, March 3, 1992, beginning at 2:30 p.m. The second hearing will take place on Thursday, March 5, 1992, beginning at 2 p.m. Both hearings will be in room 366 of the Dirksen Senate Office Building in Washington, DC.

The purposes of the hearings are to receive testimony on S. 1755, a bill to reform the concessions policies of the National Park Service, and for other purposes.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks, and Forests, Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearings, please contact David Brooks of the subcommittee staff at (202) 224-9863.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS AND SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

Mr. BUMPERS. Mr. President, on behalf of Senator BINGAMAN and myself, I would like to announce that a joint hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests and the Subcommittee on Mineral Resources Development and Production of the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, February 25, 1992, beginning at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on H.R. 3359, a bill to amend the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1027), and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Erica Rosenberg at (202) 224-7933 or Lisa Vehmas at (202) 224-7555.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on February 7, 1992, at 9:30 a.m. on the nomination of Andrew H. Card, Jr. to be Secretary of Transportation.

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

ADDITIONAL STATEMENTS

THE 125TH ANNIVERSARY OF WEST VIRGINIA UNIVERSITY

• Mr. ROCKEFELLER. Mr. President, it is with great pride that I rise today in celebration of West Virginia University's 125th anniversary.

The West Virginia Legislature established this land grant institution as the Agricultural College of West Virginia on February 7, 1867. And it is on this date that the university will officially launch its 125th anniversary's year long celebration, along with local businesses and organizations. In the words of Neil Bucklew, president of West Virginia University,

> A simultaneous nationwide event of this magnitude would certainly be indicative of the unique, special feeling that WVU alumni have for their alma mater.

West Virginia University has been dedicated to the education of students for 125 years. It was started in 1867 with two donated buildings and only a handful of students and faculty, and its status has grown to a first-class institution with a diverse curriculum. It now boasts 22,400 plus student body, 4,500 faculty and staff and offers over 176 degree programs—all on a beautiful 1,000-acre campus of rolling hills.

Realizing the importance of education, West Virginia University has established a scholars program ensuring that no student with superior ability is turned away because of financial needs. In adjunct to the financial needs of undergraduates, West Virginia University equally cares about providing resources to support graduate students.

I am proud to say that West Virginia University is ranked among the top 10 public State institutions for its large number of Rhodes scholars—a total of 23. The school also has 12 Truman scholars, and a British Marshall scholar. This is a strong symbol of the university's commitment to world-class scholarship.

The university also has a number of various programs that help tackle the variety of challenges facing West Virginia. It has a statewide network of extension programs which include economic and community development, dropout prevention, youth development and nutrition. Clinical programs like those in law and medicine provide hands-on experience to students and practitioners, while producing valuable services to West Virginians.

Mr. President, West Virginia University is a symbol of excellence within education which further enlightens the minds of our future. It has a clearly defined purpose; teaching, research, and public service.

I am proud to pay tribute to such an exceptional institution, dedicating itself to the education of students for 125 years and beyond, and I ask my colleagues to join me in wishing this fine institution a happy anniversary.•

HONORING THE NEW YORK STATE SENATE ADVISORY COMMISSION ON PRIVATIZATION

• Mr. D'AMATO. Mr. President, I rise today to congratulate the authors of an important new report. It is a report that is particularly compelling as we discuss the need to keep a tight rein on runaway spending and taxes, while providing services necessary to our Nation. The report I am talking about is "Privatization for New York: Competing for a Better Future" written by the New York State Senate Advisory Commission on privatization, chaired by Ronald S. Lauder.

One of the largest concerns we hear from our constituents, not only in New York, but across the Nation is that the middle class needs a tax break, and I agree. At the same time there are compelling demands for funding in a variety of services such as infrastructure repair, solid waste management, and housing.

The Senate of the New York State Legislature appointed a commission on privatization and charged it with finding creative alternatives to tax increases for the citizens of my State. The solution the commission raised was the privatization of Government entities and services. In the report, the commission looked for opportunities for public-private cooperation in a variety of areas. It found millions in potential savings to the State and to the taxpayer.

In this day and age of rising taxes and decreasing revenues, it is time to

take a serious look at alternatives to increased public spending. We must begin to engage in a serious dialog about ideas like privatization and see where it can work.

I once again commend Chairman Lauder and His fellow commissioners, John Lamura, Gary Lavine, George G. Nemeth, Louis Pfeifle, Mary Lou Rath, E.S. Savas, and Geff Yancy, along with the project director Allen Roth, for putting together a forward looking report that will be a benefit to not only my State, but can serve as a roadmap toward the twin goals of balanced budgets and tax relief for the working men and women of this Nation.•

SADDAM HUSSEIN IS AT IT AGAIN

• Mr. LIEBERMAN. Mr. President, Saddam Hussein is at it again. We learned yesterday that the dictator of Iraq is thumbing his nose at the United Nations resolutions that are designed to curb his appetite for war.

Saddam is now unwilling to allow the United Nations to fully monitor his military forces. Specifically, Iraq has refused to submit a detailed report on its defense industries. Saddam does not want the world to know whether he still has the capacity to make nuclear, chemical, and biological weapons. But because he does not want us to know—we know.

We know he will turn again to acquiring weapons of mass destruction the minute our gaze is averted. Clearly, he is testing us. He is testing the resolve of the international coalition, less than a year after our victory in Operation Desert Storm. He is probing for weakness.

We must let him find only strength and preparedness. And strength lies in the unity of nations. And preparedness lies in our willingness to use force against Saddam again. As we have learned so well, it is only the believable threat, or actual application of force that gets Saddam's attention.

This turn of events—not surprising to those who understand the true nature of Saddam Hussein—underscores what I believe were crucial errors in American policy in the aftermath of Operation Desert Storm. I fully supported our actions following Saddam's invasion of Kuwait in 1990. I supported Operation Desert Shield, and I supported the massive buildup of forces in November 1990. I voted for the resolution authorizing the President to use force against Saddam.

But at the conclusion of the conflict, we missed several crucial opportunities to rid the world of Saddam's despotic rule. We could have destroyed more of his army in the final hours of Operation Desert Storm. And we could have used allied air power to protect the Kurds and the Shiites from the slaughter they endured at the hands of Saddam's army in the weeks and months following our victory in the gulf.

I understand that there were legitimate concerns at the time about igniting armed rebellions among Kurds in Turkey and creating a Shiite regime in southern Iraq that could have become an Iranian satellite. But all these considerations should have been outweighed by the opportunity to get Saddam Hussein out of power.

Saddam's aggression against the Kurds and the Shiites continues. Fighting has broken out again in southern Iraq, and the north has been largely blockaded by Saddam, who seems not to care if the Kurds freeze or starve to death. We should respond to his actions by providing weapons and other material support to Kurdish and Shiite guerrillas and Sunni dissidents, both inside and outside the army. There are also 20,000 Iraqi soldiers in Saudi Arabia, including hundreds of officers, who have up until now refused to return to their country. They might be urged to work with us and other opponents of Saddam within Iraq and form the basis of an opposition army. And, should Saddam's aggression against his own people escalate to widespread proportions, we should be prepared to introduce air power in their defense. We should not become involved in a full-scale land war again within Iraq, but we continue to dominate the skies, and can still wreak havoc on Saddam's forces from above. We must clearly state our willingness to do so if the need arises.

And the economic sanctions must continue. While Iraqi propaganda continues to blame those sanctions for malnutrition and disease among Iraqi children, we know where the blame lies for any such tragedy—it lies with Saddam himself, who has it within his power to provide immediate relief to all who suffer. Yet we also learn today that Saddam is not even interested in allowing Iraqi oil to be sold to provide food and medicine to his own people. He believes our guidelines for the money from such a sale are too stringent. Clearly that is because we would spend that money on Iraqi children, and not on Iraqi armaments, as he would like to do.

The economic noose must tighten; we must pressure Jordan to staunch the flow of goods from that nation into Iraq. We should consider having U.N. inspectors play a role in monitoring the borders to ensure that the tools of war are not entering Iraq.

A tight embargo must also be maintained because it can help us limit Saddam's ability to acquire weapons of mass destruction. David Kay, the American nuclear specialist who led the United Nations inspection team in Iraq after the war, has stated that the Iraqi nuclear program involved 20,000 people and that nearly all of them are still in Iraq. We cannot yet conclude that all of Iraq's nuclear equipment has been discovered and destroyed. We have not yet shut down Iraq's capacity to build nuclear bombs.

In the wake of Saddam's new violations of the United Nations resolutions, I hope the Security Council will take strong steps to counter Iraq's intransigence. Saddam needs a fresh reminder that we have the power to back up those resolutions with force.

Iraq is a test for the post-cold-war world. It is a test for the United Nations, and for the United States. We can only pass this test when we achieve the downfall of Saddam Hussein. Until that happens, true peace and stability will not prevail in the gulf and the Middle East. Until that happens, the gulf war will have been a great victory, but not a final one.•

HERBERT HOOVER AND THE FIRST RUSSIAN RELIEF EFFORT

• Mr. HATFIELD. Mr. President, let me share you with a scenario: Russia is unable to feed its people. Hundreds of thousands face starvation. The Russian leader says that without international help, "The government will perish."

America, however, is skeptical. Having recently emerged from a war, they were downscaling their military and focusing on domestic problems like unemployment. Foreign aid was not a priority. Those would be headlines from the newspapers of today. But they were also the headlines from the newspapers of 1921.

Despite its initial reluctance, American answered the call for help. And they answered it successfully because of one man, Herbert Hoover.

As chairman of the American Relief Administration, it was Herbert Hoover who led the effort which provided 700,000 tons of food, and vast amounts of medicines and other supplies. These supplies fed and nursed 18 million Russians and saved between 10 million and 20 million lives over a 3-year period.

Seven decades ago, America responded affirmatively to Russia's request for help. A request which came from Lenin. Today, the request comes from Boris Yeltsin, a man who is committed to democracy. Can there be any question that America's response must be the same?

Yes, we have to be sure that Russia does all it can to ensure that the aid gets to the people. Yes, American taxpayers already have shouldered the burden of the cold war and it is time for other countries to contribute to the building of a free world.

But we are the leader of this free world. The United States is what other countries and other people aspire to be. We are the best example of the superiority of free enterprise, and therefore, we must demonstrate leadership. In an article written for Collier's Magazine in 1942, Herbert Hoover wrote about the

effort to feed Russia. And he offered these prophetic words, "We will need to do it all over again as part of our effort to bring peace to a weary world."

When the Russians first contacted Mr. Hoover, Russia had only recently admitted that 25 million of her citizens faced starvation. An international plea for bread and medicine had fallen on deaf ears as Western Europe struggled with post-war reconstruction and the United States endured a sluggish economy.

Russian citizens were forced to flee by foot or rail to cities already short on food. In Orenburg, up to 800 corpses a day were being buried in mass graves, Petrograd's population was reduced by starvation from 2 million to 700,000.

Herbert Hoover later wrote that the urgent human need could not be ignored. "The sole objective of relief should be humanity: It should have no political objective or other aim than the maintenance of life and order," he said.

The United States response to the needs of the Soviet Union already has been measured by a planned expenditure of over $5 billion in aid and credits. The international conference convened by the United States and encompassing nations as participants has set in motion an aid agenda. Many of us have been in communication with the State Department and the Department of Agriculture and the White House and the Defense Department regarding the needs of the people of the Confederation of Independent States.

This is a huge task and there will be additional United States relief assistance to the CIS. This is our responsibility as protectors of our own national security and as the nursemaid to new and fragile democracies.

As we accept this charge a look back to Herbert Hoover's ARA is necessary. "Fighting famine is a gigantic economic and governmental operation handled by experts and not "welfare" work of benevolent handing out food hit or miss to bread lines. There must be no waste, no inefficiency." Hoover said. The 27 point program, known as the "Riga Agreement," was tough. The tenants of the Riga Agreement and the organizational structure of the ARA operation in Russia were the time-tested products Herbert Hoover's experiences in feeding 23 other governments in the aftermath of World War I.

The economic, organizational, legal and political blueprint of the American Relief Administration's efforts in the Soviet Union was the Riga Agreement. It clearly stipulates that the conditions under which the ARA as an "unofficial volunteer American charitable organization" under the direction of Herbert Hoover, would provide relief to the Russian people.

The Riga Agreement stipulated that the Russian authorities would have to essentially step aside for this American effort. Red tape would be cut, authority would belong to Hoover, and the Russian authorities would give priority to shipments arriving from the ARA. In addition, transportation, storage and handling of the imported supplies were provided free of charge by the Russian Government.

The Riga Agreement created what could be called a "philanthropic state within a state" with rights and immunities of its own that were stipulated in writing and enforceable in a practical way: The ARA could cut off flow of food whenever Herbert Hoover decided the agreement had been violated.

In Hoover's mind, the essential elements of a relief effort were purchase, transportation and distribution of relief supplies. Purchase involved determining what to buy, where to buy it and how to pay for it.

The terms were harsh—as were the conditions in Russia—and it is not feasible that the United States should undertake such a massive bilateral relief effort instead of working in coordination with the other nations of the world. But there are lessons to be drawn from the efforts of Herbert Hoover in Russia. The first lesson is that America does not have to forsake its own best interests when undertaking a humanitarian response. The feeding of the Russian people was in our best interests just as paying for the dismantlement of Soviet nuclear weapons is in our interests now. And it is certainly in our interests to be sure that American farmers and businesses fully participate in the relief effort wherever possible.

The second lesson the Hoover experience illustrates is that those countries offering assistance to the Soviet Union can offer that assistance with terms. Our aid to the republics of the former Soviet Union should be extended in friendship but with a strong message that continued support can only be sustained if the commitment to democratic principles is maintained.

America may never again have humanitarian leadership embodied in one person as we had in Herbert Hoover, but the principles he developed for massive-scale relief efforts are as valuable today as they were 70 years ago. We would do well to take heed.

Mr. President, I would like to include for the RECORD an analysis of the Riga Agreement and President Hoover's leadership, prepared by Tom Walsh, the Executive Director of the Hoover Presidential Library Association. I also include for the RECORD a story by Washington Post reporter Haynes Johnson, entitled "U.S. Airlifts to Republics Pales Beside 1920's Aid."

FEEDING THE SOVIET UNION, 1921-23: AN OVERVIEW OF THE PROBLEMS, SOLUTIONS AND METHODS

PROLOGUE

"For thousands of years, the question 'Am I my brother's keeper?' has echoed in the conscience of mankind. The American people were the first in history to accept that obligation as a nation. Never before has a nation undertaken such burdens, consciously and collectively, that human life, and even civilization, might be preserved."—Herbert Hoover, Chairman, American Relief Administration

Section One: The Abyss

"It is impossible to picture a great famine to our American countrymen. We can have little understanding of its realities, for we have never seen real famine in our homeland since the suffering of the Pilgrims. Not even during the Civil War did famine in any town or city reach anywhere near the abyss that it reached in Central and Eastern Europe. * * *

"* * * No one who has not seen famine with his own eyes can have understanding of its hideous reality. Mothers at every meal watch the wilting away of their children. Gaunt mothers search for scraps of food, carrying emaciated children too feeble to walk. Long streams of refugees flee from the famine areas, carrying their children and a few possessions, with many dead lying at the roadsides. Few people die directly from starvation, for disease intervenes. The hospitals and children's refuges are crowded with all who can lie on the floors. The dead lie unburied in heaps. And even worse things happen which I do not repeat here.—Herbert Hoover, 1959

The area of eastern and southern Russia devastated in 1921-23 by a drought driven famine included 750,000 square miles of the Volga Valley and 85,000 square miles of the Ukraine. It included one of the most fertile and consequently most densely populated areas of Russia, with a population of 35 million. On June 26, 1921, Pravda admitted that 25 million Russians faced starvation. Without substantial and prompt foreign aid, it was likely that 15 or 20 million people would die of starvation, disease or exposure.

On July 13, 1921, the Soviet Government, through Maxim Gorky, issued an international plea for bread and medicine. It was a plea that largely fell on deaf ears; While Western Europe struggled with post-war reconstruction, the United States endured an anemic economy undermined by high unemployment, a wave of corporate bankruptcies and depressed farm prices. No less important to the public reception of any plea for sympathy and generosity was the hostility to all things Russian, which was embraced as an article of faith in the minds of most good Americans.

Food production in Russia in 1921 was less than half what it had been in the same territory in 1913. All Russia was hungry, not just those inhabiting the vast area of acute famine. It was not a question of seeking relief to supplement an existing, though inadequate supply of food, or of concentrating on a program for undernourished children. In parts of Russia there was no food at all, and the children had already begun to die.

The Russians could not effectively help themselves. Industrial centers in non-famine areas were in desperate straits; transport was demoralized; distribution machinery chaotic; private initiative destroyed by terror or suffering. Russia had only 25 miles of railway per 1,000 square miles of territory, compared to 83 miles per 1,000 square miles in the United States. In 1921, 60 percent of Russian locomotives were out of repair, as were 50 percent of freight cars. Most Russian ports were unusable for relief shipments, due to lack of equipment and storage facilities, the condition of rail connections or simply being too shallow or too prone to ice in winter, the period of greatest need.

In search of food, the panic-stricken populace—exhausted, sick, naked and starving—attempted to flee the famines on foot or by rail, moving into Russian cities that were already short of food, carrying infections with them. Cold and exposure finished the work of hunger and disease for thousands who froze to death on their way to nowhere. Roads and villages were populated by living skeletons, scarcely able to move, or completely exhausted and freezing to death where they lay, soon to be prey for birds and dogs. In Orenburg, up to 800 corpses a day were being pitched into mass graves. Pre-famine Petrograd had a population of 2 million. By early 1922, starvation and disease had reduced the city's population to 700,000.

In the cities, emaciated children—some orphaned, others deserted by their parents—were warehoused in pest holes termed "children's homes." In one such facility in the Orenburg district 1,000 children were housed in space for 400. Alive with vermin and wearing the remnants of the clothing in which they arrived, they huddled together on the floor like blind kittens, some sick, some starving, some dead. Ravaged by disease, with no wood for heat or food for sustenance, 40 to 50 died each day. But each day, more arrived, ghastly caricatures of childhood, with faces gaunt and yellow, or swollen and blue, their eyes burning with the terrible sparkle of hunger.

In the countryside, famine deaths were so common that village clerks no longer kept records. Of those who remained alive, nearly all subsisted on food substitutes. The fortunate few who had grain mixed it with chaff, ground weeds and acorns. Those without grain made bread from the leaves and bark of birch and elm trees, sawdust, shells of nuts, rushes, pea husks, potato peels, clay, straw, horse manure and blood. Cats and dogs were hungrily devoured, and in desperation the famine victims exhumed and ate dead animals. The first to fall ill and die from the effects of such food were the children.

For those driven to eating the putrid flesh of long-buried animals, the practice of eating human flesh was not such a long step. At first, there were only isolated reports. By early 1922, cannibalism was commonplace. Mothers killed and ate their own children. Unattended children were stolen, slaughtered and devoured. In some cases, the bodies of those murdered were butchered and sold in markets as meat, prompting an order forbidding the sale of meatballs, cutlets and all forms of hashed meats. Hunger and want forced the population to crimes, murders and thefts. In order to steal a cow, robbers would murder whole families, not sparing infants in arms.

Typhus, cholera, typhoid, smallpox and dysentery were epidemic due to lack of physical resistance and medical and sanitary services. In Iseave and Dedoval, when the bodies of those who died of typhus and other diseases proved too numerous to bury, they were piled in heaps in buildings, only to be stolen and boiled for food. At the First Soviet Hospital in Kazan, as many as four starvation patients shared a single bed. In other hospitals, shortages forced surgeries to be performed without anesthetic and wounds to be "dressed" with newspapers and stitched with threads from old clothing. Had the Soviet Union's estimated 26,000 surviving doctors and surgeons been evenly distributed, each would have to minister to 5,400 people. What medical personnel were able to fight the famine were themselves hungry, overworked and unremunerated while risking, and often succumbing to, infection and death.

Section Two: The Relief

"The sole objective of relief should be humanity. It should have no political objective or other aim than the maintenance of life and order.

"Tons and dollars do not express relief of suffering and saving of life."—Herbert Hoover, 1959

(Note: All dollar amounts are expressed in 1921–23 values. To calculate 1992 equivalents use 6.41 as a multiplier factor.)

Despite all economic, political and logistical obstacles, American Relief Administration (A.R.A.) feeding points were operational in 191 towns and villages in the regions of greatest need by December 1, 1921 70 days after the signing of the agreement permitting relief. In 2,997 locations from Petrograd on the Baltic to Astrakhan on the Caspian, 568,020 persons were receiving each day a balanced ration of American food. By the first week of February, 1922, the number of A.R.A. feeding stations had grown to over 6,000.

Within six months of the signing of the relief agreement, the A.R.A. had amassed $52.9 million in revenues to finance its Russian relief effort, an amount equivalent to $3.4 billion 1992 dollars. That amount included a $20 million Congressional appropriation, $4 million in military surplus medical supplies, $12.2 million in gold payments from the Soviet government, and millions more in support from affiliate organizations such as the American Red Cross, the National Lutheran Council, the Y.M.C.A., the American Jewish Joint Distribution Committee, the Southern Baptist Convention, the American Friends Service Committee and many others.

As of January 1, 1992, the ARA was feeding 1.2 million Russian children, after which the program was expanded to include adults and to provide wheat seed needed to help ensure future self-sufficiency. All commodities shipped throughout the life of the program were purchased from American suppliers on a competitive bidding basis and transported at cost by the American merchant marine.

During the month of January, 1992, five months after the relief agreement was signed, two dozen shiploads of American cargoes were dispatched to ports serving famine-stricken areas of the Soviet Union. These shipments included 301 million pounds of corn, 32 million pounds of seed wheat, and 25.7 million pounds of milk and sundry food and medical supplies, or a total of 160,000 tons.

By mid-July, 1992—11 months into the operation—the A.R.A. had purchased, transported and distributed 788,878 tons of relief supplies, among them 666,615 tons of cereals for seed and feed, 55,111 tons of condensed and evaporated milk, 15,464 tons of sugar, 9,277 tons of fats, 3,395 tons of cocoa and 29,721 tons of medical supplies, clothing and sundries.

By the summer of 1922, the A.R.A. had 200 administrative personnel at home and in Russia, supervising the efforts of 80,000 Russians. Together, they operated 15,700 kitchens and food distribution stations, feeding more than 8.5 million persons—3.25 million children and 5.3 million adults.

By the time famine conditions subsided in the summer of 1923, the A.R.A. had provided food relief to 20 million Soviet citizens, including 6.5 million children and 14 million adults.

The A.R.A., with the assistance of the Red Cross, staged during the Soviet famine of 1921–23 the greatest foreign peacetime medical crusade ever undertaken. Through the work of 40 American physicians and specialists, 21 American staffers and 800 Russian assistants, the A.R.A. operated treatment centers in each of the 17 famine districts and at points designed to intercept refugees. The $10 million spent helped to provide surgical instruments, pharmaceuticals and other medical supplies to 5,764 hospitals and sanitariums and nearly 11,000 other facilities providing medical care.

The A.R.A. inoculation and immunization effort reduced cases of typhus from 19 per 1,000 population in January 1922 to .22 per thousand in February of 1923. New cases of typhus for the whole of Russia decreased from 295,525 in April of 1922 to 6,684 in March of 1923.

A 1923 letter to A.R.A. Chairman Herbert Hoover from Maxim Gorky reads in part: "In the past year you have saved from death 3.5 million children, 5.5 million adults, 15,000 students and have now added 200 or more of the learned professions. * * * In all the history of human suffering I know of * * * no accomplishment which in terms of magnitude and generosity can be compared to the relief that you have actually accomplished * * *. Your help will be inscribed in history as a unique gigantic accomplishment worthy of the greatest glory and will long remain in the memory of millions of Russians * * * whom you have saved from death."

Section Three: Thickets and Swamps

"Fighting famine is a gigantic economic and governmental operation handled by experts and not 'welfare' work of benevolent handing out food hit or miss to bread lines. There must be no waste, no inefficiency.

"We had to pioneer through the thickets and swamps of governmental, social, financial and economic problems, including human nature in the raw."—Herbert Hoover, 1942

The economic, organizational, legal and political blueprint of the American Relief Administration's efforts in the Soviet Union was the 27-point "Riga Agreement," which is appended in full. It clearly stipulates the conditions under which the A.R.A., as a "unofficial volunteer American charitable organization" under the directorship of Herbert Hoover, would provide relief to the Russian people.

The Riga Agreement stipulated that Russian authorities would provide free transportation, storage and handling of imported supplies with priority over other traffic, as well as necessary buildings, equipment and fuel, free of charge. The A.R.A. agreed to provide food, clothing and medical relief in areas where relief could be administered most efficiently and secure the best results. All relief supplies remained the property of the A.R.A. until consumed. The A.R.A. agreed that its representatives and assistants in Russian would not engage in political activity, but insisted on an assurance of noninterference by the Soviet government in A.R.A. activities.

The Riga Agreement created a philanthropic state within a state with rights and immunities of its own that were stipulated in writing and enforceable in a practical way: The A.R.A. could cut off the flow of food whenever Herbert Hoover decided that the agreement had been violated.

The tenants of the Riga Agreement and the organizational structure of the A.R.A. operation in Russia were the time-tested products of Herbert Hoover's experiences in feeding 23 other governments in the aftermath of World War I. In each of these historic relief efforts, as in the Russian relief, the major objective was volume. In order to achieve maximum "production" Herbert Hoover ap-

plied the same principles he found most effective as a successful mining engineer: heavy outside financing, strict accounting, tight and economical administration and, above all, undisputed one-man authority. On this last point, Hoover was unflappable: "Some individual with great powers must direct and coordinate all this," he said. "Such an operation would be hopeless in the hands of international commissions or committees."

In Hoover's mind, the essential elements of a relief effort were purchase, transportation and distribution of relief supplies. Purchase involvement determining what to buy, where to buy it and how to pay for it. Transportation, in his era, involved both securing a fleet and coordinating the traffic control to ensure a constant flow of needed supplies. Distribution involved unloading, warehousing, accounting and allocation to local feeding stations, hospitals, individuals and to a network of thousands of indigenous employees paid with rations. Hoover also included in his list of tasks "disputing with dumbbells" and "listening to hourly advice from the well-intentioned but ill-informed."

The A.R.A.'s Russian relief effort was financed with a blend of private- and public-sector funding. With the U.S. in an economic depression that left 5 million Americans without jobs, no public appeal for funds was made. Instead, Hoover recruited a variety of religious charitable organizations and, as affiliates of the A.R.A., encouraged them to seek support under the A.R.A. umbrella. These A.R.A. affiliates were each allowed to select one of 18 famine districts in which relief supplies purchased with their funds would be distributed. The A.R.A. provided relief in areas not covered by the affiliates. Each of the affiliates was allowed to appoint one representative to the A.R.A. central staff in Moscow.

To minimize interference and to assure cooperation, Hoover drafted a letter to himself from President Harding, stipulating that distribution of American relief supplies in the Soviet Union would be conducted only by the A.R.A. as a matter of economy and efficiency. It further stipulated that the State Department would issue passports for Russian relief work only to those affiliated with the A.R.A.

U.S. Army Colonel William N. Haskell, a veteran of A.R.A. famine relief work in Eastern Europe, was assigned to serve as director of operations in Russia. The American Red Cross, as an affiliate, agreed to help coordinate the medical relief efforts and provided personnel and supplies. The U.S. Army Medical Corps assigned Colonel Henry Beeuwkes to direct the medical staff.

Congress appropriated $18.6 million that was used by the A.R.A. to purchase of food supplies on a weekly, competitive bidding basis from U.S. suppliers. Congress also authorized the transfer of $4 million in military surplus medical supplies to the A.R.A. From its own treasury, the A.R.A. appropriated $10.2 million. The affiliates provided $8 million. The Soviet Government provided $12 million in gold reserves and an estimated $14 million in cash, services and facilities.

The A.R.A.'s innovative "food draft" system attracted $23.5 million in donations and provided 55 million tons of food relief to nearly 950,000 individuals and families. Affiliates could purchase individual drafts for $10 each that provided 100-pound food packages that would feed one person for 19 weeks, or a family of five for five weeks. The typical contents of each package was 49 pounds of flour, 25 pounds of rice, 3 pounds of tea, 10 pounds of fats, 10 pounds of sugar and 20 tins of milk. This system was later expanded to include clothing drafts.

The vast majority of A.R.A. staff were volunteers, drawing only rations and, in some cases, expense reimbursement. The total number of Americans who worked in Russia was 327. Of these, 69 were members of affiliate organizations. Traveling by boat, train, road cart and sleigh, they estimated needs, secured warehouses, organized village committees, selected kitchen sites and arranged for medical care for children. Hoover described them as "stern administrators with tender hearts." This staff core supervised the work of nearly 100,000 Russian employees, from dock workers and railroad engineers to feeding kitchen staff, who were paid with rations.

EPILOGUE

"All this account may seem dry and statistical. But the high purpose was to meet the prayer of nations for a chance to live and the cry of mothers for their children. Beyond that, it was the hope that we were giving strength to the frail democracies which had been brought into being, that through them the world might find peace. We had won victory by arms, and we dreamed that this unparalleled generosity and service by a great nation would set new standards of human relationship in the world. And it expressed the Christianity that was within us. We will need to do it all over again as part of our effort to bring peace to a weary world."—Herbert Hoover, 1942

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APPENDIX ONE: RIGA AGREEMENT

(Agreement between the American Relief Administration and the Russian Socialist Federative Soviet Republic)

Whereas, a famine condition exists in parts of Russia, and

Whereas, Mr. Maxim Gorky, with the knowledge of the Russian Socialist Federative Soviet Republic, has appealed through Mr. Hoover to the American people for assistance to the starving and sick people, more particularly the children, of the famine stricken part of Russia, and

Whereas, Mr. Hoover and American people have read with great sympathy this appeal on the part of the Russian people in their distress and are desirous, solely for humanitarian reasons, of coming to their assistance, and

Whereas, Mr. Hoover, in his reply to Mr. Gorky, has suggested that supplementary relief might be brought by the American Relief Administration to up to a million children in Russia;

Therefore, it is agreed between the American Relief Administration, an unofficial volunteer American charitable organization under the chairmanship of Mr. Herbert Hoover, hereinafter called the A.R.A., and the Russian Socialist Federative Soviet Republic, hereinafter called the Soviet Authorities,

That the A.R.A. will extend such assistance to the Russian people as is within its power, subject to the acceptance and fulfillment of the following conditions on the part of the Soviet Authorities who hereby declare that there is need of this assistance on the part of the A.R.A.

The Soviet Authorities agree:

First: That the A.R.A. may bring into Russia such personnel as the A.R.A. finds necessary in the carrying out of its work and the Soviet Authorities guarantee them full liberty and protection while in Russia. Non-Americans and Americans who have been detained in Soviet Russia since 1917 will be admitted on approval by the Soviet Authorities.

Second: That they will, on demand of the A.R.A., immediately extend all facilities for the entry into and exit from Russia of the personnel mentioned in (1) and while such personnel are in Russia the Soviet Authorities shall accord them full liberty to come and go and move about Russia on official business and shall provide them with all necessary papers with as safe-conducts, laissez passer, et cetera, to facilitate their travel.

Third: That in securing Russian and other personnel the A.R.A. shall have complete freedom as to selection and the Soviet Authorities will, on request, assist the A.R.A. in securing same.

Fourth: That on delivery by the A.R.A. of its relief supplies at the Russian ports of Petrograd, Murmansk, Archangel, Novorossisk, or other Russian ports as mutually agreed upon, or the nearest practicable available ports in adjacent countries, decision to lie with the A.R.A., the Soviet Authorities will bear all further costs such as discharge, handling, loading, and transportation to interior base points in the areas where the A.R.A. may operate. Should demurrage or storage occur at above ports mutually agreed upon as satisfactory such demurrage and storage is for the account of the Soviet Authorities. For purposes of this agreement the ports of Riga, Reval, Libau, Hango, and Helsingfors are also considered satisfactory ports. Notice of at least five days will be given to Soviet representatives at respective ports in case the Soviet Authorities are expected to take c.i.f. delivery.

Fifth: That they will at their own expense supply the necessary storage at interior base points mentioned in paragraph (4) and handling and transportation from same to all such other interior points as the A.R.A. may designate.

Sixth: That in all above storage and movement of relief supplies they will give the A.R.A. the same priority over all other traffic as the Soviet Authorities give their own relief supplies, and on demand of the A.R.A. will furnish adequate guards and convoys.

Seventh: That they will give free import and re-export and guarantee freedom from requisition to all A.R.A. supplies of whatever nature. The A.R.A. will repay the Soviet Authorities for expenses incurred by them on re-exported supplies.

Eighth: That the relief supplies are intended only for children and the sick, as designated by the A.R.A. in accordance with paragraph (24), and remain the property of the A.R.A. until actually consumed by these children and the sick, and are to be distributed in the name of the A.R.A.

Ninth: That no individual receiving A.R.A. ratios shall be deprived of such local supplies as are given to the rest of the population.

Tenth: That they will guarantee and take every step to insure that relief supplies belonging to the A.R.A. will not go to the general adult population nor to the Army, Navy, or Government employees but only to such persons as designated in paragraphs (8) and (24).

Eleventh: That the Soviet Authorities undertake to reimburse the A.R.A. in dollars at c.i.f. cost or replace in kind any misused relief supplies.

Twelfth: That the A.R.A. shall be allowed to set up the necessary organizations for carrying out its relief work free from governmental or other interference. The Central and Local Soviet Authorities have the right of representation thereon.

Thirteenth: That the Soviet Authorities will provide:

A. The necessary premises for kitchens, dispensaries and, in as far as possible, hospitals.

B. The necessary fuel and, when available, cooking, distributing, and feeding equipment for the same.

C. The total cost of local relief administration, food preparation, distribution, et cetera, themselves are in conjunction with local authorities. Mode of payment to be arranged at later date.

D. On demand of the A.R.A. such local medical personnel and assistance, satisfactory to the A.R.A., as are needed to efficiently administer its relief.

E. Without cost railway, motor, water or other transportation for movement of relief supplies and of such personnel as may be necessary to efficiently control relief operations. The Soviet Authorities will for the duration of the A.R.A. operations assign to the A.R.A. for the sole use of its personnel, and transport free of cost, such railway carriages as the A.R.A. may reasonably request.

Fourteenth: In localities where the A.R.A. may be operating and where epidemics are raging, the A.R.A. shall be empowered by the Soviet Authorities to take such steps as may be necessary towards the improvement of sanitary conditions, protection of water supply, et cetera.

