SENATE—*Thursday, September 12, 1996*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, in the Scriptures You have called people to pray for their leaders that they may lead, "A quiet and peaceable life, in all godliness and reverence." We are thankful that throughout the land citizens began their day with this prayer. We are the recipients of this heartfelt intercession. Now our own prayer is that we may cooperate in receiving Your answer to the millions of prayers prayed for us. It is a source of awe and wonder that You have placed us in positions of authority and made us the focus of Your blessing and power. We especially think of the prayer that we may lead godly lives. As we reflect on this magnificent possibility we realize that it would mean that we make knowing You the primary priority of our lives. More than knowing about You or having a second-hand acquaintanceship with You, we renew our commitment to really know You in the intimacy of an honest, open, receptive relationship of faith and trust. With deliberate intentionality we seek Your answers to our problems. O God, make us examples to the Nation of what it truly means to live a godly life to Your glory and honor through our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Alabama, the manager of the bill, is recognized.

SCHEDULE

Mr. SHELBY. Mr. President, on behalf of the leader, I have some information here. For the information of all Senators, this morning the Senate will immediately resume consideration of the Treasury-postal appropriations bill. There will be 15 minutes of debate time, followed by two consecutive rollcall votes starting at 9:45 a.m. The first vote will be on the Hatch amendment regarding the White House Travel Office, to be immediately followed by a vote on or in relation to the Reid amendment on the same subject.

Following these votes, the Senate will consider the remaining amendments in order to the Treasury-postal appropriations bill, according to a unanimous-consent agreement reached last evening. It is hoped that the Senate can complete action on that bill by early afternoon.

Following disposition of the Treasury-postal bill, the Senate is expected to turn to consideration of the Chemical Weapons Convention under the parameters of a previous consent agreement. It is possible that the Senate could complete action on that matter today, if debate time is yielded back. If the Senate cannot complete action on the Chemical Weapons Convention today, then votes on that matter can be expected to take place on Friday, before noon.

There will be no votes after noon on Friday, in order that the religious holiday can be observed.

I yield the floor.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The PRESIDING OFFICER (Mr. GORTON). Under the previous order, the Senate will now proceed to the consideration of H.R. 3756, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3756) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes.

The Senate resumed the consideration of the bill.

Pending:

Kassebaum amendment No. 5235 (to committee amendment on page 16, line 16, through page 17, line 2), to express the sense of the Senate regarding communications between physicians and their patients.

Reid-Levin-Biden modified amendment No. 5256, to refer the White House Travel Office matter to the Court of Federal Claims.

Hatch amendment No. 5257, as modified (to amendment No. 5256), to reimburse the victims of the White House Travel Office firing and investigation.

The PRESIDING OFFICER. There will now be 15 minutes debate, equally divided, on the pending amendments, No. 5257 and No. 5256, with a vote on amendment 5257 to follow immediately thereafter.

The Senator from Utah is recognized.

AMENDMENT NO. 5257, AS MODIFIED, WITHDRAWN

Mr. HATCH. Mr. President, as we have it set up, there will be two votes, one on the Hatch amendment and one on the Reid-Levin amendment. I do not see any reason for two votes. I ask unanimous consent to withdraw the Hatch amendment and the total vote be on the Levin amendment.

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

The amendment (No. 5257), as modified, was withdrawn.

Mr. HATCH. I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

AMENDMENT NO. 5256, AS MODIFIED

Mr. REID. Mr. President, would you advise the Senator from Nevada when I have consumed 3 minutes?

The PRESIDING OFFICER. How many minutes?

Mr. REID. Three. Our side has 7½ minutes.

Mr. President, Members of the U.S. Senate should understand the amendment before this body has nothing to do with the Travel Office. The issue is whether the U.S. Senate is going to create a new precedent by reimbursing a legally indicted official who admitted, in addition to having been indicted, admitted to having done wrong.

There is a great deal of dispute about the facts in the Billy Dale matter, but there are certain undisputed facts which have already been stipulated to, agreed to, and spread across this RECORD.

First of all, Billy Dale admitted to putting 55 checks for Travel Office funds totaling some $54,000 into his personal account; and

Second, that he stole $14,000 in petty cash, and there would have been more but the fact is the records were destroyed.

Dale admitted he told no one in the Travel Office about his unique practice of depositing U.S. Government moneys, checks, into his personal account. Dale admitted he did not even tell his coworkers of 30 years about this practice. No one in his office knew about it. Of course, they did not know about it, because he was stealing the money.

After thorough investigation by the FBI, it was determined there was probable cause to prosecute Dale. Dale, thereafter, was legally indicted. Dale agreed to plead guilty to a serious criminal offense, a felony. Dale was lawfully prosecuted but Dale, like O.J. Simpson, was acquitted. Dale now appears at many Republican fundraisers. Dale was offered employment by the Dole campaign.

This body has never, never in its 200-plus-year history, reimbursed someone for attorney's fees after they have been legally, lawfully indicted.

The Senate Parliamentarian has ruled not once but twice that Billy Dale's reimbursement to be a private relief claim. There is a procedure for

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

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private relief claims to be heard by the Court of Claims. That is what we are asking be done. These facts are uncontested.

There are many new facts that we are just now learning because we recently received the prosecution's memorandum prior to indictment. They explain the reasons why we have offered this amendment today.

The issue is a patent attempt to embarrass the President in an election year. Reimbursing an admitted, indicted wrongdoer with taxpayer dollars is not something this body should be especially proud of, especially those who cry out about the need to balance the budget. Half a million dollars, $500,000, is a lot of money to throw away.

If Mr. Dale's supporters are so confident of his innocence, they should have no fear whatsoever of having this matter referred to an independent Court of Claims review. That is why we have the Court of Claims. Is it not the least we can do, before we spend half a million dollars of taxpayers money?

Mr. President, this is a good bill. This provision in the bill should be eliminated. If this is a partisan vote and this passes, I hope the conference would have the ability and, in fact, the integrity to take this out of this legislation. I hope this will be done.

I believe what has been talked about here the last couple of days gives the President every reason to veto the bill. I hope that will not be necessary. I like this legislation. I think the chairman of the subcommittee and the ranking member worked very hard to come up with a bill. This provision should not be in the bill.

The PRESIDING OFFICER. The Senator has used 3 minutes.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Rhode Island.

Mr. CHAFEE. Mr. President, few people had ever heard of the White House Travel Office before the Clinton administration took office. Now the White House Travel Office is a household name and its former employees have been falsely accused, they have been fired, they have been investigated by the IRS and the FBI, they have been defamed, and in one case indicted and finally, after a trial, they were fairly acquitted.

These employees served at the pleasure of the President. He could have replaced them any time he wanted. There is no argument about that. But it is the manner in which these employees were fired, the manner in which they were treated, and the web of improprieties uncovered as a result of the investigation into these firings that I find most troubling.

The White House, which promised what Newsweek magazine called, "the most stringent ethical requirements of any administration ever," has been the White House that has been entangled in one ethical misadventure after another.

Instead of informing the Travel Office employees that their services were no longer required, services which they could perfectly well do when they came into office, instead, they install one Katherine Cornelius, a cousin of the President. Her duty was to monitor activities in the office, and what did she come up with? She came up with a scheme to replace all those employees with TRM, a travel agency owned by Harry Thomasson, a Hollywood friend and close adviser of the Clintons. It was on so-called evidence of wrongdoing.

The PRESIDING OFFICER. The time yielded to the Senator from Rhode Island has expired.

Mr. CHAFEE. Mr. President, I do hope this individual will be reimbursed, and that is what this is all about here today.

I thank the Chair.

Mr. GRASSLEY. Mr. President, the Clinton administration has set new standards for protecting wrongdoers at the expense of victims.

We have seen the administration advance this culture in the criminal justice system. I've spoken to this point in the past on this floor.

But we have also seen the White House practice it in its own backyard. I am talking about the issue of Travelgate. An issue in which the victims of wrongdoing in the White House were charged by the wrongdoers with a crime.

Billy Dale and the other fired Travel Office workers were dedicated public servants. They had served in the Armed Forces prior to serving at the pleasure of numerous Presidents, dating back to John F. Kennedy. Their entire careers were dedicated to serving the American people, with honor and dignity.

One day, without the slightest heads-up, the seven were summarily fired. Without a reason. Certainly not a justifiable one. Those who were there were carted off in the back of an empty van. They were treated like vermin. Others heard they were fired by listening on the news.

It was certainly not the kindest and gentlest moment in the tradition of the White House.

At the time, these seven workers had no clue what was going on or why. It was only later that we discovered all the reasons.

The first was cronyism. A rich, Hollywood buddy of the President wanted the business. That would be Hollywood producer Harry Thomasson. To get the business, he had to give Billy Dale the business. And that he did. He spread unproven and false rumors about those running the Travel Office.

The second issue was White House paranoia. They must have thought there was a conspiracy of all the dedicated career public servants. They were all out to get the White House. The paranoids needed a pretext to get these workers out, and get their own teamplayers in.

That let to a marriage of convenience. The paranoids could get rid of the career workers. They could bring in their own teamplayers to replace them. And, the cronies would get the business. What a convenient confluence of interests.

And so, the Hollywood producer, Mr. Thomasson, held the gun; the First Lady, according to available documentation, said "ready, aim, fire!"; and the White House staff pulled the trigger.

Having thought this was the perfect crime, the perpetrators didn't expect to get caught. At first, they denied wrongdoing—just like the proverbial kid caught with his hand in the cookie jar.

Public and press criticism mounted. So the White House tried justifying its actions.

First, they said the Travel Office workers were replaced as part of a downsizing effort under the National Performance Review. But it became clear the NPR review came after the decision was made to fire them.

So the White House spinmeisters changed gears. They turned the victims into criminals. They did so by publicly charging the seven with the very same unfounded rumors that Harry Thomasson used to get them fired.

So not only did Billy Dale and his coworkers lose their jobs. They and their families were subjected to a public smear campaign by White House zealots trying to save face.

In trying to save face, these zealots co-opted the FBI, the IRS, and the Justice Department into pursuing Billy Dale. They pursued him with more vengeance than the Dallas Cowboys' doomsday defense.

But a jury would have none of it. Following his trial, a jury took only 2 hours to return an acquittal. It recognized the trumped-up charges brought by the Justice Department.

The net effect of all this harassment took a real toll—not only on the seven employees, but their families as well.

Their reputations, their dignity, and their psychological well-being—all have suffered at the hands of irresponsible zealots in the White House.

This is a White House that, to this day, refuses to accept responsibility for its wrongdoing.

No one takes responsibility for their firing.

There is only finger pointing.

Passing the buck.

And the harassment continues. Now, it is legislative harassment.

We have before us a provision in this bill to make Billy Dale economically whole, at least for his legal expenses.

But the White House has fanned out its lieutenants to sabotage this provision.

Their objective: Kill the provision to spare the President the embarrassment of signing it.

That is what this is all about. It's politics, getting in the way of a right-and-wrong issue.

Political barriers to correcting a wrong will not stand, Mr. President.

Ultimately, public opinion will weight in against the Democrats and the White House on this issue.

All the harassment strategies to save the President from embarrassment will only make the embarrassment worse.

It is inevitable.

There is a moral to this story, Mr. President.

Nothing is politically right which is morally wrong.

That's the issue here, Mr. President.

The Travelgate bill we're considering is all about Congress taking the initiative to right a wrong.

And those trying to block it are conspiring against the President taking responsibility for his mistakes.

I would urge my colleagues on the other side to save the President any more embarrassment.

Stop the legislative shenanigans.

Work with us to do what little we can to repair what was unjustly done to Billy Dale and the other dedicated servants of the people.

Mr. President, I urge my colleagues to reject the amendment to strike the reimbursement for Mr. Dale.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I ask for 3 minutes. How much time does the Senator from Nevada have?

The PRESIDING OFFICER. Four minutes 30 seconds.

Mr. LEVIN. Mr. President, will the Senator yield me 4 minutes?

Mr. REID. The Senator can have 4 minutes.

Mr. LEVIN. Mr. President, the issue here is not these individuals. The issue here is one individual who was properly indicted, properly prosecuted, properly tried. There is no evidence that the FBI investigation was improper. There is no evidence here that the prosecution by the Department of Justice was improper. There is no evidence here that the trial was defective. The judge at this trial, a distinguished Federal judge, ruled that the evidence was significant and substantial enough to convict this defendant.

As far as the other people who were fired, their legal fees have been paid and should be paid. That is not the issue. The issue is not errors by the White House in the firing of those employees. Those errors were made. They were conceded years ago. The legal fees relative to those employees have been paid, should be paid, and $50,000 of the amount of money in this appropriations bill completes that payment.

The issue here is whether or not Billy Dale should get $450,000 for his legal fees when it wasn't the White House who investigated him, it was the FBI. And that investigation has been ruled proper by four different entities. It wasn't the White House which prosecuted Billy Dale. It was the Department of Justice, and their prosecution was perfectly appropriate based on what Billy Dale did, not on what the White House did.

The prosecution of Billy Dale was based on the fact that he deposited $54,000 in checks meant for the Travel Office in his own personal account that he had with his wife back in Clinton, MD, that he intermingled those funds belonging to the Travel Office without notice to anybody. No one at the Travel Office knew that that is what he was doing.

The prosecution of Billy Dale wasn't based on White House actions, it was based on the fact that he cashed $14,000 that was supposed to go into the petty cash fund but which didn't and which is unaccounted. It was his actions for which he was being tried.

There is a hypothesis here that somehow or another the prosecution was improper. Test that hypothesis. Let the Court of Claims make the determination that there was something inequitable, in which case not only will they be paid those legal fees, but he should be paid.

But the proponents of this, what looks to be a complete gratuity, keep talking about some inequity perhaps in the prosecution. There has been none, no suggestion of any in the investigation or the prosecution of Billy Dale in a criminal proceeding.

We have never paid legal fees for somebody who was legally indicted. Never. This Senate would be setting a precedent which is unwise in the absence of any record, and in order to test what we are doing, what we are saying is, refer it to the Court of Claims. That has been done with regularity on claims against the Government.

The Court of Claims has been given that jurisdiction by us. Let the Court of Claims test this hypothesis that there was something inequitable in the prosecution of Billy Dale, not the firing of these seven people. We already know there was inappropriate behavior by White House staff in that area. We are talking about the prosecution by the Department of Justice of Billy Dale for depositing $54,000 of Travel Office checks in his own personal account and telling nobody about it.

Test that hypothesis to see if there was something wrong with that. Let the Court of Claims approve this before taxpayers' moneys are paid.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator from Utah has 5 minutes remaining.

Mr. HATCH. And on the other side?

The PRESIDING OFFICER. Thirty-seven seconds.

Mr. HATCH. Mr. President, I am appalled by this debate. Relying on confidential documents, some of my colleagues have continued, in my opinion, the public smearing of Billy Dale. I am astonished that they would use such a tactic in the U.S. Senate, one that I think they have historically reserved for Presidential nominees and accused Communists.

I have little doubt that some of my colleagues would have been tempted to read Billy Dale's tax returns and medical files into the RECORD if they thought it would advance their objective to win at any cost.

I believe there is substantial evidence to suggest the decision of the Justice Department to indict Mr. Dale was tainted by a political context in which the case was referred to the Clinton Justice Department. I don't think anybody doubts that.

No. 1, when the case first came to the Justice Department, prosecutors ignored information that there was insufficient evidence to prove that Mr. Dale had committed the crimes for which they were seeking to charge him.

No. 2, my Democratic colleagues spoke of an FBI financial analysis that showed Mr. Dale was improperly moving Travel Office funds. This was directly refuted by an accountant that even the FBI used to train its agents. This important information was not reflected in the prosecution memo and was, therefore, not considered by the grand jury.

No. 3, the audit my colleagues have referred to conducted by Peat Marwick after the Travel Office firings found no evidence of wrongdoing. Despite a White House directive to find wrongdoing, Peat Marwick found no improper action. In fact, one of them commented the conclusion was reached before they even did their work.

No. 4, critical evidence was ignored, again, when prosecutors failed to interview Mr. Dale's children until after the prosecution memo was written and the indictment returned.

No. 5, also overlooked was the outstanding record that Billy Dale had established in his years working in the White House Travel Office. His colleagues and members of the media he served characterized him as a professional and an honest man.