Fifteenth: That they will supply free of charge the necessary offices, garages, stormrooms, et cetera, for the transaction of the A.R.A. business and when available heat, light, and water for same. Further that they will place at the disposal of the A.R.A. adequate residential quarters for the A.R.A. personnel in all localities where the A.R.A. may be operating. All such above premises to be free from seizure and requisition. Examination of above premises will not be made except with knowledge and in presence of the chief of the A.R.A. operations in Russia or his representative and except in case of flagrant delit, when examiner will be held responsible in case examination unwarranted.

Sixteenth: That they will give to the A.R.A. complete freedom and priority without cost in the use of existing radio, telegraph, telephone, cable, post, and couriers in Russia and will provide the A.R.A., when available and subject to the consent of competent authorities, with private telegraph and telephone wires and maintenance free of cost.

Seventeenth: To accord the A.R.A. and its American representatives and its couriers the customary diplomatic privileges as to passing the frontiers.

Eighteenth: To supply the A.R.A. free of cost with the necessary gasoline and oil to operate its motor transportation and to transport such motor transportation by rail or otherwise as may be necessary.

Nineteenth: To furnish at the request of the competent A.R.A. Authorities all A.R.A. personnel, together with their impediments and supplies, free transportation in Russia.

Twentieth: To permit the A.R.A. to import and re-export free of duty and requisition such commissary, transport, and office supplies as are necessary for its personnel and administration.

Twenty-first: That they will acquaint the Russian people with the aims and methods of the relief work of the A.R.A. in order to facilitate the rapid development of its efficiency and will assist and facilitate in supplying the American people with reliable and non-political information of the existing conditions and the progress of the relief work as an aid in developing financial support in America.

Twenty-second: That they will bear all expenses of the relief operation other than:

A. Cost of relief supplies at port (see paragraph 4).

B. Direct expenses of American control and supervision of relief work in Russia with exceptions as above. In general they will give the A.R.A. all assistance in their power toward the carrying out of its humanitarian relief operations.

The A.R.A. agrees:

Twenty-third: Within the limits of its resources and facilities, to supply, as rapidly as suitable organization can be effected, food, clothing, and medical relief to the sick and particularly to the children within the age limits as decided upon by the A.R.A.

Twenty-fourth: That its relief distribution will be to the children and sick without regard to race, religion, or social or political status.

Twenty-fifth: That its personnel in Russia will confine themselves strictly to the ministration of relief and will engage in no political or commercial activity whatever. In view of paragraph (1) and the freedom of American personnel in Russia from personal search, arrest, and detention, any personnel contravening this will be withdrawn or discharged on the request of the Central Soviet Authorities. The Central Soviet Authorities will submit to the chief officer of the A.R.A. the reasons for this request and the evidence in their possession.

Twenty-sixth: That it will carry on its operations where it finds its relief can be administered most efficiently and to secure best results. Its principal object is to bring relief to the famine stricken areas of the Volga.

Twenty-seventh: That it will import no alcohol in its relief supplies and will permit customs inspection of its imported relief supplies at points to be mutually agreed upon.

The Soviet Authorities having previously agreed as the absolute sine qua non of any assistance on the part of the American people to release all Americans detained in Russia and to facilitate the departure from Russia of all Americans so desiring, the A.R.A. reserves to itself the right to suspend temporarily or terminate all of its relief work in Russia in case of failure on the part of the Soviet Authorities to fully comply with this primary condition or with any condition set forth in the above agreement. The Soviet Authorities equally reserve the right of cancelling this agreement in case of non-fulfillment of any of the above clauses on the part of the A.R.A.

Made in Riga, August Twentieth, Nineteen hundred and twentyone.

On behalf of Council of Peoples Commissaries of the Russian Socialist Federative Soviet Republic.

(Signed) MAXIM LITVINOV,
Assistant Peoples Commissary for Foreign Affairs.

On behalf of the American Relief Administration.

(Signed) WALTER LYMAN BROWN,
Director for Europe.

[From the Washington Post, Jan. 27, 1992]

U.S. AIRLIFT TO REPUBLICS PALES BESIDE 1920S AID

(By Haynes Johnson)

In an age of symbolism, where slogans often masquerade as deeds, the image of the world's last superpower airlifting emergency food and medical aid to its struggling erstwhile superpower rival commands prime news space as an international good deed—or good public relations act. In reality, it pales beside an effort launched by the United States to save the Soviet Union from starvation 71 years ago.

Today's emergency effort, announced Thursday, is dubbed by U.S. officials "Operation Provide Hope." It will provide 19,200 tons of food left over from the Persian Gulf War and medical supplies from the Defense Department.

The earlier, largely forgotten, relief provided 700,000 tons of food, plus a vast store of medicines and commodities. Those supplies fed and nursed 18 million Russians and saved between 10 million and 20 million lives over a three-year period.

It was one of the most successful humanitarian acts in history, and it contained one of history's notable ironies. That U.S. effort saved the new Soviet Union and enabled it to become this nation's great ideological rival and superpower enemy.

In another ironic twist, the man responsible for organizing the U.S. relief was the staunch anticommunist, Herbert Hoover, who as president during the Great Depression was blamed by the American people for not acting aggressively enough to alleviate suffering.

Starvation stalked the new Soviet Union in 1921 when Hoover's Russian relief effort began. Cities were filled with mobs crying for food. In Petrograd (St. Petersburg) alone, as many as 100,000 were dying of starvation each month. Then, as now, Russia possessed ample food resources. Then, as now, an incompetent bureaucratic administration system failed to deliver food where it was needed.

A stupendous famine, centered in the Ukraine and the Valley of the Volga, gripped the new society. It was caused in part by freaks of weather, but was mainly due to a halt in agricultural production while the Soviets were communizing the peasants. Vladimire Lenin, founder of the new Soviet state, wrote then that without international help "the government will perish."

That July, as Hoover was winding down his post-World War I European relief efforts as head of the American Relief Administration, he received a personal plea from Maxim Gorky, the Russian author.

Hoover, then commerce secretary under President Warren G. Harding, was one of the few distinguished Cabinet officers in an administration that became infamous for its pervasive corruption. He instantly responded and set American terms for aid. These included freedom of all American prisoners held inside Russia after a U.S. military expedition onto Soviet territory after World War I, and ability for Americans to operate with-

out restrictions and travel without interference while administering the aid. He also demanded the power to organize local relief committees inside the Soviet Union and to be given free storage space, free offices and free transportation.

That Sept. 1 more than 100 American prisoners were released from Soviet dungeons; the U.S. government had known of only 20 U.S. prisoners. Three weeks later the first meals from American imported food were being served to the Soviet people.

Initially, Hoover conceived of the relief effort as aimed mainly at children. Americans working for him on the scene quickly told him of "appalling" conditions inside the Soviet Union. They estimated that 15 million to 20 million adults and children would die from starvation unless the U.S. undertook a far wider emergency operation.

Humanitarianism notwithstanding, Hoover was a tough dealmaker. He demanded that the Soviets place a substantial amount of gold they had seized from the czars during the Russian Revolution into U.S. hands to spend for food. The gold would provide capital to buy the food, and also keep that gold from being used to subsidize revolutions worldwide.

The Soviets resisted, but finally agreed. Of a total $78 million (about $500 million in today's terms) raised for the relief, the Soviets furnished $18 million from their gold. Another $20 million came from a congressional appropriation, with $8 million from U.S. Army surplus medical supplies. The rest came from public charities.

The operation itself was remarkably small given the scale of the suffering and the numbers to be assisted. Hoover named a close associate, Col. William N. Haskell, who had worked with him on European relief two years before, to take charge of the Russian effort. Haskell assembled a staff of about 200 Americans with experience in food and medical relief. At peak, about 600 Americans were involved. They, in turn, supervised local Soviet staffs employed by the U.S. agency that oversaw the movement of supplies from seaports by rail to distribution points throughout the country. Eventually, the relief effort was operating through a distribution network of nearly 18,000 stations.

In the best of times, it would have been a formidable undertaking. Then, with many rail lines still in need of major repair and a demoralized citizenry, it is remarkable that the mission accomplished its goal. But it was not without severe internal problems: At one point thousands of tons of American food stood piled on docks awaiting train transport inland.

Americans then, as now, were not enthusiastic about aiding the Soviet people. Neither did Americans then, as now, look favorably on foreign aid of any sort, though in the Hoover period there was no question that only America could furnish such an immense effort.

In one of many striking parallels with the present, Hoover described how America had withdrawn back into itself after the war. Its military force of 2 million was swiftly cut to the bone. "At home we were spending unprecedented sums," Hoover recalled. "We were undergoing unprecedented taxation. We were faced with unemployment and all the problems of demobilization of a country regimented to war. Our people clamored * * * to stop the expense."

Still, the massive U.S. Russian relief effort continued. By the spring of 1922, the American effort was feeding 18 million Russians. The diet consisted of American shelled corn—an unknown then in the Soviet Union—wheat, fats, condensed milk, stew and wheat bread.

"It was a ghastly task," Hoover wrote, "but our men carried it through with an estimated loss of fewer than a million lives. We shipped a considerable quantity of seed wheat, and the acute crisis ended with the harvest in 1922. But the Americans had to continue to care for millions of undernourished and homeless children over the winter of 1923."

When it was over, Gorky wrote Hoover:

"In all the history of human suffering I know of * * * no accomplishment which in terms of magnitude and generosity can be compared to the relief that you have actually accomplished. * * * Your help will be inscribed in history as a unique, gigantic accomplishment worthy of the greatest glory and will long remain in the memory of millions of Russians * * * whom you saved from death."

The humanitarian effort was quickly forgotten. Russians employed by the American Relief Administration, often for no wages but their daily bread, were imprisoned as soon as the Americans withdrew. "Our men have never since been able to get any news of them," Hoover noted.

As for the friendship between the United States and the U.S.S.R., ahead lay the bloody Stalin period and then the long decades of a Cold War only now concluded.•

LOS ANGELES DODGERS HELP NICARAGUAN LITTLE LEAGUE BASEBALL

• Mrs. KASSEBAUM. Mr. President, on January 18, the owner of the Los Angeles Dodgers, Mr. Peter O'Malley, joined Nicaraguan President Violetta Chamorro in opening the Dodgers Little League Baseball Friendship Field in Managua, Nicaragua. Built with the support of the Dodgers, this field will give thousands of Nicaraguan youngsters an opportunity to play little league baseball.

As many of my colleagues who have traveled to Central America know, Nicaraguans love the sport of baseball and closely follow the major leagues in the United States. Almost every Nicaraguan child grows up playing the sport in the street, often with nothing more than a bundle of tape and an old stick.

Clearly, the growth of baseball will not solve President Chamorro's difficulties. But, I do believe it is an important positive contribution we Americans can make to the people of Nicaragua.

Far too often, we in Congress focus on the millions of dollars in official aid and military assistance, and forget about the small ways to affect the lives of the everyday citizens in developing countries. Sharing resources, talent, and expertise should be an important part of our relations with other countries. We have much to teach—and much to learn.

Mr. President, I commend Mr. O'Malley and the Dodgers for their active support of baseball in Nicaragua. For many years, the Dodgers have promoted international baseball, both on a professional and amateur level. The team has sent coaches to many countries and hosted numerous baseball exchanges.

As our world becomes more interdependent, we need more organizations like the Dodgers, more people like Peter O'Malley, who are willing to share their time and resources with those in the developing world.•

FOOT-IN-MOUTH EPIDEMIC IN JAPAN

• Mr. BIDEN. Mr. President, on January 19, the Speaker of the lower House of the Japanese Parliament, Yoshio Sakurauchi, said that "American workers don't work but they demand high pay" and "about 30 percent of them cannot read." He also reportedly said that the source of American economic problems is the "inferior quality of U.S. labor." Other Japanese officials quickly denied the remarks, saying Sakurauchi had been misquoted, but the effect of his remarks was like gasoline poured over a fire.

The foot-in-mouth epidemic in Japan continued this past Monday when Prime Minister Kiichi Miyazawa said during debate in a parliamentary committee of the Diet that, regarding American work habits, he has long thought "that the work ethic is lacking as far as that area is concerned", that area being Wall Street and the American financial markets. He also said that Americans' determination to "produce goods and create value has loosened sharply" over the past 10 years, and that many people getting out of college have gone to Wall Street for very high salaries, with the result that the number of engineers who produce goods has gone down quickly." Miyazawa later apologized for creating a "misunderstanding", saying he had not intended to criticize American workers.

Was Sakurauchi misquoted? Was Miyazawa misunderstood? It really doesn't much matter. The fact is that a great majority of Japanese apparently share these negative views of Americans. A CBS-New York Times poll last November showed 66 percent of Japanese think Americans are "lazy". And in fact many Americans suspect there's some truth in such statements: 32 percent of the Americans polled by CBS also characterized us as "lazy."

We know we're not competing effectively with the Japanese, and we know our economic standing in the world is slipping. But what are the causes of our decline? Are our workers lazy or ignorant as portrayed by the Japanese comments? Do we produce too many investment bankers, bond dealers and lawyers, and not enough engineers, scientists, and inventors? Have we in fact lost the work ethic for which this country was long admired and emulated?

Mr. President, today I want to debunk the claims in Speaker Sakaurauchi's statements about the quality of the American work force, and point out a few relevant and enlightening statistics.

Fact No. 1: American productivity—output per worker—is still the highest in the world. In 1989, Japanese productivity was 75 percent of the United States rate, while Germany was at 73 percent. It is true that our competitors are catching up, but nevertheless, we are still the world's most productive people using the standard measure.

Fact No. 2: Americans are not a nation of illiterates. Our literacy rate is estimated at 95 to 97 percent; Japan's rate is slightly higher. Both nations have approximately 20 percent of their populations enrolled in elementary-secondary education, and we have far more higher ed students, 5.1 percent of Americans versus 1.9 percent of Japanese. By some education measures, the Japanese do work harder, for example, their elementary-secondary students attend school an average of 240 days a year, almost 2 months longer than American kids. I believe this is an area where we can and will improve. I have for many years advocated lengthening the American school year, along with other school reforms, in order to give our children the world's best education.

Fact No. 3: Americans work longer hours than people in any other country except Japan, Taiwan and Korea. The average Japanese works 2,100 hours per year, the average American 1,800 hours, and the average German 1,500 hours. And American work hours are increasing: Since 1972, the average work year has lengthened by 163 hours. Japanese work hours have been holding steady, and may be starting to drop, partially in response to government policies encouraging more consumption.

Fact No. 4: American workers are not overpaid by world standards. The average manufacturing labor cost in the United States [$10.83/hr] is lower than that of either Japan [$12.27] or Germany [$12.61].

Finally, what about quality? Can American workers make good products? Fact No. 5 is that American-made products are not necessarily inferior to Japanese made. Cars made in Japanese-owned plants in the United States, by American workers, have fewer defects than cars made in Japan.

Defect rate per 100 automobiles:

American companies in United States	80
Japanese companies in Japan	50
Japanese companies in United States	49

Mazda Chairman Kenichi Yamamoto has said, "Our American suppliers—of auto parts—work incredibly hard. Their quality is top-notch. The only difference between the parts we buy in Japan and the parts we buy in America is the name stamped on the metal."

The Japanese themselves prefer many American-made products to their own. Most Japanese personal computers use microprocessors built in the United States. The best-selling computer software program in Japan last year was American-made. And IBM outsells nearly all Japanese computer makers in Japan. We also make the top-selling clothing lines, prescription drugs, and razors in Japan.

No one can deny that this Nation has significant and troublesome economic problems. But I hope that the facts I have just noted will lay to rest the notion that somehow American workers have lost their will to work and their ability to do good work. We have people out there across the country who are working harder and harder each year, frequently for less pay and fewer benefits, just to keep a roof over their heads, food on the table, and hope in their hearts that someday their children will have a chance at a better life. In all the feverish debate over the choices we must make to put this country back on the path to economic greatness, let us not be tempted to accept as truth the arrogant and misinformed statements of our rivals. When what they say is flat wrong, let us tell them—and ourselves—so.•

CLEAN WATER ACT STATE REVOLVING LOAN FUNDS

• Mr. CHAFEE. Mr. President, over the past 20 years the Federal Government has, under the Clean Water Act, provided more than $52 billion to State and local governments to help pay for the construction of waste water treatment plants. This has been one of our most successful environmental programs and is directly responsible for much of the improvement in water quality that has occurred since the Clean Water Act took its present form in 1972.

For many years this program was a grant program providing direct assistance to local governments building sewage systems. In 1987 the Congress made dramatic changes in the construction grants program. It was converted to a loan program. We no longer make grants to local governments. Rather the grants are made to the States. Each State has established a trust fund for this money. These funds are then used to make loans to local governments for construction of sewage treatment plants. The money is paid back by the cities and towns and returned to the trust funds. These trust funds are called State revolving loan funds or SRF's.

In addition to the Federal grants and the loan repayments from local governments, the State revolving loan funds also contain State money. The Clean Water Act requires at least a 20-percent State match for each Federal grant. But many States have gone way beyond the minimum and have used their revolving loan funds to leverage bonds and other financing mechanisms that have multiplied the impact of these Federal dollars manyfold.

When we created the State revolving loan funds in the Water Quality Act of 1987, we agreed to phase out the Federal role in the financing of sewage treatment plant construction. The authorization levels for the Federal contribution to the State revolving loan funds started at $2.4 billion per year in 1990, declined to $1.8 billion in 1992, $1.2 billion in 1993 and $600 million in 1994. Under current law, there is to be no Federal role, no additional Federal dollars, after 1994.

This phaseout is the result of an agreement that was made between the Congress and President Reagan in 1981. When he came to office, President Reagan proposed an immediate end to the construction grants program. At that time annual appropriations for grants were about $5 billion. Again, these were Federal grants directly to local governments that were not repaid. President Reagan proposed to abolish that program altogether.

And it must be said that there were problems with the program in 1981. Precious taxpayer dollars were in some cases being used to lay sewer collectors in affluent communities that could well afford to finance the projects locally. There were operational problems with some of the plants that had been financed with Federal dollars, and there were other issues that concerned the administration.

After much debate, the President and the Congress eventually reached a compromise that allowed the program to continue. The agreement that we reached included significant reforms in the program. We cut the Federal matching rate from 75 percent to 55 percent. We modified the eligibility criteria to exclude projects that were growth related. We cut the spending level in half.

For his part, President Reagan agreed to support a $2.4 billion per year appropriation for wastewater treatment construction for the next 10 years. After 10 years, the program was to be terminated. The Water Quality Act of 1987 that created the State revolving loan funds was designed to carry out that agreement. Rather than a flat termination of Federal funds in 1991, we provided for a more gradual phaseout of the program. But as we had agreed in 1981, there was to be an end date for Federal dollars sewage treatment grants of 1994. That date is now in sight.

Last year I joined with Senator BAUCUS to introduce S. 1081, the Water Pollution Prevention and Control Act of 1991. It would reauthorize the Clean Water Act through 1997. Like the 1987 Water Quality Act, this bill has also been designed to reflect the 1981 agree-

ment between the Congress and President Reagan. It does not provide any more dollars for the State revolving loan funds beyond those authorized in 1987. The phaseout of the Federal support for SRF's is preserved in that bill.

Mr. President, it is time to reconsider that decision. I have come to the floor of the Senate today to urge that Federal support for the State revolving loan funds be continued at current levels for the foreseeable future. I make this recommendation for two reasons.

First, it appears that President Bush, unlike his predecessor, supports a continuation of the SRF Program. The President's budget for 1993 requests appropriations of $2.5 billion for the construction of wastewater treatment facilities. Most of this money is funneled to the State revolving loan funds, but for the second year in a row the Bush administration is proposing direct grants, not loans but grants, to several large cities with polluted harbors to assure that their sewage treatment problems are resolved at an early date.

The $2.5 billion request is more than twice the amount authorized for 1993 and more than was appropriated last year. Far from phasing out the State revolving loan fund grants, President Bush is asking that the Federal grants be increased. I agree with a budget that moves in that direction. I applaud it. On this score the President deserves high praise for recognizing the very great success that the States have made of the revolving loan fund opportunity.

The SRF's are working better than we had expected. Every State has established a fund. As I said a moment ago, many states have used them as the foundation for creative financing programs that multiply the impact of Federal dollars. And the flexibility built into the State revolving loan funds has allowed the States to use these dollars to address their highest priorities.

My second reason for suggesting a continuation of the SRF grant program was reflected in the hearings on S. 1081, the Water Pollution Prevention and Control Act, which the Environmental Protection Subcommittee held last summer. That bill terminates the Federal grants for State revolving funds. But it does not terminate the Federal role in water pollution control. S. 1081 would create several new categorical grant programs.

It includes a new grant program for combined sewer overflows, a new grant program for small communities, and a new grant program for river assessments. It resurrects an old categorical grant called the Rural Clean Water Program. These are only a few of the new grants that we would authorize if S. 1081 were to be enacted in its present form.

S. 1081 would take the money that we are currently putting into State revolving loan funds and spread it over a large number of new categorical grants. That approach was strongly opposed by State officials and others at the hearings on S. 1081 held by the Environmental Protection Subcommittee last summer. They don't want a proliferation of new Federal categorical grants. They want the flexibility already available to them in the State revolving funds to effectively address their highest priorities as they see them.

I must say that I agree with the States. It would be a mistake to drop our support for the State revolving funds that are working so well and return to the old era of Federal categorical grants. That would be going in the wrong direction.

On January 2 of this year I wrote to Bill Reilly who is the Administrator of the Environmental Protection Agency to make that point. Because we are reaching the end of the authorization for the State Revolving Fund Program and because the Environmental Protection Subcommittee is planning to take action on S. 1081 in the coming weeks, I asked Mr. Reilly if he and his colleagues in the administration could make a firm declaration of the President's plans for funding programs under the Clean Water Act in the future.

The answer to my letter came in the President's budget for 1993. Far from terminating the State revolving fund grants, the President proposes to increase the appropriations over the amounts spent last year. The President's request is more than double the amount authorized for 1993 in the Clean Water Act. That's a pretty clear signal to me. The 1993 budget for SRF grants is a significant departure from budgets of the past. It's not the kind of budget a President would send up if he thought a program had failed and should be terminated. The 1993 request can only be read as an expression of confidence in the State revolving funds and a recognition of the very great need which these grants address.

Therefore, I am today urging my colleagues on the Environment and Public Works Committee and here in the Senate to support a continuation of the State Revolving Loan Fund Program beyond 1994. These State trust funds should be the principal mechanism that we use to target Federal dollars toward important water quality problems. I will make every effort to assure that the clean water reauthorization bill that we report from the Environment Committee to the Senate continues Federal support for the State revolving funds recognizing the fine job States have done and very large need for water pollution control investments that remains unmet.

Mr. President, I would ask that my letter and the reply from Mr. Reilly be printed in the RECORD at the conclusion of my comments today.

The letter follows:

U.S. SENATE,
Washington, DC, January 2, 1992.

Hon. WILLIAM K. REILLY,
Administration, Environmental Protection Agency, Washington, DC.

DEAR BILL: Senator Baucus has announced his intention to begin markup of S. 1081, the Water Pollution Prevention and Control Act, when the Congress returns in February. One of the major issues to be considered by the Environmental Protection Subcommittee during those markup sessions will be the future of federal funding for State Revolving Funds (SRFs) and other clean water initiatives.

S. 1081 as currently drafted reflects an understanding reached between Congress and the Administration in 1981. The construction grants program was to be phased out after an annual appropriation of $2.4 billion over a ten-year period. That agreement was modified in 1987 with the establishment of the State Revolving Funds. Capitalization grants to the SRFs were scheduled through 1994, but the total amount of funding was consistent with the 1981 agreement. The authorization in the 1987 Water Quality Act for grants under titles II and VI of the Clean Water Act was $18 billion. Because we have not met the authorized levels with appropriations to date, S. 1081 includes new authorizations to assure that the full $18 billion will be appropriated.

Although we have held the line on extending SRF grants in S. 1081, the Subcommittee has heard considerable testimony indicating that the State Revolving Funds are the most efficient and effective means to meet the Nation's water quality goals. All states have established SRFs. Many states have created financing authorities that use federal dollars to guarantee state and local bonds or that leverage local financing in other ways. These financial arrangements multiply the impact of federal dollars far beyond the reach of the old categorical grant program.

With the exception of some minor technical complaints by states with respect to the strings attached to SRF grants, the program appears to work quite well. Many are urging that it be extended beyond 1994 and become a permanent mechanism to channel federal dollars for water quality protection.

At the initiative of Senator Baucus, S. 1081 takes a very different approach. It would continue federal spending for water quality at approximately current levels (with inflationary adjustments) through 1998. But the federal effort would be directed through a series of new categorical grants for nonpoint pollution, small communities, combined sewer overflows, river assessments and other water quality objectives. State officials have indicated to me that categorical grants are too restrictive and do not allow them to use Federal funds in the most effective way to meet their highest priorities.

When you testified before the Subcommittee on S. 1081 in May, you did not close the door on extending the authorization for SRF grants beyond 1994. You indicated that there may be a possibility that this Administration would seek to modify the 1981 agreement and continue some SRF financing. The Administration's 1992 budget request, that included grants for several coastal cities to build sewage treatment plants, also indicates a possible change in policy direction.

I am writing now to ask that the Administration declare its view on the future of SRF capitalization grants and other clean water funding at the earliest possible date. Because the authorization for SRF grants falls to $1.2

billion for fiscal year 1993 and because of the impending markup schedule, it is my hope that you would clearly set forth the Administration's views on these issues during January of the coming year.

Notwithstanding the 1981 agreement, I would urge the Administration to make a commitment to SRF financing at $1.5 billion per year for the foreseeable future. Grants at this level would leave room within the confines of a current services budget to make a substantial commitment to finance state programs to control nonpoint sources of pollution, as well. Unlike the small community and combined sewer overflow problems, nonpoint source pollution cannot be effectively addressed through revolving loan programs. Because nonpoint source pollution is the most serious unresolved water quality problem, states need the stimulus of substantial federal grants to put good programs in place.

I urge this course of action, in part, because I believe (1) that the Congress will continue to appropriate funds for water quality protection and (2) that capitalizing the SRFs would be more effective and efficient than the shift to a series of categorical grants as contemplated in S. 1081.

A clear statement by the Administration on these issues prior to the January 21, 1992 return of the Congress is vital. I would be happy to discuss this matter with you or other Administration officials and thank you for your personal attention to the course of action I am recommending.

Sincerely,

JOHN H. CHAFEE,
Ranking Member.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, January 31, 1992.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR JOHN: Thank you for your letter of January 2, 1992, regarding future funding of the State Revolving Fund (SRF) program. I agree that the SRF program has been a very effective mechanism for financing State water quality needs because it both subsidizes necessary facilities and programs and provides a source of continued financing well into the future.

Although EPA and the States have made progress in meeting water quality objectives, funding needs continue to grow for wastewater treatment categories historically and newly eligible for Federal assistance. These needs include combines sewer overflows, storm water, nonpoint sources, toxics, and sludge disposal. We have recently discussed within the Agency funding options for the SRF program and other related initiatives, but I am not in a position to provide you with an Administration position on long term funding of the SRF and related programs yet. Further discussions within the Agency and the Administration are still necessary. However, I would like very much to discuss this issue with you when we get together next week.

Before closing, I would like to address the concern you raised about financing State nonpoint source programs. You correctly noted in your letter that, in some areas of the country, pollution from nonpoint sources represents the most important remaining water quality problem. Your proposal would provide $500 million or more in grants for nonpoint source programs with the assumption that SRF loans are not a viable source for financing for nonpoint source programs. I agree that the use of SRF loans to finance many nonpoint source needs may not always be practical, particularly for programs in rural and unincorporated areas. SRFs may prove to be viable financing mechanisms, however, where a general or special purpose governmental unit is willing to sponsor the nonpoint source program and has revenue sources in place to repay SRF loans. We are currently analyzing the issue of using SRFs to finance nonpoint source needs and will provide you with more information in the future.

I hope this letter addresses your concerns. Please call me if you have further questions, or have your staff contact LaJuana S. Wilcher, Assistant Administrator, Office of Water at (202) 260-5700. I look forward to meeting with you in the near future to discuss funding issues related to CWA Reauthorization.

Sincerely yours,

WILLIAM K. REILLY.•

OUR ECONOMY IS STALLED

• Mr. JEFFORDS. Mr. President, you do not have to be from New England to know that our economy is stalled, but it helps. While my State is faring a little better than some of its neighbors, its economy is still very, very weak.

I think we must begin by acknowledging that there are very real limits to what the Federal Government can do. This may be bad politics, but it is inescapable economics.

Throughout the past decade, when our economy went through an unprecedented peacetime expansion, our debts—governmental, commercial, and individual—ballooned. This year's deficit is predicted to be an eyelash shy of $400 billion. The national debt has increased from under $1 trillion to more than $3 trillion over the past 10 years. And the cost of servicing our debts is one of the fastest growing items in the budget, and is on the verge of surpassing our entire budget for domestic discretionary spending.

President Bush's critics barely let the ink dry on his budget before they started slamming it. I do not think it is perfect, and I, too, have criticisms of it. But I hope, and I know this may be a naive hope, that a sense of crisis will help lead to consensus rather than carping.

Just as I doubt that proposed tax cuts will produce miraculous recovery, so, too, am I skeptical that taxing the rich or slashing defense spending will be sufficient to close the gap between revenues and outlays. Our problems have become too big to yield to simple or painless remedies.

As the President's budget underscores, we really have two crises. Our immediate concern, as Vermonters and Americans know all too well, must be reviving our economy and putting people back to work. Bolstering unemployment insurance is a good step, but clearly there is much more that we can and must do.

Our second concern must be to reduce the deficit and achieve sound economic growth. To his credit, the President is willing to reduce defense spending and has put forward a proposal to rein in entitlement spending. Predictably, he has been assailed for trying to control mandatory spending. Privately, every Member of Congress knows he is right.

Given our massive accumulation of debt, steps we might wish to take must be balanced against their impact on our long-term economic health. This is by no means an easy task. The President has proposed his approach on how to achieve this, but to date his critics have not confronted the toughest issues, preferring instead to take political potshots. For my part, I do not believe that we can afford to take short-term steps that will add to the deficit.

How do you get out of a recession? Stimulate consumption. How do you achieve long-term economic growth? Stimulate saving. We want to prop up real estate values to help homeowners, but we want to make real estate more affordable to help home buyers.

There is more than a little schizophrenia in our economic debate. For years we have all decried the relatively low savings rate in our country and worried aloud about mounting consumer debt. Now that consumers seem to be reducing that debt, we worry that they are not spending enough. It is no wonder that the public is a bit uncertain.

We, too, are uncertain. Let us face it, none of us know if the Federal Reserve's actions will be sufficient, or what magnitude of tax changes will suffice to augment or accelerate economic recovery. Given this uncertainty, I think we should be cautious, avoiding the temptation to take actions designed to help today that will hurt tomorrow.

Ultimately, this can only result from reaching an agreement between the White House and Congress, Republicans, and Democrats.

The President has introduced his proposal, dividing it between short-term and long-term recommendations. He has asked us to act quickly on the former, and I believe we should do just that.

To this end, I have joined as a cosponsor of Senator DOLE's economic stimulus package, which he is introducing on behalf of the President. I believe this is a necessary step in bringing the two parties and two branches together in reaching an agreement.

Much of the President's short-term proposal makes sense. Even though homes are more affordable today than they have been in years, they still remain out of reach for too many Americans. I think it is useful to provide a $5,000 tax credit to first-time home buyers and to permit them to make a penalty-free withdrawal from their IRA's. While the latter might be seen as reducing retirement savings, I really do not think this is the case where the

money is used to purchase an asset that is likely to appreciate.

The President's flexible IRA, or FIRA's, does raise some concerns in my mind with regard to its effect on retirement security. While it would be limited to individuals making less than $60,000 and couples making $120,000, and would thus promote some horizontal distribution of tax benefits, assets would be available well before retirement age on a tax-free basis.

I have no doubt this vehicle would be attractive to upper-middle income taxpayers with disposable income and lower-income taxpayers who currently hold IRA's. Indeed, I suspect that many IRA's would be rolled into FIRA's so they could be cashed out prior to retirement age. While this activity would produce a short-term revenue gain, it would be at the price of a long-term revenue loss with questionable effects on our retirement savings.

Clearly the most significant proposal of the President's short-term package is the reduction in the rate of taxation on capital gains. Like the President, I have long felt that it is fundamentally unfair and unwise to tax capital gains without regard to the effects of inflation. As any homeowner, or farmer, or small businessperson in Vermont knows, capital gains taxes are assessed on property even when there is no real gain at all.

Just as we indexed tax brackets to avoid inflation-induced bracket creep, so, too, should we index the basis on which assets are taxed.

If there is a real gain, I believe that it should be taxed at roughly the same rate as earned income, currently 28 percent. I do not oppose a temporary reduction in the capital gains rate, but I cannot support a permanent reduction.

Our tax system, largely due to the amendments to Social Security adopted in the late 1970's, became less progressive over the course of the 1980's. Yes, the wealthy are paying a larger share, but it is at a lower rate. There is nothing wrong with lowering rates and limiting tax shelters. But there is something wrong if a minimum wage earner is paying a higher marginal rate on his first dollar than a millionaire is paying on his last dollar.

By now we are all familiar with the numbers. Nearly two-thirds of all taxpayers with incomes below $60,000 realize capital gains. But two-thirds of the benefits of the proposed exclusion would go to the top 1 percent of all taxpayers.

It is less clear what the short-term impact would be, with a wide disparity between the estimates of the Treasury Department and the Congressional Budget Office. My guess is that the President's proposal on capital gains would result in increased revenue to the Treasury in the near term, as taxpayers, taught all too well that Tax Code provisions last in Washington only a little longer than snow, sell their assets.

But there is no disagreement as to the long-term impact. Such a reduction will mean reduced revenues—the only dispute is how much. Both Treasury and CBO agree on this.

Thus, I have very grave concerns about the President's package. But I have even graver concerns about doing nothing. We must move ahead, argue in good faith, and reach agreement on a proposal that will breathe life into the economy without suffocating our budget and future with debt. This will not be easy and, given election year politics, may not be possible. But we will have failed the public miserably if we produce nothing but sloganeering.•

GRAHAM-FOWLER AMENDMENT ON NUCLEAR REACTOR LICENSING

• Mr. KERREY. Mr. President, yesterday, the Senate accepted language that significantly modifies the Nuclear Regulatory Commission's procedure for licensing a nuclear reactor. These changes undercut the ability of States and citizens to participate in the licensing process. In light of the industry and Nuclear Regulatory Commission's poor record and lack of credibility, these changes send the wrong signal. I opposed streamlining the licensing process, and am disappointed that the effort by Senators GRAHAM and FOWLER to modify the committee's proposal was rejected.

The heart of the issue before the Senate is: Under what circumstances are citizens, who have met a rigorous standard, able to have a full hearing regarding their case that a nuclear reactor should not begin operation. In addition, whether the findings of such a hearing are subject to judicial review.

The committee's proposal grants the NRC unnecessarily broad discretion in determining what type of a hearing, if any, it grants to citizens who have brought forward evidence regarding whether a reactor should begin operating. We are not talking of frivolous claims about a reactor's safety, but rather when the petitioning citizen or group has marshalled sufficient evidence to meet the very high standard required by the NRC. The amendment by Senators GRAHAM and FOWLER would, at least, have granted a full adjudicatory hearing to petitioners who had met this standard.

Mr. President, we are making a mistake on this issue. We are telling citizens that, even if they manage to meet the required rigorous standards, the NRC has the discretion to deny them a full adjudicatory hearing, and then even to have the results of that full hearing then subject to judicial review.

These are obscure points. But they go to the heart of a democracy and citizens' rights in a democracy.•

PREEMPTION S. 12

• Mr. JEFFORDS. Mr. President, my State of Vermont is one of just six States in this country that regulates cable television at a State level, instead of leaving the job up to local municipalities. Right now, the Vermont Public Service Board has several investigations into the rates and tariffs of several cable companies in the State and has others in the works. Should this bill become law, the future of these investigations would be in doubt while jurisdiction is being reobtained from the FCC.

Mr. President, I would like to ask the managers of the bill if they believe S. 12 preempts individual States' ability to conduct investigations into violations occurring prior to enactment of this bill and to take appropriate enforcement actions.

Mr. DANFORTH. Mr. President, I would respond to the Senator from Vermont's question by saying that it is not the intent of this legislation to preempt such investigations. I would hope that the FCC in writing their regulations would be able to allow investigations into past violations initiated by the States, and corresponding enforcement activities, to continue.

Mr. NICKLES. Mr. President, I would like to bring to the attention of the managers of S. 12 a problem which I believe needs to be addressed by the Federal Communications Commission. The problem relates to the implementation of syndicated exclusivity rules across State borders. I ask my friend from Missouri, Senator DANFORTH, if he is aware of this situation?

Mr. DANFORTH. I say to my friend from Oklahoma, Senator NICKLES, that I am generally aware that the syndex rules have created some complaints and I would like to hear the specific explanation of your concerns.

Mr. NICKLES. To respond to my friend, let me briefly explain the problem and give a brief background. As you know, on January 1, 1990, the Federal Communications Commission implemented rules relating to the syndicated exclusivity, known as syndex, rights of programming owned by broadcasters. The purpose of the rules were to protect broadcasters who purchase the exclusive rights to transmit syndicated programs in their recognized market area.

The syndex rules were implemented in response to the complaints of broadcasters that distant stations brought into their market area over cable, were infringing upon their programming contractual rights. As a hypothetical example, say a television station in Oklahoma City has the exclusive rights within its market area to broadcast the series "Cheers." If the local cable operator imports a station from Atlanta that also carries "Cheers," then the exclusive contractual rights that the Oklahoma station purchased to

broadcast the program has been violated.

The FCC syndex rules allow a broadcaster whose contractual programming rights are being violated by a cable operator bringing in a distant signal, to request that the cable operator remove the duplicated programming. The cable operator, upon receipt of such a notice, is required to blackout the duplicated programs on the distant station. Unfortunately, because of expense, channel underutilization, and related problems associated with blocking duplicated programming, the cable operator often takes the easier way out and simply drops the distant station entirely.

While I believe that broadcasters certainly should have their syndex rights protected, I am concerned about the problem created when broadcast stations have applied these rules across the State lines. In Oklahoma for example, a station in Wichita Falls, TX, requested the cable operator in Duncan, OK, to blackout several duplicated programs carried on an Oklahoma City station. The cable operator carried the Oklahoma City on its network, which is only 87 miles from Duncan and the information center for that part of the State. However, because the Wichita Falls station is approximately 40 miles from Duncan, the Oklahoma City station is considered to be the distant signal. Therefore, in order to comply with the syndex request of the Wichita Falls station, the cable operator, in Duncan was forced to delete the duplicated programming leaving entire portions of the broadcast day blacked out, underutilizing the operator's limited channel capacity.

In this case, the citizens of Duncan lost the consistent programming that they had come to rely upon from the Oklahoma City station. Of particular concern was the loss of the ability to receive important weather bulletins in an area known for its violent weather, as well as other important State-related information. Similar problems and concerns have been expressed by citizens in Poteau, Lawton, and Marlow, OK. In the case of Poteau, a Tulsa station was dropped entirely by the local cable operator when syndex rules were imposed by an Arkansas station.

Therefore, in an effort to address the extent of the problem, I am sending a letter to the Federal Communications Commission requesting that they initiate a study to determine the extent of this problem nationwide. My request is that they submit the results of this inquiry to the appropriate congressional committees within the next 6 months. If the FCC finds that this is a problem nationwide, I would like Congress to consider taking appropriate action to address the situation. I am submitting a copy of my letter to the FCC on this matter for the RECORD.

Mr. DANFORTH. Senator NICKLES, your explanation of the situation certainly gives cause for the FCC to initiate an evaluation of this problem. I can certainly understand why so many of your constituents are upset with the loss of their Oklahoma-based broadcasts, and share your interest in knowing whether this is a problem nationwide. In that regard, I join my colleague from Oklahoma in encouraging the FCC to report to Congress on this matter.

Mr. NICKLES. I thank my friend from Missouri for his support, and look forward to working with him and his staff in addressing this situation.

The letter follows:

U.S. SENATE,
Washington, DC, January 31, 1992.

Mr. ALFRED C. SIKES,
Chairman, Federal Communications Commission, Washington, DC

DEAR ALFRED: The purpose of this letter is to bring to your attention to a problem that is occurring in Oklahoma relating to the implementation of syndex rules, and to ask that the Federal Communications Commission initiate a study to determine if this is a problem nationwide. Briefly, let me explain. As you know, on January 1, 1990 the FCC implemented rules relating to the syndicated exclusivity (syndex) rights of programming owned by broadcasters. As you know, the purpose of the rules are to protect broadcasters who purchase the exclusive rights to transmit syndicated programs in their recognized market area.

While I believe that broadcasters certainly should have their syndex rights protected, I am concerned about the problem created when broadcast stations have applied these rules across state lines. In Oklahoma for example, a station in Wichita Falls, Texas requested the cable operator in Duncan, Oklahoma to blackout several duplicated programs on a Oklahoma City station carried on the cable system.

While Oklahoma City is only 87 miles from Duncan, it is considered a "distant" signal since the Wichita Falls station is less than 50 miles away. Therefore, in order to comply with the syndex request of the Wichita Falls station, the cable operator in Duncan was forced to delete the duplicated programming leaving entire portions of the broadcast day blacked out, underutilizing the operators limited channel capacity.

I am concerned because the citizens of Duncan lost the consistent programming that they had come to rely upon from the Oklahoma City station. Of particular concern was the loss of the ability to receive important weather bulletins in an area known for its violent weather, as well as other important State related information. Similar problems and concerns have been expressed by citizens in Poteau, Lawton and Marlow, Oklahoma. In the Poteau case, a Tulsa station was dropped entirely by the local cable operator when syndex rules were imposed by an Arkansas station.

Therefore, because of my desire to address this situation, I am requesting that the FCC initiate a study to determine the extent of this problem nationwide. The results of this evaluation should be submitted to the appropriate Congressional Committees within the next six months. Your cooperation will be most appreciated and I look forward to hearing from you soon on this matter. Enclosed are the specifics of my request.

Sincerely,

DON NICKLES,
U.S. Senator.

The Federal Communications Commission is requested to initiate a study to determine the following:

1. In what specific instances and in which geographical areas have broadcasters requested the enforcement of syndicated exclusivity rules across State lines.

2. In those instances where a broadcaster has requested the enforcement of syndex rules across State lines, the FCC is directed to investigate and report on the response of the cable operator to the broadcasters request. Specifically noted whether the cable operator blocked out the duplicated programming or dropped the distant station from its system entirely.

3. The study should also include the costs associated with the implementation of the syndex rules by those cable operators cited in the report.

This study should be provided to the appropriate Congressional Committees and Senator Nickles within six months of enactment of this legislation.●

TRIBUTE TO BILL MALLERIS

● Mr. DURENBERGER. Mr. President, I have the great honor today to pay a special tribute to Bill Malleris. Bill has devoted his life's work to helping those with mental and physical disabilities. Through SEMCIL [Southeastern Minnesota Center for Independent Living, Inc.] he has enabled thousands of disabled persons to live independently. His life's dream is to see the removal of all physical barriers to the disabled, and with the enactment of ADA [American Disabilities Act], Bill's dream is starting to become a reality.

What makes Bill successful is his outlook on life. Bill was born with congenital neuromuscular atrophy which confines him to a wheelchair. But that does not stop Bill, nor does he dwell on his condition. In fact, if there is anything he wants to do, he will find a way to do it/ For example, the idea of being handicapped and attending college in the early seventies did not inhibit him. In sufficing the problem, Bill drove a golf cart around campus. When the campus proved to be only partially navigable, he realized his solution lay in removing barriers to the physically disabled. Likewise, his love of sports and the outdoors led him to found Rochester Area Disabled Athletics and Recreation [RADAR] in 1985.

Bill's attitude toward life is one we all can learn from. From a friend who described him as a bowl of energy, we learn that no obstacle is too big for him to overcome. When SEMCIL board member, Jim Powers suffered a stroke, Bill encouraged Jim to get back in the saddle. Every minute of life is precious for Bill, and he does not want to miss out on it, nor does he want any other handicapped person to miss out.

For the past 3 years, Bill Malleris has fought for, monitored, and waited for the ADA bill to become law. Bill, the work is done, and with the law beginning to go into effect as of January 26, 1992, the challenge still lies ahead of us to implement and enforce that bill so

that all Americans can enjoy life to the fullest.

Because of the work of people like Bill, 43 million disabled Americans will be able to enjoy simple activities for the first time that most of us take for granted: eating at a restaurant; going to a movie; riding a bus; visiting a doctor; shoping for groceries.

And in another 6 months, the ADA will begin dismantling barriers that have hit the disability community the hardest—unnecessary obstacles in the workplace. Two-thirds of the disabled population do not have jobs. Most of these people want to work and are extremely capable, but many employers have discriminated against them simply because they are disabled.

Wasting the talents of the disabled community is not only wrong from a moral standpoint; it costs the Federal Government billions of dollars each year in Social Security benefits and lost income tax revenues. The cost of making society accessible to all Americans will be minuscule compared to the payoff.

A disability becomes disabling because of the barriers we erect to major life activities. I believe that history will record the efforts of people like Bill—breaking down unnecessary barriers—as progress toward taking the "dis" out of "disability." As Bill has reminded me, we owe 43 million of our relatives, friends, and neighbors nothing less.●

TRIBUTE TO DICK SCHMIDT

● Mr. WIRTH. Mr. President, for nearly 20 years I have benefited from the counsel and wisdom of Dick Schmidt—lawyer, protector of the first amendment, host to all Coloradans in Washington, westerner, raconteur, and friend. Dick has helped so many and stood for so much.

On February 19, Dick will be honored by the National Press Foundation, I wanted to share with my colleagues some of the columns his colleagues in the press have devoted to this wonderful man.

Mr. President, I ask that the following articles from the Rocky Mountain News and the Denver Post be inserted in the RECORD following my remarks.

The articles follow:

[From the Rocky Mountain News, Jan. 12, 1992]

RICHARD M. WHO?

(By Tom Gavin)

You know Dick Schmidt. Well . . . I beg your pardon? You don't? Pause. May I take you by the hand? I have for 40 years been looking for someone—anyone!—who doesn't know Richard M. Schmidt Jr., and here you are at last.

Dick Schmidt dabbled in radio and politics and law and merriment in these parts for many years, and I think he used the city directory, starting at both ends and working toward the middle, to seek out and hunt down any citizen he might not have met. Then he went away to Washington and did the same thing there, returning to Denver just often enough—seven or eight times a year—to keep people like you from becoming smug and bragging to your neighbors that, heh heh, you'd never met this Schmidt person.

Here's an example of what knowing him is like:

Many years ago, not long after his departure for the District called Columbia, I found myself there and called him for lunch. He directed me to one of those lah-de-dah dining clubs where the elite meet to eat. These organizations abound in D.C. and have one thing in common: to gain admission you must know the location of three buried bodies and/or the details of at least five fresh congressional peccadillos.

What Schmidt did was take me counterclockwise through that dining room, introducing me to nabobs at each table and offering a thumbnail biography and sotto voce listing of each victim's shortcomings.

From table to table we went. Jokes were told, confidences exchanged, gossip traded. I had so many identities crammed into my brainpan that by the time we reached the second table I was lost and numb. ". . . tameetcha," I'd mumble. Then the next table. And the next. All I wanted was lunch.

"He's a big noise Washington lawyer now, but most of his friends have found it in their hearts to forgive that.

RMS Jr. has even taken his act to Japan, China, and Europe. China reciprocated with a university-age foster son, an engaging young man who lived with the family while attending college and who fit right in with all the other Schmidts.

"Are you getting the idea that ol' Dick is a man of unbounded friendliness and generosity? Yeah, that's him. The missus, too, who may hurt me the next time I see her for referring to her in that way. More than one Denverite has presented him or herself at the Schmidts' Capitol Hill doorstep, prepared to stay awhile. In fact, it's hard not to. One of their livelier weekend guests, if I have the story right, had only come to distribute handbills.

He also prepares great baby-back ribs.

Friends, coming upon him unexpectedly, visibly pause and steel themselves. They know they are about to hear from eight to 14 jokes, most of them bad.

Once in awhile, though . . .

Schmidt's the source of my New York joke, I've repeated it many times, I know, but it makes me laugh and I am unrepentant. This is it: "A Manhattan visitor, obviously on this second or third day in the big city approaches a New Yorker. "Excuse me sir," he says, "can you direct me to Grant's Tomb or should I go bleep myself?"

Why am I telling you all this? Because my friend—everybody's friend—Dick Schmidt has been chosen to receive the National Press Foundation's Award for Distinguished Contributions to Journalism at a whoop-dee-doo black tie dinner in Washington on Feb. 19.

They say it's in recognition of all his pro bono—which as I understand it means unpaid—work on behalf of freedom of the press, and I can attest to some of that, for when I was working in that part of the country I never covered a meeting on that subject that I didn't hear a voice whisper, "Didja hear the one about. . ." and without looking up I'd say, "Hi, Dick."

It's a shame you don't know him.

[From the Rocky Mountain News, Jan. 12, 1992]

AWARD HONORS ONE OF THE GOOD GUYS

(By Gene Amole)

Crazies.

Let me set the stage for you. It is 1946 in Denver. Singer Mel Torme, the "Velvet Fog," comes to town. He is mobbed by adoring bobby-soxers wherever he goes. They even hide under his bed at the Brown Palace Hotel. When he makes a personal appearance downtown on radio station KMYR's Meet the Boys in the Band, they block traffic on Stout Street, trampling on the hoods of parked cars.

A year later, Falstaff Brewing Co. brings Jerome "Dizzy" Dean to town to broadcast a baseball game on KMYR between the Denver Bears and the Pueblo Dodgers. The Hall of Fame pitcher for the old St. Louis Cardinals "Gas House Gang" was notorious for his fractured-English broadcasting style.

Dean would say, "He slud into second base" or "Look at them arms! They is as big as a blacksmith's." He would sometimes sing The Wabash Cannonball during rain delays. When Dean arrived by train at Union Station, he was met by a gaggle of enraged English teachers carrying picket signs protesting his atrocious grammar and demanding that he be thrown off the air.

The mastermind of both events was Dick Schmidt, who then was working his way through the University of Denver as a disc jockey, part-time board announcer, sportscaster, promoter and anything else a 250-watt radio station needed. I know this because I was one of the crazies who worked with him.

Now, let us fast-forward to Feb. 19, 1992. It is the annual black-tie awards dinner of the National Press Foundation in Washington. A thousand people are in attendance to watch Richard Marten Schmidt Jr. receive the foundation's coveted award for Distinguished Contributions to Journalism. It is the first time the award has gone to a non-journalist.

Where have the years gone? It seems like yesterday when Dick graduated from DU Law School. He worked as a deputy to District Attorney Bert Keating. In private practice, he was the young lawyer the Denver media engaged to carry their successful fight to revise the Judicial Code of Ethics so that cameras and microphones could be used in courtrooms. John Gilbert Graham's 1956 murder trial was the first to be televised. He was convicted of planting a bomb on United Airlines DC-6, killing his mother and 43 others on the plane.

In Washington, Dick was appointed counsel of the Symington Agriculture Subcommittee, investigating commodities fraud. Then he became general counsel of the U.S. Information Agency, working with John Chancellor, who was on leave from NBC. He traveled all over the world, including war-torn Vietnam opening lines of communication that had been closed for decades.

His knowledge of communication law is second to none. He appears frequently before congressional committees and the U.S. Supreme Court on First Amendment issues. Dick is now general counsel for the American Society of Newspaper Editors and is also Washington counsel to the Association of American Publishers. He served as chairman of the Washington Journalism Center from 1980 to 1983.

There is a lot of talk these days about the shortcomings of our legal system, much of it deserved. But let me tell you something, Dick Schmidt is one of the good guys. He is proud to be an officer of the court and has

brought distinction to his profession. He is an eloquent defender of the Bill of Rights.

As for Mel Torme and all those screaming teen-agers, I guess you had to be there.

[From the Denver Post, Dec. 18, 1991]

RECOGNITION FOR A FRIEND OF PRESS FREEDOM

(By Bill Hornby)

Richard M. Schmidt Jr., a well-known Denver attorney who has gone on to greater glory in Washington, D.C., will receive the National Press Foundation's prestigious award for Distinguished Contributions to Journalism at a black-tie affair in the Capitol Feb. 19. The Foundation citation said Schmidt is "the unquestioned leader among the relatively small number of attorneys who have devoted their careers and lives to protection of the freedom of the press * * * the newspaper editors of America and the First Amendment have no more dedicated and able advocate and defender."

Dick Schmidt's career as general counsel to the American Society of Newspaper Editors and numerous other professional publishing and broadcast organizations has particularly close linkages to this newspaper. When the former Denver deputy district attorney first went to Washington as a temporary counsel to Sen. Stuart Symington's investigation of the Department of Agriculture, he was an intimate of then Post Editor and Publisher Ep Hoyt, and the interplay of that indefatigable duo is a sparkling footnote to The Post's history.

Later, when Dick and his wife, Anne Downing Schmidt, moved to Foggy Bottom permanently—he first to be general counsel to the Voice of America and later a partner in the communications law firm of Cohn & Marks—they became Colorado's unofficial ambassadors to the national government. Anne was a mainstay of The Denver Post's Washington bureau, and somewhere along the way Dick began his long service as ASNE counsel, the friend on the other end of the line to every embattled newspaper editor in the country.

As the Foundation reads it, "every editor knows that if his or her newspaper has a serious First Amendment problem, Dick is only a phone call away * * * no First Amendment lawyer has performed as much pro bono work in behalf of freedom of the press. This includes presentation of innumerable amicus curiae briefs up to and including the U.S. Supreme Court and appearances before countless congressional committees * * *"

The Foundation's award usually goes to a working news professional—previous winners have included A.M. Rosenthal, retired ME of the New York Times; Gene Roberts of the Philadelphia Inquirer, John Seigenthaler of USA TODAY and the Nashville Tennessean; Bob and Nancy Maynard, owners of the Oakland Tribune; and Fred Friendly, the old sidekick of Ed Murrow at CBS.

This is illustrious journalistic company, but Schmidt, a former Denver broadcaster, has never been abashed or overly impressed in the legal or social courts of the mighty, and will absorb his new recognition with habitual humility. The Foundation citation notes his "seemingly boundless energy and good cheer that continues to astound his friends," an attribute well-known in Colorado, where he still frequents the press and University clubs and the countless confabs of the Colorado bar.

Dick Schmidt is a native of El Dorado, Kan., onetime home of that genius of small-town journalism, William Allen White, though both Schmidt and White had to leave town to amount to anything. At the University of Denver, he acquired the polish of education and his gracious goodwife, while surviving on the air with such suspects as Gene Amole, Ed Koepke, and Al and Bill Meyer. Later local law practice brought him such associates as Ned Van Cise, Dale Tooley, Roy Romer, Al Zarlengo, John Mott, Dan Lesher and Dick Eason, all names in the Denver history books. He also acquired more Denver in-laws than you can shake a brief at in Anne. Downing Schmidt's clan, which posts sentinels on every Colorado ridge.

Colorado historians have missed a bet in not pumping the Schmidts. For three decades they have been intimates of our congressional delegations and of visiting Front Range politicos, and their store of vignettes about this state's illuminati is fabulous. Somebody should do a book on Schmidt, if they could get him to slow down long enough, but meanwhile we settle for his long-overdue recognition as one of this nation's really distinguished friends of a free press.●

TAKING ADVICE AND CONSENT SERIOUSLY

● Mr. SIMON. Mr. President, for some time, I have had serious concerns about the administration's devaluation of the Senate's proper role in the judicial selection process. Stated simply, the President has ignored the "advice" portion of the Senate's "advice and consent" role under the Constitution.

This week, the majority leader's Task Force on the Confirmation Process released its report on the confirmation process for presidential nominees. Section I of the task force report directly addresses the history of the advice and consent clause, and makes clear that the framers expected the Senate to play an active role in the appointment process and to engage in both formal and informal consultations with the President, particularly in the selection of U.S. Supreme Court nominees.

The recent Thomas nomination process crystallized my own concerns about the lack of attention placed on the advice portion of the Senate's advice and consent responsibility under the Constitution. It is my opinion that the Senate has a responsibility to make its own judgment about nominees to the judicial branch, especially to the Supreme Court. Unlike the President's nominations to positions in the executive branch, appointments to the judiciary are to a branch of Government that is supposed to be independent of the President. What is more, these appointments will serve a lifetime, and can only be removed by impeachment. For the President to control such appointments unilaterally would be inappropriate, especially in a political system where checks and balances are so important.

The impact of Federal judges is so enduring that we cannot view approval of these appointees as a clerical or routine duty of the Senate. I am especially concerned that we lay the groundwork now for considering future nominees to the Supreme Court—that we think about our standards and processes before people are nominated and before the debate turns to specific personalities. I am pleased that the task force findings echo my beliefs about the importance of restoring true advice and consent to the judicial nomination process.

On October 15, 1991, I introduced Senate Joint Resolution 194, which makes note of the increasingly ideological nature of Supreme Court nominations, and which proposes informal, bipartisan consultation between Senate leaders and the White House before any Supreme Court nominees are submitted to the Senate. Deans of some of the Nation's major law schools have commented on my proposal and their replies were overwhelmingly favorable.

Guido Calabresi, the noted constitutional scholar and Dean of Yale University Law School, declared that an active Senate role in the appointment of Federal judges becomes absolutely critical in light of the unprecedented ideological single mindedness of the last two administrations. Peter Shane, a professor at the University of Iowa, commented: "What bipartisan consultation might well promote is excellence in qualifications, broad public confidence in nominees, and the avoidance of ideological rigidity on the Court." Donald Gifford, Dean of West Virginia University Law School, stated: "I believe your resolution would be a positive step toward having the executive and legislative branches work together to find well qualified judges and reverse the trend of making Supreme Court appointments a solely partisan political process," and Steven Smith, dean of Cleveland State University Law School, commented:

> Perhaps early consultation would lead both to an improved quality of appointment and to a confirmation process that is more in keeping with the dignity that should surround the United States Supreme Court.

I ask to insert into the RECORD at this point the complete responses from Dean Guido Calabresi, Dean Geoffrey R. Stone, Prof. Peter M. Shane, Dean Donald Gifford, and Dean Steve Smith.

The responses follow:

YALE LAW SCHOOL,
New Haven, CT, December 3, 1991.

Hon. PAUL SIMON,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SIMON: Thank you for your letter and the proposed Resolution on "advice and consent" in Supreme Court nominations. I totally agree both with the letter and with the Resolution.

For the past 24 years Presidents of one political party have made all the appointments to the Supreme Court. This is as long a time as there has been, at least since the Civil War and possibly in the history of the country. Moreover, while in the past, Presidents have been very careful to appoint Justices whose points of view were very different from the President's own, the last two administrations have been of an ideological

single-mindedness that is virtually unheard of in our history.

The position you take in the letter and in the Resolution, correct in itself, becomes absolutely crucial in these circumstances. I thank you for it and would be happy to help in any way you think I might be useful.

Sincerely yours,

GUIDO CALABRESI.

THE UNIVERSITY OF CHICAGO,
Chicago, IL, December 12, 1991.

Senator PAUL SIMON,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SIMON: Thanks for your letter of November 26 seeking my advice concerning S. Res. 194. I certainly share your concern about the nature of the judicial selection process in recent years. My own view, however, is that the failure is that of the Senate as much as that of the President. This is so because the Senate has fallen prey to the unwarranted assumption that its appropriate role in reviewing judicial nominations—and particularly nominations to the Supreme Court of the United States—is "deference."

It is, of course appropriate for the Senate to grant considerable discretion to the President in nominating individuals to serve, for example, as Secretary of State or Attorney General, for such officials are personal advisors to the President and serve only as long as the President is in office. Such deference is wholly out of place, however, in the context of nominations of Justices to the Supreme Court. Such officials are not personal advisors to the President and they serve for life. In such circumstances, the Senate's responsibility is to make its own independent judgment as to whether the confirmation of each individual nominee is in the interest of the nation. There is simply no historical or logical basis for the assumption that the Senate should defer in the appointment of Supreme Court Justices. The appropriate constitutional stance for the Senate may take the form of "advice" as proposed in S. Res. 194 or it may consist of exercising the right to say "No."

The importance of the Senate's failure to meet its responsibilities in this regard has never been more evident than in the past quarter century. Indeed, in the past 23 years, we have seen 11 consecutive conservative appointments to the Court despite the fact that in almost all of those years we have had a divided government. Indeed, in 19 of the last 23 years Republicans have controlled the Presidency, and in 21 of those 23 years the Democrats have controlled the Senate. In such circumstances, which are historically unprecedented, the assumption of deference has proved disastrous to the nation. In an era in which there has been no consensus about the appropriate direction of the Supreme Court, the process has operated as if such a consensus existed.

Thus, although S. Res. 194 is a small step in the right direction, the right step in the right direction is for the members of the United States Senate to begin making the case for their right to meet their own responsibilities.

If I can be of any further assistance in this matter, please feel free to call on me at any time.

Sincerely yours,

GEOFFREY R. STONE.

THE UNIVERSITY OF IOWA,
Iowa City, December 19, 1991.

Senator PAUL SIMON,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SIMON: Dean Hines of this law school forwarded to me your November 26 letter concerning S. Res. 194 regarding nominations to the U.S. Supreme Court. In offering a brief comment on this proposal, I am presenting only my own view, not necessarily the views of Dean Hines or of any of my colleagues.

I share the position that I take to be implicit in S. Res. 194, namely, that the country has been ill served by the selection of recent nominees by Presidents Reagan and Bush for the clear purpose of yanking the Supreme Court into a dramatically different view of the U.S. Constitution than the general view that prevailed under the Warren and Burger Courts. Furthermore, bipartisan consultation may well be useful in identifying outstanding potential nominees who will steer the Supreme Court away from ideological rigidity. (Senatorial advice, for example, was highly significant in prompting Republican President Hoover to nominate to the Court the distinguished Democrat, Benjamin Cardozo.)

I would personally prefer, however, to avoid the metaphor of "balance" which S. Res. 194 uses. This suggests that, for every prochoice Justice on the Court, there should be an anti-choice Justice, or that, for every Justice committed to a strict separation of church and state, there should be some representation for the view that compulsory school prayer is permissible. In an extreme example, it might suggest that President Lincoln was wrong in seeking to stack the Court with Justices who would permit him to preserve the Union unimpeded. It might also suggest, if the Rehnquist Court successfully solidifies a New Right constitutional jurisprudence, that future Democratic President should hesitate before destabilizing that jurisprudence through a generally more liberal appointment. I would find none of these implications congenial.

What bipartisan consultation might well promote is excellence in qualifications, broad public confidence in nominees, and the avoidance to ideological rigidity on the Court. These, rather than "balance," are the virtues of which I would hope our residents would be mindful.

Sincerely,

PETER M. SHANE,
Professor of Law.

COLLEGE OF LAW,
WEST VIRGINIA UNIVERSITY,
Morgantown, WV, December 9, 1991.

Hon. PAUL SIMON,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SIMON: I am writing in support of proposed Senate Resolution 194, proposing Senate consultation with the White House prior to the selection of future nominees to the Supreme Court.

I recognize that the judicial and political philosophies of the Supreme Court nominees have always been at issue in both the appointment and confirmation process. Nevertheless, it appears that we have now reached a point where the Executive Branch and many members of the Legislative Branch employ differing "litmus tests" in the appointment and confirmation process. Further, inexperience and lack of strong expression of judicial views appear to have become a "plus" in the appointment and confirmation process.

I believe your resolution would be a positive step toward having the Executive and Legislative Branches work together to find well qualified judges and reverse the trend of making Supreme Court appointment a solely partisan political process.

I wish you well in your efforts.

Sincerely,

DONALD G. GIFFORD,
Dean.

CLEVELAND STATE UNIVERSITY,
CLEVELAND-MARSHALL COLLEGE OF LAW,
Cleveland, OH, December 20, 1991.

Hon. PAUL SIMON,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SIMON: Thank you for sending a copy of S. Res. 194 regarding appointments to the United States Supreme Court.

Your proposals are most intriguing and I hope that they will be considered seriously by the Senate. The proposed sense of the Senate resolution contains both a political and a procedural component. While I am fully in accordance with division 1 regarding philosophical balance, it seems to me that the second provision regarding consultation is the much more important. By putting the philosophical language in the resolution, it may dilute the impact of the procedural issue.

The procedural issues seems to me to be particularly critical. The current process of appointment is not producing particularly outstanding scholars or lawyers as Supreme Court justices. Perhaps early consultation would lead both to an improved quality of appointment and to a confirmation process that is more in keeping with the dignity that should surround the United States Supreme Court.

Thank you for sending me a copy of your resolution.

Best wishes.

Sincerely yours,

STEVEN R. SMITH,
Dean.•

SENATE CONCURRENT RESOLUTION 88, CONGRATULATING THE PRESIDENT AND PEOPLE OF ARMENIA

• Mr. D'AMATO. Mr. President, I rise today in support of Senate Concurrent Resolution 88, congratulating the President and people of Armenia for their achievement of independence.

Following their declaration of independence on August 23, 1991, Armenia set out on the road to building a stable and viable democracy based on the principle of human rights. On September 21, they held a referendum, and overwhelmingly affirmed their independence.

After 70 years of domination and subjugation by the totalitarian Soviet state, Armenia is now free. It's culture, dominated by warped Soviet mores, is free to flourish unhindered. Its people, now separated from their Soviet chains, can pursue a life free of foreign domination. Armenia's destiny is now it's own.

I join my colleagues in congratulating President Bush for recognizing the independence of Armenia and I also

congratulate the people of Armenia and their achievement of independence. I welcome Armenia to the family of nations.●

ORDERS FOR TUESDAY, FEBRUARY 11; FRIDAY, FEBRUARY 14; AND TUESDAY, FEBRUARY 18, 1992

Mr. ROBB. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m., Tuesday, February 11; that when the Senate meets on Tuesday, it meet in pro forma session only; that at the close of the pro forma session,the Senate stand in recess until 11 a.m., Friday, February 14; that when the Senate meets on Friday, it meet in pro forma session only; that at the close of the pro forma session, the Senate then stand in recess until 9:30 a.m., Tuesday, February 18; that on Tuesday, following the prayer, the Journal of Proceedings be deemed approved to date; and following the time for the two leaders, there be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m., in order to accommodate the regular party conference luncheons.

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

RECESS UNTIL TUESDAY, FEBRUARY 11, 1992, AT 11 A.M.

Mr. ROBB. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 5:12 p.m., recessed until Tuesday, February 11, 1992, at 11 a.m.

EXTENSIONS OF REMARKS

MISUNDERSTANDING THE LESSONS OF WAR

HON. LES ASPIN
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. ASPIN. Mr. Speaker, I address my colleagues today out of a concern that we have won a war only to run the danger of misunderstanding its lessons.

A year ago, the U.S. military brilliantly executed Operations Desert Shield and Desert Storm. The lessons we draw from this conflict are likely to have an enormous and long-lasting impact on the way we prepare our defenses for the future. There are two basic reasons for this.

First, there is the historical context. This campaign in Southwest Asia followed the collapse of the Warsaw Pact and preceded by only months the dissolution of the Soviet Union itself. That means the Moscow-ruled Eastern Bloc that for so long dominated our military thinking and our defense preparations is gone, and the threats we will face in the future will more closely resemble the regional conflict with Iraq than world war III in Europe.

Second, the war in Iraq decisively settled a longstanding argument in defense circles about high technology on the battlefield. Even while we pursued a high-technology strategy, there were those who said it was a mistake. The high-technology stuff would prove too temperamental for battle, they said. It would prove too difficult for the average GI to operate, they said. We couldn't buy it in enough numbers to do the job, they said. What we needed was simple, robust weapons in large numbers.

Well, the collapse of the Warsaw Pact dealt with the first issue and the war with Iraq settled the other. Our men and women in uniform kept their high-technology weaponry on line and on target. And when they did, something very welcome emerged. High technology saved American lives in this war. It saved lives by providing accuracy, lethality, and long range. And it's also a fact that simple weapons tend to require more human effort to make them work in battle, effort that is up close and dangerous. High-technology weapons less so.

All this places us at a crossroads. History has happily deprived us of our longtime enemy. Nevertheless, Saddam Hussein has shown us there are threats to our security. How we understand the war against Saddam will thus enormously influence how we prepare our defense for the future.