Again, this evidence was left out of the prosecution memo and not presented to the grand jury.

I mentioned that Sam Donaldson testified in his behalf. The moneys that were involved were the media's moneys, and they had no complaints over the way he handled it.

In closing, I want to point out that at the same time my Democratic colleagues are on the floor besmirching Mr. Dale and accusing him of being guilty after he was acquitted by 12 jurors who were peers of his in a formal trial, the White House has maneuvered a way in which its own people, those loyal first and foremost to the Clinton administration, will be reimbursed for legal expenses: Bruce Lindsey, Mack McLarty, and George Stephanopolous.

I personally don't have any problem with that, but I think it hypocritical for them seeking reimbursement of their own but not seeking reimbursement for a person they pretty well admit they smeared and they took apart from a reputation standpoint.

I am not here today to comment on the propriety of that reimbursement to those 23, other than what I said. In fact, if the law allows it, fine with me. My point in raising the issue is to show the sheer hypocrisy of the Clinton administration. The Clinton White House victimized Billy Dale and the other members of the Travel Office leading to an unprecedented political prosecution costing Mr. Dale upward of $500,000 in legal fees. Even the White House admitted that it lacked proper judgment in the handling of the Travel Office employees.

I would like to quote again from a document produced to the Judiciary Committee by the White House. This is a document advocating a certain position. This was produced by the White House:

> You may all dimly remember the Travel Office affair in which a number of White House staff—many immature and self-promoting—took impulsive and foolhardy actions to root out problems at the beginning of the Clinton administration and to gallantly recommend that they take over its operation. The White House has the nerve to request the payment of legal fees to its own people but not to those that they victimized.

Mr. President, that is the height of hypocrisy. I urge all of my colleagues to defeat the Reid-Levin amendment and do justice here. I hope some on the other side feel the same way. No American deserves the treatment Billy Dale has gotten and received from the White House, nor did he deserve the treatment he received from some of my colleagues last night on this floor. We should right this wrong which has been lingering for the last 3 years and lift the cloud above Mr. Dale's head and allow him to get on with his life.

Mr. President, I ask unanimous consent that two letters, dated August 13, 1996, from Jack Quinn to Helene M. Goldberg, be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, DC, August 13, 1996.

HELENE M. GOLDBERG,
Director, Torts Branch, U.S. Department of Justice, Washington, DC.

Re: Investigations by Congress and the independent counsel into the Travel Office and related matters.

DEAR MS. GOLDBERG: This letter supplements my letter to you of July 5, 1996, concerning reimbursement of White House officials for legal fees and expenses incurred in connection with the Travel Office and related matters. A copy of the July 5, 1996 letter, together with attachments, is enclosed. I understand that you need some further information with respect to the duties of each individual requesting reimbursement. That information is provided here. We have developed this information essentially based upon the letters sent to the White House requesting reimbursement; White House records describing the responsibilities and job titles of the witnesses; and deposition transcripts that are now publicly available. We have enclosed those transcripts where we believe it might be helpful in understanding the role of the witness in the Travel Office matter.

1. Nelson Cunningham is the General Counsel in the Office of Administration. As such, he has been asked to testify about the chain of custody of the David Watkins memorandum concerning the Travel Office matter, which was located in the archives of the Office of Administration in December 1995.

2. Bruce Overton is the Deputy General Counsel of the Office of Administration. He also was asked to testify about the chain of custody of the David Watkins memorandum.

3. Douglass Matties is the Special Assistant to the Director of the Office of Administration. He was also asked to testify about the chain of custody of the David Watkins memorandum.

4. Nell Doering is a Supervisory Management Analyst in the Office of Administration. She is responsible for maintaining documents in the archives. She also was asked to testify about the chain of custody of the David Watkins memorandum.

5. Charles Easley is the Security Office for the Executive Office of the President. He was recently been given responsibility for personnel security for White House staff. He has been asked to testify about the matters relating to personnel security in connection with the Congressional inquiry into the obtaining of FBI background investigation files of former White House employees, an inquiry that grew out of the Travel Office matter. A copy of his disposition testimony is enclosed.

6. Carolyn Huber is a Special Assistant to the President and Director of Personal Correspondence. Her office is responsibility for personal correspondence of the First Lady. In response to the House Committee's subpoena for documents related to the Travel Office and other matters, Ms. Huber identified a letter from David Watkins to the First Lady that was located in her office and that was potentially responsive to the subpoena. She was asked to testify about the identification and chain of custody of this document. A copy of her deposition testimony is enclosed.

7. Ed Hughes was the Executive Assistant in the Office of Personnel Security. He served as the Executive Assistant to Craig Livingstone. As a result of this position, he has been asked to testify about the operation of the Office of Personnel Security in connection with the FBI files matter.

8. Jonathan Denbo was the Security Assistant in the Office of Personnel Security. He served as an assistant to Craig Livingstone. As a result of his position, he has been asked to testify about the operation of the Office of Personnel Security in connection with the FBI files matter.

9. Dee Dee Myers was the White House Press Secretary. As a result of her responsibility as press secretary, Ms. Myers participated in press briefings and responded to press inquiries about the Travel Office matter. She has been asked to produce documents to the House Committee, including her notes, and has been asked to testify about her knowledge of the Travel Office matter. A copy of her deposition testimony is enclosed.

10. Ashley Raines is the Customer Service Program Director of the Office of Administration. She was the custodian of certain documents and lists requested by Congress in connection with the FBI files matter and has been asked to testify about those documents and lists.

11. Ricki Seidman was the Assistant to the President for Scheduling and Advance. Prior to holding that position, she served as Deputy Communications Director and Counselor to the Chief of Staff. She has been asked to respond to the subpoena from the House Committee and, according to her counsel, has been asked to testify concerning her knowledge of the Travel Office matter as a result of her (1) editing the Management Review; (2) attendance at any meetings where the matter was discussed; and (3) in connection with any discussions she may have had with other White House officials at the time. A copy of her deposition testimony is enclosed.

12. Clifford Sloan was an Associate Counsel to the President. As such, he participated in various investigations of the Travel Office matter and has been asked to produce documents and testify about these investigations.

I have no reason to believe that the conduct of any of the above individuals, all of which was performed in the course of their official duties, was not performed in good faith. Accordingly, it is in the interest of the United States to reimburse these officials for their legal fees and expenses.

Sincerely,

JACK QUINN,
Counsel to the President.

THE WHITE HOUSE,
Washington, DC, August 13, 1996.

HELENE M. GOLDBERG,
Director, Torts Branch, U.S. Department of Justice, Washington, DC.

Re: Investigations by Congress and the independent counsel into the Travel Office and related matters.

DEAR MS. GOLDBERG: I am writing pursuant to Frank W. Hunger's letter to me of May 22, 1996, concerning the payment or reimbursement of fees and expenses incurred by current and former White House officials in conjunction with the House Committee on Government Reform and Oversight's investigation of the Travel Office matter.[1] In addition, I am forwarding for consideration a request for reimbursement for fees and expenses incurred by a current White House staff member in connection with the investigation by the Independent Counsel into the Travel Office matter. We understand that

[1] Since Mr. Hunger's letter of May 22, 1996, the "Travel Office Matter" has grown to include investigations by Congress into requests by the White House Office of Personnel Security for FBI files related to former White House employees.

this request will be considered separately by the Department.

The information provided below has been developed essentially based upon the letters sent to the White House requesting reimbursement; White House records describing the responsibilities and job titles of the witnesses; and deposition transcripts that are now publicly available. We have enclosed those transcripts where we believe it might be helpful in understanding the role of the witness in the Travel Office matter.

Enclosed are requests for reimbursement submitted on behalf of the following officials:

1. *Kelli McClure*. Ms. McClure is the White House Personnel Liaison in the Office of Management & Administration. She has been asked to testify before the grand jury empaneled by the Independent Counsel in connection with Travel Office related matters as a result of her official responsibilities with respect to personnel issues and maintenance of personnel records.

2. *Lisa Caputo*. Ms. Caputo was the Deputy Assistant to the President and Press Secretary to the First Lady. She has been asked to produce documents and to provide deposition testimony to the House Committee in connection with her responsibilities as the First Lady's Press Secretary. As such, she was involved in press briefings and discussions related to Travel Office matters. A copy of her deposition testimony is enclosed.

3. *Thomas F. McLarty, III*. Mr. McLarty was the Chief of Staff and now serves as Counsel to the President. As Chief of Staff, Mr. McLarty has been asked to produce documents and to provide deposition testimony to the House Committee concerning his knowledge and participation in the events leading up to the firing of the Travel Office employees and his role in the White House investigation of the matter. A copy of his deposition testimony is enclosed.

4. *Kathleen Whalen*. Ms. Whalen is an Associate Counsel to the President. As a member of the Counsel's Office, she has responsibilities for Presidential Appointments. She has been asked to provide deposition testimony to the House Committee in connection with her knowledge of procedures relating to the use of FBI background files for Presidential Appointments.

Each of these officials has described in the enclosed correspondence the requests that have been made and the responses required by the Congressional Committee or Independent Counsel. In each case, the Committee and/or the Independent Counsel has requested documents and testimony from these individuals about conduct performed in the course of their official duties. I have no reason to believe that the conduct of any of the above individuals was not performed in good faith.

I recommend that each of these requests be approved and that reimbursement be provided. I believe that reimbursement is in the interest of the United States since these individuals should be not be compelled to pay private counsel, out of their own resources, to represent them in connection with activities performed as part of their government service.

I have advised these individuals that you will communicate directly with them, or their counsel, in responding to their requests.

Sincerely,

JACK QUINN,
Counsel to the President.

Mr. HATCH. Mr. President, I reserve the balance of my time.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Maybe there are those who wish that there were impropriety. There was not any. The people referred to by my friend from Utah were not indicted. There has never been any hint of any in this case, in the prosecution, of impropriety. He agreed to plead to a felony. This matter should be referred to the Court of Claims, an independent tribunal, if they believe their case is so just. We believe it is not. The Court of Claims would handle the case properly.

Mr. HATCH. Mr. President, do I have any time left?

The PRESIDING OFFICER. The Senator from Utah has 3 seconds remaining. The Senator from Nevada has 12 seconds remaining.

Mr. HATCH. Mr. President, let us do justice here. Let us reimburse this man and give him his reputation back.

The PRESIDING OFFICER. All time has expired.

The question is on amendment No. 5256, as modified. The yeas and nays have not been ordered.

Mr. HATCH. Mr. President, I ask for the yeas about nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire [Mr. SMITH] is necessarily absent.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The PRESIDING OFFICER (Mr. FRIST). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 52, as follows:

[Rollcall Vote No. 286 Leg.]

YEAS—46

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Bradley	Heflin	Nunn
Breaux	Hollings	Pell
Bryan	Inouye	Reid
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Conrad	Kerrey	Sarbanes
Daschle	Kerry	Simon
Dodd	Kohl	Wellstone
Dorgan	Lautenberg	Wyden
Exon	Leahy	
Feingold	Levin	

NAYS—52

Abraham	Campbell	Craig
Ashcroft	Chafee	D'Amato
Bennett	Coats	DeWine
Bond	Cochran	Domenici
Brown	Cohen	Faircloth
Burns	Coverdell	Frahm
Frist	Kassebaum	Santorum
Gorton	Kempthorne	Shelby
Gramm	Kyl	Simpson
Grams	Lott	Snowe
Grassley	Lugar	Specter
Gregg	Mack	Stevens
Hatch	McCain	Thomas
Hatfield	McConnell	Thompson
Helms	Murkowski	Thurmond
Hutchison	Nickles	Warner
Inhofe	Pressler	
Jeffords	Roth	

NOT VOTING—2

Pryor	Smith

The amendment (No. 5256), as modified, was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question occurs on the Kassebaum amendment.

The Senate will be in order.

Mr. LOTT. Mr. President, was the motion to reconsider laid on the table?

The PRESIDING OFFICER. It was.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, if I could have the Senators' attention, maybe I can outline where we are and begin to think about where we hope to go today and the balance of the week.

The Senate began consideration of this Treasury-Postal appropriations bill at 4 p.m. on Tuesday of this week and has spent approximately 15 hours considering the legislation. This is not a bill that really is that controversial. I was a little bit taken aback when Senators on both sides of the aisle came up with, I guess, about 97 amendments last night. Most of the 97 amendments are nongermane to this bill. And 15 hours has already been spent on it. We need to get serious now and narrow this list down to the ones we really do feel are important, hopefully germane, and deal with them in a quick, reasonable period of time.

Most of the time in this 15 hours has been spent considering nongermane issues. As it stands now, on the majority side of the aisle, we have not more than 12 amendments that have to be considered in some way or other before passage, and I think less than a half dozen of those actually would require any time and the possibility of a recorded vote. I think we can get it down below that. Frankly, where we ought to be is a couple of amendments on each side and then move to final passage of the bill.

I understand that on the Democratic side of the aisle they still have 35 amendments that remain to be offered. Again, many, or most of those, are nongermane. I know that the minority leader has been working with his leadership team, and they have had some amendments removed from the list. But right now we are still looking at

somewhere, I guess, between 35 and 40 amendments. I really have to say that I think that is ridiculous.

I hope all Members will exercise restraint with regard to offering amendments in an effort to reach final passage early this afternoon. The Senate must also consider the chemical weapons today, which has a time limitation of up to 12 hours. And, needless to say, the Senate begins that this afternoon. The earlier the Senate concludes this business, the better.

All Senators should be aware that we must continue to make progress on appropriations bills. That is our job. We should do it in regular order, with cooperation. But I am getting very concerned about what we are going to be able to do on these final four appropriations bills.

I would like to see the Senate do something that has not been done more than once or twice in 25 years: complete all the appropriations bills before the beginning of the fiscal year. I can only do so much. There are a lot of other bills that Members on both sides would like to have considered. Some would only take a couple hours. We have to focus on the appropriations bills. Members who insist on offering nongermane amendments to the appropriations bills are delaying enactment of very important spending measures that will have an impact on us being able to complete our work by the first of the month.

So, with that in mind, and in order for the managers to assess what truly remains to be considered, I ask unanimous consent that all remaining amendments in order to H.R. 3756 must be filed at the desk by 12 noon today.

Mr. DASCHLE. Reserving the right to object, let me just say, for the Record, that in the last Congress all the appropriations bills were finished on time. We would like to see if we can do that 2 years in a row. I have indicated my desire to work with the majority leader to see if we can get that done.

We have gone through our list and find about 18 amendments that may require action. So we have our work cut out for us in order to get this bill done. I think this is a good suggestion. I would like to see if we can't work through the next couple of hours to have the amendments filed, so we can look with some serious understanding of what it is we have left to do. And if we require amendments to be filed, we will have a much better understanding of that. So I hope that both sides can agree.

Mr. LOTT. I think that is a fair thing to do. Everyone knew this bill was coming. If you have an amendment that you are serious about, surely, you have it developed. So file it, and we can see who is serious. At 12 o'clock we can assess what we can do with regard to this bill, how we can wrap it up, and when.

But it would be my intent, probably around noon, to go to the Chemical Weapons Convention. We all knew this has been coming. I made a commitment to bring it up by the 14th. The administration wants it. Of course, it is ready to go. So we are going to have to do that. I am going to do my very best to request a number of Senators to finish it today and have the vote tonight, so we won't have to go over to tomorrow. Again, it takes cooperation. So let's go forward now for the next hour and a half, or so, and assess where we are, and we will announce at that time exactly when we are going to go to the chemical weapons treaty. Was there objection to that request?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. KERREY. Reserving the right to object, I would like to ask the majority leader. One of the biggest problems that we have stuck in our throat on this bill right now is the Kassebaum sense-of-the-Senate resolution followed by a second Wyden amendment. If we could wrap those two up, if we could get unanimous consent to vote on those right away, we could move on.

There are a lot of these amendments that have been offered with Senator SHELBY and I working with Republican and Democratic Members trying to see if we can reach some accommodation so that we get this thing done. We have been on the bill 2 days. We have, as I said, the Kassebaum sense-of-the-Senate resolution and the Wyden amendment. If we could add those to the unanimous consent and vote on those right away, we think we have a pretty good chance of resolving most of this.