On April 30 of last year, I wrote President Bush asking that he consider appointing an independent commission to examine the planning and execution of the war. At the time, I wrote, "the nation needs a comprehensive, objective review from an overall perspective that cuts across service lines and is not bound to any one organizational approach."

I said that the review should have three main goals: An analysis of the military success in the war, an inventory of weak spots, and an assessment of the relevance of the war to future conflicts lest we be misled by the unique aspects of the conflict.

I suggested that the inquiry be structured along the lines of the U.S. strategic bombing survey of World War II, and headed by civilians of stature and ability.

If Mr. Bush did consider this request, no record of that consideration has escaped the White House. No independent commission was appointed. An important opportunity was lost.

Congress did mandate in the legislation authorizing funds for Operation Desert Storm that the Pentagon conduct a formal evaluation of the lessons of the war. The deadline specified for his report has long passed but we now hear that publication may be imminent.

It appears we are about to pay the price for failure to have an independent assessment of the war. Press and other accounts suggest that the report will not be rigorous, chips-fall-where-they-may analysis. Rather, these accounts suggest that the Pentagon assessment will be a document negotiated among the services so that no one comes off looking much worse than the other. If these reports are true, the war will turn out in Pentagon analysis to be closer to a one-third, one-third, one-third proposition than perhaps we remember it.

This is both understandable and predictable. The performance of technology in this war is going to have a big impact. The impact is so big that I believe it could alter the balance of roles and missions between the services. If that is true, we can certainly see why any one service would be very concerned that an official assessment of the war not reflect less favorably on its role than that of its sister services.

It's one thing to slug it out over future roles and missions in private. It's another thing to give your opponents a cudgel with which to beat you over the head in public.

This behavior isn't peculiar to our military services. No institution should be asked to act against its own interests. It just doesn't work. That's why we needed an objective, authoritative outside examination of conduct of the war. And it looks like that's just what we're not going to get from the Pentagon.

For those who are interested, I ask that my April 30, 1991, letter to the President, the May 3, 1991, White House reply, and a recent press account of the Pentagon assessment be included in this RECORD.

When the Pentagon report is published, I ask that you read it. There will be much that we can draw from it. But I ask that you read it with some skepticism. And I ask that you compare it with our own forthcoming effort to assess the lessons of the war.

The gentleman from Alabama [Mr. DICKINSON] and I will shortly publish an assessment of the war that, I suspect, will have a much different emphasis than the official Pentagon version. I make no claim that our assessment is the final word on Operation Desert Storm. I do say we have attempted a comprehensive, objective assessment of the major lessons of the war as they relate to our job of providing the right defense for America in the future. I commend it to your attention.

COMMITTEE ON ARMED SERVICES,
Washington, DC, April 30, 1991.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I believe you should consider appointing an independent commission to examine the planning and execution of U.S. military operations that resulted in victory in the war against Iraq. The Defense Department and its many components are deeply engaged in assessing various aspects of Operations Desert Shield and Desert Storm. These will be valuable. But the nation needs a comprehensive, objective review from an overall perspective that cuts across service lines and is not bound to any one organizational approach.

The review should have three main goals. First, it should analyze the ingredients of our military success in the Gulf, including the contribution of specific military strategies, tactics, weapons and support capabilities to accomplishing our military objectives. Second, it should identify any weak spots in our preparations, planning and performance. Third, it should examine the likely relevance of the Persian Gulf experience to other conflicts to help ensure that we do not over-generalize from the specific circumstance of this war.

Your August 2, 1990, Aspen speech emphasized the changes in the world that have caused your administration to begin to rethink U.S. national military strategy. The Gulf war has provided the nation an opportunity to examine how to shape a strategy and develop a military posture that focuses on the regional conflicts you identify as a major concern in the future. The review I am suggesting is intended to take advantage of this opportunity.

An independent commission, possibly structured along the lines of the World War II U.S. Strategic Bombing Survey, is a promising approach. It could initially report to the President and the Congress on a classified basis and then to the American people in a clear and comprehensive report on the war.

If, as was the case with the Bombing Survey, the commission is headed by civilians of impeccable reputation and supported by talented, knowledgeable staff, its findings and conclusions will achieve a credibility with the Congress and the American people. I am certain that the result will reinforce the nation's commitment to a strong defense posture in the future.

Respectfully yours,

LES ASPIN,
Chairman.

WASHINGTON, DC,
May 3, 1991.

Hon. LES ASPIN,
House of Representatives,
Washington, DC.

DEAR LES: Thank you for your recent letter to the President regarding the establishment of an independent commission to examine U.S. military operations that resulted in the success of Operation Desert Storm.

We appreciate your suggestion. Please know that I have shared your comments with several of the President's advisors on this matter so that they, too, are aware of your recommendations.

Thank you again for your interest in writing.

With best regards,

Sincerely,

FREDERICK D. MCCLURE,
Assistant to the President
for Legislative Affairs.

[From the Washington Post, Jan. 28, 1992]

DISPUTES DELAY GULF WAR HISTORY

(By Barton Gellman)

The Defense Department's official history of the Persian Gulf War, which missed a Jan. 15 deadline set by Congress, has been delayed by interservice and interagency disputes over the way the war was fought and the meanings to be extracted from its outcome, Pentagon officials said.

Occasionally bitter disagreements have ranged from the factual and technical, such as whether radar jammers supported the F-117A "stealth" attack plane, to semantic choices that touch on power, turf and prestige. As the first large-scale conflict since the Vietnam War and the last before major spending cuts begin to bite, the gulf war is being refought in thousands of pages of memoranda with a view toward coming conflicts over budgets and authority.

Prepared under the supervision of I. Lewis Libby, principal deputy undersecretary of defense for policy, the so-called lessons learned report is circulating in three thick binders containing eight chapters and 20 technical appendices. Now stamped "Secret/Noforn/Close Hold," the report will be released in classified form to Congress and in an unclassified version to the public.

Officers and civilians involved in its drafting said the final report, which went late last week to Defense Secretary Richard B. Cheney, will bear little trace of the discord that produced it. Most major disputes, they said, will be sidestepped or softened. "It looks like it was written by a committee, which it was," said one officer closely involved in its preparation.

Some knowledgeable officials, though acknowledging the interservice disputes, said their intensity has been exaggerated by some partisans. "This whole process has been characterized by a considerable degree of jointness," said an official involved in coordinating the effort.

But others said the collegiality of the drafting team, with colonel-grade representatives from the four principal military services, has not been matched by their superiors in the services and civilian defense agencies.

For example, a superficially minor semantic question—whether to call the bombing of Iraq an "air operation" or an "air campaign"—sharply divided the Army and the Air Force. In the parlance of U.S. military doctrine, a campaign is the main event in war and an operation merely serves the campaign.

"Terminology becomes very important," said an officer reflecting the views of Air Force Secretary Donald B. Rice. "If only the theater commander can have a 'campaign' and everyone else is a 'supporting operation,' it means that air power is limited forever to a supporting role."

The Air Force is pitching for star billing in future wars by arguing that it was the "decisive arm" of the last one. Gen. Merrill A. McPeak, the Air Force chief of staff, has been publicly expressing his "private conviction" since last March that Iraq's defeat marked "the first time in history that a field army has been defeated by air power."

A major obstacle to Air Force ambitions is the structure of war time joint command. Of the five regional commanders-in-chief, or CINCs, two are traditionally Army commands, two belong to the Navy, and one—the gulf war's Central Command—alternates between the Army and the Marines. The Air Force has recently created an Air Combat Command and seeks to use it for a greater operational role.

"Look at all the warfighting CINCs," said the Air Force officer. "They're all surface guys. If you can keep air power as a supporting operation you preempt air as a principal force."

Among the other points of contention in the Pentagon's war report:

The Pentagon's office of program analysis and evaluation (PA&E) engaged the Air Force in a heated dispute over the invisibility and independence of F-117A stealth strike planes.

In an effort to boost the fortunes of the controversial B-2 stealth bomber, the Air Force tried to give the impression that the F-117A was so nearly invisible to Iraqi detection that it required no escorts of fighter aircraft, radar jammers or anti-radar missile-launchers. The Air Force has said, for instance, that in comparable missions, eight F-117As flew without escort while twice as many F-111s needed escorts of 16 fighters and 12 "radar suppression" planes.

PA&E analysts said the Air Force had not substantiated the claim that the stealth planes needed no escort. In fact, the analysts said, the air campaign was intricately—even brilliantly—designed to provide indirect support for the F-117A. For example, F-117As sometimes flew into sectors in which U.S. radar jammers were operating to protect non-stealth aircraft. "They employed the F-117 in a very, very sensible way, and they took advantage of all the assets they had out there," one official said. "They are degrading the human achievement to hype the technology."

The Air Force, in a recent statement, wrote that "the majority" of F-117 strikes were launched without fighter or radar-jamming escorts "assigned specifically" to support them, but did not deny that the stealth planes received indirect support. Even so, sources said, the final Pentagon war report will emphasize the Air Force point of view.

The Marine Corps objects to saying that the three-star general in charge of the joint air campaign had "command" or "tasking authority" over Marine aircraft. The Marines prefer the term "coordinating authority," which an Air Force officer described as "denying reality." Here again the language stands for an important question of power.

"The Marine Corps integrates its close air support, logistics support and ground support under one [Marine] commander," said one Marine officer. "That's the way we've always done it and that's how we train to fight. If we lose that air-ground liaison, we become less effective."

The Army disagreed with the Air Force on the extent of damage done to Iraqi forces by the allied bombing campaign: The Air Force said more, the Army said less. At stake is who gets credit for destroying the Iraqi Republican Guard. A Jan. 9 Air Force memorandum said the Army's Central Command "greatly overestimated residual combat effectiveness" of the guard forces.

Along similar lines, the Air Force objected to Army and Marine language asserting that ground forces achieved "a great victory in 100 hours of combat." Air Force officers also ridiculed the Army headnote to the chapter on the ground campaign, taken from author P.R. Fehrenbach. Air power alone cannot defeat an enemy. Fehrenbach wrote, adding: "You must do this the way the Roman legions did, by putting your young men in the mud."

"I mean, get a grip!" one Air Force officer said. "The Roman legions! The point is to save lives."

All the services squabbled over the space allotted to their portions of the war. The Air Force, in particular, was dissatisfied with the compromise choice of one chapter each for the air, ground and maritime operations. "They took a war in which the principal force that was used was air and they're trying to treat it as a 33-33-33 war," an officer said.

WE CAN SAVE JOBS AND ANCIENT FORESTS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 3, 1992

Mr. STARK. Mr. Speaker, the timber industry would have you believe there is a dilemma in the Pacific Northwest that asks us to chose between jobs and ancient forests. They are wrong. The export of raw logs from private timber holdings to Pacific rim countries has left mills without logs to process, workers without jobs, and increased and pressure to cut our public ancient forests.

Currently, it is illegal to export logs that are cut on Federal land. Timber logged on private lands can be exported. Three billion board feet of timber is exported in the Pacific Northwest. Because of these exports, timber companies do not have logs for U.S. mills. The timber companies pressure the Federal Government to expand logging on Federal timber lands. If Federal timber lands are not opened up for companies threaten to shut the mills. A diversion of less than 25 percent of the timber from the export market to U.S. mills would keep the mills open and save 4,800 jobs. This would also relieve the pressure on our public ancient forests. It would allow the preservation of critical spotted owl habitat.

What is truly startling about this situation is the fact that the Tax Code subsidizes raw log exports by at least $100 million per year according to an analysis done by the Joint Committee on Taxation. This taxpayer subsidy results in export of good U.S. jobs. This taxpayer subsidized pressure to cut down our remaining public ancient forests must end. I am introducing legislation along with Congressman JONTZ and Congressman BROWN to remove these subsidies.

Mr. Speaker, I insist the legislation, a technical description of the provisions, and the analysis in the RECORD:

TECHNICAL EXPLANATION FOR LEGISLATION TO DENY THE BENEFITS OF CERTAIN EXPORT SUBSIDIES IN THE CASE OF EXPORTS OF CERTAIN UNPROCESSED TIMBER

PRESENT LAW

Foreign sales corporations

Foreign sales corporations (FSCs) are foreign corporations established under special export-incentive provisions of the Internal Revenue Code. A portion of the foreign trade income of an eligible FSC is exempt from Federal income tax. In addition, a domestic corporation is allowed a 100-percent dividends-received deduction for dividends distributed from the FSC out of earnings attributable to certain foreign trade income. Thus, there generally is no corporate level tax imposed on a portion of the income earned from exports through an FSC.

Typically, an FSC is owned by a U.S. company, such as a manufacturer, that produces goods in the United States. The U.S. company either sells its export goods to the FSC for resale abroad to unrelated persons, or pays the FSC a commission in connection with its own export sales to unrelated persons. Therefore, the income of the FSC, a portion of which is exempt under the FSC rules, equals the FSC's gross markup or gross commission income, less the expenses incurred by the FSC itself.

Foreign trade income is defined as the gross income of a FSC attributable to foreign trading gross receipts. Foreign trading gross receipts are receipts from, among other things, the sale of export property. Generally, export property includes property that is manufactured, produced, grown, or extracted in the United States, and is destined for use, consumption, or disposition outside the United States. Foreign trade income includes both the profits earned by the FSC itself from exports and commissions earned by the FSC from products or services exported by others.

The portion of foreign trade income that is treated as exempt foreign trade income depends on the pricing rule used to determine the amount of foreign trade income earned by the FSC. If the amount of income earned by the FSC is based on arm's-length pricing between unrelated parties, or between related parties under the rules of section 482, then exempt foreign trade income generally is 30 percent of the foreign trade income the FSC derives from a transaction. For this purpose, foreign trade income does not include any income attributable to patents and other intangibles which do not constitute export property. If the income earned by the FSC is determined under the special administrative pricing rules provided in the FSC provision, then the exempt foreign trade income generally is 15/23 of the foreign trade income allocated to the FSC from the transaction.

Domestic international sales corporations

A domestic international sales corporation (DISC) is a U.S. corporation that satisfies certain criteria designed to identify those corporations the income and assets of which are primarily related to exports. The DISC provisions are a modified version of the principal export incentive that was provided in the Code prior to the enactment of the FSC provisions. A DISC generally is not subject to current U.S. income tax. However, the shareholders of a DISC may be subject to current U.S. income tax on a portion of DISC income. The taxable income of the DISC is not currently taxable in the hands of the shareholders to the extent that the DISC income is attributable to $10,000,000 or less of qualified export receipts of the DISC. Shareholders must instead pay interest each year on an amount which is generally the hypothetical U.S. Income tax that is deferred by reason of DISC tax benefits.

Qualified export receipts are receipts from, among other things, the sale of export property. Generally, as in the case of the FSC provisions, export property includes property that is manufactured, produced, grown, or extracted in the United States, and is destined for use, consumption, or disposition outside the United States.

Source of income from sales of personal property

Subject to significant exceptions, income from the sale of personal property generally is sourced on the basis of the residence of the seller. Inventory property is subject to one such exception. Gains, profits, and income derived from the purchase of inventory property within the United States and its sale or exchange without the United States are sourced foreign. Income attributable to the marketing of inventory property by U.S. residents in other cases also has its source at the place of sale.

Title passage rule generally: The place of sale generally is the place where the seller's right, title, and interest in the property passes to the purchaser (the "title passage" rule). The title passage rule applies both to all income from the purchase and resale of inventory, and to the marketing portion of income from the production of inventory property in the United States and the marketing of that property abroad. Moreover, this rule applies regardless of whether the sale is to an unrelated purchaser or to a related person (for example, a foreign corporate subsidiary) that resells the property to an unrelated purchaser.

It may be noted that, in many cases, passage of title in a foreign country may not in itself generate a sufficient nexus under foreign law for the imposition of tax by that country on the income of the U.S. seller.

Production/marketing split: Income derived from the manufacture of products in the United States and their sale elsewhere is treated as having a divided source. Under Treasury regulations, 50 percent of such income generally is attributed to the place of production (in this case, the United States), and 50 percent of the income is attributed to marketing activities and is sourced on the basis of the place of sale (determined under the title passage rule). Under certain circumstances, the division of the income between production and marketing activities must be made on the basis of an independent factory or production price, rather than on a 50-50 basis, where a taxpayer sells part of its output to wholly independent distributors or other selling concerns in such a way as to establish fairly the independent factory or production price unaffected by considerations of tax liability (Treas. Reg. sec. 1.863-3(b)(2), Example (1); Notice 89-10, 1989-4 I.R.B. 10).

Income earned through foreign corporations

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") that conduct foreign operations directly include income from those operations on their U.S. tax return for the year the income is earned. The United States taxes that income currently. The foreign tax credit may reduce or eliminate the U.S. tax on that income.

U.S. persons that conduct foreign operations through a foreign corporation generally pay no U.S. tax on the income from those operations until the foreign corporation repatriates its earnings to the United States. This delay in the imposition of U.S. tax is referred to as "deferral." The income appears on the U.S. owner's tax return for the year it comes home, the United States imposes tax on it then. The foreign tax credit may reduce or eliminate the U.S. tax.

Deferral of U.S. tax on undistributed income of a controlled foreign corporation is not available for certain kinds of income (sometimes referred to as "subpart F income") under the Code's subpart F provisions. Subpart F income consists of foreign base company income (generally, passive income as well as certain types of active income that are easily movable or tend to be subject to little foreign income taxation) and insurance income, and certain income relating to international boycotts and other violations of public policy.

When a controlled foreign corporation earns subpart F income, the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro rata share of the subpart F income. In effect, the Code treats those U.S. shareholders as having received a current distribution out of the subpart F income. In this case, also, the foreign tax credit may reduce or eliminate the shareholders' U.S. tax on that deemed distribution.

EXPLANATION OF PROVISION

In general

In general, the bill repeals tax benefits afforded under the FSC, DISC, and inventory sales sourcing rules, and repeals the benefit of deferral on income earned through controlled foreign corporations, to the extent that those benefits would otherwise reduce U.S. tax on income from transactions involving any U.S.-grown unprocessed timber which is a softwood. The term unprocessed timber, as used in the bill, means any log, cant, or similar form of timber.

Foreign sales corporations

The bill provides that unprocessed softwood timber will not be treated as "export property" for purposes of the FSC rules. Thus, for example, under the bill, income that a FSC derives from the sale of U.S.-grown unprocessed softwood timber will not be eligible for the FSC export incentive. Rather, it will be subject to the other rules applicable to income of foreign corporations, as modified by the bill (see description below of provisions on income earned through foreign corporations). No income of the FSC from sales of such timber will be considered exempt foreign trade income.

Domestic international sales corporations

The bill provides that unprocessed softwood timber will not be treated as "export property" for purposes of the DISC rules. Thus, for example, under the bill, income that a DISC would derive from the sale of U.S.-grown unprocessed softwood timber will be currently taxable in the hands of the shareholder of the DISC. No tax payments may be deferred with respect to the income derived by the DISC from sales of such timber.

Source of income from sales of personal property

The bill provides that income from the sale of unprocessed softwood timber cut from an area in the United States will be sourced domestically. The bill also excludes such income from the Code rules under which income involving inventory property may be sourced foreign in part. Therefore under the bill, such income is not subject to the rule that gains, profits, and income derived from the purchase of inventory property within the United States and its sales or exchange without the United States are sourced foreign. Nor is such income eligible for the rule

that income derived from the manufacture of products in the United States and their sale elsewhere is treated as having a divided source.

Income earned through foreign corporations

The bill provides that subpart F income includes any income, whether in the form of profits, commissions, fees, or otherwise, derived in connection with either the sale of unprocessed softwood timber, or the milling of any such timber outside the United States. Thus, to the extent that any controlled foreign corporation is owned by 10-percent or greater U.S. shareholders, the bill repeals deferral for income of the controlled foreign corporation from sales or milling (outside the United States) of unprocessed softwood timber.

EFFECTIVE DATE

The bill applies to sales, exchanges, or other dispositions after the date of the enactment of the bill.

JOINT COMMITTEE ON TAXATION,
Washington, DC, February 6, 1992.

Hon. FORTNEY P. STARK,
House of Representatives,
Washington, DC.

DEAR MR. STARK: This is in response to your request of October 29, 1991, for a revenue estimate of a proposal which would deny various tax benefits for exports of unprocessed "softwood" timber.

As the enclosed draft indicates, the proposal would deny tax benefits available for Foreign Sales Corporations and Domestic International Sales Corporations to the extent that their activities include the export of unprocessed softwood. In addition, such exports would be denied sourcing under the title passage rule, and foreign base company sales income under subpart F would include any income derived in connection with unprocessed softwood exports.

The proposal is to be effective for sales, exchanges, or other dispositions after the date of its enactment which, for the purpose of making this estimate, we have assumed would be March 31, 1992. This proposal would increase Federal fiscal year budget receipts as follows:

[Fiscal years, in billions of dollars]

1992	1993	1994	1995	1996	1997	1992–97
(1)	0.1	0.1	0.1	0.1	0.1	0.4

[1] Gain of less than $50,000,000.

Note:—Details do not add to total due to rounding.

Please note that in making this estimate, we have employed data on softwood log exports compiled by the Forest Service of the United States Department of Agriculture. It is assumed for this estimate that an administrable definition of such exports could be developed.

I hope this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

HARRY L. GUTMAN.

H.R. 4208

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

SECTION 1. DENIAL OF CERTAIN EXPORT SUBSIDIES.

(a) FOREIGN SALES CORPORATIONS.—Paragraph (2) of section 927(a) of the Internal Revenue Code of 1986 (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end thereof the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(b) DOMESTIC INTERNATIONAL SALES CORPORATIONS.—Paragraph (2) of section 993(c) of such Code (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding after subparagraph (D) the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(c) TITLE-PASSAGE RULE.—Subsection (b) of section 865 of such Code (relating to source rules for personal property sales) is amended by adding at the end thereof the following:

"Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

(d) ELIMINATION OF DEFERRAL.—Subsection (d) of section 954 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) the sale of any unprocessed timber referred to in section 856(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

CERTIFICATION OF PUERTO RICO REFERENDUM RESULTS

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. LAGOMARSINO. Mr. Speaker, I have received a copy of the official certification of the results of the Puerto Rico referendum of December 8, 1991, when the voters rejected the propositions which would distance Puerto Rico and the United States. By a margin of 53.61 to 45.40 percent, the people of Puerto Rico affirmed their desire for a closer relationship to the United States and rejected any impediment to permanent union.

STATE ELECTORAL COMMISSION, SAN JUAN, PR

CERTIFICATION

In conformity with article 14 of the Enabling Act of the Referendum on the Reclamation of Democratic Rights Law No. 86, dated October 2, 1991, and subsequent to the General Vote on the referendum held December 8, 1991 on the island of Puerto Rico, I certify that the official results are as follows:

	Number of votes	Percent
Votes in favor of the reclamation of democratic rights (Yes)	559,163	45.40
Votes against the reclamation of democratic rights (No)	660,267	53.61
Blank votes	2,538	00.21
Votes declared null and void	9,554	00.78
Total	1,231,522	

The votes cast represent 60 percent of the total number of those able to vote on the referendum, which was 2,052,690.

Done at San Juan Puerto Rico, February 5, 1992

JUAN R. MELECIO,
Chairman.

TRIBUTE TO ALFRED RUSSO, FORMER MAYOR OF LOWELLVILLE, OH

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to Alfred Russo, the former mayor of Lowellville, OH, in my 17th Congressional District. The Honorable Mr. Russo held the position of mayor longer than any in Lowellville history, 16 years of dedicated service.

During his eminent tenure as mayor, Alfred Russo brought over $2 million of Government moneys into the village of Lowellville for the purpose of housing rehabilitation, baseball fields, and parks for public recreation, and revitalization of the downtown area. Because of his efforts, Lowellville has maintained a senior citizen transportation program for 16 years. Most importantly, though, Alfred Russo procured Government aid for cleanup following a devastating flood years ago.

If that were not enough work for a public figure to take on, Mr. Russo has been married to the former Virginia Buongrazio for the past 42 years, and they have raised four sons, Anthony, Alan, Brian, and Christopher. The Russo's are also the proud grandparents of seven.

The venerable Alfred Russo has already been commended by his local constituents and peers, but because of his exceptional service to his community, I felt that he should be recognized on the national level.

That is why it gives me great pleasure and pride, Mr. Speaker, to rise here today to honor and congratulate Mr. Alfred Russo on his retirement.

MERCY HOSPITAL CELEBRATES 50 YEARS OF SERVICE

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. VISCLOSKY. Mr. Speaker, I rise today in honor of Our Lady of Mercy Hospital's celebration of 50 years of service in the First Congressional District of Indiana.

Over the last 50 years, Our Lady of Mercy Hospital has not only become a leader in the treatment of psychiatric disorders and substance abuse, but also have evolved into a technologically advanced general service hospital.

In 1923, the Sisters of Mercy began serving the Calumet region with St. Vincent's Homes for the Aged in Hammond and Mount Mercy Sanitarium in Munster. By 1942, Mount Mercy Sanitarium moved to a larger 75-bed facility in Dyer. Expanding into a 200-bed hospital in 1951 and 1952, Mount Mercy Sanitarium changed its name to Our Lady of Mercy Hospital and began to offer medical surgical services as well as psychiatric care. By 1968, Our Lady of Mercy Hospital offered such services as intensive care, emergency rooms, coronary care, nuclear medicine and pulmonary functions.

Since then, Our Lady of Mercy has developed its general and psychiatric services. They have established a department of behavioral medicine, a care unit, dedicated to the treatment of the chemically dependent, and have added a Center for Sports Medicine and a nationally acclaimed Dental Phobia Center.

Our Lady of Mercy is not only committed to healing the community, but is also dedicated to educating it through programs like "IMPACT", a community education program which has trained over 14,000 educators and adults.

Recently, Our Lady of Mercy merged with Saint Margaret Hospital and Health Center in Hammond, IN. This will allow Our Lady of Mercy to further increase their technology, operational efficiency and effectiveness, as well as serve a greater portion of the community.

Let us celebrate the 50 years of dedication, commitment, and innovation Our Lady of Mercy Hospital has provided to individuals throughout northwest Indiana. They have been and remain committed to healing the body, mind and spirit of the people throughout the area.

THE AMERICAN JEWISH CONGRESS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. FRANK of Massachusetts. Mr. Speaker, late last year we put into the RECORD a description of the events which led me to introduce an amendment creating an affordable housing program for the Federal Deposit Insurance Corporation's Liquidation Program. I made a rather serious mistake when I did so—I neglected to mention the major role which the American Jewish Congress Boston chapter played in working on this idea and bringing it to my attention. The Boston chapter of the American Jewish Congress has been an outstanding fighter for social justice for American Jews and others for as long as I can remember. The role that the Congress has played in this effort to create an affordable housing program is just one example of the excellent work it does, under the leadership of Sheila Decter who heads up the staff of the chapter in Boston. Along with Ellen Feingold who has been a leader in housing efforts for many years, the American Jewish Congress operation in Boston deserves a great deal of credit for the advances we have been making.

COMMENDING THE DEDICATION OF THE GUAM NIH RESEARCH CLINIC STAFF

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. BLAZ. Mr. Speaker, for the past 50 years, the Territory of Guam has been at the center of the study of Alzheimer's related disorders similar to Lou Gehrig's Disease and Parkinson's Disease and known locally as Lytigo and Bodig. I would like to take this opportunity to recognize the services of a group of people whose body of work spans nearly an entire generation and whose devotion to curing these devastating maladies extends to this day.

The studies on Guam by these individuals laid the groundwork for much of what is now known about neurodegenerative diseases and they may eventually lead to the discovery of the causes and of the means of preventing these disorders. This would not only be a blessing to the people of Guam who have, in their own way, made very costly sacrifices to this research, but also to millions nationally and internationally who suffer from these illnesses. Their achievements are an inspiration to future generations of medical research professionals.

This important research began in the early 1950's when Navy doctors stationed on Guam noticed an unusually high incidence of neurodegenerative diseases among the native Chamorro population. Jose M. Torres, Lorenzo Iriarte, Francisco Leon Guerrero, and Manuel Cruz had been selected to participate in an intensive 3-year program at the U.S. Navy Medical Practitioners School. Upon graduation, the four were eventually recruited by the National Institutes of Health scientists to assist them with their investigation. Their knowledge of the Chamorro language and customs combined with their medical training made them an invaluable resource to the early research efforts. These four individuals along with Luis Munoz and Julieta V. Santos conducted hundreds of personal interviews, checked thousands of medical records, and did extensive study of the various illnesses afflicting the local population. Gradually, they began to understand the extent and significance of the situation and realized that Guam could hold at least part of the answer to the causes of Alzheimer's disease and related disorders. Ultimately, they assisted with the development of over 200 scientific articles and studies, many of which were considered major breakthroughs in determining the patterns and possible causes of these diseases. Simply put, the work on Guam could not have been accomplished without them.

The contributions which these individuals have made to research on Lytigo and Bodig is enormous and worthy of commendation and it is for this reason that I rise on the floor of this House to commend them, to thank them, and to focus attention on their contribution to eliminating a scourge that has affected us all either directly or indirectly in our own lives.

On a very personal note, I am proud to state for the record that I had been a classmate of most of these extraordinary individuals at the U.S. Navy Medical Practitioners School and I am humbled by the incredible coincidence that, thanks to the people of Guam, I am in the position to commend these friends, classmates, and compatriots for their outstanding work and unselfish devotion to the pursuit of a solution to a very complicated medical problem.

RESPONSE FROM PRIME MINISTER CARNOGURSKY

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. HOYER. Mr. Speaker, 2 months ago Senator DENNIS DECONCINI and I, as the Chairmen of the Helsinki Commission, wrote a letter to the Prime Minister of the Slovak Republic, Mr. Jan Carnogursky. We were deeply disturbed to learn that a plaque had been erected in Slovakia honoring the memory of Father Josef Tiso—a Slovak leader during World War II, stripped of his religious rank by the Catholic Church and executed as a war criminal. Under Tiso's leadership, thousands of men, women, and children were sent to their deaths in Nazi labor and concentration camps.

In our letter, we urged Prime Minister Carnogursky to send a clear and unequivocal signal to those who would honor Tiso that the heinous crimes which Tiso perpetrated are incompatible with modern Slovak values; that the climate of fear and hatred which thrived under Tiso will not be tolerated today. Silence in the face of such an ignoble tribute would suggest approval of this man, his deeds, and his memorial.

This week, Mr. Speaker, we received a response to our letter. Prime Minister Carnogursky drew our attention to a declaration he signed in 1987, under the Communist regime, an act for which he was persecuted. In fact, Senator DECONCINI and I first became aware of this declaration when a copy of it was translated and sent to the Helsinki Commission in 1987, by Mrs. Anna Faltus. This declaration was also reprinted in the Israeli newspaper Davar. Because its content remains so relevant today, I request that it be reprinted in the CONGRESSIONAL RECORD with

my remarks. We were pleased to receive the Prime Minister's assurance that he stands by this proclamation today.

Mr. Speaker, both Senator DECONCINI and I were delighted to receive this response from Prime Minister Carnogursky. After decades of repression, the United States now has an opportunity to renew our warm and historic ties with the Republic of Slovakia, as well at the Czech Republic. In this spirit, we welcome the dialog that is now underway with the Government of Slovakia. It is our firm belief that greater contact between our leaderships and our peoples will improve our relations and contribute to the achievement of the goals of the Helsinki Final Act.

DECLARATION CONCERNING THE DEPORTATION OF THE JEWS FROM SLOVAKIA

Not only individuals but also nations have a consciousness and a continuing history. They have the ability to do good or ill, and a conscience to approve the former and condemn the latter.

We bear all this in mind when we consider what happened here during the Second World War between our fellow citizens and our Jewish brothers. 45 years ago there were illegal deportations of ten thousand Jews—men, women and children—from Slovakia. These deportations were preceded by a law and by other measures introducing discrimination and violence against our Jewish fellow citizens. These measures were mainly adapted from the German race laws proclaimed at Nuremberg in 1935. The deportations and the other anti-Jewish measures were the work of Slovaks. The greater number of the Jews deported died in the concentration camps.

We, representatives of the younger generations, together with many persons over the age of 60 who were too young during the War to take part in public life, had no personal share in these crimes against our Jewish fellow citizens. Even so, the events of which we speak are a disgrace to humanity which we not only condemn but also deeply regret; and we wish herein—due to various reasons for the first time—to express our apologies to all living relatives of those offered up in inhuman sacrifice, and also to all the representatives of their nation.

This expression of regret and apology we do not wish to weaken by any analysis of the Slovak historical background. We also leave to the historians final judgment of the whole absurd international situation of this period—filled as it was with violence and with unprecedented pressures to limit full independence of action. Nor do we wish to speak about such resistance to the persecution of our Jewish fellow citizens as came from representatives of the Church, or of the help offered by many Slovaks to our inhumanly persecuted Jewish brothers. All this we reserve to the full judgment of history.

Nor do we wish at all to weaken in our Declaration what we feel it necessary to express—namely our deep sorrow and regret and genuine apology for all that happened to our Jewish fellow citizens and brothers.

For the deaths now we can only grieve, or the believers among us can deeply and with sorrow pray. To their living relatives and the representatives of their nation throughout the world we should like to apologize in the name of humanity, and those of us who believe in the name of faith, which we hope will survive, and the roots of which are common for us with the people of Israel through the Old Testament.

To this Declaration we are moved also by the fact that there is no dignified monument in Slovakia to commemorate this greatest tragedy in our history. Also synagogues—these former centres of Jewish community life in Slovakia—and Jewish cemeteries are in a poor state of repair and are gradually falling into ruin.

The anti-Jewish measures and mainly the deportations from Slovakia denied those principles which we should like to see enshrined in the creation of the Slovak future—equality for all without regard to race, tolerance, freedom of worship, democracy, legality, and mutual love. In the hope of such a future state among people and among nations, we before the whole world submit to the representatives of the Jewish nation this honest Declaration.

VA PROGRAMS REACH OUT TO THE HOMELESS

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. MONTGOMERY. Mr. Speaker, it is estimated that, on any given night, there are anywhere from 500,000 to 700,000 homeless people on the streets of America and at least one-third of them are veterans. The Department of Veterans Affairs [VA] conducts a variety of programs to assist the homeless and, unlike many private efforts, these programs provide more than just food, shelter, and grooming; they provide total care. The two most prominent homeless assistance programs are the Domiciliary Care for Homeless Veterans Program and the Homeless Chronically Mentally Ill Program.

The Domiciliary Care for Homeless Veterans [DCHV] Program, which now operates at 27 VA medical centers, is designed to provide medical care and rehabilitation in a residential setting. The program consists of five phases: community outreach and referral; admission screening and assessment; medical and psychiatric evaluation; treatment, vocational counseling and rehabilitation; and postdischarge community support.

The Homeless Chronically Mentally Ill [HCMI] Program targets homeless veterans with psychiatric difficulties and operates from 45 VA medical care facilities located in 26 States and the District of Columbia. At each site, homeless veterans receive active outreach services, psychiatric and medical assessment and treatment, intensive case management and residential rehabilitation. Since the program began, more than 30,000 homeless veterans have been clinically assessed, and 8,000 have been placed in community-based facilities.

The VA has been both innovative and diligent in its efforts to serve the homeless. In addition to the two aforementioned programs, the VA regional benefits office in each State has a designated staff member who serves as a coordinator and point of contact for homeless veterans. These individuals visit shelters and work with community homeless groups.

The VA operates 196 psychological counseling centers—Vet Centers—in most urban areas of the country, a program that has distinguished itself in assisting veterans suffering from post-traumatic stress disorder [PTSD] and other mental illnesses. The centers also provide employment and health care referral services.

The VA has also implemented a program in which it sells acquired properties at discounted prices to State and local agencies, as well as nonprofit organizations, to provide shelter to the homeless. Under a compensated work therapy program, VA contracts with private industry to secure appropriate work for disabled veterans. Congress recently authorized the VA to provide veterans who are working under this program with structured and supervised independent living in community-based houses bought by VA. These are just a few of the VA undertakings to better serve the homeless.

The bottom line is that the authorizing committees of the Congress have given VA carte blanche to do what needs to be done to help all homeless veterans, and it has carried out its responsibilities admirably considering its limited resources.

I would like to share with my colleagues an article from the Ennis (TX) News which reports on the successful efforts of one VA medical center, the fine hospital in Dallas, to assist our homeless veterans:

VA HOMELESS PROGRAM WINS HONOR

The Dallas Department of Veterans Affairs (VA) Medical Center was recently named the winner of the Community Council of Greater Dallas' 1991 award for Excellence in Human Service Programming in the Adult Category. The medical center earned the honor for its Comprehensive Homeless Center for homeless veterans. "This is a terrific honor and one that belongs to the dedicated staff of our many therapeutic programs designed to help homeless veterans turn their lives around," said Alan G. Harper, Medical Center Director.

The Dallas VA Medical Center was selected from a host of outstanding community programs that help needy in Dallas. The medical center's homeless program offers outreach services to veterans in need and includes a 40 bed domiciliary and a Compensated Work Therapy program which puts veterans back to work and teaches them the skills necessary to obtain employment.

The medical center plans to expand its homeless programs in the near future through a joint venture with the City of Dallas. A work therapy program for homeless veterans will be established in the City's Day Resource Center. Activation of this expansion is anticipated in early 1992.

SAVE OUR SMALL PASSENGER VESSEL OPERATORS

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. JONES of North Carolina. Mr. Speaker, many small passenger vessel operators are being unfairly jeopardized because the Internal Revenue Service [IRA] is misconstruing a tax levied by Congress 2 years ago. Today, I am introducing H.R. 4198 to solve this inequity.

The problem arises from section 7504 of Public Law 101-239, the Omnibus Budget Reconciliation Act of 1989, codified in 26 United States Code 4471-72, and from the IRS rules implementing this provision. this statute

imposes a ship passenger international departure tax of $3 per passenger on covered vessel voyages.

The idea which led to the enactment of section 7504 of Public Law 101–239 originated in the House Merchant Marine and Fisheries Committee in 1989. We proposed a $20 per-passenger user fee on certain vessels. Subsequently, Congress altered the proposal; ultimately, it became the tax codified in the Internal Revenue Code at sections 4471 and 4472.

Congress clearly intended for this tax to apply only to traditional passenger vessels and to vessels on "cruises to nowhere" in international waters offering gambling. The language of the statute was designed to parallel the departure tax on international airline passengers as evidenced by the word "International" in the title of section 7504 of the public law.

Unfortunately, the IRS construes the statute to cover certain vessels offering sport fishing, recreational diving, and whale-watching cruises. As of April 1990, the IRS required these small operators to pay this tax; however, as of this date, the IRS has not issued a final ruling on the tax. Smaller operators would be especially harmed by the $3 per-passenger tax since they charge much less per cruise than the traditional cruise vessel operator.

My bill clarifies congressional intent by adding the requirement that a vessel must be "over 100 gross tons" if it is to be subject to the tax. This would effectively exclude those smaller operators unfairly burdened by the tax coverage.

TRIBUTE TO DANNY OTSUGA

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to Danny Otsuga, congratulating his achievement of the highest rank in the Boy Scouts of America, the Eagle Scout.

Danny Otsuga, of my Ohio 17th Congressional District, overcame a language problem in order to achieve this accolade. On his way toward becoming an Eagle Scout, Danny earned 26 merit badges, served as patrol leader, and now serves as an assistant senior patrol leader. If this were not enough for a young man to tackle, Danny has been very active in community projects.

Mr. Speaker, it is with great pleasure that I rise on this occasion to congratulate Danny Otsuga on achieving the Eagle Scout and the Western Reserve Council Boy Scout Troop 15 on helping to create the future leaders of America.

TRIBUTE TO CHERYL ADAMS

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. VISCLOSKY. Mr. Speaker, I rise today to pay tribute to Ms. Cheryl Adams, a resident of Indiana's First Congressional District who has successfully completed the Sheet Metal Workers Local 20 Apprenticeship Program.

Cheryl Adams is the first woman to graduate from the Sheet Metal Workers Local 20 Apprenticeship Program in Gary. She also graduated from William A. Wirt High School in 1979 and Indiana Vocational Technical College in 1981, where she majored in industrial maintenance.

It has been my privilege and honor to work with the membership of local 20 over the last several years. They have, in no uncertain terms, played a key role in sustaining the growth, economy and development of northwest Indiana. From hospitals to homes, from school to steel mills, sheet metal workers have played a critical part in building northwest Indiana.

I commend Cheryl Adams, for completing the apprenticeship program. As the first woman to graduate from local 20, she will become part of the proud history of the skilled and dedicated tradesmen of local 20. I am confident that the commitment and skills that she has learned from her fellow workers will allow her to join with the other members of local 20, to make the region a better place to live.

BATTLE OF THE BULGE

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. FRANK of Massachusetts. Mr. Speaker, one of the best things the older generation can do for younger people is to help them remember the shaping events of our past. Among those is the Battle of the Bulge, an example of great heroism on the part of Americans, and a tragic reminder to us that war is an ongoing bitter and difficult activity. William J. Cavanaugh of Natick, MA is a military veteran who does a great deal to help inform his fellow citizens of the true reality of war. His recent article about the Battle of the Bulge in the Middlesex News is an example of the important educational efforts which Mr. Cavanaugh takes on himself, and because I was particularly struck by the article and because I know that it struck as well a very important positive tone among veterans of that battle, I ask that it be printed here.

[From the Middlesex News (MA.), Dec. 18, 1991]

REMEMBERING THE 'BATTLE OF THE BULGE'

(By William J. Cavanaugh)

On Dec. 16, 1944, just a little over three years after the infamous Japanese attack on Pearl Harbor, the German's launched their ultra-secret offensive operation called "Christ Rose." Thus began the decisive battle of World War II in Europe, which was to become known as the "Battle of the Bulge."

For 40 days men fought in the bitter cold, sleet and snow of the "worst in 20 years" winter of 1944–45 and, most ominously, "The Ghost of the Ardennes," a pervasive fog that impeded friendly and enemy forces alike, contributed to the final battle statistics: 81,000 American casualties and 100,000 German.

The battle included the Malmedy Massacre of U.S. prisoners, one of the worst atrocities of the northern European campaign, the classic American "Nuts!" response by surrounded General McAliffe of the 101st Airborne Division at Bastogne, and General George Patton's successful Christmas Eve relief column which signaled the return of U.S. forces to the offensive.

Without taking anything from the recent 50th anniversary celebration of Pearl Harbor, the later heroism and sacrifices of so many Americans must be remembered as well, including this decisive last desperate offensive engagement by the German army which led ultimately to the defeat of both Germany and Japan, and changed the course of history forever.

David Lainge, a survivor of the Ardennes "Bulge" with the 33rd Regiment, 84th Infantry ("Railsplitters") Division, and founder of the military order of the Ardennes, says that the battle is already extensively documented by historians, but its importance is still growing in the United States. Lainge predicts that eventually it's going to be known as the "Gettysburg" of World War II.

Like many families throughout the U.S., ours has a heroic survivor of the Bulge, my brother-in-law, James Campbell of West Roxbury. Jim was a 20-year-old engineer soldier pressed into service with the 26th Infantry ("Yankee") Division during the U.S. Third Army counterattack against the German stronghold at Wiltz, Luxembourg. Just after Christmas, on a hill overlooking Wiltz, Jim's squad, exhausted and out of ammunition, was overrun and captured when their relief failed to arrive. Jim, like so many WWII combat veterans, rarely speaks of his battlefield experience, and his bitter captivity at Stalag 12A in Germany which was "home" until his escape with two other POWs in mid-April 1945, just before Patton's Third Army advance in to the German heartland.

A year-and-a-half ago, Jim's family, with the help of Congressman Joseph Moakley, honored him with a presentation of long overdue Prisoner of War and Bronze Star medals and other decorations he had never formally received. Publication of Jim's story in the July 30, 1990 edition of the Middlesex News ultimately led to the family's becoming aware of the *Military Order of the Ardennes*, the exclusive organization of participants in the Battle of the Bulge who are eligible to be inducted into lifetime membership and to receive its "Grand Cross of Homage."

No one can be born into the military order of the Ardennes, no president or king can grant membership, and no amount of wealth can purchase admission. Membership is open *only* to those who possess an honorable discharge certificate from an Allied armed force indicating that they fought during the 40 days and nights of the Ardennes campaign. Unlike other organizations, associate members do not swell the ranks of membership and with each passing year the ranks of the living survivors grows thinner. Membership is an earned and noble right, a heroic homage for those who sacrificed above and beyond during those interminable days of enemy attack and American forces defense and counterattack.

At a Thanksgiving weekend family gathering, Jim Campbell, with customary modesty and tears of joy, was presented with his "Grand Cross of Homage." His extended family, at least, will know and never forget his sacrifices for freedom during that bitter winter of 1944–45.

All of us who enjoy the fruits of their sacrifices and victory in the Ardennes, remember and give homage to the veterans of this final decisive European battle of World War II—the Battle of the Bulge.

COMMENDING DR. ASAO AND KEIKO HIRANO

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. BLAZ. Mr. Speaker, for the past 50 years, the Territory of Guam has been at the center of the study of Alzheimer's related disorders similar to Lou Gehrig's Disease and Parkinson's Disease and known locally as Lytigo and Bodig. I would like to take this opportunity to recognize the services of a group of people whose body of work spans nearly an entire generation and whose devotion to curing these devastating maladies extends to this day.

The studies on Guam by these individuals laid the groundwork for much of what is now known about neurodegenerative diseases and which may eventually lead to the discovery of the causes and the means of preventing these disorders. This would not only be a blessing to the people of Guam who have, in their own way, made very costly sacrifices to this research, but also to millions nationally and internationally who suffer from these illnesses. Their achievements are in inspiration to future generations of medical research professionals.

In the early 1950's, Dr. Asao Hirano, a neuropathologist, and Mrs. Keiko Hirano, a graduate of Mount Holyoke College, traveled to Guam to establish the first neuropathology laboratory. Their intensive study led to a series of detailed descriptions of the devastating effects of Lytigo and Bodig. Remarkably, the Hiranos conducted their early research in the living room of their apartment which was converted into a laboratory. Their research, much of which was comprised of the meticulous and exacting science of preparing and studying slides, would be difficult even under the best of conditions. The fact that the Hiranos were able to produce studies of such high caliber under such conditions is truly a testament to their skill and commitment. These achievements did not go unnoticed and in 1961, Dr. Hirano received the prestigious Weil award from the American Neurology Association.

The Hiranos' work identified what is considered a standard feature of Alzheimer's disease known as the Hirano body. This discovery led to the realization that there are strong similarities and peculiar dissimilarities between the diseases found on Guam and other neurodegenerative diseases which affect millions of people worldwide. The Hiranos' effort brought to the forefront the idea that the work on Guam was even more important than anticipated and that it could very well hold the key to understanding the causes of some of the most common varieties of neurodegenerative disease.

These many years of research have seen an unprecedented collaboration between the people of Guam, the Government of Guam, the National Institutes of Health, and national and international research scientists like Dr. and Mrs. Hirano. This type of cooperation has contributed immensely to our understanding of Lytigo and Bodig. If a cure is to be found, it will undoubtedly require the continued efforts and same devotion and international cooperation exemplified by the Hiranos.

Mr. Speaker, Asao and Keiko Hirano have devoted their talents to destroying a group of diseases which have in one way or another touched us all. We only need imagine what it is like to watch a loved one suffer from one of these maladies to realize that we must do all we can to put an end to these diseases. It is my hope that by others hearing of the Hiranos' achievements and of the important work that is being done by these individuals that their efforts will be supported by this House and by elements of the medical research community until this malady is finally eliminated from Guam and from the world.

A TRIBUTE TO BLACK LAS VEGANS IN HONOR OF AFRICAN-AMERICAN HERITAGE MONTH

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. BILBRAY. Mr. Speaker, I rise today to pay tribute to a few of the remarkable African-American leaders who have contributed significantly to the Las Vegas community. This commemoration comes at a very unique time of year—African-American Heritage Month—a celebration designed to credit recognition to numerous individuals all over the United States for their cultural contributions to our country.

I would like to call attention to members of the community who have dedicated their careers to serving Las Vegas. By no means are these individuals alone in their accomplishments. They are a representation of the outstanding number of African-Americans in southern Nevada. This year I want to take the opportunity to mention three outstanding individuals; the Honorable Judge Addeliar D. Guy III, Mrs. Daisy Miller, and Dr. William H. (Bob) Bailey.

JUDGE ADDELIAR D. GUY III

Judge Addeliar D. Guy III, has worked extensively over the past 25 years in the U.S. District Court for Nevada. Judge Guy has been a licensed attorney for over 30 years beginning his legal experience in Nevada as a deputy district attorney in 1966 where I had the pleasure to serve with him. Presently he holds the district court judgeship, a position he has held since July 1975.

Judge Guy also served in the U.S. military where his career began with the Coast Guard (1942–46). He also served in the U.S. Army, retiring as a reservist in 1976 after achieving the rank of lieutenant colonel. During his tenure in the military, Judge Guy was decorated with the Purple Heart as well as other military service awards.

Judge Guy currently serves on the board of directors of many of the service organizations in the Las Vegas community; March of Dimes, United Way, Boy Scouts of America, Judicial Council of the National Bar Association, and the Community College of Southern Nevada.

Other awards and commendations he has received include: Housing Authority City of Las Vegas Addeliar D. Guy Youth Center, Clark County School District Addeliar D. Guy III Junior High School to be built, Social Action Award of Delta Sigma Theta, Outstanding Service Award of Cosmetique Inc., Good Fellow Award of City of Hope, Outstanding Achievement as Judge NAACP, Distinguished Nevadan University of Nevada, Distinguished Achievement Award National Bar Association, and the Chief Judge Eight Judicial District Court.

MRS. DAISY L. MILLER

Daisy L. Miller, presently assistant principal at R.O. Gibson Junior High School in Nevada, has served extensively in the Clark County School District implementing, advising, and developing various programs to benefit the Nevada school system. She has dedicated her career to improving educational institutions in the Las Vegas area. Mrs. Miller's ingenious activities are most significantly seen in her efforts in coordinating programs such as the planning program of the economic opportunity board which initiated immunization in the African-American community.

Mrs. Miller is a member of the Clark County Association of Secondary School Principals, NAACP, Academic School Curriculum Development, Delta Sigma Kappa, and Phi Delta Kappa. She is actively involved in the community through her involvement as past president of the Las Vegas Alliance of Black Educators and member and past president of the Doolittle Tutorial Board.

DR. WILLIAM H. (BOB) BAILEY

Dr. William H. (Bob) Bailey is currently the deputy director of the Minority Business Development Agency [MBDA]. In this capacity, he acts as a key Commerce Department advocate for minority business development issues. As former president of the Nevada Economic Development Company, Inc., in Las Vegas, Bailey has a proven history of assisting the minority business community. He gained national recognition for development of numerous outreach and training programs for the Minority Business Development Centers across the United States.

Bailey served 5 years as chairman of Nevada's Equal Rights Commission. As one of Nevada's most active African-Americans, Dr. Bailey has been responsible for establishing the first minority owned real estate development firm and became the developer of the first minority owned mortgage company, New Ventures.

I first had the pleasure of meeting Bob Bailey when he worked as a disc jockey in the 1950's at Reno Radio. He later moved to become one of Nevada's first African-American TV newscasters. He is currently listed in Who's Who in Black America and Who's Who in American Economics. He also served as a member of the rules committee of the White House Conference on Small Business in both 1980 and 1988.

Most recently, Bailey was instrumental in assuring one Nevada minority owned firm was selected to participate by the Department of Commerce sponsored trade mission to the Persian Gulf region. He is currently the recipi-

ent of over 100 awards including the proclamation of an official Bob Bailey Day in Nevada.

All three of these individuals have not only been a credit to African-Americans nationwide, but through their efforts have made a considerable difference in southern Nevada. I rise today to acknowledge and praise their accomplishments and ask my colleagues to join me in congratulating these credits to the Las Vegas community.

A TRIBUTE TO JOHN APOSTOLAKOS

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. NOWAK. Mr. Speaker, it is with great respect and admiration that I congratulate Mr. John Apostolakos upon his retirement as president of the Western New York Hospital Association, Inc.

Since 1962, John Apostolakos has offered his tremendous insight and experience in the health care field. After having earned a juris doctorate degree from the American University National Law Center and having been admitted to the Washington, DC bar, John began his professional career in government, working at the Veterans' Administration and then at the National Institutes of Health.

In 1965, Mr. Apostolakos was welcomed into the western New York area. His first employment in Buffalo was at Health Research, Inc., where his responsibilities included the management of grants for Roswell Park Memorial institute, one of the Nation's 25 comprehensive cancer institutes. He quickly accelerated up the ranks and, in 1969, was named executive director of Health Research, Inc. His career path would take John to Buffalo's Columbus Hospital where he would remain from 1970 to 1977. Mirroring his swift advancement at his previous employment, John Apostolakos was soon named administrator of Buffalo Columbus Hospital. His years at this hospital were marked by numerous achievements and expansions including a $10 million program establishing a nursing home as well as modernizing the hospital facility.

The Western New York Hospital Association, Inc., capitalized on John's expertise in the health care industry in 1977 naming him chief executive officer of their organization. His impressive interpersonal skills as well as his obvious wealth of knowledge in health issues were evidenced throughout his years at this association. He assumed massive responsibilities in coordinating multiple activities, agendas, and staff as the hospital association continued to grow. During a period of financial constraint for the health care industry John most effectively voiced the concerns and interests held by western New York health care providers.

His contributions to the community continue in the many councils, committees, and task forces in which he is an active participant and advisor. His affiliations with the Health Systems Agency of Western New York, the Buffalo Prenatal-Perinatal Comprehensive Network Development Task Force, Inc., and the Coordinated Care Management Corp., enabled these organizations to benefit from his acute insights.

John Apostolakos had a tremendous and constructive influence in the health care industry that was not only felt by hospitals but by Federal, State, and local government, the insurance industry, and numerous health care associations. The Western New York area is extremely fortunate to have had such an effective individual achieve so much in our area in developing a high quality health care network.

Mr. Speaker, my fellow colleagues, I congratulate Mr. John Apostolakos upon his retirement from the Western New York Hospital Association, Inc. I wish John the best of health, happiness, and success in all of his future endeavors.

TRIBUTE TO THE 125TH ANNIVERSARY OF TEMPLE, RODEF SHOLOM

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. TRAFICANT. Mr. Speaker, I rise on this occasion to pay tribute to the monumental achievements of Temple Rodef Sholom in my 17th District in Ohio. This year marks its 125th anniversary.

In 1867, Youngstown's substantial Jewish community erected this outstanding temple for worship and for the promotion of service and community activities. The cohesive personality of this congregation has, since then, served Youngstown with admirable dedication. Additionally, the efforts of the members of Rodef Sholom stretch beyond Youngstown to touch the activities and needs of others on a national level. I take my hat off to this group as they celebrate their anniversary.

The current atmosphere of celebration has prompted the Rodef Sholom congregation to publish a book of vignettes outlining the temple's history. I am proud to be invited to participate in such a publication. This reform Jewish community has assisted me in several projects and I am not only grateful, but I also have come to admire and respect the group as both a people and a culture.

Mr. Speaker, I congratulate the members of Rodef Sholom Temple as they celebrate the temple's 125th anniversary and wish them the best as they continue to make history from the temple doors throughout the community.

MEG ROTHMAN, AWARD-WINNING PAGE

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. FRANK of Massachusetts. Mr. Speaker, one of the most rewarding aspects of our jobs is having the opportunity to select young people from our districts to serve as pages in the House of Representatives. During my service in this body, I have been fortunate to have young men and women who were bright and hard-working serve as pages under my sponsorship. While I have appreciated the valuable contributions that all of them have made, I wanted to take a moment to recognize the especially fine performance of Meg Rothman, the most recent page from my district.

Meg, a resident of Newton, MA, began her stint last September and worked until January. At the graduation ceremony for her page class, Meg was given the Outstanding Citizenship Award. The highest honor a page can receive, the award is given each semester to one male and one female. Recipients are chosen by votes of the proctors in the page dormitories, the teachers in the page school, and the staff that supervises the pages as they carry out the important tasks they do for all of us.

In order to win this award, a page must excel in all three of these areas—legislative work, school, and dormitory life. In contacting my office to announce that Meg was receiving the award, the staff of the page program praised her performance, saying that she had displayed a commitment to excellence throughout her tenure, that she had often gone above and beyond the call of duty, that she was always willing to participate in page activities and frequently offered to do more, and that she consistently maintained a cheerful, uncomplaining attitude toward her work and her peers.

I can testify, having met with her and having seen her when she periodically stopped by my office, either to visit or when making her rounds, that she is indeed a hard-working, mature, professional young woman.

Mr. Speaker, too often our pages, who play such a key role in the effective operation of Congress, are seen as anonymous errand runners, rather than individuals performing challenging work. This is one reason I feel it is important for me to call attention to Meg's exemplary record as a page. Equally too often, people in this country are critical of the commitment and work ethic of our young people. Meg is living proof that this is not true, and I believe for this reason as well it is important to publicly recognize her achievement. I offer her congratulations on receiving the award and thanks for the superb work she did while she was here.

COMMENDING DR. LEONARD KURLAND AND DR. DONALD MULDER

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. BLAZ. Mr. Speaker, for the past 50 years, the territory of Guam has been at the center of the study of Alzheimer's-related disorders similar to Lou Gehrig's disease and Parkinson's disease and known locally as Lytigo and Bodig. I would like to take this opportunity to recognize the services of a group of people whose body of work spans nearly an entire generation and whose devotion to curing these devastating maladies extends to this day.

The studies on Guam by these individuals laid the groundwork for much of what is now known about neurodegenerative diseases and which may eventually lead to the discovery of the causes and the means of preventing these disorders. This would not only be a blessing to the people of Guam who have, in their own way, made very costly sacrifices to this research, but also to millions nationally and internationally who suffer from these illnesses. Their achievements are an inspiration to future generations of medical research professionals.

In 1953, two young scientists, Dr. Leonard Kurland and Dr. Donald Mulder, traveled to the territory of Guam to investigate an unusual epidemic and became the first neurologists to examine the many cases of Lytigo and Bodig on Guam. Their early investigation led to the establishment of a National Institute of Health Research Clinic in Guam. Through their research and that of their colleagues, over 200 different scientific papers have been published based on research at the NIH Research Center on Guam, vastly increasing the body of knowledge of neurodegenerative disorders.

Drs. Kurland and Mulder are as devoted as ever to determining the causes of these disorders. These two medical professionals have dedicated their lives to helping others and it is through their efforts that so much is known neurodegenerative diseases on Guam. But, more importantly, it is because of their persistence and sheer determination that this important research continues to this day. Dr. Kurland, who has been at the forefront of this effort since its inception, currently leads and ambitious 5-year research project which combines the resources of the Mayo Clinic in Rochester, MN, the University of Guam, and the Mount Sinai Hospital in New York. I have known Dr. Kurland long enough to realize that his contributions and commitment to the people of Guam and to those who suffer from Alzheimer's-related diseases is worthy of more recognition than I can possibly provide.

Mr. Speaker, Drs. Kurland and Mulder have devoted their talents to destroying a group of diseases which in one way or another touched us all. We only need imagine what it is like to watch a loved one suffer from one of these maladies to realize that we must do all we can to put an end to these diseases. It is my hope that by others hearing of Drs. Kurland and Mulder's achievements and of the important work that is being done by these individuals that these efforts will be supported by this House and by elements of the medical research community until this malady is finally eliminated from Guam and from the world.

SMALL BUSINESS PRESERVATION AND JOBS ACT OF 1992

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. IRELAND. Mr. Speaker, today our distinguished colleague from Wisconsin, Mr. GUNDERSON, and I are introducing the Small Business Preservation and Jobs Act.

Last January 3, I asked our colleagues in Congress to adopt an informal, but very important, resolution that will help create jobs, spur economic growth, and foster new opportunities at home and abroad. I asked our colleagues to adopt a new year's resolution: To do all we can to protect and promote our Nation's small businesses.

In explaining what that pledge meant, I suggested that, beyond protecting small enterprises from their own Government, Congress also had to look for programs and policies that actually helped small businesses thrive and expand.

Today, Mr. Speaker, Mr. GUNDERSON and I are honoring our pledge to help small businesses.

As you know, demand for two extremely successful Small Business Administration lending programs is running higher than expected this year. These programs will very likely run out of money sometime this summer if Congress does not act quickly.

We believe it would be unconscionable if Congress through inaction, effectively shut down two proven and productive SBA loan programs at a time when they can do the most good for our economy and our job market. We must honor our commitment to small enterprises and to their current and future employees.

And we can do that, Mr. Speaker, by simply keeping SBA's door open for qualified borrowers and increasing SBA's 7(a) loan guarantee authority and the agency's development company loan guarantee authority. That is the first goal of our bill. But we have an opportunity to do much, much more.

As we are all aware, bank foreclosures are precipitating disaster for many small businesses that have loans or lines of credit with banks that are taken over by the FDIC. If no buyer for these loans appears, the loans are called—even though the business may never have missed a payment. Needless to say, a few of these businesses are in a position to come up with the money to pay off the loan in full, so they must face the tragic possibility of shutting their doors to workers and customers alike.

We are all much too familiar with this sad, but avoidable story: Banks blame overzealous regulators for making it difficult, if not impossible, to make loans even to healthy, growing smaller firms. Regulators point to bad management and poor decisionmaking on the part of banking executives as the cause of the problem. And on it goes.

But, Mr. Speaker, while all this finger-pointing is going on, the SBA has initiated a smart, creative program that cuts to the chase by helping small enterprises, their workers, and our Nation's taxpayers all at the same time.

Through what is known as the New England Lending and Recovery Project, SBA is stepping in and servicing SBA-guaranteed loans held by banks that have been taken over by the FDIC. In addition, the SBA is examining the nonguaranteed portion of the failed bank's portfolio for good, performing small business loans that are in danger of being called. Upon identifying such a loan—a loan that meets SBA's lending criteria—the SBA is contacting the business and offering the opportunity to restructure its debt using private financial institutions and an SBA loan guarantee.

The result? Hundreds of small enterprises and the jobs they provide have been saved.

Mr. Speaker, Mr. GUNDERSON and I believe this is a win-win program that easily could be expanded to include the RTC and taken nationwide. By helping the SBA do this, small businesses across America can be rescued from foreclosure on loans whose only flaw is that the banks that made them have failed. The economy reaps the benefit of the continued productivity of those businesses. And the Government is able to turn what would have been a loss into a performing asset.

This is the second purpose of the Small Business Preservation and Jobs Act.

To accomplish these vital and eminently worthwhile goals, our bill seeks to raise the SBA's 7(a) loan guarantee authority by $3 billion this fiscal year and each of the 2 following fiscal years, and it encourages the Small Business Administration to use part of that increased authority to expand its New England Lending and Recovery Project throughout the United States. Further, it seeks $100 million more in loan guarantee authority for the same fiscal years for the SBA's development company loan programs.

Mr. Speaker, I urge our colleagues to join me as cosponsors of our bill so that we can begin now to help small businesses do what they do best: Create the new jobs, products, and services our country so desperately needs.

As a former colleague declared on the floor of this House more than 50 years ago, "If America will save small business, small business will save America." Mr. Speaker, we have the opportunity literally to save hundreds of small businesses—and the jobs of their employees—by passing the Small Business Preservation and Jobs Act.

H.R. 4197

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Preservation and Jobs Act of 1992".

SEC. 2. INCREASES IN SBA PROGRAM LEVELS FOR LOAN GUARANTEES.

(a) FISCAL YEAR 1992.—Section 20(e)(2) of the Small Business Act (15 U.S.C. 631 note) is amended to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $7,303,000,000 in deferred participation loans and other financings; and of such sums, the Administration is authorized to make $6,500,000,000 in general business loans as provided in section 7(a) (including loans on a national basis under the Administration's Lending and Recovery Project), $53,000,000 in loans as provided in section 7(a)(12)(B), and $750,000,000 in financing as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958."

(b) FISCAL YEAR 1993.—Section 20(g)(2) of such Act is amended to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $8,405,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $7,500,000,000 in general business loans as provided in section 7(a) (including loans on a national basis under the Administration's Lending and Recovery Project), $55,000,000 in loans as provided in section 7(a)(12)(B), and $850,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.".

(c) FISCAL YEAR 1994.—Section 20(i)(2) of such Act is amended to read as follows:

"(2) For the programs authorized by this Act, the Administration is authorized to make $9,508,000,000 in deferred participation loans and other financings; and of such sums, the Administration is authorized to make $8,500,000,000 in general business loans as provided in section 7(a) (including loans on a national basis under the Administration's Lending and Recovery Project), $58,000,000 in loans as provided in section 7(a)(12)(B), and $950,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.".

MEXICAN LABOR UNIONS AND THE FTA

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. PEASE. Mr. Speaker, I would like to submit for the RECORD the attached Journal of Commerce article describing the recent arrest of a Mexican labor leader, apparently in response to a workers' strike in maquiladora plants, many of which are majority-owned by American investors.

In discussions of the proposed free trade agreement [FTA] with Mexico and Canada, I have expressed my concern over Mexico's labor union regime. More specifically, I have noted my impression that labor unions do not operate freely—that is, without government intervention—in Mexico and that workers are not adequately represented through existing labor union structures in this Latin American country.

You might ask why such concerns are relevant to discussion of the merits of an FTA. Simply put, labor unions ensure the natural linkage between wage rates and productivity levels. With an FTA, Mexico will develop economically and productivity is likely to increase with such economic development. If unions do not function in Mexico, it is possible, even probable, that Mexican wages will remain abnormally low—that is, lower than productivity levels would warrant—over an extended period.

The movement of American investment capital to Mexico in the short run due to wage differentials is one thing. A sustained wage differential capable of catalyzing American investment in Mexico even years from now, after Mexico's economy has developed, is something else entirely.

This article suggests that there is something very wrong with the way labor unions function in Mexico. If we want to negotiate an FTA that will not devastate our domestic economy, we must seriously address this issue in the context of the FTA talks. Now, more than ever, we need to consider domestic employment effects when crafting international trade initiatives.

[From the Journal of Commerce, Feb. 5, 1992]

UAW PROTESTS MEXICO'S ARREST OF LABOR LEADER

(By Tim Shorrock)

WASHINGTON—The recent arrest of a prominent Mexican labor leader in the midst of a strike of thousands of U.S.-border plant workers has drawn a sharp protest from the United Auto Workers union and could become part of the ongoing debate over whether the United States should approve a free-trade agreement with its southern neighbor.

On Friday, Agapito Gonzalez Cavasos, leader of the Union of Journeymen and Industrial Workers in Matamoros, Mexico, was taken into custody by a "special team" from the Mexican federal judicial police and taken to Mexico City, according to Don Stillman, director of international affairs for the UAW.

The arrest led the UAW—an opponent of the proposed North American free-trade agreement, which would erase tariff barriers among the United States, Mexico and Canada—to question the commitment of the government of President Carlos Salinas de Gortari to trade union rights.

The U.S. labor movement generally has opposed the move to include Mexico in the pact because it fears that lower-wage workers in Mexico would take jobs from U.S. factory employees.

The arrest came several days after representatives of the Maquiladora Association of Matamoros, which represents 62 mostly U.S. owned manufacturing plants along the border, met with Mr. Salinas to discuss a rash of strikes at those plants, Mr. Stillman said.

"He basically was arrested two days before a strike deadline for 33 more maquila factories," said Mr. Stillman. "One would have to find the timing curious."

The autoworkers union was especially angered by press reports that the employers association lowered its wage offers to union workers after the arrest of their primary negotiator.

"The arrest of a top union leader in the midst of crucial negotiations is conduct we have come to expect in countries such as South Africa and Korea—countries known for their repression of workers and unions," wrote UAW President Owen Bieber in a Feb. 4 letter to Mexican Ambassador Gustavo Petrocioli.

A spokesman at the Mexican Embassy here said he had seen press reports of Mr. Gonzalez's arrest but could not officially confirm that it had taken place.

The arrest warrant, which listed charges of tax evasion, was several years old, "but they chose this time to take him off in the dead of night," Mr. Stillman said.

On Jan. 27 and Jan. 28, between 12,000 and 15,000 members of Mr. Gonzalez's union struck nine maquiladora plants in Matamoros.

Among the plants hit were three factories owned by General Motors Corp., including Componentes Mexicanos, Rimir and Deltronics.

A spokesman for GM said only one of its facilities in Matamoros had been affected by the strike.

At Deltronics, "there was talk of a strike, but it never happened," the spokesman said. According to press reports from Matamoros, however, 3,500 workers walked out of that plant on Jan. 28.

The strikers were seeking a 30% wage hike. Total compensation for maquiladora workers, including wages and benefits, is less than $1 an hour, according to the UAW, far below the prevailing wages at plants in the United States and Canada.