Mr. LOTT. If the Senator will yield, I would like to ask the managers to get with the Senators involved—Senators KASSEBAUM and WYDEN, and the assistant majority leader, Senator NICKLES, and those who are interested in this issue. We debated this yesterday. I would like to see if we can come to a conclusion on that. But I am not prepared to propound a unanimous consent on that right now because I do not know where everybody is. I believe, if we could go ahead and get started to move forward on the bill and any other amendments, we can work on that, and maybe we can come to an agreement to get a vote on that at 11:30. We will work on that with you.

Mr. KERREY. Unless we propound a unanimous consent to agree on those two amendments, I think it is going to be difficult to proceed. We just won't be realistic about it. If leadership will help us get that done—I don't know why—I personally don't understand. We are prepared to accept both amendments, by the way, to be cleared on this side. I would be prepared to accept both of the amendments. We are going to conference, for God's sake. Everybody knows what that means.

Mr. LOTT. Mr. President, again, if the Senator will yield, I know the managers of this legislation can come up with a good recommendation to the leadership.

Mr. KERREY. I am making a recommendation. I recommend that we modify the unanimous-consent request to include these two amendments for rollcall votes immediately. That is what we have to do to get these votes up and out and get our business done. We have been talking about it for a couple of days. I say let us start voting.

Mr. LOTT. I feel a need at least to have a chance to talk with the Senators involved in this issue. I do not see Senator KASSEBAUM on the floor.

Mr. KERREY. If we can go into a quorum call for about 5 minutes and get it resolved. We have work to do. We know what needs to be done. Let us get the votes. For gosh sakes, one is a sense-of-the-Senate resolution. It is hardly what I would call Earth shattering.

Mr. DASCHLE. Mr. President, I think the Senator from Nebraska makes a very good point. It might be in our interest just to check. I would be compelled to object at this point to the request, even though I have already expressed myself with regard to how I feel about the request, just to accommodate our ranking member in this regard. So I will not object if we go into a quorum call to clarify whether or not we can do what the Senator from Nebraska has suggested. That would be my hope so we can resolve at least that matter. Otherwise, I will be compelled to object, and we can just continue to work.

Mr. LOTT. Mr. President, that is why we should have asked for this request yesterday. We should have had all the amendments that are serious filed yesterday. We had the hotline even on the request to ask you to file your amendments.

So we are going to go into a quorum call, and we are going to have a time out, instead of doing business while their conversations are going back and forth. I do not think it is unreasonable to ask the people involved to get together and let us talk about how we can work it out. At the same time we are again extending the time, or I guess we would have to extend the time for Senators to file their amendments. The intent is that all amendments be filed by 12 o'clock. I hope that Senators will proceed on that assumption. I have no problem with our getting together to see if we can work out this problem, and I cannot make a commitment because I have not followed the issue enough to be able to say right now that we ought to do this or that. I have to consult with people who are familiar with the subject on both sides.

Mr. KERREY. Mr. President, with respect, I think the unanimous consent

request is good. I would love to get it approved. I do not object to the unanimous consent. But the next pending business is the Kassebaum sense-of-the-Senate resolution.

Mr. LOTT. Mr. President, let me renew my unanimous consent request and get an agreement on that so the Senate is on notice. We can take the quorum call, and we will right now and try to come to a conclusion of the issue.

Mr. LAUTENBERG. Will the majority leader yield for a question?

Mr. DASCHLE. Let me respond, if I could, to the majority leader, and then I will be happy to yield to the distinguished Senator from New Jersey. I think that we have to resolve the matter the Senator from Nebraska has presented to us prior to the time we enter into a unanimous-consent agreement. If we can do that, I think that is a good-faith indication that we are able to resolve at least that part of it, and then we can go on to the next step. Let us do that.

Mr. LOTT. If we can go into a quorum call—but during that quorum call I will also consider putting this bill down right now and proceed to the Chemical Weapons Convention. This is the kind of thing that makes it impossible for us to do our work in a reasonable and cooperative way. I am saying that we should meet and discuss how we can solve this problem. But 15 hours on the Treasury-postal appropriations bill with all of the work we have pending, it is time that we get serious. To have 40 amendments pending on this bill now is not serious.

I observe the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DEWINE). WITHOUT OBJECTION, IT IS SO ORDERED.

Mr. SHELBY. Mr. President, I also ask unanimous consent that the pending committee amendments be temporarily laid aside.

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

Mr. SHELBY. Mr. President, I ask unanimous consent that the UC agreement earlier propounded by Senator LOTT, the majority leader, be withdrawn.

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

AMENDMENTS NOS. 5261, 5262, 5263, AND 5264 EN BLOC

Mr. SHELBY. Mr. President, I send a number of amendments to the desk which have been cleared on each side of aisle.

I ask unanimous consent that these amendments be considered and approved, en bloc, and that accompanying statements be placed at the appropriate place in the RECORD.

Mr. President, the amendments are as follows: for Senator GRAMS, to improve the IRS 1-800 help line service; for Senator FAIRCLOTH, regarding color printing of tax information; for Senator LEVIN, a sense-of-the-Senate resolution in support of the U.S. negotiators' position on autos and auto parts with Japan; for Senator THOMPSON, for the GSA to create a pilot program for States to participate in the FTS 2000 program.

The PRESIDING OFFICER. Is there objection to the request for the amendments to be considered en bloc?

Mr. KERREY. Mr. President, we have reviewed the amendments. There is no objection.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendments by number.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. SHELBY) proposes amendments numbered, en bloc, 5261 through 5264.

The amendments (Nos. 5261 through 5264), en bloc, are as follows:

AMENDMENT NO. 5261

(Purpose: To require the Internal Revenue Services to allocate sufficient funds and staff for providing improved IRS 1-800 help line service to taxpayers)

At appropriate place insert the following section:

"SEC. . IMPROVEMENT OF THE IRS 1-800 HELP LINE SERVICE

"(a) Funds made available by this or any other Act to the Internal Revenue Services shall be available for improved facilities and increased manpower to provide sufficient and effective 1-800 help line for taxpayers.

"(b) The Commissioner shall make the improvement of the IRS 1-800 help line service a priority and allocate resources necessary to ensure the increase in phone lines and staff to improve the IRS 1-800 help line service."

Mr. GRAMS. Mr. President, this is a simple and straightforward amendment. All it does is ask the Commissioner of the Internal Revenue Service to make improvement of the IRS 1-800 help line service a priority, and allocate the necessary resources to ensure the American taxpayers receive the assistance they need from the IRS.

Mr. President, although IRS spending increased from $2.5 billion in fiscal year 1979 to $7.5 billion in fiscal year 1996, the level of service provided to the taxpayers has not grown proportionally. In recent years, the IRS has invested billions of taxpayer dollars in its efforts to modernize its operations, including its information systems—but the results have been described by the GAO as "chaotic." As an ironic consequence, the Nation's tax collector remains perhaps the least taxpayer-friendly agency in the entire Federal Government.

Meanwhile, the Federal tax system has grown more complicated than ever before. In the mid-1950's, the Federal Income Tax Code was comprised of 103 sections and 400,000 words. Today, it has ballooned to 698 sections—a 578-percent increase—and nearly 1.4 million words. Adding to the aggravation of the Nation's taxpayers, tax regulations have multiplied just as rapidly. Between 1955 and 1994, the number of words in the regulations of the Internal Revenue Code increased more than 550 percent, from just over 1 million words to 5.7 million. Even if you are a trained speed reader who can read 1,000 words a minute, and you did not do anything else but devote every hour of every business day to reading these regulations, it would take you almost 3 years to complete them.

The rapid growth of the Federal Tax Code and its regulations has dramatically increased the complexity of our tax system, to the point where no one but a very few tax specialists can understand it. Even IRS agents are often confused by their own tax laws. The complexity of the Federal tax system means that tax assistance for ordinary American taxpayers is even more urgent now than ever before.

But this desperately needed assistance has not been adequately and effectively provided. For example, my State office receives complaints daily from constituents frustrated they cannot get through to a human being at the toll-free lines established by the IRS: the lines are constantly busy. In some cases, my constituents have tried for 3 or 4 days before they finally got through.

Mr. President, we enact laws and require the people to obey them. But in this case, the IRS has failed to provide sufficient assistance to enable average Americans to understand and comply with the laws. And when innocent noncompliance occurs due to the complexity of the tax system, we punish the taxpayers by imposing all sorts of penalties. This is simply not fair.

Mr. President, this amendment is a small but important step to improve our service to the American taxpayers. All it does is urge the IRS to use existing funds to provide more IRS 1-800 help line servive. I urge my colleagues to support it.

AMENDMENT NO. 5262

(Purpose: To prohibit the Internal Revenue Service from using color printing for purposes other than to call attention to changes in tax law or to make tax forms easier to use)

On page 26, after line 9, insert the following:

SEC. . No funds made available by this Act, or any other Act, to the Internal Revenue Service may be used to pay for the design and printing of more than two ink colors on the covers of income tax packages, and such ink colors must be the same colors as used to print the balance of the material in each package.

AMENDMENT NO. 5263

(Purpose: Sense-of-the-Senate resolution in support of U.S. negotiators' position in Framework Agreement on Autos and Auto Parts with Japan consultations)

At the appropriate place, insert the following:

That the Senate finds: on June 28, 1995, the United States and Japan finalized the text of the U.S.-Japan Framework Agreement on Autos and Auto Parts in Geneva.

That the 30 page text spells out a wide-ranging set of commitments by the Government of Japan to meet the Framework objective of "achieving significantly expanded sales opportunities to result in a significant expansion of purchases of foreign parts by Japanese firms in Japan and through their transplants, as well as removing problems which affect market access, and encouraging imports of foreign autos and auto parts in Japan."

That the commitments to action by the Government of Japan and statements by the Japanese private sector address the major barriers to access that have frustrated U.S. producers of competitive autos and auto parts in their efforts to sell in Japan and to the Japanese transplants, and

That the Framework Agreement represents an unprecedented, enforceable set of commitments to open the Japanese market to foreign competitive autos and auto parts and to increase the opportunities for competitive parts suppliers to sell to the Japanese transplant manufacturers.

Therefore, it is the Sense of the United States Senate to fully support the goals set out in the Framework Agreement and support the U.S. negotiators in their first annual consultations with Japan on September 18 and 19 in San Francisco in their efforts to obtain full compliance with the letter and spirit of the Framework Agreement.

FRAMEWORK AGREEMENT ON AUTOS AND AUTO PARTS

Mr. LEVIN. Mr. President, as cochairman of the Senate auto parts task force, I offer, with my colleague Senator SPECTER, the other cochairman of the Senate auto parts task force, a bipartisan resolution in support of obtaining full compliance with the letter and spirit of the Framework Agreement on Autos and Auto Parts.

Last summer, the United States and Japan signed an historic trade agreement that promises to open Japan's closed markets to United States autos and auto parts and deregulate Japan's convoluted and discriminatory auto parts safety inspection process.

However, the success of this agreement pivots on its strict monitoring and enforcement. An important part of that process is the annual consultations with Japan that are built into the terms of the agreement. The first annual review of the agreement between United States and Japanese negotiators takes place on September 18 and 19 in San Francisco.

With September 18 quickly approaching, Senator SPECTER and I, as cochairs of the Senate auto parts task force, offer this resolution today in strong support of the goals set out in the framework agreement and in support of our U.S. negotiators.

With this resolution, we want to make it clear that there continues to be strong bipartisan congressional support for achievement of the commitments made in the agreement. We want Japan to know that Congress will be watching the September 18 and 19 consultations and we expect to see compliance with the letter and spirit of the framework agreement.

The success of this United States-Japan agreement lies in the level to which it is complied with. We know all too well from past experience that Japan will not open its markets without strong pressure from the United States.

The September consultations offer United States negotiators the chance to review Japan's progress and insist that the agreement be lived up to. With this resolution we stand firmly behind our negotiators in insisting that we see true progress and concrete results.

AMENDMENT NO. 5264

(Purpose: To authorize the Administrator of General Services to conduct a pilot program involving States participation in the FTS2000 program)

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the General Services Administration is authorized to conduct a pilot program involving up to 10 States to provide FTS 2000 service to a State government, if:

(1) the appropriate authority of such State government makes application to the Administrator to receive FTS 2000 service and, as part of the application, agrees to pay all costs associated with access; and

(2) the Administrator finds that it would be advantageous for the federal government to provide FTS 2000 service to such State government.

(b) Nothing in this section shall be construed to authorize the Administrator of the General Services Administration to implement cooperative purchasing under 40 U.S.C. 481(b)(2).

(c) The authority provided in this section shall expire on September 30, 1998.

The PRESIDING OFFICER. Under the previous order, the amendments are agreed to, en bloc.

The amendments (Nos. 5261 through 5264) en bloc were agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

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

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

Mr. LOTT. Mr. President, it is noon on Thursday. We have work to do. The managers of the bill are doing very constructive work here unofficially, but we need to get back to business.

We are discussing with the minority leader and, through him, with the administration on how to proceed, if at all, on the Chemical Weapons Convention. There is some indication perhaps agreement may be reached to not do that at this time, but I have to have that request from the administration. We have to have an understanding about what that means.

In the meantime, we ought to be working on the Treasury-Postal appropriations bill. I am not asking much here. I am just asking that the Senate move forward. I think the Members would like to move forward, if we could get the staff to agree.

So I feel that I must ask for these consents—and I believe Senator DASCHLE wants to cooperate with this—but as the time goes by today, we have to consider other options.

Mr. President, I ask unanimous consent, then, that there be 20 minutes remaining for debate on the Kassebaum amendment No. 5235, to be equally divided in the usual form, and following the debate, the amendment be laid aside and Senator WYDEN be recognized to offer an amendment on the same subject, the text of which Senator WYDEN will now send to the desk.

I further ask that there be 20 minutes for debate on the amendment, to be equally divided in the usual form and no further amendments be in order during the pendency of the Kassebaum and Wyden amendments.

I further ask that a vote then occur on the Kassebaum amendment, without further action or debate, to be followed immediately by a vote on the Wyden amendment.

I think this is a fair way to proceed. This is what the Senator from Oregon indicated he wanted to happen. I think this is a way to get a vote on both of these issues and other issues.

I further ask unanimous consent that this agreement be implemented at the call of the majority leader, after notification of the Democratic leader.

The PRESIDING OFFICER. Is there objection?

Mr. KERREY. Mr. President, I object.

Mr. LOTT. I regret this objection. The agreement seemed to be the best course of action involving this impasse.

Mr. President, I ask unanimous consent that the Kassebaum amendment be laid aside for consideration of one amendment, and following the disposition of that amendment, the Kassebaum amendment become the pending business.

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

Mr. LOTT. This allows us to proceed then, Mr. President, to the next amendment in order. The managers

have some things they have been working on. They can do that. This makes good sense. I appreciate at least this cooperation. We will take them one teeny step at a time. I yield the floor.

Mr. KERREY. 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, I renew my earlier request, with a change of time, that all amendments must be filed by Senators by 2 p.m. this afternoon on the Treasury-Postal appropriations bill.

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

Mr. LOTT. Mr. President, I should clarify that these have to be the amendments that were on the list that we agreed to. Of course, the whole world was on the list. But this would have to be amendments on the list. And they need now to be filed by 2 o'clock in order to be considered at all. I thank the Senator from Nebraska for his help in getting that agreement. I hope now that he and the chairman can make some progress on maybe some agreed-to amendments and take up some amendment that is pending.

Mr. KERREY. 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. SHELBY. 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. SHELBY. Mr. President, I, along with my colleague, Senator KERREY, encourage all Senators now who have amendments that we might be able to clear and agree on between us, that they come down here and discuss them with Senator KERREY and me, because we are working off of a list. We have already worked four or five off in the last 30 minutes. Perhaps we can, if they will come on over—it is just a few minutes after 12—in the next hour or two we can perhaps work 8 or 10 off this list. I think it would be helpful and constructive, and we would be moving forward on this bill.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. I thank the Chair.

Mr. President, as the distinguished Senator from Alabama, the chairman of the subcommittee, said, we are trying to—and we are alerting both Senators and staff—we are trying right now to identify those amendments that we can agree to accept.

We also are trying to identify those amendments where we are going to agree together that we will both oppose or move to table. Senators need to be alerted to that, that there will be amendments offered on both sides of the aisle—Democrats will offer amendments that I may move to table; and, likewise, Republicans may offer amendments that Senator SHELBY agrees to table—and we are going to be aggressive in tabling amendments that we regard in some cases as nongermane or to be incorrectly offered, to just let people have a heads-up on that.

Third, we will look for opportunities, if we can, to talk to Members that have open—that is to say, they filed a place mark in here to identify whether or not their concerns have been taken care of in other areas, so that we can begin to winnow this list of amendments down.

There is a very good chance, as we now understand it, we will be on this bill all night long and until we get it passed.

Mr. SHELBY. That is right.

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

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

AMENDMENT NOS. 5271 THROUGH 5278, EN BLOC

Mr. SHELBY. Mr. President, I send a number of amendments to the desk which have been cleared on each side.

Mr. President, the amendments are as follows: Senator GRAMM, a sense-of-the-Senate resolution regarding the border States in Laredo, TX; for Senators BINGAMAN and JEFFORDS regarding energy savings; for Senator DASCHLE regarding explosives and arson information; for Mr. D'AMATO regarding the commemorative coin programs; for Senator MCCAIN regarding the Udall Scholarship Foundation; for Senator DORGAN, Mr. CONRAD, Mr. DASCHLE, and Mr. PRESSLER regarding the transfer of excess properties to Indian tribes; for Senator BYRD regarding telecommuting; and for Senator HATFIELD to provide care funds for the Pioneer Courthouse in Portland, OR.

I ask unanimous consent that these amendments be considered and approved, en bloc, and that accompanying statements be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes amendments numbered 5271 through 5278, en bloc.

The amendments (Nos. 5271 through 5278), en bloc, are as follows:

AMENDMENT NO. 5271

Insert at the appropriate place in the bill:

(a) REDUCTION IN FACILITIES ENERGY COSTS.

(1) IN GENERAL.—The head of each agency for which funds are made available under this Act shall—

(A) take all actions necessary to achieve during fiscal year 1998 a 5 percent reduction, from fiscal year 1996 levels, in the energy costs of the facilities used by the agency; or

(B) enter into a sufficient number of energy savings performance contracts with private sector energy service companies under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) to achieve during fiscal year 1998 at least a 5 percent reduction, from fiscal year 1996 levels, in the energy use of the facilities used by the agency.

(2) GOAL.—The activities described in paragraph (1) should be a key component of agency programs that will by the year 2000 result in a 20 percent reduction, from fiscal year 1985 levels, in the energy use of the facilities used by the agency, as required by section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253).

AMENDMENT NO. 5272

At the appropriate place, insert the following:

ESTABLISHING A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

SEC. . NATIONAL REPOSITORY FOR INFORMATION ON EXPLOSIVES INCIDENTS AND ARSON.

(a) Section 846 of Title 18. United States Code, is amended by—

(1) designating the existing section as subsection (a): and

(2) by adding the following new subsection (b) to read as follows:

"(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Secretary by State and local authorities."

(b) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

AMENDMENT NO. 5273

(Purpose: To reform the commemorative coin programs of the United States Mint in order to protect the integrity of such programs and prevent losses of Government funds, and for other purposes)

On page ___, strike lines ___ and ___, and insert the following:

"(1) MINT FACILITY FOR GOLD AND PLATINUM COINS.—Notwithstanding any other provision of law,".

At the end of title V of the bill, insert the following new sections:

SEC. 5___. COMMEMORATIVE COIN PROGRAM REFORM.

(a) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—Section 5112 of title 31, United States Code, as amended by sections 524 and 530 of this Act, is amended by adding at the end the following new subsection:

"(m) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—

"(1) MAXIMUM NUMBER.—Beginning January 1, 1999, the Secretary may mint and issue commemorative coins under this section during any calendar year with respect to not more than 2 commemorative coin programs.

"(2) MINTAGE LEVELS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in carrying out any commemorative coin program, the Secretary shall mint—

"(i) not more than 750,000 clad half-dollar coins;

"(ii) not more than 500,000 silver one-dollar coins; and

"(iii) not more than 100,000 gold five-dollar or ten-dollar coins.

"(B) EXCEPTION.—If the Secretary determines, based on independent, market-based research conducted by a designated recipient organization of a commemorative coin program, that the mintage levels described in subparagraph (A) are not adequate to meet public demand for that commemorative coin, the Secretary may waive one or more of the requirements of subparagraph (A) with respect to that commemorative coin program.

"(C) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this paragraph, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(b) RECOVERY OF MINT EXPENSES REQUIRED BEFORE PAYMENT OF SURCHARGES TO ANY RECIPIENT ORGANIZATION.—

(1) CLARIFICATION OF LAW RELATING TO DEPOSIT OF SURCHARGES IN THE NUMISMATIC PUBLIC ENTERPRISE FUND.—Section 5134(c)(2) of title 31, United States Code, is amended by inserting ", including amounts attributable to any surcharge imposed with respect to the sale of any numismatic item" before the period.

(2) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(f) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—

"(1) PAYMENT OF SURCHARGES.—Notwithstanding any other provision of law, no amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall be paid from the fund to any designated recipient organization unless—

"(A) all numismatic operation and program costs allocable to the program under which such numismatic item is produced and sold have been recovered; and

"(B) the designated recipient organization submits an audited financial statement that demonstrates to the satisfaction of the Secretary of the Treasury that, with respect to all projects or purposes for which the proceeds of such surcharge may be used, the organization has raised funds from private sources for such projects and purposes in an amount that is equal to or greater than the maximum amount the organization may receive from the proceeds of such surcharge.

"(2) ANNUAL AUDITS.—

"(A) ANNUAL AUDITS OF RECIPIENTS REQUIRED.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such amount, for an annual audit, in accordance with generally accepted government auditing standards by an independent public accountant selected by the organization, of all such payments to the organization beginning in the first fiscal year of the organization in which any such amount is received and continuing until all amounts received by such organization from the fund with respect to such surcharges are fully expended or placed in trust.

"(B) MINIMUM REQUIREMENTS FOR ANNUAL AUDITS.—At a minimum, each audit of a designated recipient organization pursuant to subparagraph (A) shall report—

"(i) the amount of payments received by the designated recipient organization from the fund during the fiscal year of the organization for which the audit is conducted that are derived from the proceeds of any surcharge imposed on the sale of any numismatic item;

"(ii) the amount expended by the designated recipient organization from the proceeds of such surcharges during the fiscal year of the organization for which the audit is conducted; and

"(iii) whether all expenditures by the designated recipient organization during the fiscal year of the organization for which the audit is conducted from the proceeds of such surcharges were for authorized purposes.

"(C) RESPONSIBILITY OF ORGANIZATION TO ACCOUNT FOR EXPENDITURES OF SURCHARGES.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall take appropriate steps, as a condition for receiving any such payment, to ensure that the receipt of the payment and the expenditure of the proceeds of such surcharge by the organization in each fiscal year of the organization can be accounted for separately from all other revenues and expenditures of the organization.

"(D) SUBMISSION OF AUDIT REPORT.—Not later than 90 days after the end of any fiscal year of a designated recipient organization for which an audit is required under subparagraph (A), the organization shall—

"(i) submit a copy of the report to the Secretary of the Treasury; and

"(ii) make a copy of the report available to the public.

"(E) USE OF SURCHARGES FOR AUDITS.—Any designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may use the amount received to pay the cost of an audit required under subparagraph (A).

"(F) WAIVER OF PARAGRAPH.—The Secretary of the Treasury may waive the application of any subparagraph of this paragraph to any designated recipient organization for any fiscal year after taking into account the amount of surcharges that such organization received or expended during such year.

"(G) NONAPPLICABILITY TO FEDERAL ENTITIES.—This paragraph shall not apply to any Federal agency or department or any independent establishment in the executive branch that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item.

"(H) AVAILABILITY OF BOOKS AND RECORDS.—An organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such payment, to the Inspector General of the Department of the Treasury or the Comptroller General of the United States, upon the request of such Inspector General or the Comptroller General, all books, records, and work papers belonging to or used by the organization, or by any independent public accountant who audited the organization in accordance with subparagraph (A), which may relate to the receipt or expenditure of any such amount by the organization.

"(3) USE OF AGENTS OR ATTORNEYS TO INFLUENCE COMMEMORATIVE COIN LEGISLATION.—No portion of any payment from the fund to any designated recipient organization of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may be used, directly or indirectly, by the organization to compensate any agent or attorney for services rendered to support or influence in any way legislative action of the Congress relating to such numismatic item.

"(4) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this subsection, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(3) SCOPE OF APPLICATION.—The amendments made by this section shall apply with respect to the proceeds of any surcharge imposed on the sale of any numismatic item that are deposited in the Numismatic Public Enterprise Fund after the date of the enactment of this Act.

(4) REPEAL OF EXISTING RECIPIENT REPORT REQUIREMENT.—Section 302 of Public Law 103-186 (31 U.S.C. 5112 note) is repealed.

(c) QUARTERLY FINANCIAL REPORTS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g) QUARTERLY FINANCIAL REPORTS.—

"(1) IN GENERAL.—Not later than the 30th day of each month following each calendar quarter through and including the final period of sales with respect to any commemorative coin program authorized on or after the date of enactment of the Treasury, Postal Service, and General Government Appropriations Act, 1997, the Mint shall submit to the Congress a quarterly financial report in accordance with this subsection.

"(2) REQUIREMENTS.—Each report submitted under paragraph (1) shall include, with respect to the calendar quarter at issue—

"(A) a detailed financial statement, prepared in accordance with generally accepted accounting principles, that includes financial information specific to that quarter, as well as cumulative financial information relating to the entire program;

"(B) a detailed accounting of—

"(i) all costs relating to marketing efforts;

"(ii) all funds projected for marketing use;

"(iii) all costs for employee travel relating to the promotion of commemorative coin programs;

"(iv) all numismatic items minted, sold, not sold, and rejected during the production process; and

"(v) the costs of melting down all rejected and unsold products;

"(C) adequate market-based research for all commemorative coin programs; and

"(D) a description of the efforts of the Mint in keeping the sale price of numismatic items as low as practicable.".

(d) CITIZENS COMMEMORATIVE COIN ADVISORY COMMITTEE.—

(1) FIXED TERMS FOR MEMBERS.—Section 5135(a)(4) of title 31, United States Code, is amended to read as follows:

"(4) TERMS.—Each member appointed under clause (i) or (iii) of paragraph (3)(A) shall be appointed for a term of 4 years.".

(2) CHAIRPERSON.—Section 5135(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(7) CHAIRPERSON.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Chairperson of the Advisory Committee shall be elected by the members of the Advisory Committee from among such members.

"(B) EXCEPTION.—The member appointed pursuant to paragraph (3)(A)(ii) (or the alternate to that member) may not serve as the Chairperson of the Advisory Committee, beginning on June 1, 1999.".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 5___. MINT MANAGERIAL STAFFING REFORM.

Section 5131 of title 31, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

Mr. D'AMATO. Mr. President, this amendment will begin the necessary reform of the commemorative coin programs authorized by Congress and carried out by the U.S. Mint. The amendment, supported fully by the Mint, includes many programs of H.R. 2614 passed by the House as well as recommendations for reform from the GAO. The amendment is a comprehensive substitute that enjoys widespread support.

Commemorative coins are collectibles. The coins issued for each program satisfy a number of objectives.

First, they raise awareness. Coin themes are meant to recognize significant national, and sometimes international, events, heroes and heroines, and historic sites vital to our American experience. They are expressions of our tremendous pride in all that molded this great country.

Second, they allow the Treasury a means of decreasing the national deficit through profitable programs.

Third, the sale of these coins enables worthy causes to raise money. For example, the restoration of our Nation's Capitol, the construction of memorials to our fallen heroes, and equally important for upkeep and maintenance of great homes such as Mount Vernon and the White House, and even the notable open-air home to four of our most prestigious Presidents, Mount Rushmore have been funded through commemorative coin programs.

As wonderful as these programs seem, serious problems exists—as underscored by the recent General Accounting Office report I requested last year. The commemorative coin market has been flooded with far too many coins. Overzealous programs trying to generate as many products as possible only reduce the value of coins for collecting. When mintage levels go through the roof, the value of these commemorative coins drops considerably.

More importantly and much to my dismay, taxpayers end up carrying the burden of coin programs that are not received well by the collectors. And while the sponsoring organizations may satisfy its goal of raising funds, the U.S. Mint incurs a loss which is passed on to the taxpayers.

The amendment I am offering has been crafted to augment the valuable work on commemorative coin program reforms sponsored by Representative MICHAEL CASTLE, chairman of the Subcommittee on Domestic and International Monetary Policy of the Committee on Banking and Financial Services. Congressman CASTLE's bill, H.R. 2614, which was supported overwhelmingly in the House, serves as a clear foundation for the reforms embodied in this bill. I commend him on his guidance and perseverance as it relates to this issue.

Mr. President, the reforms contained in this amendment will accomplish three major goals: Protect the taxpayer from losses incurred by the Mint, keep the number of coins in the market at a collectible level for collectors, and keep the total number of yearly programs at a manageable level for the Mint. Fulfillment of these goals will not only protect the American taxpayer, but will ensure the preservation and success of future commemorative coin programs produced by the U.S. Mint.

Mr. President, I ask unanimous consent that a summary of the amendment be printed in the RECORD.

Mr. President, I thank my good friend and colleague, Senator SHELBY, for his work in this area. As a member of the Banking Committee he is keenly aware of the necessity for these reforms.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Contains a technical correction to a previous amendment to H.R. 3756 concerning exclusive use of the Mint facility at West Point to produce all gold and all platinum numismatic items and bullion products.

Section 2. Commemorative Coin Program Reform. Section (a) addresses commemorative coin program restrictions. Section "(m)" to be added to Section 5112 of title 31, USC, requires that the Secretary of the Treasury may mint and issue no more than two commemorative coin programs per calendar year beginning on January 1, 1999. It also sets guidelines of maximum mintage levels for each denomination of numismatic product as prescribed by the Citizens Commemorative Coin Advisory Committee. This section includes an exception for the Secretary to increase the mintage levels as he determines appropriate from results of adequate, market based research.

Subsection (c) defines designated recipient organization.

Section (b)(1) addresses the recovery of mint expenses required before payment of surcharges to any recipient organization. Section 5134(C)(2) of title 31, USC is amended by inserting ", including amounts attributable to any surcharge imposed with respect to the sale of any numismatic item" before the period.

Section (b)(2) amends Section 5134(C) of title 31, USC by adding subsection (f), Conditions of payment of surcharges to recipient organizations. Subsection (f)(1) states no amount of any surcharge imposed shall be paid from the fund to the recipient organization unless the program costs have been recovered. Subsection (f)(1)(B) requires submission of an audited financial statement, which demonstrates to the satisfaction of the Secretary of the Treasury that the organization has raised funds from private sources in an amount equal to or greater than the maximum amount of surcharges that organization may receive from the sale of numismatic items.

Subsection (f)(2) requires annual audits beginning after the commencement of the surcharge payments. Subsection (f)(2)(A) requires these audits to begin with the first fiscal year in which the payments are received. The audit shall be in accordance with generally accepted government auditing standards and performed by an independent public accountant selected by the entity. The annual audits shall be conducted until the surcharges are fully expended. Each audit shall report the amount of surcharges received, the amount of surcharges expended, and whether the expenditures were for authorized purposes.

Subsection (f)(2)(B) sets minimum requirements for the annual audits. Required to be included in the audit shall be the amount of payments received, expenditures from the proceeds, and verification that expenditures were for authorized purposes.

Subsection (f)(2)(C) requires an accounting of surcharge monies separate from all other revenues and expenditures of the recipient organization. Subsection (f)(2)(D) calls for the submission of the annual audit no later than 90 days after the end of any fiscal year of the recipient organization. This report shall be submitted to the Secretary of the Treasury and made available to the public. Subsection (f)(2)(E) allows the recipient organization to pay the cost of the audit with surcharge funds. Subsection (f)(2)(F) allows the Secretary of the Treasury to waive the annual audit requirements, and Subsection (f)(2)(G) states that Federal entities are exempt from this paragraph.