In talks leading up to the strike, the employers association had sought to eliminate a contract clause that would gradually raise wages. In addition to GM, U.S. companies involved in the negotiations include subsidiaries of Trico, Eaton, Zenith and United Technologies.

But nine companies had settled their strikes by Saturday after agreeing to wage increases of 25.5%. Other issues remain unresolved, however.

After Mr. Gonzalez's arrest, the deadline for the 33 other plants was extended to Feb. 10. As of Tuesday, no strikes were in progress.

Last week, the UAW sent $15,000 to assist the strikers.

MARTIN D. WESCOTT RETIRES AFTER MORE THAN 30 YEARS OF LEADERSHIP IN LAW ENFORCEMENT

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. SOLOMON. Mr. Speaker, it's truly the end of an era in Washington County, NY. Martin D. Wescott, or Marty, as he is known, retired the first of the year as county sheriff, a position he has held with great honor and the highest professionalism since 1978.

Mr. Speaker, when you think of dedicated, innovative law enforcement, you think of Marty Wescott. This native of Whitehall graduated from the New York State Police Academy in 1958 and was assigned to the substation in Salem, where his family has lived ever since. He retired from the State police in 1977.

During those 20 years Marty earned the respect not only of fellow law enforcement personnel but also that of the people he served. He was elected sheriff in November 1977, and from the day he took office in 1978 he began implementing numerous training programs. He began a Juvenile Aid Bureau and a DWI task force, and played a personally active role in his department's canine patrol. He had computers installed in the civil and records department. Sheriff Wescott also served on the traffic safety committee, the Washington County fair board, and the executive committee of the New York State Sheriff's Association.

Another thing that makes Marty Wescott special to me is his active involvement in Boy Scouts. He also has been active at Holy Cross Church in Salem.

And like other people who are pillars in their community Mary Wescott is a solid family man. He and Harriet, who celebrated their 40th anniversary last August, have 6 children—Dan, Len, Rich, Ron, Norene, and Linda—as well as 11 grandchildren.

Marty is going to take a well-earned vacation for a while. But if I know Marty, I doubt that he'll be idle for long. Whether his new career is in law enforcement or not, we can be sure he will be successful.

Mr. Speaker, a retirement party for his great public servant will be held on February 16. Let us rise today to add our voices in tribute to Martin Wescott, a model law enforcement officer, a great American, and a good friend.

WARREN AND PHYLLIS DORN—50TH WEDDING ANNIVERSARY

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. PANETTA. Mr. Speaker, Mr. LAGOMARSINO and I join today in honoring Warren and Phyllis Dorn on their 50th wedding anniversary, which they will celebrate on February 14, 1992. Warren and Phyllis have been actively involved in their communities in Pasadena, La Canada, and now Morro Bay. Over the years, those who have come to know them, including Mr. LAGOMARSINO and myself, appreciate their unfailing dedication to one another and the communities in which they have lived.

Warren Dorn was born in Pasadena, CA, where he attended Pasadena city schools and then the University of California at Santa Barabara. His long and distinguished political career has included serving as the mayor of the city of Pasadena from 1949 to 1956. After moving to the 16th Congressional District of California, Warren became involved in the local politics and served as mayor of the city of Morro Bay from 1980 to 1982. He served as president of County Supervisors Association of California, and three-time chairman of the platform committee of the National Association of Counties. Warren has been named twice as Man of the Year by his home town, once by the Pasadena Chamber of Commerce and once by the La Canada Chamber of Commerce. Warren has been honored for his outstanding contributions to the community by numerous organizations, including the Salvation Army and the Red Cross.

At the age of 5, Phyllis Dorn's art career began as she drew on the empty pages of her grandfather's hymn book. She enhanced her talents in high school and Pasadena College, and then at the University of California at Los Angeles and Pomona College. Although she explored all types of art expression, Phyllis discovered that her main interest was in watercolor. When Warren and Phyllis were married in 1942, Phyllis took time off from her training to raise their three children, but never lost sight of her true passion for art. In 1958, Phyllis returned to her art studies at the California College of Watercolor and in 1960, attended the Otis Art Institute in Los Angeles, presently the Parsons School of Art. In 1966, she earned a secondary teaching credential and began teaching as a substitute in the La Canada and Pasadena public schools, and in the art department of Pasadena City College. With her teaching credential and incredible artistic talent, Phyllis inspired and encouraged her students to exhibit their own hidden talents of self-expression.

Since moving to Morro Bay, Phyllis has been commissioned by a number of organizations to create works of art for display throughout the State. One of her most famous works is a collection of 22 paintings of different castles displayed in each of the 22 rooms of the Sea Coast Lodge in San Simeon, CA. Phyllis' work can also be seen at the Eisenhower Medical Center in Palm Springs, bringing color and beauty to those who come in contact with it. Her works are also contained in private collections, including that of Dolores and Bob Hope.

Warren and Phyllis have shared their hopes and dreams with each other for the last 50 years, each encouraging the other to strive for the very best. A perfect example of this strength is the establishment of Morro Bay Beautiful. In 1980, Phyllis founded Morro Bay Beautiful, an organization dedicated to improving the environment and economic quality of the Morro Bay Area. Phyllis served as founding president from 1980 to 1984, at which time Warren took over as president from 1984 to the present. Morro Bay Beautiful has been an incredible asset to the 16th Congressional District, making significant contributions of funds, materials, and volunteer labor to benefit the residents and visitors of the Morro Bay Area.

In their 50 years of marriage, Phyllis and Warren have been guiding forces in their family and in their community. They are blessed with 3 children, Daniel, Robert, and Jennie, and 14 loving grandchilden. Few couples are fortunate enough to share for over half a century the kind of love Warren and Phyllis have for one another. The occasion of their 50th wedding anniversary is truly a cause for celebration. Mr. Speaker, Mr. LAGOMARSINO and I now ask our colleagues to join us in congratulating Phyllis and Warren on this joyous day. It is our hope that they will continue to share their love for one another and their family, friends, and community for many years to come.

YEAR OF THE AMERICAN INDIAN

HON. ENI F.H. FALEOMAVAEGA

AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. FALEOMAVAEGA. Mr. Speaker, through Public Law 102–188 (S.J. Res. 217, H.J. Res. 342), Congress and the President designated 1992 as the Year of the American Indian. This law pays tribute to the people who first inhabited the land now known as the continental United States. Although only symbolic, this gesture is important because it shows there is sympathy in the eyes of a majority of both Houses of the Congress for those Indian issues which we as a Congress have been struggling with for over 200 years. In support of the Year of the American Indian, and as part of my ongoing series this year I am providing today for the consideration of my colleagues a short biography of Pope, a medicine man from the Tewa Pueblo, taken from a Department of the Interior publication entitled Famous Indians, A Collection of Short Biographies.

POPE (PUEBLO)

For hundreds of years before the Spanish colonized the Southwest, Indians had lived along the Rio Grande in what is now New Mexico. They were successful farmers, made handsome pottery, and wove fine cotton cloth. Above all, they were extremely religious. The supernatural influenced everything they did.

In 1598, colonists and priests from Mexico under Don Juan de Onate established among these Indians the first Spanish community in the Southwest. The new settlers called the Indians "Pueblos" (the name by which they have since been known), because of the Indians' remarkable villages of large timber and adobe houses. Ornate, the new settlement's governor, had Catholic missions and churches built, and in 1610 established a territorial capital at Santa Fe.

The Pueblos' ancient way of life was soon threatened. Considered subjects of the Spanish crown, Indians were required to pay taxes in the form of cloth, corn, or labor. Their villages were renamed after Catholic saints, and their own ceremonies and religious practices were forbidden.

But although they gave lip service to Christianity, and pretended to submit to Spanish rule, the resentful Indians continued to follow their own sacred practices in the secrecy of their (underground ceremonial rooms).

In 1675 a leader arose among the Pueblo Indians in the person of Pope, a medicine man from a Tewa Pueblo renamed by the Spanish "San Juan." Pope had been one of several Indians imprisoned by the Spanish under suspicion of witchcraft and the killing of several missionaries, and he bitterly hated the white occupiers. Released from prison, he went into hiding in Taos Pueblo, and there planned and organized an all-Pueblo, an there planned and organized an all-Pueblo rebellion. The spirits, he said, had ordered him to bring back the Indians' traditional beliefs and customs. Runners secretly carried this message to all the Pueblos, and one by one, native towns enthusiastically joined the plot. Every precaution was taken to keep the Spanish from learning of the conspiracy: Pope, suspecting even his own brother-in-law of treachery, had him put to death.

August 13, 1680, was the date set for the attack. Somehow, however, the news leaked out, and Pope's only hope was to strike at once. On August 10, with the force of a long-suppressed hatred, the Indians attacked.

Nearly 500 of the 2,500 Spanish population were killed. About 30 priests were murdered in their missions, their bodies stacked upon the altars. Santa Fe, the Spanish capital, was beseiged, and its 1,000 inhabitants took refuge in official buildings for about 10 days. Then, after forcing the Indians to a temporary retreat, they abandoned Santa Fe, and, with the remaining Spanish population of the area, fled to El Paso del Norte (now El Paso, Tex.).

Having driven out the occupiers, the triumphant Pope then set out to erase all traces of them. Everything brought by the "Metal People" was ordered destroyed. Indians who had been baptized as Christians were washed with Yucca suds, and use of the Spanish language and all baptismal names was prohibited. In Santa Fe, cattle were herded into churches that had escaped burning. Pope did all he could to restore the old Pueblo way of life.

For a time, Pope was received with great honor as he traveled from Pueblo to Pueblo in ceremonial dress. But his success made him a despot. Hostilities broke out between pro- and anti-Pope Pueblos, and he was deposed. In 1688 he was reelected Pueblo leader, but shortly thereafter, he died.

The Pueblos were masters of their own country for 12 years. In 1692, after brief but brutal fighting, Spanish rule was reinstated under Vargas. There was peace in the Pueblos thereafter. The Spanish remained as occupiers for 150 years longer, but their domination was never again as strong as before.

TRIBUTE TO THE EUFAULA TRIBUNE'S GOOD CITIZENS OF 1991

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. DICKINSON. Mr. Speaker, today I would like to pay tribute to 10 Alabamians who have recently been named Good Citizens of 1991 by the Eufaula Tribune. The Tribune each year recognizes several citizens for outstanding volunteer service. The recipients for 1991 were:

Yamandu Acosta, recipient of the Governor's Hospitality Award. He and his family open their home for international visitors and students. Acosta has given distinguished service to Lions International and has helped to bring hundreds of people from his native Uruguay to the United States for medical treatment. He is president of the Eufaula Little Theatre.

Gloria Hagler, 1991 president of the Eufaula United Way. Ms. Hagler has also served as president of the RSVP board of directors and president of the Eufaula Business and Professional Women's Club. She was a leader in developing plans for the RSVP to open historic Fendall Hall for public tours.

Mildred Houston, member of the RSVP. Ms. Houston oversaw the purchase and wrapping of Christmas gifts for the young people who reside at the Eufaula Adjustment Center. She has also been a long-time central organizer of the First United Methodist Church's fall bazaar.

Jay Jaxon, former mayor of Eufaula. Mr. Jaxon was recognized for his leadership of the Eufaula for Education Committee, made up of 800 volunteers who sought passage of an 8-mill ad valorem tax increase to benefit Eufaula City schools. Eufaula passed this tax when other Alabama communities were rejecting such tax increases for education.

Carol Keefe, chairman of the 1991 Eufaula Pilgrimage. The 1991 pilgrimage brought in thousands of visitors and record receipts. Ms. Keefe coordinated the activities of hundreds of volunteer committee members, hosts, and hostesses. Ms. Keefe also is a member of the Eufaula Heritage Association board of directors and is active in a local garden club.

Father Killian Mooney, priest at Holy Redeemer Catholic Church. Father Mooney was recognized for going above and beyond the call of duty as a parish priest. As a leader in the Georgetown-Eufaula Ministerial Association, he directs the distribution of clothing and food to needy area families each month.

Don Sonnen, president of the Clean Lake Association. Mr. Sonnen directed activities of almost 1,000 volunteers in the second annual Operation Clean Shore, a September event held to clean up Lake Eufaula.

Elizabeth Wells, retired teacher. Ms. Wells taught in Eufaula city schools for 28 years and was recently active on the Eufaula for Education Committee to secure support for the millage increase.

June Wiggins, Boy Scout volunteer. Ms. Wiggins, an employee of Central Bank, received the Silver Beaver Award from the Alabama-Florida Council of the Boy Scouts of America. This is the highest award given for contributions to scouting. She currently serves as volunteer coordinator for troop 11 and is a leader in the Eufaula High School Choral Boosters.

Dr. Linda Young, president of Sparks State Technical College. Dr. Young was recognized for her volunteer service as chairman of the 1991 Eufaula-Barbour County United Way campaign.

It is people like these who make good neighbors, it is good neighbors who work together to create good communities, and it is good communities which make our Nation great. I ask Members of Congress to join with me in paying tribute to these exemplary citizens.

HELP NEEDED FOR AGRICULTURAL CONSERVATION EASEMENTS

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. KOSTMAYER. Mr. Speaker, a change in Federal tax policy is needed to eliminate the hardship imposed by estate taxes on farmers who wish to perpetually conserve their land for agriculture and other, compatible natural uses.

According to the Delaware Valley Regional Planning Commission, more than 82,000 acres of land in the 4 suburban Philadelphia counties were developed between 1980 and 1990. Each year, Pennsylvania loses over 70,000 acres of farmland. In Bucks County, we have lost more than 70 percent of our farms since 1960.

Section 2032A of the Tax Code permits farms to be "specially valued" for estate tax purposes at their agricultural value rather than highest and best use. The intent is to help preserve family farms by not taxing their development potential so long as the family continues to own and farm the land. A 10-year recapture provision ensures this result.

Preserving open land for agriculture, wildlife, scenery and similar purposes is also the objective of section 170(h) of the Tax Code. This allows an income tax deduction for "conservation easements," deed restrictions that limit the use of land to protect its natural features, so long as they qualify as consistent with State and local policies regarding land use and development.

Recently, in the case of a Lancaster County farm widow, the IRS interpreted these sections of the code together and came up with a totally opposite result. The Service said that the placing of a conservation easement over a farm to keep it in agriculture forever would result in a recapture of taxes foregone.

My legislation would correct this situation and remove further impediments to conservation of the farmland that the United States will need to feed itself and the world in the future.

The bill makes it clear that the donation or sale of a qualified conservation easement to protect farmland does not trigger a recapture of estate taxes or disqualify it from special use valuation in the first place. When land is permanently dedicated to agriculture under easement, the purpose of special use valuation is not defeated, but furthered. The law should recognize this fact.

AGAINST THE GULF WAR REVISIONISTS—UNITED STATES EMBASSY IN KUWAIT CONFIRMS IRAQI ATROCITIES

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. LANTOS. Mr. Speaker, on the first anniversary of the beginning of hostilities in the Persian Gulf war, revisionist historians launched a grand campaign to rewrite the history of that war. Unfortunately, even the New York Times, which should have known better, allowed itself to be misused and misled by one of these revisionists rewriters of history.

We here in the Congress, who went through the very difficult decision to authorize the use of force to drive Iraqi occupation troops from Kuwait, know only too well the overwhelming preponderance of evidence that led us reluctantly to approve the use of our military forces against the Iraqi occupiers of Kuwait.

As my colleagues know well, Mr. Speaker, during my entire 11 years in the Congress, I have been an outspoken critic of Saddam Hussein's appalling human rights violations, his brutal use of terror, and his outrageous efforts at international intimidation. I regret that I have been so right in my criticism of his evil regime.

In view of the criticism that revisionists leveled against me and the Congressional Human Rights Caucus for a hearing we held in October 1990 which focused on human rights abuses in Iraqi-occupied Kuwait, I would like to place in the RECORD three important documents which deal with the particular issues which were raised.

First, I would like to place in the RECORD a letter from me to the editor of the New York Times which was published by the Times on January 27. My letter was in response to the initial revisionist Oped by John R. MacArthur.

Second, I ask that another letter be placed in the RECORD. This letter, dated January 27, is addressed to me from Edward W. Gnehm, Jr., our current American Ambassador to Kuwait. As my colleagues know, Ambassador Gnehm arrived in Kuwait City shortly after it was liberated from Iraqi occupation last spring. This letter focuses on Iraqi atrocities in occupied Kuwait which were discussed at the Congressional Human Rights Caucus hearing in October 1990. Ambassador Gnehm is particularly well-qualified to comment upon these matters based on his first-hand involvement in Kuwaiti affairs at the Department of State during the Iraqi occupation and his service as our Ambassador for the past 10 months.

The third document I would like to place in the RECORD is an unclassified diplomatic cable from Ambassador Gnehm to Secretary of State James Baker. This cable addresses directly the question of Iraqi atrocities in Kuwait, and specifically focuses on the reports that Iraqi occupation troops took premature infants off of vital life-support systems, which led to their deaths.

These are important issues, Mr. Speaker, and these documents are critical in order to fully understand the issue.

KUWAITI GAVE CONSISTENT ACCOUNT OF ATROCITIES

TO THE EDITOR: Hold on to your hats. The grand campaign to rewrite the history of the Persian Gulf War is on. And the campaign of revisionist history begins with rewriting the causes of that war.

If you thought that the cause of the war was Saddam Hussein's brutal invasion of Kuwait, you are wrong. If you thought that the cause was Saddam Hussein's reckless and premeditated aggression that gave him control of Kuwait's vast oil resources and imminent domination of the giant Saudi oil fields—giving him mastery of the energy jugular of the world—you are wrong. If you thought that the cause of the war was his horrendous human rights violations—the verified poison gassing of his own citizens, and verified torture and murder of thousands of innocent victims, including infants, children, handicapped, women and older persons—you are wrong. If you thought the cause of the war was Saddam Hussein's growing nuclear capability, his huge stock of biological and chemical weapons and the missile capabilities—you are wrong.

The real cause of the war, according to John MacArthur (Op-Ed, Jan. 6), was a concocted story by the 15-year-old daughter of the Kuwaiti ambassador to Washington! She allegedly fabricated a story about premature infants being taken from their incubators by the invading Iraqi military and left to die. The article's sinister innuendo suggests that the girl was not even in Kuwait at the time of the Iraqi invasion, and the whole gruesome incident was a diabolical plot by a U.S. public relations firm. So much for revisionist history—now for the facts.

The Congressional Human Rights Caucus decided to hold a hearing on Iraqi human rights abuses in Kuwait, and it sought individuals who could give eyewitness accounts of what was happening there. Among several individuals brought to its attention was a fifteen-year-old Kuwaiti girl, Nayirah.

At the time of the hearing, it was requested that her identity—and the identity of another witness—not be made public to protect friends and associates in Kuwait from Iraqi retaliation, including torture and murder. I felt then, and I feel now, that this was a legitimate and appropriate request given Iraqi atrocities in Kuwait. It would be hard to think of a more appropriate use of witness protection—an honored and universally accepted American practice under infinitely less dangerous circumstances.

The Congressional Human Rights Caucus has a Democratic and a Republican Cochairman, and each of us has one staff person. The staff work together in preparing Caucus hearings, and each Cochairman is briefed for caucus events by has staff person. The Cochairmen do not brief each other. We alternate chairing of Caucus events.

The fact that Nayirah was the daughter of the Ambassador of Kuwait made her a more credible witness. The Kuwaiti government would have considerably more to lose if the daughter of its Ambassador were not telling the truth than if some man-in-the-street lied. If anything, her relationship to the Ambassador and government enhanced here credibility.

Nayirah's account took a few minutes during a hearing that lasted several hours. Other eyewitnesses gave much longer and more extensive accounts of atrocities by Iraqi troops in occupied Kuwait. Her account was consistent with the information we received from other witnesses, with hundreds of other atrocity stories from Kuwait carried by media around the globe, and with reports by independent human rights organizations, such as Amnesty International, who also testified at our hearing and subsequently published accounts similar to Nayirah's.

Was Nayirah telling the truth? MacArthur's unsubstantiated innuendo that Nayirah was not even in Kuwait when the atrocities occurred was never checked. The State Department in fact, confirms that she was in Kuwait at the time of the Iraqi invasion and she remained in the country for several weeks until she was able to escape.

Given the countless cases of verified Iraqi human rights violations, including torture and murder, which have occurred before, during, and since the Iraqi invasion of Kuwait, it was hardly necessary for any government or any P.R. firm to manufacture false stories. There were so many appalling accounts, all sickeningly true, that it would have been totally unnecessary and counterproductive for them to invent atrocities.

The suggestion of some "special relationship" with the public relations firm Hill & Knowlton is absurd. The Caucus has held hearings on human rights abuses on countries around the globe—from the Soviet Union to South Africa, from Indonesia to Central America. We have exposed violations by our closest and most democratic allies, including Great Britain when we held hearings on human rights abuses involving the "Birmingham Six" and others in Northern Ireland. These Caucus actitivies are held without regard to whether these countries are represented by any law firm or public relations firm.

Mr. MacArthur's deceptive article serves only the cynics who seek to rewrite the history of the Persian Gulf War.

(REP.) TOM LANTOS,
Co-chairman, Congressional Human Rights Caucus, Washington, Jan. 23, 1992.

EMBASSY OF THE
UNITED STATES OF AMERICA,
Kuwait City, Kuwait, January 27, 1992.

Hon. TOM LANTOS,
House of Representatives, Washington, DC.

DEAR MR. CONGRESSMAN: I have been deeply disturbed by several recent media reports that focus on the hearings you held in the fall of 1990 regarding the Iraqi atrocities in occupied Kuwait. These attacks distort the truth and themselves fabricate fiction.

Media would have its audience believe that one of your witnesses, Nayirah Saud al-Sabah, daughter of Kuwait's Ambassador in Washington, was not in Kuwait in the period after the Iraqi invasion. That is simply false; she was in Kuwait until she escaped with her mother on September 21.

In the months of August and September, I was in Washington working with Ambassador Saud Nasir on a daily basis. I remember cautioning him on several occasions about the danger facing his family inside Kuwait as a result of his very high profile after the Iraqi invasion. His response repeatedly was that his country's liberation was paramount no matter what that meant for him and his family.

Yet, I knew he was worried and, as the days passed, the Iraqi noose began to close around the Ambassador's wife and daughter. I urged him again to get them out. He said his wife still refused to leave Kuwait. Then one day in early September, I was with him at his home in Washington when a satellite telephone call came from his wife inside Kuwait. She told him that she could no longer move around. She admitted it was only a matter of time before she and the family with her would be caught. She agreed to come out with Nayirah.

I began working on ways that we might assist in extricating the Ambassador's family. Ultimately, they were able to escape by using altered passports. I later met Abdul-al Al-Qenaee, the Kuwaiti who brought the Ambassador's wife and daughter out of Kuwait.

In addition to my own account, officers of my embassy have spoken to people who were in Kuwait in August and September 1990, and those people verify that they saw Nayirah in Kuwait at that time. I think it is incontrovertible that she indeed was in Kuwait during the time frame she spoke of when before your subcommittee. Efforts to imply otherwise are patent efforts to deceive.

Second, you and your colleagues who agreed to protect witnesses before your subcommittee by using only first names made, in my opinion, a very sound, correct and humane decision. Since liberation, I have heard a number of stories from Kuwaitis who remained under Iraqi occupation that they or friends suffered directly when inadvertently their relatives on the outside were quoted or innocently tried to send messages over the media to their families inside. The Iraqis monitored radio and television coverage of Kuwaitis and went after family members inside hoping to intimidate Kuwaitis outside from speaking out. Had your committee used full names you would have jeopardized other innocent people still in Kuwait.

I want also to mention Iraqi atrocities against premature and newly-born babies. There is no question that a number of premature babies died in Kuwait due directly to actions taken by Iraqi authorities. Those who were working in the hospitals and clinics tell multiple stories, not about one, but about several incidents where babies died. The numbers total in the several hundred. In some cases the Iraqis ordered babies taken out of the incubators and ventilators that provided life support. In other cases, nurses tell of electric cords being yanked from the machines or oxygen turned off. The resulting deaths are deplorable no matter what specific Iraqi actions led to the loss of life.

The world needs to understand that these atrocities against newborn infants was only small—but horrible—manifestation of the Iraqi mentality. Two hospital employees have told of attending a staff meeting called by the newly-arrived Iraqi doctor, a military colonel given command of the hospital. He announced that several wards of the hospital would be closed, including those for premature babies and the handicapped. He said the state should not spend valuable time and resources on those who should have died anyway. Only the fit and strong had a place in the new Iraq! That same day at least three premature babies died at that hospital when removed from ventilators. Hospital staff attribute five additional deaths to the actions ordered by the Iraqi colonel.

Mr. Congressman, in my very humble opinion, you and your colleagues deserve tribute for your initiative in holding those human rights' hearings. A few years ago in another war, if a few people had acted as you did now, millions of lives might have been saved. I have no doubt that many more Kuwaitis would have died at Iraqi hands if the world had not early on taken note of Iraqi atrocities. We will never know the number of Kuwaitis and others in the region who remain alive today because America confronted a regime which had no regard for human life. We should all be proud to be bold.

God bless you for your efforts, and let us pray that we learn from our past mistakes and always face tyrants who are willing to shed life indiscriminately.

Sincerely,

EDWARD W. GNEHM, Jr.,
Ambassador.

TEXT OF CABLE

The following is the text of a cable from the United States Embassy in Kuwait, sent to Secretary of State James A. Baker in Washington, D.C. The cable is dated February 3. It deals with Iraqi atrocities in occupied Kuwait, and focuses on the accounts of Iraqi troops removing infants from incubators. This cable is unclassified, with names of informants removed.

1. An incredible twist to press stories looking at Kuwait one year after the invasion is the rather smug and cynical casting of doubt on accounts of atrocities. The story that newborn babies had died after being removed from incubators by Iraqi soldiers has in particular been dismissed by some "revisionist historians". There have even been claims that such stories were fabricated deliberately for political ends. We would like to make a straightforward contribution to any discussion of this issue. Officers who have served at this post since the liberation of Kuwait are convinced that premature and newborn babies died when Iraqis removed life support systems from Kuwaiti hospitals. Whatever other twists this unseemly debate might take, their deaths and the pain of their families should not be in question.

2. In our view the most outrageous aspect of the recent media reports casting doubt on the "incubator story" is that at least two human rights groups, as well as a number of journalists affiliated with reputable organizations, at some point have claimed that after "investigating" they found no evidence of babies dying as a result of Iraq's taking incubators from Kuwaiti hospitals. We believe claims not to have found such evidence are either false or else the "investigation" was so cursory and biased that no other conclusion was possible. Our own experience simply allows no other conclusion.

3. Officers at Embassy Kuwait are not professional investigators and we have not systematically pursued accounts of the incubator atrocities to compile evidence that would stand up in a court of law. Nevertheless, since March 1991, we have had hundreds of conversations with Kuwaitis about their personal experiences of life in Kuwait during the occupation. In the course of these conversations, the "incubator story" has at times come up. Often it is told as a second-hand account—something that happened to a neighbor or a relative. The stories track generally with the accounts we all heard in August and September of 1990.

4. Occasionally though, chance encounters have placed an Embassy officer face to face with a Kuwaiti who relates a first-hand account of something he or she personally witnessed that supports the stories about the removal of incubators from the hospitals. Sometimes the story is of the death of their own child.

5. It is hard to convey the impact on the listener of eyewitness accounts of atrocities. You are told of the insignificant details of a sadist's accent or a father's idle thoughts the moment before he discovers his son's mutilated body on the doorstep. You hear something horribly true even though your own experience provides no context. Most of all, you feel you are speaking with someone whose life has been altered by the wound they carry inside. Something very real happened.

6. In support of the incubator story, we have heard such eyewitness accounts from nurses and doctors, morgue attendants, ambulance drivers, and cemetery caretakers. Thus we believe that a number of premature and newborn babies died as a direct result of orders given or actions taken by Iraqi officers and doctors. We are not referring blandly to an increased infant mortality rate due to shortages of equipment, medicine, medical staff, or power although that is a crime that can undoubtedly be laid at the feet of the Iraqis. We are speaking about babies who died when nurses were forced to remove them from life support systems or when Iraqi soldiers removed key components of the life support systems.

7. We cannot say how many babies died this way. We hope one day the Government of Kuwait and human rights groups will have an answer to that question. We have been told that approximately two hundred and fifty bodies of babies where buried in several mass graves in Riggae during August and September of 1990. The Kuwaiti ambulance driver who delivered the bodies and the caretaker who buried them kept track of the numbers but cannot say how or where the babies died. A woman who washed and wrapped the remains tells of receiving a container with nearly fifty bodies from one hospital morgue one evening in the latter half of August. Many of the bodies where of premature babies. She knew something extraordinary was taking place. Halfway through her grim task she found one baby still alive. She tried to save it but the baby died after twenty minutes.

8. (Name withheld), a nurse at Aladan Hospital, argued with a group of Iraqi soldiers who demanded that babies be removed from fifteen ventilators and incubators. (Not all of the incubators where in use.) The Iraqi officer, growing angry, reached out and disconnected the tube carrying oxygen to a ventilator. She began to scream. Another nurse ran into the ward and together they moved the babies onto cots. One baby died almost immediately. A total of four died within twenty-four hours. The ventilators and incubators were moved by the soldiers to another room in the hospital and locked away. Two weeks later, the equipment was brought out of the room and lined in the hallway to be filmed by a news crew.

9. At Al-Fahra Hospital, (names withheld) relate supporting accounts of the Iraqi doctor placed in charge of the hospital. his name was Colonel Khalil. He announced to the staff that three of the four pediatric wards of the hospital would be closed. He said the state should not spend valuable time and resources on those who should have died anyway. On the morning of August 26, (name withheld) was forced by the Iraqis to move twelve babies from the neo-natal intensive care unit (ward eight) to the regular pediatric ward. Eight of the babies were removed from incubators, two of the babies were disconnected from life support ventilators. (name withheld) tried to keep the babies alive but without the ventilators, two babies died that day. A third baby also died. Six of the eight incubators in ward eight were removed (the doctors did not witness by whom) and the doors were chained shut by order of Colonel Khalil.

10. Supporting these accounts, we have in our possession a number of official Iraqi documents ordering Iraqi officials in Kuwait to remove equipment from hospitals, labs, universities, and research centers. The documents do not mention incubators but other medical equipment is listed specifically. We know of course that the Iraqis systematicly removed computers, engineering equipment, laboratory equipment, and other machinery wherever they found it in Kuwait. (stripped labs at the university actually had written on the walls the names of the institutions in Iraq to which the trucks were to deliver the looted goods.)

11. We also have seen photographs of the bodies of babies from the hospitals. These sad photographs of course do not have anywhere near the impact of the first-hand accounts.

12. It is astonishing, sad, and ultimately unbelievable that an "investigator" could come to Kuwait and fail to find evidence supporting reports of this particular atrocity. A call to any one of several Kuwaiti organizations attempting to record the accounts of atrocities would have led to strong evidence and important leads. A chat with somebody in our Embassy would have directed them to some of the people we have met who can shed light on the stories. Any journalist or human rights investigator who asks will of course find us prepared to point them in the right direction on this story.

13. In conclusion, we should note that when one examines all the accounts of Iraqi brutality in occupied Kuwait, the story of the incubators begins to look relatively mild. It is abundantly clear that Iraqi policy was to terrorize and brutalize the population of Kuwait into a state of absolute fear and submission. Total disregard for human life has kept Saddam Hussein and the Baath party in power in Iraq and he clearly believed terror was the key to exerting his power over the population of Kuwait. Kuwaitis will not forget that the liberation of their country ended a reign of terror; from time to time we should recall that fact ourselves.

EDWARD W. GNEHM, Jr.,
U.S. Ambassador to Kuwait.

TRIBUTE TO GENE AMBS

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. CAMP. Mr. Speaker, it is with great pleasure that I rise today to recognize a truly fine individual, Mr. Gene Ambs, from Cadillac, MI.

Gene Ambs has been a member of the Michigan State Police force for a quarter of a century. He started his career on December 11, 1966, as a road trooper in Bridgeport, MI.

After gaining experience in Bridgeport as well as a Jackson post and the scientific labs latent print unit in East Lansing, he was promoted to the rank of detective in 1972 while working in East Lansing. Mr. Ambs had many opportunities to move up in rank, but preferred to work in the field, a luxury he would not have had if he had been promoted.

He was transferred to the Cadillac post in 1981 where he worked for the rest of his career. Gene Ambs even earned national recognition for one of his cases through the television program "Top Cops."

Mr. Speaker, on December 11, 1991, Gene Ambs retired from the Michigan State Police force after 25 years of dedicated service. I know you will join with me in commending and

thanking Gene Ambs for his commitment and service to the people of the State of Michigan.

THE PRESENTATION OF THE VICTORY OF FREEDOM AWARD

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. HORTON. Mr. Speaker, as the chairman of the Committee to Commemorate the 1956 Hungarian Revolution, I recently took part in the joyful celebration of the 35th anniversary of that historic event. As one of a series of commemorative observances, a delegation of the Hungarian Freedom Fighters' Federation U.S.A. met with First Lady Barbara Bush on January 14, 1992, in the White House. The delegation on behalf of the federation presented Mrs. Bush with the federation's Victory of Freedom Award established on the occasion of the 35th anniversary of the Hungarian Revolution and expressed its appreciation of her sustained support of the Alba Regia Memorial Chapel. The chapel was erected in memory of Hungarians who fell in the defense of their country's liberty. Gratitude was also expressed for the work Mrs. Bush is doing on behalf of the victims of tyranny, especially the children who were forced to leave their home.

Mrs. Bush, on behalf of the President, also received the Victory of Freedom Award presented to President Bush in recognition of his continuing support for the ideals of freedom and justice in Hungary. The award also sought to recognize President Bush for his indispensable efforts on behalf of freely elected governments which culminated in 1990 in the victory throughout Eastern Europe of the ideals of the 1956 Hungarian Revolution. We Americans who have labored on Hungary's behalf during the past decades feel a great joy that our support was not in vain.

With the award, Mr. Istvan B. Gereben, copresident of the Hungarian Freedom Fighters' federation U.S.A., presented a letter from the Federation to the President expressing the sentiments of its members and their views on the full implementation of the principles of democracy and a free market in Hungary. I would like to include a copy of this letter in the CONGRESSIONAL RECORD to share its message with my colleagues and my fellow Americans.

HUNGARIAN FREEDOM
FIGHTERS FEDERATION,
Rockville, MD, January 14, 1992.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: On the occasion of the 35th anniversary of the 1956 Revolution the Hungarian Freedom Fighters' Federation U.S.A. resolved to recognize those individuals and organizations whose continuous efforts on behalf of the principles of freedom and human rights contributed to the fulfillment of the ideals of 1956.