Subsection (f)(2)(H) requires recipient organizations to provide, at the request of the Treasury Department's Inspector General or the Comptroller General of the United States, books, records and workpapers relating to receipts and/or expenditures of surcharge monies.

Subsection (f)(3) prohibits surcharge monies from being used, in any form or fashion, to attempt to influence or support Congressional numismatic legislative action. Subsection (f)(4) defines designated recipient organizations as "the recipient of any surcharge imposed on the sale of any numismatic item."

Section (b)(3) applies to the scope of the amendment which will involve all proceeds of any surcharge imposed on the sale of any numismatic item that are deposited in the Numismatic Public Enterprise Fund after the date of the enactment of this Act.

Section (b)(4) repeals the existing recipient report requirement as mandated by Section 302 of Public Law 103-186 (31 U.S.C. 5112 note).

Section (c) amends section 5134 of title 31, USC, by adding the new section "(g) Quarterly Financial Reports." Subsection (g)(1) requires that the U.S. Mint shall provide a quarterly financial report to Congress for all authorized commemorative coin programs to

be due no later than the 15th day of the month following each calendar quarter.

Subsection (g)(2) outlines the minimal requirements of these quarterly reports. Subsection (g)(2)(A) calls for a financial statement prepared in accordance with generally accepted accounting principles with information specific to action for each quarter as well as cumulative financial information relating to the entire program.

Subsection (g)(2)(B) states further requirements for all quarterly reports such as all costs relating to marketing efforts, all funds projected for marketing use, all costs for employee travel relating to the promotion of the programs, all numismatic items minted, sold, not sold, and rejected during the production process, and the costs of melting down all rejected and unsold products.

Subsection (g)(2)(B) requires the Mint to include information showing adequate market-based research for all non-circulating commemorative coin programs. Subsection (g)(2)(D) requires a description of the efforts of the Mint doing what it can to keep the price of numismatic items as low as practicable.

Section (d), the Citizens Commemorative Coin Advisory Committee amends Section 5135(a)(4) of title 31, USC, to shorten the length of service for members appointed to the Citizens Commemorative Coin Advisory Committee (CCCAC) to a term of 4 years and Subsection (d)(2)(A) allows for the Chairperson of the CCCAC to be elected by and from the Committee members by amending Section 5135(a)(6). Subsection (d)(2)(B) further states that the representative of the Mint, or the alternate to that member, appointed to serve in the CCCAC may not serve as Chairperson effective June 1, 1999.

Section (e) defines the effective date of all sections in this amendment to take effect on the date of enactment of this Act.

Section 5, the Mint Managerial Staffing Reform provision, no longer requires a presidential appointment of the following positions at each Mint facility: superintendent, assayer and engraver at the Philadelphia Mint.

AMENDMENT NO. 5274

(Purpose: To provide for the continuation of the term of a member of the Morris K. Udall Scholarship Board after the member's term has expired until a successor is chosen)

At the appropriate place, insert the following new section:

SEC. . Section 5(c)(1) of Public Law 102–259 (20 U.S.C. 5603(c)(1)) is amended—

(1) in subparagraph (A)(iii), by striking "and" after the semicolon;

(2) in subparagraph (B), by striking the period and inserting "; and"; and

(3) by adding after subparagraph (B) the following:

"(C) a Trustee may serve after the expiration of the Trustee's term until a successor has been chosen.".

Mr. McCAIN. Mr. President, this amendment is very simple. It ensures that trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation be able to serve after the expiration of their term until a successor is chosen.

Under the act which established the Morris K. Udall scholarships and foundation, trustees are nominated by the President and confirmed by the U.S. Senate. We all know that the nomination and confirmation process can be time consuming, and the work is not always completed in time for an efficient transition between new trustees and those whose term has expired. The resulting vacancies are disruptive to the organization and do not serve the purposes for which Congress created the foundation.

The Goldwater Foundation, also chartered by Congress, has an identical provision as this amendment, and the modification is worthy of the Senate's approval.

AMENDMENT NO. 5275

(Purpose: To allow the Department of Interior, through the Bureau of Indian Affairs, to transfer directly to Indian tribes in North and South Dakota portable housing units at the Grand Forks Air Force Base which have been declared excess by the Department of Defense and requested for transfer by the Department of Interior)

At the appropriate place in the bill, add the following:

Notwithstanding any other provision of law, the Secretary of the Interior, through the Bureau of Indian Affairs, may directly transfer to Indian tribes in North and South Dakota portable housing units at the Grand Forks Air Force base in North Dakota which have been declared excess by the Department of Defense and requested for transfer by the Department of the Interior.

Mr. DORGAN. Mr. President, I am offering this amendment to resolve a bureaucratic nightmare which has arisen in conjunction with the transfer of excess Department of Defense property from the Grand Forks Air Force Base in North Dakota to Indian reservations in North and South Dakota. I am pleased to be joined in this effort by Senators CONRAD, DASCHLE, and PRESSLER.

As a result of the realignment of the 321st Missile Group at the Grand Forks Air Force Base, housing needs were reduced and 486 existing homes were declared excess property by the Department of Defense. The Department of Interior requested these housing units with the intent of transferring them through its Bureau of Indian Affairs to certain reservations in North and South Dakota under Operation Walking Shield. When the first house was on a truck bed and ready to be transferred from the Grand Forks Air Force Base to the Oglala Sioux Reservation in Pine Ridge, SD, it hit a road block. At the last minute, we were informed that the Bureau of Indian Affairs had no authority to transfer title to these homes directly to the Indian tribes. My amendment is intended to resolve this problem.

As I am sure my colleagues are aware, the housing conditions faced by many native American communities are shocking. A recent Urban Institute study revealed that approximately 27 percent of all Indian households reside in substandard dwellings that are overcrowded and/or lack kitchen or plumbing facilities, electricity, and/or central heating.

In August, I had the opportunity to view the housing conditions on the Standing Rock Sioux and Fort Berthold reservations in North Dakota. What I saw was deplorable. Many homes fail to meet even basic safety and health standards. They lack roofs, windows, plumbing, and they smell of gas. And many Indian families have to wait for years for critical home repairs. It is truly a national disgrace.

The Senators from North and South Dakota were most hopeful that some of the critical housing shortages on the reservations in our respective States could be addressed with the transfer of this excess DOD housing to the tribes. In order to ensure that these desperately needed homes can be transferred, we must first pass this amendment.

The Department of Interior and the General Services Administration as well as the Governmental Affairs and Indian Affairs Committees have reviewed and cleared this narrowly targeted amendment, and I want to thank everyone involved for their efforts in helping to resolve this problem.

With adoption of the amendment, we have an opportunity to prevent Government waste and stretch Federal resources to meet the urgent and real housing needs of Indian families. In short, this amendment represents an example of how Government should work, and I urge its adoption.

AMENDMENT NO. 5276

(Purpose: To provide funding for the acquisition, lease, construction, and equipment of certain flexiplace work telecommuting centers)

On page 49, line 18, insert before the colon ": *Provided*, That of such amount provided for non-prospectus construction projects $250,000 may be available until expended for the acquisition, lease, construction, and equipping of flexiplace work telecommuting centers in the State of West Virginia".

Mr. BYRD. Mr. President, the amendment I am offering would make available an amount of $250,000 out of non-prospectus construction projects, for the establishment of a flexiplace work telecommuting center in West Virginia.

Mr. President, both Jefferson and Berkeley Counties of West Virginia are now considered to be part of the Washington Metropolitan Statistical Area. I am advised that officials of the Jefferson County Development Authority have been working with the staff of the General Services Administration to develop a telecommuting center in the Charles Town area. The purpose of the center is to establish a job site that could easily be linked through computer and telecommunication technologies to federal agencies in the central Washington, DC area, thus diminishing commuting time and helping to alleviate severe traffic congestion. The parties negotiated in good faith and were under the impression that funds were available for the establishment of

the center. Unfortunately, the funds to establish such telecommuting centers are only available to establish such centers in Maryland and Virginia.

The purpose of this amendment is to make an amount of $250,000 available for the establishment of a telecommuting center in the Charles Town area. The amendment would not diminish the funds already available for centers in Maryland and Virginia. Rather, the funds would be derived from monies set aside in the bill for non-prospectus construction projects, that is, projects costing less than $1.5 million, including such minor projects as periodic painting and repair of mechanical, electrical, and other building components.

In summary, the amendment I am proposing would allow for the establishment of a flexiplace work telecommuting center in Jefferson County, West Virginia, which is now considered by the Department of Labor to be part of the Washington Metropolitan Statistical Area.

AMENDMENT NO. 5277

On page 55, line 11 after "Missouri" insert: ": *Provided further*, That $1,450,000 may be available for the renovation of the Pioneer Courthouse located at 520 SW Morrison in Portland, Oregon".

AMENDMENT NO. 5278

(Purpose: To express the sense of the Senate in support of new border station construction in Laredo, Texas)

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE IN SUPPORT OF NEW BORDER STATION CONSTRUCTION IN LAREDO, TEXAS.

(a) The Senate finds that:

(1) In 1995, over one-third (35%) of all U.S. exports to Mexico were processed through the Port of Laredo;

(2) Nearly two-thirds of all U.S. exports to Mexico that went through a south Texas port of entry went through the Port of Laredo in 1995;

(3) The value of imports processed through the Port of Laredo in 1995 exceeded $15 billion, and the value of all exports was $14.7 billion for that year;

(4) The number of loaded, cross-border shipments, both northbound and southbound, through the Port of Laredo is projected to double from 1995 to the year 2000, from 851,745 shipments to 1,703,490;

(5) The City of Laredo received on October 3, 1994 a Presidential Permit from the U.S. State Department to construct a third bridge in the city, and in February 1996 the U.S. Coast Guard issued a permit for the bridge's construction;

(6) Financing of the new bridge has been secured from both sponsors, the cities of Laredo and Nuevo Laredo, and in February 1997 the City of Nuevo Laredo is scheduled to begin construction of an access road connecting the bridge with the loop around Nuevo Laredo;

(7) U.S. Customs revenue generated at the Port of Laredo totaled $216 million in 1995, an increase of $13 million from the previous year, while the U.S. Government's estimated cost for operating border station facilities in Laredo is $10 million, so that the Port generated over $200 million for the U.S. Treasury in 1995; and

(8) The new bridge will greatly enhance safety in the downtown area because it will allow the diversion of commercial traffic from the two existing downtown bridges to the new bridge, since the two downtown bridges will be strictly passenger bridges, with the new bridge and the Colombia Bridge (22 miles from Laredo) devoted to commercial traffic.

(b) It is the sense of the Senate that:

(1) The construction of a third bridge in Laredo is vitally needed to accommodate increased trade with Mexico and to relieve traffic congestion, road damage, and pollution in downtown Laredo caused by commercial traffic; and

(2) The Administrator of the General Services Administration should accelerate the timetable for design and construction of a border station for the new Laredo bridge to ensure that the bridge can be opened to international traffic as soon as possible.

Mr. KERREY. Mr. President, we have reviewed these amendments, and we concur. They are all worthy amendments and we support their adoption.

The PRESIDING OFFICER. Under the previous order, the amendments are agreed to.

The amendments (Nos. 5271 through 5278), en bloc, were agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

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

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

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I understand the pending business is the amendment of the Senator from the State of Oregon. Is that correct?

Mr. KERREY. Kansas.

Mr. SHELBY. Kansas.

The PRESIDING OFFICER. The pending business is the Kassebaum amendment.

Mr. KERRY. I move that the pending business be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

AMENDMENT NO. 5279

(Purpose: To make funds available for a study of tagging explosive materials, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself, Mrs. FEINSTEIN, and Mr. KENNEDY, proposes an amendment numbered 5279.

Mr. KERRY. 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 14, line 6, strike "$395,597,000" and insert "$416,897,000, of which $21,300,000, to remain available until expended, shall be available to conduct the study under section 732(a) of Public Law 104–132 (relating to marking, rendering inert, and licensing of explosive materials) and to conduct a study of threats to law enforcement officers from the criminal use of firearms and ammunition; and".

On page 22, line 14, strike $4,085,355,000" and insert "$4,064,055,000".

On page 25, between lines 21 and 22, insert:

SEC. . (a) Section 732(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is hereby repealed.

(b) It is the sense of the Senate that the $21,300,000 reduction in funds available for tax law enforcement to fund the explosive materials and law enforcement officers safety study be achieved as follows:

(1) $9,700,000 from the delay required by this Act in implementing field restructuring of the Internal Revenue Service.

(2) $11,600,000 from administrative and other savings in tax law enforcement activities.

Mr. KERRY. Mr. President, this is an amendment which attempts to deal with a problem that has long been identified within the law enforcement community and which many within the law enforcement community feel is an essential ingredient in our ability to be able to improve our antiterrorist activities and our ability to be able to bring people to prosecution for terrorist acts.

Earlier this year, Congress took a very important and long overdue step toward making it easier to track the origin of explosives that are used by terrorists and other criminals when we passed the antiterrorism bill. That legislation, which was signed by the President in April, directed the Secretary of the Treasury to study the feasibility of tagging explosives for the purposes of detection and identification. We passed the provision asking for a study that would identify how we can possibly put taggants into explosives so that if there is——

Mr. SHELBY. Will the distinguished Senator from Massachusetts yield for an inquiry as to a possible time agreement?

Mr. KERRY. Mr. President, I am delighted to yield.

Mr. SHELBY. What about an hour equally divided?

Mr. KERRY. I want to inquire of my colleagues for a moment. I know the Senator from California wants to speak, and I want to see who else might like to speak. I know Senator KENNEDY may.

If the Senator will allow me, I will continue my opening comments.

Mr. SHELBY. Sure. We will come back to it.

Mr. KERRY. I will be happy to enter into an agreement if we can determine who wishes to speak.

Mr. SHELBY. I thank the Senator for yielding.

Mr. KERRY. We will touch base with a couple of offices and ascertain their intentions.

Mr. President, again, I want to emphasize that we passed and the President signed legislation that begins to deal with this question of taggants and the feasibility of using taggants as a means of tracking explosives in the aftermath of a bombing.

As I think most of our colleagues know, a taggant is a plastic tracing device—or metal—which can be placed in the explosive material and, after an explosion, these taggants can actually be scooped up either by magnetic or other means so that you can gain enough of them to be able to determine from the taggant code precisely where it was sold, when it was sold, and where it was manufactured, and begin to be able to track the person who committed the crime.

There are millions of different codes that are capable of being created, so you have this enormous ability to be able to determine when and where a particular explosive might have been made. If the study results that we have ordered already are positive, then the Secretary of the Treasury is authorized to begin to issue additional regulations that will enable us to use these taggants in explosives manufactured or imported into the United States.

Unfortunately, this provision in the anti-terrorism bill did not include all dangerous materials in the study. It explicitly excluded black and smokeless powder. One can ask why we chose to leave out these substances when they are used in 90 percent of the pipe bomb attacks in the United States. I regret we did not include these.

I think the public has been, all too often, denied, for various reasons, its ability to try to maximize law enforcement's ability to move forward. I am not suggesting that we ought to do anything that says we are going to absolutely mandate the use of taggants, but we would like to have the study to at least analyze whether or not adding taggants to black and smokeless powder will provide us the ability to fight terrorism and safely—and I emphasize "safely"—deal with the problem of black and smokeless powder in bombs.

All we are asking for is a study. Let us study whether or not that can be done in a safe way. Why anyone would want to object to law enforcement being able to study something that they say they definitely want and need, and that they know works, is beyond me. My hope is that we will not have objection to it, that we will be able to proceed forward with the Congress unanimously saying: In the United States of America, common sense will rule. It is appropriate to have a study, an analysis independently done, of whether or not it is safe to have taggants in black and smokeless powder.

I have heard opponents suggest that taggants might not be safe because they might destabilize the powder. I personally believe this is a red herring. Taggants have been used in black powder previously without a stability problem. But that is the purpose of the study. If, in fact, it is unsafe, let the study come back and tell us it is unsafe. The purpose of the study is to determine the safety, the feasibility, and the effectiveness of adding the taggants.

Why should we do this? I was a prosecutor, and I gained great respect for the forensic laboratory during that experience. Today, it is even more extraordinary what forensic experts are able to tell us about the things which just escape the naked eye or which escape all of us who are not experts. But the experts tell us they want this technology to enable them to determine the origin of explosives and to help them work their way back to the perpetrator of a bombing.

When Pam Am 103 crashed over Lockerbie, Scotland, in 1989, the authorities determined almost immediately that the cause was a bomb, but it took them a year to find the tiny clue that led to the Libyan suspects. If the explosives in that bomb had been marked with taggants, the source of the material would have been immediately known, and the investigators would have gained a tremendous advantage.

We have recently witnessed again the horrific spectacle of a massive explosion in the air of a still as yet undetermined source, as a 747 went down. We know there was some kind of explosion of undetermined origin. We have watched the painstaking process of an effort to try to rebuild the airplane itself, recouped from the floor of the ocean, and that makes it even more difficult. But if investigators do determine that a bomb triggered the crash of TWA 800, they will then have an even more difficult investigation to find the bomber. This time the problem is exponentially more difficult because the wreckage is under water. But it does not take a forensic scientist to understand that a mechanism to determine the origin of explosive material would be a tremendous value in this explosion, too.

This investigation has already indicated evidence of holes blown through the back of seats that show the direction of that explosion. But they do not have taggants. They do not have the ability to quickly draw a conclusion of its type or origin or, even yet, whether that came from a bomb.

Attacks of the magnitude of Pan Am 103 obviously cause devastating impact. They grab our attention. So did the TWA flight. But attacks using pipe bombs are actually a much more common experience in the United States, and these devices also cause death and destruction. This was demonstrated all too vividly in July when just such a bomb exploded at the Olympic Centennial Park, causing two deaths and spreading terror through an event that was supposed to celebrate the triumph of the peaceful human spirit.

Unfortunately, the Olympic bombing was not an isolated incident. From 1990 through 1994, there were 4,095 pipe bomb attacks in the United States. Let me repeat that. From 1990 through 1994, there were 4,095 pipe bomb attacks in our country. These bombs killed 44 people, injured 384, and they caused property damage of almost $10 million. In 1994 alone, there were 862 incidents. Of these, 86 percent used smokeless and black powder.

Taggants have already proved to be a useful tool for law enforcement. The Bureau of Alcohol, Tobacco, and Firearms conducted a pilot project in the late 1970's. They added taggants to dynamite and other blasting-cap-sensitive explosives. In 1979, Nathan Allen, of Baltimore, was killed by a bomb hooked to his car ignition. The subsequent investigation found that the explosive used in that bomb contained taggants. The investigators identified the specific batch from which the explosives came. The police then used the sales records to track down and convict Mr. Allen's killer.

That should have become a routine investigative practice, post-1979, but 17 years later, here we are still talking about it. Here we are, 17 years later, and law enforcement, which managed to convict a killer by the use of taggants, is still asking us: Let us have taggants.

All we are asking today is, let us analyze and study the benefit of adding taggants to explosives so we can make an informed decision. If the study finds them to be safe, then it seems the benefits are obvious. The ability to track the origin of explosive materials is an invaluable tool for criminal investigations, and I hope my colleagues will join me in adding black and smokeless powder to the study and providing the necessary funding.

It seems to me, despite any group's opposition for reasons that they understand but which, frankly, do not bear up to scrutiny when measured against where most people in this Senate or Congress are prepared to go, we ought not delay further this analysis.

So I hope that colleagues will join with Senator FEINSTEIN, Senator KENNEDY, myself, and others in an effort to provide law enforcement with the tools that they need to combat terrorism and to track down those cowardly individuals who see bombs as a way to achieve their misguided goals.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from California, Mrs. FEINSTEIN, is recognized.

Mrs. FEINSTEIN. I thank the Chair. Mr. President, I commend the Senator from Massachusetts for what was a strong, accurate and, I think, eloquent statement, something that has become very controversial and really should not be controversial.

Mr. KERRY. Mr. President, can I ask my colleague to yield for a moment? The manager asked if we were able to enter into a time agreement. I know he wants to do that. How much time does my colleague expect to consume?

Mrs. FEINSTEIN. Give me 10 minutes, maybe a little more.

Mr. KERRY. Mr. President, can we suggest an hour equally divided?

Mr. SHELBY. Mr. President, I ask unanimous consent that there be 1 hour of debate, equally divided in the usual form, on the Kerry amendment pending a motion to table. I further ask that no second-degree amendment be in order prior to the motion to table, and no vote occur before the hour of 2:15 p.m.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Mr. President, reserving the right to object. I inquire, can we have an up-or-down vote?

Mr. SHELBY. It is going to be a motion to table.

Mr. KERRY. I heard that, which is why, Mr. President, I was wondering whether we could have an up-or-down vote.

Mr. SHELBY. We would, over here, rather have a motion to table. That is what we talked about.

Mrs. FEINSTEIN. Reserving the right to object. I think it is really time for us to go on record. Senator KERRY and I participated, as did the distinguished Senator from Idaho sitting in the back of the room, in a special effort where we tried to negotiate something and were not able to do so.

I think what we hope to do is lay out the case, and I am sure the case in opposition to studying black and smokeless powder will be laid out. We would really appreciate an up-or-down vote, I say to my colleague.

Mr. SHELBY. If I may respond, I have talked to Senator KERREY from Nebraska. He is not on the floor. We had agreed earlier to move to table this, along with other amendments that came up that we thought we could not fund at this point. With an hour of debate—if I can just proceed a second—if we can agree on this, there will be an hour of debate. Of course, everybody knows the rules. Once we get recognized, we can move to table and there will be no debate. Whereas, we get an hour on this equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Reserving the right to object. Mr. President, do I understand, according to the unanimous-consent request, the motion to table then would be on the Kerry amendment as submitted?

Mr. SHELBY. That is right, but no second degrees.

Mr. KERRY. And no second degrees. I understand, prior to the motion to table, no second degrees.

Mr. SHELBY. Correct, and no vote before 2:15 p.m., which is an hour.

Mr. KERRY. I have no objection.

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

Mr. KERRY. Mr. President, I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California [Mrs. FEINSTEIN], is recognized for 10 minutes.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, this amendment, which I strongly support, would repeal the prohibition of requiring or even studying the use of taggants in black and smokeless powder. What we are saying is, let's take a look, in a comprehensive, well-done, study of using taggants in black and smokeless powder. It provides the funding, $21 million, for the examination of the safety and the effectiveness of taggants, which is required before they can be used.

Why do we want black and smokeless powder? Senator KERRY was eloquent. Ninety percent of all of the pipe bombs have black and smokeless powder. Therefore, not to be even able to study it renders us impotent in ever using taggants in a meaningful way to trace those who practice terrorist incidents.

Why is this important? It is important because today—today—the United States of America is in the top 20 nations with the highest level of terrorism in the world. We have more incidents than Lebanon.

The Senator has indicated the number of incidents: well over 4,000 now since 1990. We all know of the Unabomber. We all know a pipe bomb was used at the Atlanta Olympics. We all have seen what happened in the World Trade Center. We are all deeply concerned about TWA Flight 800.

What is a taggant? A taggant is a small sandwich-shape microchip. It is color coded in different codes. When it is broken down, it looks like the smallest little flecks of sand, different colors, so small you can barely see them at all. These are put in the powder. And then depending on the color coding of the taggant, you can trace where this was purchased.

So it becomes like a fingerprint that enables somebody to go back to the source and trace a perpetrator. It is not a solution, but it is an aid to law enforcement to be able to ferret out and arrest, I think, the biggest cowards of all time—the people who use bombs on innocent people. That is why it is important.

We have heard a lot about the fact that this information to make pipe bombs is so easily available. Youngsters are making these bombs from information available on the Internet—pipe bombs, 80 percent of all of the bombings according to one study have become all too common.

Let me go back to some of the concerns. Some of the concerns are safety: There was an explosion in 1979 at a firm called GOEX Manufacturing Co. in Arkansas. I have here an affidavit, which I would like to submit for the RECORD, from a gentleman by the name of James P. Palmquist, who was the senior attorney with the office of the general counsel of 3M, Minnesota Mining and Manufacturing Co. He handled for 3M a lawsuit against 3M involving this explosion at GOEX in Arkansas in 1979.

I want to read three parts of his affidavit, and I quote:

> 4. That in the course of discovery concerning the allegations made in this lawsuit, records were discovered which identified the exact location at the time of the accidental explosion of all MICROTAGGANT materials which were then being evaluated, which records proved that there was no MICROTAGGANT materials in the booster materials that were being reworked at the time of the accidental explosion;

The point is Taggants were not in the materials that were exploded in 1979, which is the incident that the National Rifle Association most uses to discredit taggants.

> 5. That further information was discovered indicating other reasons for the increased instability of the booster materials which were being reworked at the time of the accidental explosion;
>
> 6. That based upon such facts it became clear to all involved in the lawsuit that there was no evidence whatsoever that 3M's MICROTAGGANTs could have contributed in any way to subject explosion, said lawsuit was dismissed.

It is signed by James P. Palmquist. It is notarized.

Mr. President, I ask unanimous consent that this be printed in the RECORD.

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

AFFIDAVIT

State of Minnesota
County of Ramsey

Known all men by these presents:

That, before me, the undersigned authority, on this day personally appeared James P. Palmquist, who, after having been duly sworn by me, upon his oath deposed and said the following:

1. That he is a Senior Attorney with the Office of General Counsel, Minnesota Mining and Manufacturing Company ("3M") with offices located at Building 220–11E–03, 3M Center, St. Paul, MN 55144–1000;

2. That he has been employed by 3M since 1963 and has been an attorney within 3M's Office of General Counsel from 1973 to present;

3. That in such capacity he handled for 3M a lawsuit filed against 3M involving a July

25, 1979 explosion at GOEX, specifically the GOEX manufacturing plant in East Camden, Arkansas, which lawsuit alleged, among other things, that 3M's MICROTAGGANTs® which were then being evaluated as possible identification taggant materials for explosives, was a contaminet in certain booster materials that were being reworked and that the MICROTAGGANTs® contributed or caused the GOEX accidental explosion;

4. That in the course of discovery concerning the allegations made in this lawsuit, records were discovered which identified the exact location at the time of the accidental explosion of all MICROTAGGANT® materials which were then being evaluated, which records proved that there was no MICROTAGGANT® materials in the booster materials that were being reworked at the time of the accidental explosion;

5. That further information was discovered indicating other reasons for the increased instability of the booster materials which were being reworked at the time of the accidental explosion;

6. That based upon such facts it became clear to all involved in the lawsuit that there was no evidence whatsoever that 3M's MICROTAGGANTs® could have contributed in any way to subject explosion, said lawsuit was dismissed.

Further affiant sayeth not.

JAMES P. PALMQUIST.

Mrs. FEINSTEIN. Additionally, there was a study performed by the Aerospace Corp. and contracted out by ATF. This was done about 15 years ago. And I would like to read from a letter of Dr. Carl Boyars who is the manager of the Explosives and Materials Control Directorate of the Aerospace Corp. He was in charge of this study. And he says in a letter to me, dated July 31, 1996:

The only firearms for which black powder is now used as a propellant explosive are antiques and antique replicas, both commonly referred to as "muzzle loaders". Black powder is sold in cans for use by hobbyists who reenact battles of prior centuries and carry out similar activities. It is also used, illegally, by some makers of pipe bombs because of its ready availability and ease of ignition. Addition of identification taggants in the final step of black powder manufacture was easily performed, involved no hazard, and performance of the tagged product in muzzle loading firearms was no different from the performance of untagged black powder in tests carried out by a muzzle loading firearms expert selected by the black powder manufacturer.

So the black powder manufacturer selected a specific expert, and that expert carried out these tests and found no difference between muzzles loaded with tagged black powder and muzzles loaded with untagged black powder.

He continues:

Smokeless powder is also sold in cans for use by reloaders. These are individuals who prefer to load cartridge ammunition by hand rather than use factory manufactured ammunition in their own firearms. Advantages cited by reloaders are cost (e.g., in shotgun ammunition) or greater accuracy because of more precise control of the load in each cartridge. The smokeless powder intended for reloaders is also used, illegally, by some makers of pipe bombs because of its ready availability, ease of ignition, and much higher energy content than black powder.

Unlike black powder, smokeless powder can come in a wide range of chemical compositions and physical shapes and sizes, depending on the manufacturer. The individual particles of smokeless powder may be cylindrical, flat, or spherical, although all particles within any can of smokeless powder for reloaders will have the same chemical composition and shape. This makes the development of an identification taggant for smokeless powders a more complex problem.

A test program was set up to examine the feasibility of identification tagging of spherical smokeless powder. However the manufacturer of the spherical powder biased the test conditions so greatly that failure was guaranteed.

This is from the definitive person who did the study by the Aerospace Corp., as contracted by ATF back in 1980.

The Swiss also took this study, and the Government of Switzerland began requiring their use—taggants—in all commercial explosives. The success has been outstanding. In over 10 years, they have solved 565 crimes based on taggants.

The report compiled by the Swiss Scientific Research Council stated the following:

After more than a 10 year experience in the field of marking explosives, safety fuses and detonating cords, we feel that our methods and procedures have proven highly practical and efficient. In summary, it is safe to say that Switzerland with its marking methods is on the right lines. Fears that adding marker substances might negatively influence the safety of explosives for civil use has proven unsubstantiated.

Here is my point. I have, I think, adequately debunked this incident where opponents say powder with taggants exploded. No taggants were in the powder that exploded in 1979 in that Arkansas plant.

Two, the head person of the Aerospace study found that taggants were safe for use with one exception that needs further study.

Three, Switzerland has used taggants for 10 years, made 565 arrests successfully.

Four, we are now No. 20 in terrorist incidents in the world. And 90 percent of pipe bombs use this kind of black and smokeless powder. Therefore, should not this body exercise its responsibility and do a study of black and smokeless powder? The Senator from Massachusetts and I both say, yes, let us do that study, let us spend the money. We can save lives, and we will arrest perpetrators. I thank the Chair. I yield the floor.

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

Who seeks recognition?

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. SHELBY. 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. SHELBY. Mr. President, I am concerned at the moment, as one of the managers of the bill, not about the study that the Senator from Massachusetts and the Senator from California discussed, because in a lot of ways that makes a lot of sense. I am concerned about the offsets—how are we going to pay for it? I understand the Senator is proposing to pay for this study.

Because of that, as I indicated, Senator KERREY and I at the appropriate time would move to table the amendment. Mr. President, this amendment proposes to appropriate $21.3 million for this study, and it is probably going to cost a lot of money to do a proper study of this kind. The offset, Mr. President, I remind my colleagues, would come from reductions in the IRS.

Now, the Secretary of the Treasury and the Commissioner of the IRS are already calling and imploring us to try to put some more money in the IRS. Senator KERREY and I believe we are properly funding the IRS, but to take an additional $21.3 million out, I think, would not be the proper time to do it, and it would not be the proper thing to do. I do not believe it is the appropriate thing to do on this bill.

I was wondering if the Senator from Massachusetts and California could find some other way to fund the study?

Mrs. FEINSTEIN. I am very happy to respond through the Chair to the distinguished Senator.

It is my understanding that the Treasury Department supports this appropriation. In other words, the Treasury Department has agreed to the offset.

Mr. SHELBY. I am not aware of that at all. I talked with the Secretary of the Treasury until 11 o'clock this morning and he certainly did not mention this to me. I do not know if he mentioned it to Senator KERREY.

Mr. KERREY. Mr. President, as I understand it, half the funding would come from savings that would occur only if the reorganization proposed by the IRS would not occur, but the reorganization is supported by Treasury. The IRS actually has objected to the reorganization delay that is contained in another amendment that is on this bill. It is not clear whether or not that reorganization amendment is going to be sustained. I had one conversation with Secretary of Treasury Rubin about that.

Mrs. FEINSTEIN. If the Senator will yield, we are verifying this at this moment. I was informed by my staff that the Treasury Department is in support of this offset. We will be happy to verify it.

Mr. KERREY. Mr. President, I have the amendment now in front of me. I did not earlier. The $9.7 million comes from the delay required by the act in

implementing field restructuring of the Internal Revenue Service. We have not passed that delay yet. That delay was added as an amendment. It has not been enacted yet.