You, Mr. President, are among those whom we are privileged to honor with this special recognition. Your support of Hungary's fight for its freedom is evident in many of your statements and actions. The policies that you have supported and carried out both as vice President and President have substantially contributed to the disintegration of the Soviet Empire. We are grateful to the people and the leaders of the United States for their determination to stay the course and thus help the people of our land of origin to achieve the goals of the 1956 Revolution.

The issues which surfaced with the dramatic defeat of the Communist dictatorship and the election of a free government in Hungary are manyfold and seem almost unresolvable. Initial euphoria has given way to a growing desire for order, stability and security. We observe frustration, disillusionment and dissatisfaction among the Hungarian people. We fear that in the struggle to establish a free and just society the most essential elements of democracy may fail to take root. The appeal of populist, and exclusionary sentiments is widespread and growing. In these circumstances leaders may be tempted to adopt emergency authoritarian measures. To avoid the possibility of such a reversal of progress the United States must monitor and aid the development of democracy and a free market.

Our Federation by the presentation of its emblem wishes to express its gratitude for your support given to Hungary and Hungarians.

On this occasion our Federation thanks you, Mr. President, and the American people for the help and opportunities we, as refugees from tyranny, received.

Gratefully yours,

DR. ANDRAS POGANY,
President.
ISTVAN B. GEREBEN,
Copresident.
ILONA M.GYORIK,
Secretary General.

FRANCIS AND VESTA LYNE CELEBRATE 50TH WEDDING ANNIVERSARY

HON. TOM DeLAY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. DELAY. Mr. Speaker, today, the 7th day of February 1992, Francis and Vesta Lyne of Clay Center, KS are celebrating their 50th wedding anniversary. I would like to extend sincere congratulations to them for reaching this monumental milestone of life. The lasting love of a husband and wife is a gift from God. I hope that life's most precious treasures will forever be within their grasp and that their love will be everlasting.

STABILIZING THE BANKING SYSTEM THROUGH INTERSTATE BANKING AND BRANCHING

HON. PETER HOAGLAND

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. HOAGLAND. Mr. Speaker, today Congressman MCCOLLUM and I, along with a number of colleagues, are introducing H.R. 4202 to further advance the reforms of the American banking system that the administration and the Congress began last year. Entitled the Nationwide Banking and Branching Act of 1992, our bill will enable banks to safely and profitably conduct additional banking activities across State lines. The bill we are introducing today is modeled on the proposal offered by the administration last year and the bill reported from the House Committee on Banking and Urban Affairs in June 1991.

LAWS ANTIQUATED

We have what is known as a dual banking system in America. Banks may be chartered as national banks and regulated by the Federal Government or they may be chartered as State banks and regulated by State governments. There are two laws that, in our view, make modern-day banking cumbersome: the McFadden Act enacted in 1927, and last amended in 1933, and the Douglas amendment enacted in 1956. The McFadden Act prohibits interstate branching by national banks. The Douglas amendment prohibits bank holding companies from chartering or acquiring a bank in another State unless expressly permitted to do so by State law.

The bill we are introducing today has three major features. First, it would authorize the Federal Reserve to approve interstate acquisitions by repealing the Douglas amendment upon enactment. Second, 2 years after enactment, it would allow banks to establish or acquire a branch outside their home State, unless the legislature of the receiving State passes legislation opting out or prohibiting out-of-state banks from branching into their State. Third, beginning 2 years from enactment, it would allow bank holding companies with bank subsidiaries in more than one State to combine two or more subsidiary banks into a single bank through merger, consolidation, or other transaction. A summary of the provisions of the bill appears at the end of this statement.

PROTECTING THE DEPOSITOR

Studies show generally that the more locations a bank has, the less likely it is to fail. Further, banks that are allowed to operate across State lines and into different regions of the country are less likely to fail because they can diversify their deposit base and their loan portfolios. A bank operating in more than one region with a diverse base, for instance, is less likely to become overly dependent upon a local economy, like agriculture, oil, or defense technology. Thus, if a downturn in a local economy occurs, or if an industry-specific business hits a slow period, the bank has other sources of deposits and customers. With interstate operations, banks are less vulnerable to vacillations in local economies. In a report prepared for the Financial Institutions Subcommittee dated December 17, 1990, entitled "The Banking Industry in Turmoil: A Report on the Condition of the U.S. Banking Industry and the Bank Insurance Fund," banking experts Robert E. Litan, James Barth and Dan Brumbaugh expressed it this way:

There is virtually no other business in the United States that is so geographically restricted as the banking business * * * At a minimum, allowing banks to branch nationwide would permit them to diversify their risks and thus reduce the deposit insurance liabilities of the Federal Government. It is difficult to believe that 9 of the top 10 banks in Texas that failed during the 1980's would also have failed had they been part of larger nationwide operations. Similarly, had Continental Illinois been able to branch beyond the confines of Chicago and thus diversify its

funding sources, it is at least conceivable that the deposit run that helped trigger the bank's collapse would not have happened, or if it did, would have had the same disastrous effects.

Banks which are geographically diverse can diffuse losses over a broader base. As banks become broader and more diverse, failure is less likely. There will be fewer failures which will result in banks paying lower deposit insurance premiums and ultimately lower charges to customers.

AFFIRMING CURRENT ACTIVITY

Current law authorizes considerable interstate banking activity already. This legislation would allow it to expand further, but primarily would allow it to occur considerably more efficiently. This bill is authorizing what is basically happening already. In recent years, many States have enacted legislation permitting reciprocal interstate banking and the courts have upheld these laws. Thirty-four States have passed laws to permit nationwide banking through bank holding companies. Fourteen States permit regional banking. Thus, 48 States already permit some form of interstate banking. Only two States prohibit all forms of interstate banking.

In addition, modern technology makes it virtually impossible for a bank not to operate interstate. According to "Banking Law Manual" (Norton and Whitley):

As a practical matter, today almost any type of financial institution can originate or acquire assets on a nationwide basis through many formal and informal avenues that extend its market reach beyond the traditional bank headquarters location: interstate ownership of banks and thrifts, lending through affiliated nonbank/nonthrift finance companies, mortgage companies and loan production offices, purchase of local participations and securitized assets through correspondent bank networks, credit card lending, statewide and interstate branching * * *

EFFICIENCIES

Interstate expansion saves costs for banks which in turn helps attract capital, increases profits and lowers charges to consumers. Under the current system, a bank holding company, if it is to operate interstate, must operate through a separately chartered bank in each State. Such a bank must set up a separate board of directors and management; prepare separate regulatory reports; undergo separate examinations; and install separate computer systems. Banks must satisfy capital requirements separately. Eliminating this duplication would mean tremendous cost savings for banks and ultimately for their consumers. More savings mean strengthened capital and more stable banking.

Former Treasury Undersecretary Robert R. Glauber cited in testimony a McKinsey & Co. study that interstate branching "could yield as much as $10 billion annually in cost savings." A study commissioned by the Congressional Budget Office conservatively estimates cost reductions of 3 percent to 4 percent. This study concludes that reducing real costs by 3 percent to 4 percent would be passed on to bank customers in the form of reductions in real prices for banking services. "A reduction in real costs would likely generate a 3 percent reduction in real prices (e.g., lower loan rates and/or higher deposit rates)," the study maintains.

CUSTOMER CONVENIENCE

An interstate network would be advantageous to the consumer especially in areas near State borders. For example, a customer could do all his or her banking in any State in which the bank operates. Because under current law banks have separate computer systems, a checking account with a bank in one State cannot be accessed in an affiliate bank in another State. Consolidating computer systems would be especially convenient for travelers. Who hasn't run short of cash while traveling?

Interstate branching would bring improved and cheaper services for both consumers and corporations. A CBO-sponsored study states that among the economies of scale is the fact that disbursing customers are more likely to do business with the same bank as collecting customers. This would reduce internal costs.

INTERNATIONAL COMPETITION

Finally, there is the issue of international competitiveness. Most European countries have already adopted full nationwide branching, which is soon to be expanded to unrestricted branching throughout the European Community. As the world economy continues to internationalize, we must keep our industry competitive with those abroad. According to Dr. Glauber:

The United States remains the only major industrial country in the world that does not have a truly national banking system.

CONCLUSION

Banks today are hamstrung by antiquated Federal laws born in the era of the Great Depression. Federal law has prohibited banks from participating in the vast growth and diversification of their competitors in the financial services industry. For example, Sears Roebuck is involved in insurance, real estate, securities, credit cards, and numerous other financial services. Similarly, General Electric offers a vast array of financial services in the areas of insurance, real estate, securities, and other money management services. Banks have been prohibited from fully competing with these entities. As a result, they have lost market share, lost profitability, and become weaker during a period of time when other sectors of corporate America have flourished.

Comparing certain statistics from 1970 with 1990 illustrates the point. In 1970, banks had 31 percent of all commercial lending; in 1990, they had 10 percent. Commercial banks' return on average equity in 1970 was 12.36 percent on after-tax earnings; in 1990, it was 7.84 percent. In 1970, there were 251 banks on FDIC's problem list; from 1985 to 1990, that number topped 1,000 each year.

Congress has a responsibility to protect the taxpayer, the depositor, and the fund that insures customers' deposits by providing banks the modern tools they need to run a reliable, modern business. The statutory restrictions on interstate banking are artificial, serve no useful purpose, and weaken an industry vital to our Nation's health. The role of Congress should be to promote competition, not hinder it. This bill is an attempt to do that, and I hope my colleagues will join me in enacting it into law.

SUMMARY OF H.R. 4202, THE NATIONWIDE BANKING AND BRANCHING ACT OF 1992

NATIONWIDE BANKING

Authorizes the Federal Reserve Board to approve applications to acquire any insured depository institution or bank holding company in any state upon enactment of this bill. This has the effect of repealing the Douglas amendment enacted in 1956.

INTERSTATE BRANCHING BY NATIONAL BANKS

Authorizes the Comptroller of the Currency to approve applications to permit a national bank to establish or acquire a branch in a state outside the state in which the main office of the bank is located beginning two years after enactment unless the state "opts out" by passing legislation prohibiting out-of-state banks from establishing or acquiring branches in the state. This has the effect of repealing the interstate prohibitions of the McFadden Act enacted in 1927 and amended in 1962.

Allows interstate branching to begin early if a state "opts in."

Provides that any such branch is subject to the laws of the host state to the same extent as a national bank with its main office in that state.

INTERSTATE BRANCHING BY STATE-CHARTERED BANKS

Authorizes, beginning two years after enactment (unless a state "opts in" early), a state bank to establish or acquire a branch located outside the state in which the bank is chartered if authorized by the law of the state in which the bank is chartered.

Allows states for two years after enactment to enact legislation to "opt out" by passing legislation prohibiting out-of-state banks from establishing or acquiring branches in the state.

Provides that any branch of an out-of-state bank shall be subject to the laws of the host state as if it were a branch of a bank chartered by the host state.

Allows the host state to exercise supervisory, regulatory and enforcement authority over branches.

INTERSTATE BRANCHING BY FOREIGN BANKS

Allows foreign banks to establish and operate (a) a federal branch in any state outside the home state with approval of the Comptroller of the Currency in consultation with the Federal Reserve Board and (b) a state branch with the approval of the Board and the state regulatory authority.

Requires foreign banks to have a capital level equivalent to that required of domestic banks for branching purposes.

INTERSTATE CONSOLIDATION

Allows a bank holding company with bank subsidiaries in more than one state to combine two or more subsidiary banks into a single bank through merger, consolidation or other transaction beginning 2 years from the date of enactment, unless the states "opt in" early.

Allows a consolidated bank to acquire and operate additional branches pursuant to state law.

COMMUNITY REINVESTMENT REQUIREMENTS

Requires federal supervisory agencies to prepare for banks with interstate branches a written evaluation of the entire institution's record of performance in community reinvestment and for each state in which the bank has one or more branches, a separate written evaluation of the record of performance within each state.

GUIDELINES FOR MEETING CREDIT NEEDS

Requires federal supervisory banking agencies to publish regulations establishing guidelines to ensure that each interstate branch meets the credit needs of the community and market area in which the branch operates.

STATE TAXATION AUTHORITY

Provides that state taxation authority is not affected by this act.

A SALUTE TO THE ALVIN AILEY DANCE THEATER

HON. KWEISI MFUME

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. MFUME. Mr. Speaker, I would like to commend the Alvin Ailey Dance Theater for its prestigious work within the world of fine arts, as well as its work throughout various communities, and for sharing their creative genius with the less fortunate. The group was founded in 1958 by Alvin Ailey who was a man of vision. His talents ranged from the preservation of African-American cultural heritage to incorporating social statements in the form of dance. Ailey wanted the world to realize that dance was not just a form of entertainment but it was indeed a means of communication.

In 1969, Alvin Ailey founded the Alvin Ailey American Dance Center. This official school of the Alvin Ailey American Dance Theater educates over 2,500 students per year in the art of dance. Originally, the company employed only black dancers but Ailey shaped it into one that was multiracial, reaching people of extended backgrounds. The members of this multiracial dance company serve as cultural ambassadors as they maintain an extensive touring schedule that has taken them to 48 States, 45 countries, and 6 continents.

Unfortunately, Ailey's contributions to the world of dance ended with his untimely death in 1989. His career died, but not his irreplaceable influence on dance and the community. His own protegee and former principal dancer of this company, Judith Jamison, became the new artistic director of Alvin Ailey Dance Theater. Not only did Ms. Jamison rejuvenate the dance company, but she has also planned to continue the establishment of several 6-week company residencies in cities throughout the United States. The Ailey Camp is an important component of the dance company's community outreach.

I am particularly proud of the Ailey Camp. This project is located in both Kansas City and in my own State of Maryland. The Kansas City Ailey Camp was founded by the Kansas City Friends of Alvin Ailey, and the Maryland Ailey Camp was founded by the Alvin Ailey Dance Theater Foundation of Maryland, Inc. The program is innovative and exciting in that it uses dance as a core curriculum to impact at-risk youth. Participants are middle-school-aged children who are primarily urban minorities of lower socioeconomic status and are in serious danger of becoming another dropout statistic due to a host of problems. They are given an opportunity to enhance their creativity and self-esteem and become motivated—all through the glorious experience of dance.

Mr. Speaker, I would like to applaud the Alvin Ailey Dance Theater Foundation of Maryland, Inc., for its superior work and commitment to bringing artistic excellence to the State of Maryland. It was their initiative in August of 1989 which established a unique and praiseworthy relationship with the Alvin Ailey American Dance Theater.

Thus, Mr. Speaker, I would like to salute the Alvin Ailey Dance Theater. Based in New York, this world-renowned modern dance company, under the leadership of Judith Jamison, is a stellar example of the American ideal, personified through artistic expression. The theater's dedication to the preservation and enrichment of American modern dance heritage and its community outreach deserve to be commended and should be emulated by other performing art companies. The Alvin Ailey Dance Theater is truly an example of an artistic performing arts organization with a social conscience and a devotion to artistic excellence.

BATTLE CREEK ACADEMY HIGH SCHOOL BAND

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. WOLPE. Mr. Speaker, I want to pay special tribute to members of the Battle Creek Academy High School Band located in Battle Creek, MI. The Battle Creek Academy Band was selected by the National Executive Board of Christian Instrumental Directors Association to perform the opening concert for the CIDA national conference scheduled for March 19–20, 1992, in Springfield, MO.

The selection of the Battle Creek Academy Band for this honor was based upon a recording of a live performance presented in Kettering, OH. The Battle Creek Academy has the distinction of being the only high school band invited to perform; all other bands selected will represent the collegiate level. The academy band will present a concert of sacred and classical music under the directorship of Ms. Nancy Steely to an audience of leading composers, directors, and musicians from all over the United States.

The members of the Battle Creek Academy Band have demonstrated remarkable musical talent and creativity to have been chosen for such an honor. This impressive accomplishment is eloquent testimony to the musical ensemble, dedication, and discipline.

I am certain my colleagues will want to join with me in saluting members of the Battle Creek Academy Band for their outstanding achievement.

SOCIAL SECURITY'S TELESERVICE REPRESENTATIVES ARE TRAINED PROFESSIONALS

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. BURTON of Indiana. Mr. Speaker, in my last newsletter, I told my constituents about legislation that would require the Social Security Administration to list the phone number of its local offices in the telephone directory alongside the '800' number. I referred to employees of Social Security's teleservice centers as switchboard operators.

It has been brought to my attention that Social Security's teleservice representatives are trained professionals who receive extensive training to handle Social Security problems. They receive 6 weeks of initial training when they are hired, and they attend periodic training sessions after that to keep them up to date on Social Security rules and procedures.

I apologize to those Social Security employees who felt that my newsletter demeaned their position. I do believe they provide a valuable service. As a member of the House Post Office and Civil Service Committee, I would like to state for the record that I believe that the vast majority of Federal employees are dedicated public servants.

It was also brought to my attention that there are peak periods during the month when seniors have the most difficulty getting through on the '800' number. For instance, it is very difficult to get through at the beginning of the month when Social Security checks are issued. In addition to listing both the '800' number and the local phone number in telephone books, I would urge the Social Security Administration to do more to inform Social Security recipients when these peak periods are and when the best times to call are.

AN ALARMING RISE IN ANTI-SEMITISM ACROSS THE NATION

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. SCHUMER. Mr. Speaker, I rise today to bring to the attention of my colleagues and our Nation the release of the 1991 Audit of Anti-Semitic Incidents. This important study is compiled annually by the Anti-Defamation League, and it is the most comprehensive analysis we have to of the incidence of anti-Semitism in our country.

Sadly for our Nation, the numbers in 1991 are higher than ever before the 13 years this study has been conducted, up a full 11 percent since 1990. All Americans ought to be disgusted by these results. We are marching backwards rather than forwards. When we should be seeing the quashing of prejudice and anti-Semitism, we instead are witnessing a return to a climate in which anti-Semitism has become more acceptable. We see ugly signs of it ranging from our street corners to even our Presidential campaigns.

For the first time, there were more attacks on Jewish individuals than there were on their property: 950 cases of anti-Semitic harassment and assault compared to 929 cases of vandalism. Physical assaults doubled in 1990 to sixty.

The most tragic incident of all occurred in my own hometown of Brooklyn, where 29-year-old Yankel Rosenbaum was stabbed to death during the riots in Crown Heights. As Abe Foxman, the ADL's director, put it, this was the "first lynching of a Jew in the United States since Leo Frank in 1915." In another tragedy, a Holocaust survivor from Russia, Brocha Estrin, jumped to her death after being tormented by images that reminded her of Nazi Germany. In addition, 23 Jews suffered

serious bodily injury in those riots, including beatings and slashings. Synagogues were fired upon, yeshiva and other cars were burned, and windows were broken in virtually every Jewish home on Crown Heights' President Street.

Anti-Semitic vandalism occurred around the country in 1991. A synagogue in Los Angeles was firebombed. A synagogue in Boca Raton, FL was smokebombed. A synagogue in Dayton, OH was desecrated with swastikas. And in Knoxville, TN, a Jewish-owned store was vandalized with anti-Semitic graffiti and a molotov cocktail by Skinheads.

1991 also saw a resurgence of politically related anti-Semitism attributable to the war in the Persian Gulf. A California country club with many Jewish members received this phone treat: "Kill every Jew * * * on behalf of the Iraqi people." Cars in Pennsylvania were painted with the words "Death to Israel" and "Saddam Rules." There were 52 such incidents during Operation Desert Storm alone.

For the fourth straight year, anti-Semitic acts on campuses increased. At Columbia University, for instance, 52 mezuzas were ripped from the doorposts of Jewish students. The reports also chronicles the "erosion of the taboo against such open bigotry," adding, "Nowhere is it reflected more clearly or disturbingly than in the proliferation of bigotry and violence in the lyrics of some of the best-selling popular music of the day."

Looking at the State-by-State analysis, I was chagrined that my own State led the country, with 254 anti-Semitic vandalism incidents in New York, an increase of 68. Community leaders in New York must redouble our efforts to put an end to this travesty, and law enforcement agencies must be vigilant in tracking down these criminals.

I am proud to have successfully sponsored the Hate Crimes Statistics Act in the last Congress. This new law requires law enforcement agencies to track crimes of such a hateful nature. We need a diagnosis of the illness to know where to attack it, and I'm glad to have given us this diagnostic tool. Similar to legislation that the ADL has successfully lobbied for in 46 States, this statute will help us eradicate all kind of hate crimes. As the chairman of the Subcommittee on Crime and Criminal Justice, I will be vigilant in monitoring the implementation and enforcement of these laws.

This report shows us in stark terms that our Nation is on the wrong track. In times of economic hardship, we cannot let ourselves slip into prejudice and divisiveness. We need leadership at the national level to fight these hateful undercurrents which tear at the fabric of our democracy. When anti-Semitism and racism rear their ugly twin heads, we must be ready to fight back with all that we have. Because behind these statistics are real people, innocent people, who have been threatened and harassed, attacked and injured, solely because of their heritage and their faith.

TREATMENT OF CHICKASAW, CHOCTAW, AND CHEROKEE NATIONS HAS BEEN SHAMEFUL

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. SYNAR. Mr. Speaker, for many years, the Chickasaw, Choctaw, and Cherokee Nations of Oklahoma have been seeking compensation for their losses caused by the construction of the McClellan-Kerr navigation project on the Arkansas River. The project was authorized in 1946, and completed in 1971, but the tribes were never compensated for the use and occupancy of the river bed to which they claimed ownership under treaties with the United States.

In 1970, the Supreme Court ruled, after years of litigation between the tribes and the State of Oklahoma, that the tribes and not the State owned the river bed. *Choctaw* v. *Oklahoma,* 397 U.S. 620 (1970). The Court has since stated that its decision is "literally a 'singular exception' in which the result depended 'on very peculiar circumstances'" of the "unusual history behind the Indian treaties at issue in that case," and a promise by the United States that no part of the tribes' lands would become part of a State.

After the Court's decision, the tribes sought compensation from the Federal Government. Negotiations broke down when the Interior Department and Corps of Engineers concluded that the navigational servitude precluded Federal liability.

In 1982, Public Law 97–385, which I had introduced, established jurisdiction in the Federal courts for the tribes' claims. The legislation authorized both legal and equitable claims, and specially authorized claims based on fair and honorable dealings that are not otherwise recognized by any existing rule of law or equity.

Since then, the Cherokee Nation has pressed its river bed claim all the way to the Supreme Court. But the Court has failed to reach the damages issue. Instead, it has upheld dismissal of the legal claims chiefly on the basis that the Federal Government is not liable for damages caused by the exercise of the navigational servitude. In my view, this ruling is most unfair because the United States holds the river bed lands in trust for the tribes. Moreover, even in cases where other tribes did not own the river bed, the United States has compensated them for similar losses caused by navigation project construction.

After 9 years, the Cherokee Nation is facing the challenge of returning to the Supreme Court a second time to petition for relief on its fair and honorable dealings claim. The other tribes have not even begun their claims litigation.

It was never my intention or expectation that Public Law 97–385 would be interpreted to deny the Chickasaw, Choctaw, and Cherokee Nations compensation for damage to their property. Accordingly, I am introducing legislation to amend Public Law 97–385 and to resolve this egregious injustice. This effort is supported by the Oklahoma congressional delegation. The amendment will ensure that the tribes have the opportunity to argue that they are entitled to damages resulting from the construction of the McClellan-Kerr project notwithstanding the Government's historical right to navigational servitude.

The history surrounding our Government's treatment of the Chickasaw, Choctaw, and Cherokee Tribes is shameful. After forcibly removing them from their aboriginal lands to what is now the State of Oklahoma, the Government proceeded to break the promises it had made to them. Regardless of whether the Government has a legal obligation to compensate these tribes, it certainly has a moral duty to do so. Valuable assets were removed from the Arkansas River by the Government. At a minimum the tribes deserve to be compensated for these losses.

THE INTRODUCTION OF LEGISLATION TO GRANT A FEDERAL CHARTER TO THE ORGANIZATION KNOWN AS THE SHEPHERD'S CENTERS OF AMERICA

HON. JAN MEYERS

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mrs. MEYERS of Kansas. Mr. Speaker, I am introducing legislation today to recognize and grant the organization known as the Shepherd's Centers of America, Inc., a Federal charter. Today, there are 96 Shepherd's Centers in 26 States, comprising an estimated network of 15,000 volunteers serving 175,000 older adults.

Shepherd's Centers of America is an organization of volunteers that brings older adults together within interfaith, community-based centers. They develop and provide programs and services which improve the quality of life for older Americans in their communities.

The first Shepherd's Center was established in Kansas City, MO, in 1972. It was founded by Dr. Elbert C. Cole, pastor of one of the 23 churches and synagogues that joined in an interfaith effort to provide a ministry by, with, and for older adults. The original center began with only six volunteers serving seven senior citizens.

Shepherd's Centers are guided by the following principles:

First, older people are seen as a potential resource rather than as a social problem;

Second, responsibility for their lives and the development of programs for their peers and community is vested in older adults themselves;

Third, the center acts as a voluntary watchful presence in the community, showing concern about older people;

Fourth, financial support comes from the private sector, especially from congregations, businesses, and foundations—but not from government; participants themselves contribute from 30 to 60 percent of the cost of operating a center; and

Fifth, a Shepherd's Center is cost effective: it uses church and synagogue space for its offices and delivery of programs, and is staffed by peer volunteers.

Shepherd's Centers allow seniors to use their skills and experiences to help them serve

their neighbors. They help older adults to set and reach new learning goals that enable them to make positive lifestyle changes. Shepherd's Centers enable frail people to continue living in their own homes and apartments. They offer opportunities for lifelong learning, personal growth, and responsible citizenry. Shepherd's Centers also promote the building of strong and lasting friendships that buffer the challenges and losses of the later years.

Today, this innovative volunteer movement is at an exciting threshold. A Federal charter would provide the Shepherd's Centers of America greater visibility and increase its thrust nationwide.

There is no Federal cost associated with granting a Federal charter to Shepherd's Centers of America.

Mr. Speaker, I urge my colleagues to support this important legislation.

FRIENDS OF WARREN COUNTY

HON. DICK ZIMMER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. ZIMMER. Mr. Speaker, as a result of legislative redistricting in New Jersey, Senator Robert Littell, Assemblyman C. Richard Kamin and Assemblyman E. Scott Garrett will no longer represent Warren County.

On Sunday, February 16, 1992, the Warren County Republican Committee will honor the service of these three representatives at its annual Lincoln Day brunch.

Their dedication and commitment to improving the quality of life in Warren County has left a lasting impression on its residents. As individuals and as a delegation, they have served the interests of Warren County with distinction.

Warren County will surely miss the services of these three representatives.

Mr. Speaker, I ask my colleagues to join me and the residents of Warren County, NJ in honoring Senator Robert Littell, Assemblyman C. Richard Kamin, and Assemblyman E. Scott Garrett for their invaluable contribution to the betterment of Warren County.

RECYCLING OF USED OIL

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. SKELTON. Mr. Speaker, I rise today to share with my colleagues some important information regarding the recycling of used oil. Last March, I reintroduced H.R. 1411, the Used Oil Recycling Act of 1991, which emphasizes the importance of not listing used oil as hazardous waste. My bill would insure that individual citizens and other users will have no problem returning the used oil to proper used oil collection sites, such as gas stations, so that this precious, nonrenewable energy source can be recycled as a fuel or lubricant.

Recently, I contacted the States to request their comments on the bill, H.R. 1411, and on the concept of not listing used oil as a hazardous waste. Their support was overwhelming. Other States have written the Environmental Protection Agency pointing out that their voluntary recycling programs would be destroyed if used oil were listed as a hazardous waste.

I have edited their remarks but let me read to you what they say:

SUPPORT FROM STATE ENVIRONMENTAL OFFICIALS FOR H.R. 1411, THE USED OIL RECYCLING ACT OF 1991

STATE OF NORTH CAROLINA

"We strongly support the concept of not listing used oil as a hazardous waste and appreciate efforts to prevent such a listing.

"The encouragement of used oil recycling from do-it-yourselfers is the key to establishing a successful recycling program. We believe that public collection centers or incentives to the private sector to establish used oil collection centers is essential and this needs consideration in your bill. The encouragement of the use of used oil as a fuel will enhance markets for the used oil collected."—Excerpts from letter to Rep. Ike Skelton, dated November 21, 1991, from William L. Meyer, Director, Department of Environment, Health, and Natural Resources.

STATE OF TEXAS

"We heartily encourage and support your efforts to keep used oil off the hazardous waste list. We likewise feel that to list this valuable resource as a hazardous waste would discourage reuse or recycling of used oil and would require that it be disposed of as a hazardous waste. Do-it-yourselfers, in particular, would not have a convenient way to dispose of their used oil. They would most likely resort to improper disposal because they would have to pay an exorbitant fee to properly dispose of a hazardous waste.

"We thank you for your efforts and hope that used oil will not be listed as a hazardous waste."—Excerpts from letter to Rep. Ike Skelton, dated November 5, 1991, from Robert A. MacLean, M.D., Acting Commissioner of Health, Texas Department of Health.

STATE OF FLORIDA

"I wish to offer the Florida Department of Environmental Regulation's endorsement and support for H.R. 1411, the Used Oil Recycling Act of 1991. The bill establishes management standards for used oil that encourage recycling and reuse and protect the environment, without listing used oil as a hazardous waste.

"If used oil is listed as a hazardous waste, it will spell disaster for the state's used oil recycling program. According to surveys conducted of those businesses accepting used oil from the public, around 95% would not participate if a hazardous waste designation were placed on used oil. This would indeed dismantle the current recycling system in the State of Florida and leave our citizens without an appropriate means to recycle their used oil. The consequences for Florida's environment resulting from Illegal and inappropriate disposal and dumping of used oil would be severe.

"Education on used oil recycling and economical and accessible collection centers, coupled with sensible and responsible management standards, spell success for used oil recycling programs. The listing of used oil as a hazardous waste could spell the end for these programs.

"Once again I offer my support for your bill, which will provide for recycling, reuse, and environmental protection without listing used oil as a hazardous waste."—Excerpts from letter to Rep. Ike Skelton, dated November 4, 1991, from Carol M. Browner, Secretary, Florida Department of Environmental Regulation.

STATE OF IDAHO

"The State supports your view that used oil that is recycled shall not be listed as a hazardous waste."—Excerpts from letter to Rep. Ike Skelton, dated November 7, 1991, from Joy L. Palmer, Manager, Planning & Evaluation Division, Idaho Department of Health and Welfare.

STATE OF MISSOURI

"We are in strong agreement with your testimony before the Subcommittee on Transportation and Hazardous Materials of the Committee on Energy and Commerce that listing waste oil as a RCRA hazardous waste will discourage the legitimate reclamation of a valuable commodity.

"About half of all the virgin oil sold in Missouri is reclaimed. We believe this can be improved and H.R. 1411 could be the key.

"Overall, we feel H.R. 1411 is a positive step in developing a viable national waste oil program and support legislation which is not overly burdensome and will encourage the reclamation of a valuable resource."—Excerpts from letter to Rep. Ike Skelton, dated November 22, 1991, from G. Tracy Mehan, III, Director, Department of Natural Resources.

STATE OF WISCONSIN

"* * * we are in agreement with you that more needs to be done to recognize used oil as a resource, and to assure that it is managed properly to prevent harm to public health and the environment. We are also in agreement that it is possible to adequately regulate the management and recycling of used oil, without listing it as a hazardous waste."—Excerpts from letter to Rep. Ike Skelton, dated October 31, 1991, from Lyman F. Wible, Administrator, Division for Environmental Quality, Department of Natural Resources.

COMMONWEALTH OF KENTUCKY

"Your proposed legislation concerning used motor oil is very similar to our own statutes which established Kentucky's used motor oil recovery program in 1982.

"Because of the similarity of H.R. 1411 to KRS 224.895 and the positive experience we have had over the last 10 years, we feel the passage of the Used Oil Recovery Act of 1991 will reinforce our activities. We would support H.R. 1411—and its concept of voluntary, educational efforts—over a regulatory program which could be costly, burdensome, and potentially prohibitive to consumers."—Excerpts from letter to Rep. Ike Skelton, dated October 7, 1991, from Susan Bush, Director, Division of Waste Management, Natural Resources and Environmental Protection Cabinet.

"STATE OF ARKANSAS

"We concur with your assessment that, if managed properly, the health and environmental risk from used oil is significantly minimized. Recognized used oil has great potential as a resource, the course you are suggesting needs to be pursued."—Excerpts from letter to Rep. Ike Skelton, dated October 8, 1991, from Thomas W. Boston, Chief, Solid Waste Management Division, Department of Pollution Control and Ecology.

STATE OF CALIFORNIA

"Based on our California experience, I believe your bill would help decrease the amounts of used oil illegally disposed of and increase the amounts recycled. Developing comprehensive management standards and encouraging safe recycling practices and compliance throughout the industry should

increase recycling."—Excerpts from letter to Rep. Ike Skelton, dated July 19, 1989, from John E. Gallagher, Chairman, California Waste Management Board.

STATE OF HAWAII

"* * * [T]he Hawaii Department of Health supports your proposed legislation to recycle used oil and recovery it as a valuable resource. The recovery of used oil is essentially of concern in Hawaii to prevent the pollution of our natural environment.

"The Department agrees with your proposed legislation that used oil should not be listed as a hazardous waste."—Excerpts from letter to Rep. Ike Skelton, dated July 13, 1989, from John C. Lewin, M.D., Director of Health, State of Hawaii.

STATE OF MINNESOTA

"This bill is extremely important for Minnesota since our collection network for do-it-yourself oil changers relies primarily on businesses allowing the public to deposit used oil in their collection tanks at little or no cost. Fortunately a large number of businesses in Minnesota currently provide such a service, and millions of gallons of used oil are collected. However, if used oil is listed as a hazardous waste these same businesses would probably charge a significant fee to the public to deposit used oil in their collection tanks, or worse yet, simply refuse to accept it. Either of these actions would increase illegal disposal of used oil and consequently increase environmental pollution."—Excerpts from letter to Rep. Ike Skelton, (undated), from Gerald L. Willet, Commissioner, Minnesota Pollution Control Agency.