I did receive notification from Secretary Rubin that he is concerned about a delay in reorganization. I do not know, perhaps they are not going to support it. It was in the IRS recommendations that they wanted to do this reorganization.

To be clear on this, or attempt to be clear on this, the reorganization effort itself has not been fully justified to me. A reason we put the amendment on, asking for delay, was for the purpose of provoking a full justification from the standpoint of the mission of the IRS, as well as customer service of the IRS. We have some problems already with their 800 numbers and we want to make sure that this reorganization was both cost justified and was not going to produce a deterioration in service.

The second area is one that I must say, if the administration supports this, really flies in the face with things they have been talking to our committee about every single time they have come up. Mr. President, $11.6 million from administration and other savings in tax law enforcement activities—we cut back tax law enforcement activities from the levels that they requested. Tax law enforcement activities are a tool we use to try to get compliance from about, I believe, 83 or 84 percent today, and hopefully up to the 90 percent goal, which is the administration's objective.

The more, of course, we collect in taxes, the less pressure you have on people who are voluntarily complying and saying, "I will send my taxes in; I know I owe them." Tax enforcement is for the purpose of relieving the burden on law-abiding citizens willing to pay their taxes without having to be jostled by the IRS.

I am interested to see what the administration says, if they are willing to make a statement on both of those things. First, I do not know how they will be able to work out the objection they raised to reorganization. Even if they do, it is not clear that will be in the law.

Second, as I said, with great respect to the Senator from California and the Senator from Massachusetts, I think they have a good proposal on that. It does, as I said, fly in the face of the recommendations. I am prepared to make an argument anyway that we are dangerously close to underfunding what we need to be able to fund on tax enforcement so that we can say to our taxpayers that 83 percent to 84 percent of American taxpayers file voluntarily the correct amount. They do not make any mistake at all. Mr. President, 85 out of 100 or 83 out of 100 Americans—Coloradans, Idahoans, Nebraskans, Californians—are filing taxes and they are all right.

The enforcement division and the enforcement effort is to try to reduce the burden on them. Once we have decided how much money needs to be collected to pay the bills, the more compliance; the higher compliance rates we get, the lower the burden is going to be on everyone.

This is a very important effort. Again, I have great respect for the intent of the amendment but until and unless the administration or someone is able to persuade me that this would not be a good offset, I continue to oppose the amendment.

Mrs. FEINSTEIN. 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. 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.

UNANIMOUS-CONSENT AGREEMENT—CHEMICAL WEAPONS CONVENTION

Mr. LOTT. Mr. President, as in executive session, I ask unanimous consent that the agreement entered into on June 28, 1996, with respect to Executive Calendar No. 12 be vitiated.

I further ask unanimous consent that the majority leader, after consultation with the Democratic leader, may turn to the consideration of Calendar No. 12.

Before the Chair rules, I know that the Democratic leader would like to comment, but I would like to comment, too.

First of all, just a little history on this. We worked on both sides of the aisle to come to this unanimous-consent agreement back in June. It was related to the defense authorization bill. We came to an agreement, and I felt compelled to honor that agreement. I fully intended to go to the Chemical Weapons Convention Treaty this morning, to go to conclusion today or tomorrow, as provided under the unanimous-consent agreement.

After consultation with the Democratic leader, and having gotten indications from the administration, including just now from the Secretary of State, that their preference would be at this time that we not proceed with the previous agreement, I have prepared the pending unanimous-consent agreement. I understand their request, and I am prepared to comply with it.

I want to say to the leader that I think we ought to continue working on it. The parties involved who have interest on both sides of the aisle should communicate on amendments, and examine if potential amendments to the resolution of ratification can be worked out. Hopefully that can happen. It may not happen.

We have to recognize the period of time that we are in. There are lots of interests, and lots of time pressures. The important thing is to be careful what we do and to make sure that we do it the right way with as little partisan rancor as possible. We will keep working with you on that.

I want to emphasize that we are not setting a time certain for a vote on the convention this year. I am not going to be in a position to be intimidated or to have other matters held hostage in an effort to force a vote before we adjourn. To say in the future what we can or can't do in an effort to force a vote would be irresponsible and demonstrate a lack of good faith. It is at the request of the administration that we are not voting tonight on the convention. But I will say—and I think I now have a record to back it up—that I will work with the Democratic leader, and we will see what we can do, and we will keep working to see if agreement between both sides can be reached.

I renew my unanimous-consent request.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, let me say that the decision we have made represents our best effort to try to deal with the circumstances we currently have before us. The amendments that are contemplated during the debate on the chemical weapons treaty have not yet been shown to the administration or to Members of this side of the aisle, and for good reasons. They have been working on them, and I do not fault them necessarily for not showing them to us, but we are concerned that the amendments have the opportunity to be considered carefully, that we work with the authors of the legislation over the next few days to see whether we can't resolve the differences that the amendments represent.

The administration is desirous of attempting to find some resolution to those amendments so that we can send a clear message as a country about the importance of this treaty as is possible.

I appreciate very much again the cooperation of the majority leader in coming to this conclusion. I think it is the right one. He and I had anticipated bringing the treaty up this afternoon and having a good debate, but I think a 1-hour time limit under these circumstances may not be the definition of a good debate on issues of this import.

So we will continue to work to continue to try to find ways in which to resolve these differences and, subject to the agreement of both leaders, perhaps bring it up later. It would be my hope that we will bring it up later, but that will be subject, of course, to our success in these negotiations on the amendments themselves and the schedule. But we will address that and issues relating to the treaty at a later day.

So, again, let me thank the majority leader.

Mr. LOTT. Mr. President, I renew my request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Two points I would like to make before the leader leaves. We are still requesting additional information with regard to the convention. I have been corresponding with the White House and communicating with the administration. I think that there is additional information that could be obtained and perhaps be declassified. I am going to continue to work on that. I may ask the minority leader to give me a hand with that as part of the ongoing process. I think there is some more information that could be made available and could be declassified which could be helpful on both sides, quite frankly.

The other thing is that we are going to proceed on the Treasury-Postal appropriations bill to try to make some progress on that. I am not going to try to get another unanimous-consent agreement at this point. But it is my intention to keep working on that and come back here after further consultation to see if we can't get some further narrowing of the amendments and some way to complete this bill tonight.

Is that your understanding, or your intention?

Mr. DASCHLE. Mr. President, I just came from a caucus meeting and encouraged our colleagues to come to the floor to offer the essential amendments, to wait for another day to offer those that may not be essential, to agree to time limits, recognizing there is a real possibility we could finish this bill tonight. I would like to work with that goal in mind with the majority leader and with an expectation that we can accommodate Senators' schedules on Friday and on Monday. But we will do our best to see if we cannot get additional cooperation and narrow that list more completely this afternoon.

Mr. LOTT. I thank the Senator very much.

Mr. President, I yield to the Senator from Massachusetts. He has a question.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. I should like to ask the majority leader, if I may, Mr. President, is it my understanding that it is the majority leader's intention to try to work through the amendments with the specific notion of bringing the convention, the treaty, back within the timeframe that we are here in September?

Mr. LOTT. That is not the way I stated it. I gave my assurance that we will continue to work with interested parties on both sides of the issue and to see if amendments could be agreed to or not. It was obvious that to proceed at this time was not the right thing to do.

Mr. KERRY. I understood that.

Mr. LOTT. I am not making a commitment on a specific time or even this September. It will depend on what happens.

Mr. President, while other Senators are conferring, I do want to encourage the managers of this legislation to keep working to move amendments and to see if we can find a time to get votes. I reiterate, I am not making any commitments on times, and I am not going to be threatened in how we do this. But I am prepared to work in good faith with both sides of the issue and both sides of the aisle, and I think that is all that can be expected of me at this time.

With that, Mr. President, unless there are further questions, I will observe the absence of a quorum so the managers can return to the floor and proceed.

The PRESIDING OFFICER (Ms. SNOWE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 5279

Mr. KERRY. Madam President, is there any time remaining?

The PRESIDING OFFICER. There are 5 minutes left to the opposition.

Mr. KERRY. Who is considered the opposition here?

The PRESIDING OFFICER. The Senator from Alabama.

Mr. KERRY. That is the only time remaining?

The PRESIDING OFFICER. That is correct.

Mr. KERRY. Madam President, I ask unanimous consent simply for 1 minute to explain.

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

The Senator from Massachusetts.

Mr. KERRY. Madam President, this is a very straightforward vote on whether or not we are prepared, finally, to include black and smokeless powder in a study by appropriate law enforcement authorities of the United States. A study to determine whether it can contain taggants so that we can investigate pipe bombs and other bombs in the United States. Law enforcement has sought this for 17 years. It is a very simple vote. There is an adequate offset in the IRS. They have cut the bills funding by $1 billion already. The most that this will cost is $21 million and of course we hope it will be less, but any argument to the contrary that suggests you cannot find the $21 million that have been offset here is simply unacceptable. So we ask colleagues to vote for this appropriate study.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Madam President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Alabama has 3½ minutes.

Mr. SHELBY. Madam President, I will be brief on this. We have just been told the administration does not support the offset proposed by the Senator from Massachusetts on this.

I yield the remainder of my time.

I move to table the amendment.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

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

The result was announced, yeas 57, nays 42, as follows:

[Rollcall Vote No. 287 Leg.]

YEAS—57

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Baucus	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Brown	Gregg	Nunn
Burns	Hatch	Pressler
Campbell	Hatfield	Roth
Coats	Heflin	Santorum
Cochran	Helms	Shelby
Cohen	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Jeffords	Snowe
D'Amato	Kempthorne	Specter
DeWine	Kerrey	Stevens
Domenici	Kyl	Thomas
Exon	Leahy	Thompson
Faircloth	Lott	Thurmond
Frahm	Lugar	Warner

NAYS—42

Akaka	Feingold	Levin
Biden	Feinstein	Lieberman
Bingaman	Ford	Mikulski
Boxer	Glenn	Moseley-Braun
Bradley	Graham	Moynihan
Breaux	Harkin	Murray
Bryan	Hollings	Pell
Bumpers	Inouye	Reid
Byrd	Johnston	Robb
Chafee	Kassebaum	Rockefeller
Conrad	Kennedy	Sarbanes
Daschle	Kerry	Simon
Dodd	Kohl	Wellstone
Dorgan	Lautenberg	Wyden

NOT VOTING—1

Pryor

The motion to lay on the table the amendment (No. 5279) was agreed to.

Mr. SHELBY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Madam President, I ask unanimous consent the pending business be set aside.

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

EXCEPTED COMMITTEE AMENDMENT, BEGINNING ON PAGE 129, LINE 20 THROUGH PAGE 130, LINE 18

Mr. FEINGOLD. Madam President, I intend to move to table the committee amendment beginning on page 129, and ask that it be in order to consider that committee amendment at this time.

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

Mr. LOTT. Madam President, as I indicated, I will move to table the committee amendment that strikes a House provision capping the number of political employees who are appointed by the President. The effect of tabling the committee amendment will be to retain the House language and therefore limit the number of executive branch political appointees.

I am pleased to be joined in this bipartisan effort by both Senators from Arizona, Mr. MCCAIN and Mr. KYL, my neighbor from the neighboring State of Minnesota, Mr. GRAMS, and the Senator from Pennsylvania, Mr. SANTORUM.

Madam President, the House language we seek to retain caps the number of political appointees at 2,300. The CBO estimates that doing so will save $228 million over the next 6 years. This bipartisan proposal is broadly supported for both its deficit reduction and its policy implications.

Madam President, it has been endorsed by the Citizens Against Government Waste, and similar versions of this provision have been included in the CBO's deficit reduction proposals, as well as the budget assumptions of the other body. The other body passed this exact provision on a vote of 267–150, with strong bipartisan support.

I note that this is a more modest provision than the one the Senate passed last year as part of the fiscal year 1996 Treasury-Postal appropriations bill. At that time, we in this body capped the executive branch political appointees at 2,000, a level that in practice would have required a reduction that would have been 60 percent greater than the reduction we are proposing today, the reduction that has already been approved in the House version of this legislation.

The provision is also consistent with the recommendations of the Vice President's National Performance Review which called for reductions in the number of Federal managers and supervisors. That report argued that overcontrol and micromanagement not only stifled the creativity of line managers and workers, they "consumed billions per year in salary, benefits, and administrative costs."

Madam President, that assessment is especially appropriate when we think about and look at the issue of political appointees. Between 1980 and 1992, the number of political appointees in our executive branch grew by more than 17 percent, over three times as fast as the total number of executive branch employees. Since 1960, political appointees have grown in this country in the executive branch by a startling percentage of 430 percent. While we have made significant strides in the last few years in slowing and even reversing the growth in the total number of Federal employees, our progress with respect to political appointees has lagged behind.

Madam President, the exploding number of political appointees was a target of the 1989 National Commission on the Public Service which was chaired by former Federal Reserve Board chairman Paul Volcker. As the Commission noted, Presidents must have the flexibility to appoint staff that are ideologically compatible. Political appointees, of course, can be enthusiastic sources of fresh ideas, and they do bring many times meaningful experience from the private sector into an administration. Equally as important, political appointees help ensure Government response to the policy priorities that were actually mandated by the electorate at the ballot box.

You cannot say that no political appointees are needed. It is very important if our election of a President is to have real meaning. However, Madam President, as the Volcker Commission found, far from enhancing responsiveness, the mushrooming number of Presidential appointees actually undermined effective Presidential control of the executive branch. The Commission noted that the large number of Presidential appointees simply cannot be managed effectively by any President or by any White House. There are just too many.

Altogether, the Volcker Commission argued that the lack of control and focus may dilute the President's ability to develop a coherent and coordinated program, and to hold Cabinet Secretaries accountable. The Commission found that the excessive number of appointees are actually a barrier to critical expertise, distancing the President and his principal assistants both from the most experienced career officials and from the front-line workers. These are the people who are often the best positioned to make the critical assessments of Government policy.

The problem of distancing that was raised by the Volcker Commission has been chronicled in more detail by Paul Light in his book "Thickening Government." Light found that the increasing number of political appointees are arrayed in layer upon layer of management, layers that did not exist 30 years ago. He found in 1960 there were 17 layers of management at the very top level of Government; by 1992 there were 32 layers. Compounding the problem, Light notes that the 32 layers do not stack neatly on top of one another in a unified chain of command. Some layers come into play on some issues, but not on other issues. Mr. Light asserts that as this sediment has thickened over the decades, Presidents have grown increasingly distant from the lines of Government, and the front lines from them. He adds that Presidential leadership, therefore, may reside in stripping Government of the barriers to do its job effectively.

Madam President, many will recall the difficulties, for example, that the current administration has had in filling even some of the more visible political appointments. A story in the National Journal in November 1993 focusing upon the delays in the Clinton administration in filling political positions noted that in Great Britain the transition to a new government is finished a week after it begins. A speedy transition is possible because the British Government runs on a handful of political appointees. According to Paul Light, they have about one-tenth as many career executives, and only five layers of management between the Minister and the British equivalent of the Deputy Assistant Secretary, compared to more than 16 layers here in a comparable situation.

By contrast, the transition of U.S. administrations over the past 35 years has seen increasing delays and logjams and perfectly illustrates another reason why the number of these political appointee positions should be cut back. Madam President, the average length of time from inauguration to confirmation of top-level executive positions has steadily risen from 2.4 months under President Kennedy, to 5.3 months under President Reagan, to 8.1 months under President Bush, and now to a pretty staggering 8.5 months, on average, under President Clinton.

The consequences of having so many critical positions unfilled when an administration changes can be serious. In the first 2 years of the Clinton administration, there were a number of stories and problems created by delays in making these appointments.

From strained relationships with foreign allies over failures to make ambassadorial appointments, to the 2-year vacancy that we all read about at the top of the National Archives, the record is replete with examples of agencies left drifting while a political appointment was delayed. Obviously, there were many situations where the delays were caused by circumstances beyond the control of this administration. And, of course, the figures I just read indicated that this has been a problem in many administrations. It is

just that, over time, with each administration, regardless of party, it has gotten somewhat worse.

Nonetheless, it is clear that with a reduced number of political appointments to fill, the process of selecting and appointing individuals to key positions in a new administration is very likely to go more smoothly and to be enhanced.