STATE OF NEW YORK

"Based on several years of experience, New York State believes that waste oil which does not contain a listed hazardous waste and which is destined for recycling should not be subject to the same regulations applied to hazardous wastes. We base our belief on two considerations: (1) that waste oil which does not contain a listed hazardous waste poses essentially the same environmental concerns as virgin oil, and (2) that regulating such a waste as hazardous will deter establishment of used oil recycling and re-refining facilities in New York. * * *"—Excerpts from letter to Rep. Ike Skelton, dated July 28, 1989, from Thomas C. Jorling, Commissioner, State of New York Department of Environmental Conservation.

STATE OF MICHIGAN

"I have reviewed this comprehensive legislation and could not agree with you more that this Bill will effectively promote recycling of used oil in an environmentally sound manner through a nationwide education campaign, new management standards for recycling practices and a federal program of mandatory procurement of recycled oil."—Excerpts from a letter to Rep. Ike Skelton, dated July 24, 1989, from Hien Nguyen, Resource Recovery Section, Waste Management Division, Department of Natural Resources, State of Michigan.

EXCERPTS FROM COMMENTS OF STATE GOVERNMENT AGENCIES ON EPA'S PROPOSALS CONCERNING USED OIL NOVEMBER, 1991

STATE OF ALABAMA HIGHWAY DEPARTMENT

"I would like to express the opposition of the Alabama Highway Department to any changes in the regulation of used oil that would result in used oil being classified as a hazardous material."

STATE OF ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS

"I am writing to urge EPA not to list recycled oil or used oil that is to be recycled as hazardous waste. Instead, EPA should develop stringent rules and management standards which would prevent the contamination of used oil with hazardous wastes and to discourage do-it-yourself [DIY] oil changers and dumpers from careless disposal of used oil into the trash, backyard, or down the sewer.

"Properly managed, used oil is a valuable resource. It can be re-refined into lubricants or burned as an industrial fuel. Recycled oil reduces America's dependence on foreign oil, as well as, reducing the volume of waste which enters and contaminates our environment."

STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION, HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

"It is the State of Alaska's opinion that used oil should not be listed as a hazardous waste if it is to be recycled or burned for energy recovery."

STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

"In regard to the options described on page 48020, it seems as though option #3, the no list option, would work best because you have the ability to regulate the management of the used oil and mixtures of used oils under special regulations."

STATE OF COLORADO DEPARTMENT OF HEALTH, HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

"* * * we feel that the promotion of recycling and reuse as a general policy, would better serve the needs of Colorado and the nation than an across the board 'hazardous' designation."

STATE OF DELAWARE SOLID WASTE AUTHORITY

"If the agency [EPA] decides to pursue such listing, the agency will discourage waste oil collection and disposal programs.

"When a substance is listed as a hazardous waste, current regulations make it very onerous to collect, store, and dispose of the material, particularly in voluntary programs. We, therefore, respectfully urge you not to list used motor oil as a hazardous waste under Subtitle C of RCRA."

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION

"Florida has more than 850 participating businesses accepting used oil from the public. In less than one complete year of operation, this statewide network has collected over 680,000 gallons of used oil. Without this network of convenient used oil collection centers, a large portion of this oil would have found its way into the environment via sewers, storm drains, landfills, and indiscriminate land and water disposal.

"I believe that listing used oil as a hazardous waste would seriously damage this very successful, nationally recognized program."

STATE OF GEORGIA DEPARTMENT OF NATURAL RESOURCES

"Of the three alternative approaches the agency proposes to the listing of used oil as hazardous, we support alternative three, which focuses on the promulgation of comprehensive management standards. We feel this alternative can best be used to maximize the recycling rather than disposal of used oil * * * the stigma of calling used oil "hazardous waste" will be detrimental to its recycling."

STATE OF HAWAII DEPARTMENT OF HEALTH

"We oppose the listing of used oil as hazardous waste because incresased regulation, higher disposal costs, and the issue of hazardous waste liability are deterrents to private and public used oil collection programs. We believe listing of used oil as a hazardous waste will encourage the illegal disposal of used oil by both large and small generators. The listing will also damage public voluntary collection programs, many of which are just now starting on Kauai, Maui and Oahu."

STATE OF ILLINOIS OFFICE OF THE ILLINOIS STATE FIRE MARSHAL

"The most effective approach would be to encourage the collection and recycling of used oil.

"Listing used oil as a hazardous waste would erode the viability of recycling programs, forcing facilities to decide whether to collect used oil and face potential legal and financial consequences."

STATE OF KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

"Listing used oil as hazardous waste would discourage recycling and may worsen the problem of used oil mismanagement. Listing would not stop Do-It-Yourselfers from improperly dumping use oil. Listing may discourage small businesses from being collection sites due to increased record keeping, liability, and cost."

COMMONWEALTH OF KENTUCKY NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

"[L]isting of used motor oil will almost certainly be counterproductive, and allow used oil to enter the environment by unmanaged disposal practices."

STATE OF MARYLAND DEPARTMENT OF THE ENVIRONMENT

"The [Department of the Environment] categorically believes that the best way to address used oil is through the option of management standards. The listing of used oil as a hazardous waste will result in dislocation of an industry and of a working recycling system. This will also have detrimental impacts to the State both economically and environmentally."

STATE OF MICHIGAN DEPARTMENT OF NATURAL RESOURCES

"The Michigan Department of Natural Resources would like to go on record as supporting Suboption Option #3."

STATE OF MINNESOTA POLLUTION CONTROL AGENCY

"* * * listing all used oils would have a detrimental effect on Minnesota's used oil recycling system that Minnesota has worked five or more years to establish, substantially increase the amount of used oil that is mismanaged, and essentially force our state recycling system to start at "ground zero" on developing a new used oil recycling system.

"Listing all used oils does nothing to address the used oil management problems in Minnesota that are outlined above, and, as explained below, would actually compound these existing problems and sources of mismanagement."

STATE OF NEW YORK, DEPARTMENT OF ENVIRONMENTAL CONSERVATION

"Used oil which is destined to be recycled and is managed within a regulatory framework, poses little risk to the environment or human health. If managed properly, it poses no more threat than virgin oils.

Used oil (at the point of generation) which is destined for recycling should not be regulated as a hazardous waste."

STATE OF NORTH CAROLINA, DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

"Regarding your September 23, 1991 notice concerning used oil regulatory options, I

want to write to urge that used oil not be classified as a hazardous waste.

"Because effective used oil programs are so dependent on voluntary action by do-it-yourselfers and the ready convenience of collection centers, we are positive that a hazardous waste "listing" would chill our efforts and doom the prospects of a quick solution to the disposal problems."

STATE OF OHIO, ENVIRONMENTAL PROTECTION AGENCY

"The State believes that listing used oil as a hazardous waste will have a significant adverse impact on used oil collection/recycling programs and therefore the State suggests, as an alternative, instituting appropriate management procedures in place of the listings for these waste streams.

STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

"Today's comments augment DEQ's previous positions, particularly our thought that used oil should not be listed as a Resource Conservation and Recovery Act [RCRA] listed hazardous waste due to the effect such listing may have on the recycling of household used oil. In our opinion, regulating used oil under RCRA Section 3014, as we previously suggested, will provide the necessary protection of the environment and human health from hazards associated with recycling used oil. We remain concerned that listing used oil as hazardous waste could significantly reduce the opportunities available to the public for recycling oil, and that greater environmental damage and waste of resources may result."

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL RESOURCES

"The only option that should be acceptable to EPA would be the requirement to rely on the management of used oil within existing recycling networks utilizing appropriate management standards."

STATE OF SOUTH CAROLINA, DEPARTMENT OF CONSUMER AFFAIRS

"Presently, we are implementing a comprehensive program of capturing and reusing used lubricating oil in an environmentally sensitive manner. Hundreds of collection points have already been established throughout our state. Federal classification of used oil as hazardous waste would seriously undermine efforts already implemented.

"The increased permitting requirements and financial liability associated with a hazardous waste classification for used oil would have an adverse impact on our ability to dispose of used oil safely and economically.

"Therefore, I strongly urge EPA not to designate used oil destined for recycling as a hazardous waste."

STATE OF SOUTH DAKOTA, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

"We believe that the listing of used oil would lead to adverse impacts to the environment due to improper disposal methods used to avoid the high cost of handling the material as a listed hazardous waste.

"Therefore, DENR believes used oil should not be classified as a listed hazardous waste."

STATE OF SOUTH DAKOTA, DEPARTMENT OF AGRICULTURE, DIVISION OF CONSERVATION

"The promotion of used oil as a recyclable resource should be the foremost priority of the new rules.

"Listing used crankcase oil as a hazardous waste without providing exemptions for recycling will in my opinion discourage recycling, instead of encouraging recycling."

STATE OF TEXAS, TEXAS WATER COMMISSION

"The TWC believes that all used oils should not be listed as hazardous waste. Used oil encompasses a varied universe of oil types, many of which do not warrant listing. Treatment and disposal capacity does not currently exist to handle such an increase in hazardous waste volumes.

"Imposition of management standards would provide protection from mismanagement without much of the increased burden from classification as hazardous waste."

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF MINES, MINERALS AND ENERGY

"Since 1982, DMME has been working primarily with retail service stations to maintain a statewide network of used oil collection centers that voluntarily accept used motor oil for recycling from do-it-yourself oil changes [DIY's].

"We had the largest decrease in participating centers between 1985 and 1986. The reason for this was largely attributed to the lack of viable market for the used oil and the overall concern on the part of the collection operators that used oil would be declared a hazardous waste by the federal government.

"Many collection centers have stated that if recycled used oil is listed as a hazardous waste, they would no longer be able to participate in Virginia's Voluntary Used Oil Recycling Program.

"Most of the 'used oil recyclers' in Virginia who collect used oil from the voluntary collection centers have indicated that a hazardous listing for used oil would effectively put them out of business."

STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES

"The State of Wisconsin believes that it is not necessary to list used oil as a hazardous waste in order to ensure adequate regulation."

STATE OF WYOMING, OFFICE OF THE GOVERNOR

"* * * we recommend that EPA adopt management standards which provides states with maximum latitude to institute waste oil regulations designed to meet the needs of those states. We do not recommend listing of waste oil as a hazardous waste. * * *"

NOEL PINCINCE CHOSEN AS THE CITIZEN OF THE YEAR

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize Noel Pincince who has been chosen as the Citizen of the Year by the Woonsocket Kiwanis Club.

Each year the Woonsocket Kiwanis Club recognizes a Greater Woonsocket resident for his achievements and contributions to his community and the State of Rhode Island. Noel Pincince has always shown his strong commitment to the community and fully deserves to be honored as the 1991 Citizen of the Year.

Noel's involvement in community service began two decades ago at age 17 when he became director of his church choir. Through his commitment to the community and his ability to motivate others, Noel transformed the St. Louis Chorale into one of the best known singing groups in Woonsocket. Twenty years later, the group is still performing for nursing homes and health centers in addition to their performances at civic and charitable events.

Noel Pincince is best known for his active involvement as chairman of the Woonsocket milk fund, an organization designed to provide milk to women, children, and needy families in Woonsocket. Under Noel's direction, the milk fund raised over $100,000 this year which was an all-time record for the fund. Noel's commitment to helping the Woonsocket community through the Milk Fund and his involvement in the St. Louis Chorale makes him an excellent choice for the 1991 Citizen of the Year.

Noel, I congratulate you on your achievement. Your energy and charisma are assets to the Woonsocket community. Once again, you have shown us that hard work and commitment to others will ultimately make Rhode Island and our Nation a better place to live in. I wish you all the best in your future endeavors.

IN HONOR OF MURRAY-REYNOLDS POST 76, NORTH HAVEN AMERICAN LEGION

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Ms. DELAURO. Mr. Speaker, all of us would like to think that we are generous, even selfless at times. We like to hope that we would give all we could to help another human being in need. But how many of us would actually sacrifice our lives so that others might live?

This year marks the 25 consecutive years that the North Haven American Legion offers a tribute to 4 of the most remarkable heros this country has ever known.

During the Second World War, an American troop ship traveling to Greenland was sighted by an enemy submarine, which sent a torpedo into the ship's boiler room. The instant explosion killed many aboard the USAT *Dorchester* immediately, and sent the rest of the crew scrambling for the lifeboats. Amid the chaos, four Army chaplains remained calm.

Rev. George L. Fox, Rabbi Alexander D. Goode, Rev. Clark V. Polling, and Father Johnny P. Washington led the soldiers and sailors to lifeboats and handed out lifejackets. The chaplains were credited with saving some 200 lives that day, even giving up their lifejackets to those who had none.

The chaplains, arms linked, went down with the ship, but their heroism is remembered each year on the anniversary of the disaster. Through their supreme sacrifice, the chaplains not only saved lives, but provided future generations with a powerful source of inspiration.

The men of Murray-Reynolds Post 76 have used the example of the 4 chaplains as inspiration for their community involvement. Their essential belief in the goodness of human nature, and the willingness of people to make sacrifices for the benefit of others, has given their post a reputation for kindness and generosity.

In these difficult times, with violence and suffering both abroad and in our own country, it helps us all to keep faith in the potential we all have to be heroes.

Each year for the past quarter of a century, Wallace Bassett and his fellow patriots have led the entire community in a moving tribute to the four chaplains. They have established a tradition that reminds us all, not only of the chaplains' willingness to sacrifice their lives for others, but of the good that we all can perform by joining together to help our neighbors.

The very first year of the four chaplains service provided a stirring example of this potential. As the small group stood together, shivering in the bitter February winds beside the Quinnipiac River, one of the group bent down to place a red rose in the icy, grey water. As he leaned forward on the river's edge, his footing gave way and he fell into the swift-running river. The men of the group quickly formed a human chain and plunged into the water to rescue him. This selfless act of bravery in the face of danger mirrored the values that moved the 4 chaplains.

For 25 years, this same group has led us all to reflect upon the virtues we treasure most. By remembering the four chaplains, we summon images of the best the human spirit has to offer. Inspired by their example, we realize what we can accomplish as individuals.

We find heroes like the four chaplains in peace as in war. The men of the North Haven American Legion are such peacetime heroes. Post 76 is the only American Legion group in the State of Connecticut with such a long and distinguished record of honoring the four chaplains. All of us in Connecticut's Third Congressional District are truly proud of this longstanding tradition, and we are grateful, both for the example set by the men of God aboard that ship, and by those in Post 76, who keep that spirit alive.

NATIONAL SYSTEM OF STATEWIDE CANCER REGISTRIES

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mrs. MORELLA. Mr. Speaker, I am pleased to be an original cosponsor of legislation introduced yesterday by Congressman SANDERS and Senator LEAHY to establish a national system of statewide cancer registries. Many of our States lack statewide cancer registries, and to launch a study of breast cancer in the States with the highest breast cancer mortality rates.

Maryland leads the Nation in cancer mortality, and ranks ninth in breast cancer mortality rates. At the same time, the top 10 States with the highest age-adjusted breast cancer mortality rates lie within the North and Mid-Atlantic regions. If we are to wage an effective campaign against cancer, it is critical that we establish a national system of statewide cancer registries. Many of our States lack statewide cancer registries. And the States with registries are often incomplete and lacking in the resources necessary to adequately track the incidence, stage, and treatment of cancer. A complete and uniform system would allow health professionals to effectively target and evaluate cancer prevention and control efforts.

A national system of registries would also allow us to move forward with a study of the higher incidence of breast cancer in certain States. We must understand the factors behind this phenomenon in order to reverse this tragedy and prevent future cancer deaths across the country.

I congratulate my colleagues from Vermont for taking the lead on this critical issue, and I look forward to working with them and the many organizations involved in the war on cancer to ensure the immediate passage of this legislation.

A CONGRESSIONAL SALUTE TO JIM LYNCH

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. ANDERSON. Mr. Speaker, today I rise to pay tribute to a man who has served the Lakewood community with great distinction. On Tuesday, February 11, 1992, the Lakewood Chamber of Commerce will be honoring their outgoing president, Mr. Jim Lynch.

It took Jim quite a few years to get to California but, once he arrived, he certainly made his mark. Born in Erie, PA, Mr. Lynch spent his early adulthood managing the roller skating rink, Skate Lodge. Leaving the security of a weekly paycheck behind, Jim left the roller rink to sell cable television door to door. He was one of the first six direct sales representatives for Erie Cablevision, which is owned by American Television and Communications Corp., a division of Time-Warner. Recognizing his superior sales ability and performance, Jim was offered the position of sales manager in Sheboygan, WI. This prompted the first of several moves. After only a year, he was promoted to regional sales manager and relocated to Appleton, WI. Shortly thereafter, Mr. Lynch was promoted to divisional sales manager in ATC's Savannah, GA, division. Following a brief stay, Jim returned to Kenosha, WI, as the marketing manager for Jones Intercable. Finally, in November 1986, Jim Lynch was named general manager of Jones Intercable of Lakewood and arrived in California.

Jim Lynch's touch can be felt in a broad spectrum of community organizations as well as in the cable television industry. As a supporter of the Special Olympics, he has helped raise over $20,000 for the Long Beach and southeast Los Angeles chapters. Jim has been a board member of the YMCA since 1987 and was named Man of the Year by the Lakewood YMCA in 1989. A job that may be envied by many, he serves as cochairman of the Miss Lakewood Pageant and was recently presented an award from the Lakewood Artist Guild for outstanding corporate support of community activities.

In the little spare time Jim has, he is an avid runner, having run the Los Angeles Marathon the past 3 years. He provides video production support for an outstanding musical talent soon to be signed by a major recording label, Tasha Scott and Simply Divine.

It is because of these and the many other accomplishments Jim Lynch has achieved that I take great pride in joining with all those attending this special occasion in expressing the gratitude he so richly deserves.

My wife, Lee, joins me in extending this congressional salute to Mr. Jim Lynch. We wish him all the best in the years to come and good luck in the New York Marathon.

TRIBUTE TO MAYOR H. ODELL WEEKS

HON. BUTLER DERRICK

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. DERRICK. Mr. Speaker, I am pleased to honor a very distinguished and committed leader in the public service of South Carolina. Mayor H. Odell Weeks wholeheartedly devoted 44 years to serving Aiken, SC. After the longest term ever served by a mayor in South Carolina, Mr. Weeks announced his retirement in October 1991.

Elected Aiken's chief executive in 1946, Odell Weeks loyally served until 1952. For the following 4 years, he was a member of the city council. Mr. Weeks was reelected mayor in 1957, holding the office until his retirement in 1991. His enthusiasm and effectiveness have been a source of inspiration for fellow leaders of South Carolina. Mayor Weeks, my dear and highly esteemed friend, will be deeply missed as the leader of the city of Aiken.

When Mr. Weeks announced he would not run for re-election he described the difficulty of letting go of something he loved dearly, serving his city. The H.O. Weeks Activities Center will serve as a hallmark of his dedication to Aiken.

Mr. Speaker, I ask that you and the Members of this distinguished body join me in saluting Mayor H. Odell Weeks as an outstanding public servant in his community. I know he will be long remembered in the history of South Carolina and country. I wish for him many happy years of retirement.

HAITIAN REFUGEES NEED COMPASSION

HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. HAYES of Illinois. Mr. Speaker, I stand here today to ask the U.S. Government to have compassion on the Haitian refugees who have fled their country because of fear of political persecution. The actions that are being taken by the U.S. Government are deplorable. How can we live with ourselves? We are supposed to be a compassionate nation, a nation that cares about the world community, and now we refuse to take a moral stance to assist the Haitians simply because they are poor and black. There is no other explanation for this travesty, because there have been too many other situations where we have gladly opened our arms to refugees from other lands. When trouble erupted in Central America refugees were given the chance to apply for asylum in large numbers. I ask you what is the difference?

The United States Embassy in Haiti has noted that there have been reports of killings,

police harassment, illegal searches, and looting of private homes and arrests without warrants, by Haiti's de facto Government. In addition, Amnesty International has reported hundreds of executions, beatings, and political arrest after the coup, with the repression centered on the supporters of the ousted President. What additional proof does the President need to show that these refugees are escaping political persecution and not economic persecution. Our own Embassy has provided proof enough.

Hundreds of Haitians have been returned without an adequate review process. We know that Haiti is closely monitoring these returns by fingerprinting each refugee. I'm saddened that the President can sleep at night with the blood of these suffering people on his hands. I call for immediate action by the Congress in response to this emergency. Let's stop these illegal deportations.

FRIENDS OF DADE COUNTY ELDERLY

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, the Friends of Dade County Elderly is a new, not-for-profit organization formed to raise money to provide services to the elderly and disabled residents of Dade County. The hope is that Friends of the Elderly will be of added assistance to those who are helped by the elderly services division of the department of human resources of Dade County.

In recent times of financial difficulty, many State and locally funded programs for older Americans have remained static, or even cut. Friends of Dade County Elderly seeks to fill in any gap in services to promote health and independence among the elderly.

Friends of Dade County Elderly will focus its efforts on raising money for elderly services. According to its newsletter, Friend's News, the group will not only seek to maintain service levels, it will advocate expansion of many programs to keep pace with the growing elderly population.

The funds raised will be used to augment the programs of Dade County's Division of Elderly Services and to help to educate the community about the needs of older Americans. The elderly services division provides support for caregivers, families and friends of elderly, and for disabled adults. These programs include: retired senior volunteers program, residential homemaker program, adult day care/seniors center, and transportation programs.

Mr. Speaker, I commend the Friends of Dade County Elderly for its work to support and extend elderly services in south Florida. In particular, I want to recognize the leadership of the following individuals: Lawrence Nierenberg, Margaret Miller, Linda Flaherty, Dr. Martin Arostegui, Nancy Boggio, Fred Bonsteel, Lola Gonzalez, Andrew Horn, Lloyd Howard, Delores Kory, Norma Lemberg, Patricia Luis, Wayne Morris, Dr. Eduardo Padron, Miles A. Price, Dorothy Quintana, Dr. John M. Riley, Mark Rubin, Ginger Searle, Bernard Dane Stein, John Stokesberry, and Luis Wynn. I wish the Friends of Dade County Elderly much success.

THREATS AGAINST BISHOP TOKES

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. MICHEL. Mr. Speaker, the Right Reverend Laszlo Tokes, Bishop of Oradea—Nagyvard—has come under intense harassment and even death threats. Bishop Tokes was a hero of the revolution in Romania, and has been internationally acclaimed.

Unfortunately, democratic values and respect for human rights have not as of yet triumphed in Romania. That is why the bishop is receiving death threats, and that is why we should condemn terrorist threats against the cleric who was a spokesman both for the Hungarians of Transylvania, some 2.5 million strong, and for Romanian-Hungarian reconciliation.

We call on President Iliescu and the Romanian Government to proceed with a thorough investigation against those responsible for the death threats, and to provide adequate protection for Bishop Tokes.

The Romanian people broke the dictatorship of the Ceauesescu regime with the help of people like Bishop Tokes, who is an ethnic Hungarian. Romania still has far to go to attain the ideals for which the revolution was fought. Bishop Tokes' safety should be a primary duty of the Romanian Government.

PRESERVING THE INTEGRITY OF THE VA HOSPITAL SYSTEM

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. HARRIS. Mr. Speaker, recently, the Secretary of Veterans Affairs and the Secretary of Health and Human Services chose two veterans hospitals as experimental sites for a joint project entitled the "Rural Health Care Initiative." One of those hospitals is located in Tuskegee, AL.

The joint project would allow non-veterans to be served in veterans hospitals. Being from the State of Alabama and serving on the House Veterans Committee and the House Energy and Commerce Committee, I am fully aware of the problem our country has with rural health care. I have always been an advocate of high quality, affordable health care for rural Americans, but do not feel it should be at the expense of our veterans. Yes, we do have a tremendous problem with our health care system and yes, something needs to be done about it now, but not on the backs of our veterans who have dedicated their lives to our country.

The chairman of a select Commission appointed by the DVA to examine veterans' health care issues for the year 2000 and beyond told the members of the House and Senate Veterans Committees at a joint hearing that without more funding, the veterans system will not be able to meet all of its obligations in the next two decades. How can we justify placing an added burden on a health care system that is already overworked and underfunded?

That is why I have introduced legislation which would prohibit the Secretary of Veterans Affairs from implementing the Rural Health Care Initiative. My bill is a companion to S. 2183, sponsored by my colleague from Alabama, Senator RICHARD SHELBY.

THE TRUTH IN BUDGETING ACT

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. JACOBS. Mr. Speaker, I am today introducing H.R. 4192, the Truth in Budgeting Act of 1992. A summary of the bill, prepared by the staff of the Subcommittee on Social Security, follows:

H.R. 4192, THE TRUTH IN BUDGETING ACT

Social security and Medicare are independent, self-sustaining trust funds, financed through dedicated revenues designed to cover the costs of these programs. Like other federal trust funds that provide retirement, disability, health, and unemployment benefits, these funds are supported by taxes paid by employers and employees for the purpose of paying benefits specified by that program. Yet the special character and self-sustaining status of these funds are masked, and at times actually distorted, by their treatment in the federal budget.

The problems are three-fold. First, despite Congress's clear designation of social security as off-budget in 1990, the Office of Management and Budget continues to present a "consolidated budget." Under this representation, all spending adds to the deficit, and all revenue reduces it. This fuels continuing pressure to reduce spending for programs such as social security despite the surplus of dedicated revenues in these trust funds.

Second, social security and other trust funds must by law invest their balances in government securities; but the interest that the Treasury pays them does not show up in the bottom line of the federal budget. Rather, interest owed to trust funds is treated as an interfund transaction and excluded from the interest function (900) of the budget. This hides the true size of federal interest payments and understates the true cost of deficit spending.

Third, payments that the federal government makes as an employer are not offset against trust fund spending. Rather, an employing agency's payroll taxes are subtracted from federal budget totals in a special function called "Undistributed Offsetting Receipts." This practice masks an important component of federal spending and, together with the current treatment of dedicated revenues and interest, overstates entitlement spending from trust funds as a proportion of the federal budget.

H.R. 4192 would address these problems as follows:

It would prevent the lumping together of dedicated trust fund revenues and general funds in federal budget presentations. Spe-

cifically, it would stipulate that all revenues dedicated by law to a federal retirement, disability, health, or unemployment trust fund must be offset against spending from that fund and not against the total budget authority and outlays of the government.

It would reveal the true extent of the federal government's interest obligations to these trust funds. This would be accomplished by treating interest payments made by the Treasury as general spending in the budget and offsetting receipts to these trust funds.

Similarly, it would treat payments that the federal government makes as an employer as general spending in the budget and revenues to the trust funds. This would give government agencies the same budgetary treatment vis-a-vis the trust funds as private employers.

These changes would result in a dramatically different picture of the sources of deficit spending. As the following chart demonstrates, mandatory trust fund spending for retirement, disability, health and unemployment benefits would drop from 51 percent to 21 percent of federal spending, while discretionary spending would rise from 35 percent to 51 percent. At the same time, interest payments would rise significantly—from 14 percent to 28 percent of the budget—revealing the true extent of federal interest obligations. Most important, the myth that federal spending is driven by social security and other entitlements which are "out of control" would be effectively combatted by a realistic budgetary presentation of the extent to which these funds are self-sustaining.

[In percent]

	Current budget presentation	Truth in budgeting proposal
Defense	19	28
International	1	2
Domestic Discretionary	14	21
Subtotal: Discretionary	41	51
Interest payments	14	28
Mandatory, including mandatory trust funds	51	21

The following table compares the President's fiscal year 1993 budget presentation with the display required by H.R. 4192, the Truth in Budgeting Act.

[In billions of dollars]

	President's fiscal year 1993 budget [1]	Percent of total outlays	Truth in budgeting proposal	Percent of total outlays
Spending:				
Discretionary:				
Defense	$291.6	19.2	$291.6	27.8
International	20.6	1.4	20.6	2.0
Domestic discretionary	224.7	14.8	224.7	21.4
Total, discretionary	537.0	35.4	537.0	51.2
Mandatory:				
Government payment as an employer	NA		15.6	
Gross mandatory outlays	466.2		466.2	
Interest paid to mandatory trust funds	NA		−51.1	
Government payments as an employer to mandatory trust funds	NA		−9.5	
Government receipts to mandatory trust funds	NA		−136.9	
Other	NA		.5	
Net mandatory outlays	466.2	30.7	284.8	27.2
Social Security:				
Outgo from the trust funds [1]	302.3		(1)	
Payments to Government entities and financial adjustments [1]	−2.6		−2.6	
Net Social Security [1]	299.7	19.8	(1)	(1)
Interest:				
Interest on the public debt	339.1		339.1	
Interest received by Social Security [1]	−27.0		NA	
Interest received by on-budget trust funds	−51.1		NA	
Interest received by other Government entities	−47.2		−47.2	
Net interest	213.8	14.1	291.9	27.8
Total outlays	1,516.7	100.0	1,111.1	106.0
Revenues (excluding Social Security)	839.0		695.8	
Social Security revenue [1]	325.8		(1)	
Deficit	−351.9		−415.3	
Increased Federal liability for interest payments to the public and to trust funds:				
Financed by mandatory on-budget trust funds	−54.9			
Financed by Social Security trust-funds	−63.4			
Financed by the public [2]	−351.9			
Total increased liability	−470.2			
Social Security:				
Outlays	(3)		299.7	
Interest received by Social Security [1]	(3)		299.7	
Government payments as an employer to Social Security			−6.1	
Payroll tax receipts			−325.8	
Amount equivalent to taxation of Social Security benefits			−6.3	
Other (including transfers to on-budget activities)			2.6	
Net Social Security outlays	(1)		−62.9	−6.0
Revenue	NA		.5	
Surplus			63.4	
Trust Fund Surpluses (includes all collections by the trust funds, includes interest, tax receipts, government contributions as an employer and general fund transfers):				
On-budget:				
Hospital insurance			18.9	
Supplementary medical insurance			−4.5	
Federal civilian employee retirement funds			27.8	
Military retirement			12.2	
Black lung				
Railroad retirement			.6	
Unemployment trust fund			−.1	
Subtotal, on-budget			54.9	
Social Security			63.4	

[1] Although Social Security was taken off-budget by legislation, the summary tables in the President's budget include Social Security in revenues and outlays and in calculating the deficit. The truth in budgeting proposal excludes Social Security from the budget as required by current law.

[2] Some portion of the deficit is financed by Federal activities other than mandatory trust funds. About 3 percent of the estimated interest on the public debt will go to these activities in fiscal year 1993.

[3] Included in budget totals.

TRIBUTE TO WILLIAM POHL

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. MANTON. Mr. Speaker, on Wednesday, February 12, 1992, the Garden School, one of the highly respected educational institutions in the Ninth Congressional District of New York, is honoring one of its trustees, Mr. William Pohl, who is retiring after 40 years of dedicated service.

Mr. Speaker, William Pohl was born in Greece in 1905 and came to America at the age of 19 on a tramp steamer via Cuba. He immediately found work and 3 years after his arrival opened his own business which became one of the finest gourmet shops in the upper East Side of Manhattan. The family continues to conduct that business today.

William married his wife Christine in 1936 and they were blessed with seven children. All of the Pohl's children were educated at the Garden School. Mr. Pohl believed in parental concern for children and became an active participant in the work of the school. While his formal education was limited, he made certain that his own family was given the basic higher education necessary to carry on successful careers as gainfully employed citizens. He helped provide that education for many other young people as well.

Mr. Speaker, now at 87 years of age, William Pohl is entitled to retire from active duty. His efforts over the years have enriched our

city, State, and Nation. As a modest, common man he has been a great contributor to the educational process.

TRIBUTE TO JOHN BENNETT

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. WELDON. Mr. Speaker, I am here today to commend the heroics of John Bennett, a young boy in Troop No. 487, who utilized training he received in the Boy Scouts to save the life of a mother and her child. It is actions like John's that make me proud to stand here today and recount his story to my esteemed colleagues.

This past April, John Bennett and his family were camping in the Shenandoah National Park when tragedy struck the group camping next to them as their car accidentally went over a ledge and fell approximately 100 yards before hitting a tree.

The man managed to free himself from the twisted wreckage but his wife and son were still trapped inside. John Bennett's Boy Scout experience and training enabled him to secure a rope and get down to the car with a first-aid kit.

Unable to open the doors of the car, John squeezed in through a broken window and was able to calm the panicked and badly injured woman. Bandaging a long, deep laceration on the woman's head, John was able to stop the bleeding. After the mother was stabilized, John carefully removed the young boy from the car and wrapped him in a blanket to keep him warm. John then climbed up the rope to wait for the Park Rangers.

When the rescue teams arrived, this courageous young man secured the ropes that they used to descend to the car. Also, at their request, he helped carry equipment and emergency gear to the crash site. Because of his size, John was asked to enter the car and secure the woman to the back board while emergency workers pried open the doors. The teams then lifted the women on John's ropes to the waiting ambulances.

When the smoke began to clear, rescue workers praised John Bennett's heroic and responsive actions. He sacrificed his safety to save the lives of others.

It makes me very proud to stand before you today and tell you about the heroics of a young man from my district. I hope that in the future I will have the privilege of working with the likes of John Bennett and Troop No. 487. Delaware County is proud to call John Bennett one of her own.

TRIBUTE TO HON. JOSEPH C. HOWARD

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, February 7, 1992

Mr. CARDIN. Mr. Speaker, today I rise to pay tribute to a man of many "firsts"—the Honorable Joseph C. Howard who presides on the U.S. District Court for the District of Maryland. A portrait hanging ceremony in honor of the judge will take place on February 14, 1992, where Judge Howard will be honored by his colleagues and his past and present law clerks.

Judge Howard became the first African-American to be appointed to the U.S. District Court in Maryland—appointed by President Carter. He was the first African-American to be inducted into the Phi Alpha Delta Legal Fraternity. He was the first African-American elected to citywide office in 1968 and the first to sit by designation on the Fourth Circuit Court of Appeals. He is truly a pioneer.

Judge Howard has played a leading role in Maryland's legal and political communities for over 25 years. He strongly believes that law is an instrument of empowerment and not control. Early in his career, he earned a reputation and high profile by challenging elitism and unfairness in the judicial system. He is regarded as a dedicated, hard-working, and learned jurist. He has been described as a paragon of what a judge should be.

The judge is extremely active in the community of Baltimore as well. He is particularly noted for his writings and teachings on the African-American community. In addition, his involvement in many worthy causes, along with his education and experience aids him in helping to solve the many difficult problems he faces on the bench each day.

Baltimore is fortunate to have Judge Howard sitting on the bench. He has graced this city, and the judicial system with personal and professional qualities that are truly unique. His colleagues, and especially his younger employees, are struck by his gentlemanly, friendly, open-door policy. Mr. Speaker, I hope that you and my colleagues will join me and the citizens of Baltimore in paying tribute to the Honorable Joseph C. Howard.