Madam President, let me also stress that the problem is not simply the initial filling of a political appointment, but also the problem of keeping somebody in that position for a reasonable period of time. Between 1970 and 1986, the tenure of a political appointee was, on average, 20 months, and even shorter for schedule C employees.

In a recent report, the General Accounting Office reviewed a portion of these positions for the period of 1981 to 1991, and found high levels of turnovers—seven appointees in 10 years for one position—as well as delays, usually of months but sometimes years, in filling vacancies.

As I have noted before on this floor, this proposal may not be popular with some within this administration and perhaps some in the other party who hope to win back the White House in the upcoming election.

I want to stress that I do not believe the effort to reduce the number of political appointees should be a partisan issue. It is because the only way we are ever going to have control over this is by a bipartisan commitment in the House and the Senate to do something about the exponential growth in the number of political appointees.

So I was pleased to introduce earlier in the 104th Congress legislation that would have implemented the recommendations of the Volcker Commission, and that would have capped the political appointees at 2,000. And I was proud to have as cosponsors of that measure my friends, the senior Senator from Arizona and also his colleague and my friend, the junior Senator from Arizona.

As I mentioned earlier, this body adopted that provision to last year's fiscal year 1996 Treasury-postal appropriations bill. It had bipartisan sponsorship. So this body has already gone on record in favor of the cap at 2,000. But what we are trying to do by tabling the committee amendment today is to at least get us down to the 2,300 that the other body has already supported in this legislation we are considering today.

(Mr. THOMAS assumed the chair.)

Mr. FEINGOLD. Mr. President, the sacrifice that the deficit reduction efforts require really have to be spread among all of us. That has already been felt by many people all over this country and many Government workers all over this country. This measure requires us to bite the bullet and impose limitations upon political appointments that both parties would probably want to retain.

The test of a commitment to deficit reduction, however, is not simply to propose measures that impact somebody else. As we move forward to implement the recommendations of the National Performance Review Board to reduce the number of Government employees and streamline agencies and make Government more responsive, we should also take this opportunity today to right-size the number of political appointees, to implement the policies of any administration, without, at the same time, unnecessarily burdening the Federal budget.

Mr. President, I urge my colleagues to support this bipartisan effort. I thank the Chair and yield the floor.

Mr. KERREY. Mr. President, I listened, I regret to say, only to about the last half of the Senator's statement. If he doesn't mind, I would like to ask a couple of questions. First of all, my memory, such as it is, says that there was not a rollcall vote on this last year, is that correct?

Mr. FEINGOLD. That is correct.

Mr. KERREY. You have cited a Volcker Commission report repeatedly here. Can you describe the details of that commission and how many people were on it? Do you have any other cites besides the Volcker Commission to base this on?

Mr. FEINGOLD. In addition to Mr. Volcker's commission, which was cited by a number of articles, I also cited the work of Mr. Light, who wrote a more extensive book about this subject called "Thickening Government," which I quoted at length. It was described that the growth of these political appointments has outstripped growth in other areas of Government. Therefore, while we have cut back on some of our Federal employees, this area continues to grow. I can certainly provide the Senator with the details of the Volcker Commission and Mr. Light's book.

Mr. KERREY. The one statement that the Senator from Wisconsin made that causes me to have some concern is the statement that I believe the Volcker Commission said that political appointees actually make it more difficult for the President to carry out whatever it was he or she campaigned upon. One of the facts here is that this would take it from 2,800 down to——

Mr. FEINGOLD. The current estimate, if I may say to the Senator from Nebraska, is about 2,900, but it varies and the Congressional Budget Office estimates that it averages around 2,700 or 2,800. The effect of this would be, as I understand it, to require, within the next year, a reduction of between 400 and 500 positions.

Mr. KERREY. So that the public can put this into perspective, there are 1.971 million Federal employees. Right now, there is an allowance for 3,400. I think we are at 2,800 now. This would take us down to 2,300.

My concern with the Senator's amendment is based upon having been elected for 4 years as Governor, where I came into office with very little opportunity for appointments below the top slot. It made it difficult, therefore, to come in, having promised to do something, for example, with agriculture, with taxes, or with some other area of government, and carry that out. The public expected me to be able to do it. But, in fact, I would come in with very little real power, because there was little opportunity to bring people in who agreed with the positions that I had taken during the campaign itself.

That is why I was concerned when I heard that. It runs against my own common experience, my own personal experience. It does not seem to me that running at the current level of 2,800, with 3,400 being the cap, that does not seem, on the surface, to be like a thickening of the Government. It is less than half of 1 percent—current political appointees. I know the administration raised concerns, not just for themselves but for whoever might follow, that this could impede their ability to carry out whatever he or she campaigned upon. It seems to me the people expect him to be able to come in and run the bureaucracies with the people that have similar views to theirs.

Mr. FEINGOLD. Mr. President, I appreciate the comments of the Senator from Nebraska, of course. I respect very much his distinguished tenure as Governor of Nebraska and his knowledge of the importance of having a political presence within any kind of executive administration, if you want to implement the policies you run on.

I indicated that, and it was also indicated from the Volcker Commission, and others' comments to that effect.

The question is what level? What I have indicated here and want to repeat is that that clearly has been a greater theme of government with respect to political appointees than other people in executive positions. It has grown 17 percent, while in the nonpolitical area it has only grown approximately 5 percent. That is the question.

Clearly, I say to the Senator from Nebraska, Mr. President, there must be some point at which there are too many political appointees—perhaps 10,000, or 8,000. At some point there are too many people. What these reports have suggested, almost ironically, is that, if you get too many political appointees, the chief executive of a State or the Federal Government cannot even keep track of them so that it actually can backfire on them. It could actually end up being worse than having the right mix between civil service career people and political appointees.

In response to the earlier question, as I understand it, there were six members of the task force within the Volcker Commission that examined the specific issue of political appointees. The chairman of that task force was Elliot Richardson. Among the members were Robert McFarlane, Walter Mondale, Benjamin Read, Anne Wexler, and Alan Wolff, and they came up with this conclusion that we ought to go to 2,000 again.

To reiterate, my amendment—actually the House amendment that I simply want to restore—would not take this to 2,000 as I originally hoped. It would simply take us to the 2,300 figure.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I still have some questions about this. I come at this with some background of longstanding. The Volcker Commission report is about 7 years old at this time. I had hearings on it when it first came out of the Governmental Affairs Committee. I am very familiar with the Volcker Commission report. It came out in 1989, I believe. I had hearings on it in the Governmental Affairs Committee at the time it came out because I, too, was concerned about the growth of Government. We had hearings and worked on some ways to peel back on some political appointees to hit the proper balance that needs to be hit.

I do not believe, however, that just mandating it, as we are doing with this particular proposal, is the way to go at this thing. I think it is in many ways unnecessary and unwarranted because the proposed legislation would enforce an arbitrary cap. And it is arbitrary. It is not done going department by department and agency by agency, and saying, "Here are some that are excess; here are some that are not." Doing a study that way just lops off about a third, or 30 percent the total number of political appointees, without saying who is going to do this job or whether their job can be done by somebody else or absorbed by people in the regular civil service ranks, or whatever.

Let me just say that President Clinton has taken the lead to reduce Federal employees while making Government work better. The President's plan has carefully analyzed the Federal Government, and it has recommended specific and pragmatic ways to reduce the number of Government employees. The plan makes 180 specific recommendations to streamline the Government and deliver more services for less money.

By contrast, the proposed legislation singles out political appointees while failing to account for how the arbitrary number of remaining appointees will manage the Government. As far as reducing Government and cutting costs, we began 3 years ago when President Clinton began the effort to reduce Government.

We are all familiar with the National Performance Review under the direction of the Vice President. His goal was to create a Federal Government that works better and costs less.

Under the NPR—let us see how we have done with the NPR. After 3 years in office, the President is well ahead of schedule to reduce the size by 272,900—that was the goal by the end of this year—or about a 12-percent reduction in the Federal workforce. In fiscal year 1995, 185,000 full-time equivalent positions were cut. By the end of fiscal year 1996, 214,000 will have been cut. So we are well on the way to cutting that 272,900. So we have reduced. We are about two-thirds of the way toward the goal in one-third of the time that we thought it was going to take.

In the Reagan and Bush administrations, from 1980 to 1992, we saw an increase of 67,000 in the Federal civilian workforce. That was an increase of 3.1 percent. This administration has cut the number of on-board Federal employees by 225,000 in 3 years. It is a decrease of 10 percent. A similar reduction has occurred in the percentage of political appointees.

So it has been across the board. It has not been only civil service. It has also been the political appointees. There are approximately 6 percent fewer political appointees in this administration than there were during the previous administration.

This is an important thing to note. The last time American taxpayers saw levels of Federal employment this low was during the administration of President Kennedy.

This administration established a plan to reduce not only the size of the Government but also the number of programs, the number of regulations, and the way Government works to develop new partnerships. Even though the current level of appointees in this administration is below that of the Bush administration in 1992, the proposed legislation would force a 30-percent reduction of political appointees in addition to the reductions that have already been accomplished.

The National Performance Review accomplishes the goals of this proposed amendment. I have been much involved with the NPR. President Clinton has sought to reduce the cost of Government to the American public while providing higher quality services. The National Performance Review has carefully analyzed the Federal Government and has recommended specific, pragmatic ways to reduce the number of Government employees, including political appointees, to manage with fewer layers of middle management, and to reduce Government regulations. For example, President Clinton has reduced the number of Department of Agriculture agencies from 43 to 29 and plans to close or consolidate 1,200 field offices.

I think the proposed amendment looks only at one frame of really the big picture. The proposed amendment singles out political appointees. By singling out political appointees, it examines only one-sixth of 1 percent of the total Federal employees. About half of the political appointees are schedule C employees who are junior and midlevel staff. These are not all senior-level managers even though they may be political appointees.

This administration has instead focused on all Federal employees by removing layers of management to offer lower level employees greater responsibility. It also decentralized decision-making and increased the scope of managers' control.

Political appointees execute the policy priorities voiced by the American public at the ballot box. Political appointees play a key role in carrying forward policy priorities. The Clinton administration has an obligation to ensure that the Government is a well-managed instrument of the public interest in carrying out programs important to the public. Political appointees are entrusted with managing the priorities of the American public.

So just arbitrary cuts in the number of political appointees endanger the administration's ability to respond to policy priorities created both by law and the American public at the ballot box.

Mr. President, there was a statement made about how the British functioned and how their Government operates and how they can turn around the Government in a much shorter time than we can. That is very true. Perhaps there are some areas where we can learn from the British and other parliamentary forms of government. But they operate on a parliamentary form of government quite different from ours. Indeed, they are a democracy, but their functions of government are completely different than ours where we split the powers out and have the powers of government balance each other between the executive and legislative branches. Then ours is monitored by the judicial branch, of course, when there are any challenges to this. But in a parliamentary system theirs is centered in that Prime Minister, and a Prime Minister is normally far more powerful than any American President. We may be a bigger country and a bigger economy, but as far as the authority to commit the affairs of government in a certain direction, a Prime Minister speaks with authority for his or her government with a shadow Cabinet out there in the offing. That is the reason they always can turn over faster than we can. In a parliamentary form of government, the Prime Minister can say, "Here is what is going to happen," and that is a commitment of

government, or that person is turned out of office when there is a new election or the party turns him or her out of office.

And so a Prime Minister, as far as getting things done, and as far as the hierarchy, the bureaucracy of Government to back that person up, there is less turnover in that type system than there is normally in our type system with all of its remainder of powers back and forth.

The loyal opposition in a parliamentary situation has a cabinet, a shadow cabinet standing there waiting to come in. They know right then who their appointees are going to be, if there are going to be many at all, and the actual form of Government goes on. The full-time civil servants are lifetime, usually spend a lifetime career in those particular positions.

Now, let us look back at the NPR a minute, the National Performance Review. We worked very closely with the National Performance Review in the Governmental Affairs Committee. We provided some of the legislation, the legal authority for buyouts, for early outs, for early retirements, but done with fairness—done with fairness.

We have cut out a lot of those positions. And as I just read a moment ago here, we have, indeed, cut out a number of the political appointees with that, and that was done at the initiative of the administration, to cut some of those out, cut out some of these layers of management.

I know Paul Light, in reference to his work. I have his book and have read his book. He was on our committee staff at one time and went from the committee staff, I think, to the position he has now where he has authored a lot of articles, and so on, has done an excellent job in what he has done. So I am thoroughly familiar with Paul's work. I know him personally. He has done a good job in pointing out a lot of these things. We do, indeed, have to be working toward the end he points out in the book of this layering of Government, the many layers and levels that we have to fix if we truly are going to have efficiency in Government.

But as my distinguished colleague from the Nebraska, the floor manager of the bill, pointed out a few moments ago, political appointees in our system come in not just as political favors to give somebody a Government job. They are put in over the normal civilian bureaucracy, the civil service, so that the policies of the new President can be implemented; you have people in each one of these departments or agencies to do exactly that, to see that the President's policies are carried out. They are the implementers.

Now, do we have too many implementers? Well, I would not quarrel that maybe we do, but I think to just arbitrarily say we are going to lop off a third of these because we do not like that big number out there is a pretty shortsighted way to go at this thing.

How do we make that kind of change, just whacking away at the management levels that the President uses for control in these different agencies and departments? How do we just whack away at them without knowing what the impact is going to be? I guess I would feel much better about it if we had had some hearings on this and have some specificity about where we are going to see these cuts occur, how they are going to do this. Maybe it will work in some departments; in other departments, it might be catastrophic.

I do agree very much with the distinguished Senator's comments about the turnover in the political appointees once they are in office, and that disturbs me mightily because we did some studies on that and have GAO figures on it. I do not have the current figures with me to be up to speed on this.

Well, I guess I do. Staff just handed me a comment on this.

Turnover rates of political appointees: Appointees average 2 years of service. When NPAS vacancies occur, it often takes months, if not years, to fill the slots. Some positions go unfilled for months, if not years. By the time you get up to speed on major issues and budget procurement and financial management, you are on the way out, and that is no way to run the Government.

So when I have conducted hearings in the past, when we have had people come up for confirmation before the committee, I have always asked them for a commitment. I asked them for a personal commitment that they are in for this term of office of the President. Everyone I have run into so far, all those who have been through confirmation—we had, I think it is, 40 or 40-some who have come before our committee—everyone has given me that commitment. I do not think anyone has violated it.

So we are doing our little bit to get this constancy of Government in there also, which I think is very important. I think it is about half of the appointees are gone within 28 months, or something like that, I think, is the current figure. That is in the ballpark anyway. We would have to get more detailed figures on that.

In fact, we had a hearing on this back a few years ago; I was concerned enough. We had GAO do a study, and they came up and gave the results to us. We were trying to make sure whatever administration, Republican or Democratic, it got a commitment from their political appointees coming in not just to get a new entry in their dossier or in their record but came in to do their job to the end of that administration's 4-year term, whatever it might be.

So I would feel better about this proposal if we had had some hearings or we had details on exactly who was going to be affected—most, how the President is expected to do his job if he does not have his political appointments in there to carry out the policies that he has been elected to put into effect in Government, and I do not think we have that.

So I hate to oppose this, but I have to, in all good conscience, do that because I do not like this sort of, what I call, a meat-ax approach to Government, just say we do not like the number of employees; we will whack a third of them off.

That is basically what we are doing with this. It sounds great. Political appointees, everybody would probably agree they are the most expendable people in Government, but they are not really. Whether it is a Republican administration or Democratic administration, there are people out there in Government as political appointees, either Secretary, Under Secretary level or whatever, who are implementing the policies the administration had just been elected to put into practice.

So just to say that because they are political appointees we automatically can do away with approximately a third of them I do not think is realistic. So I have to oppose this. This will probably be popular enough—we are going to have a vote on it—to go through, but I urge my colleagues to think twice about this before they vote for something like this.

We are progressing in this direction. The administration has had well over 200,000 positions cut. We are at the lowest employment level since John F. Kennedy. We are bringing the employment of Government down not only in civil service but in these political appointments.

A number of those positions, as I said earlier, have already been eliminated by the National Performance Review and more are coming. That, to me, is the way to go at this thing—keep the course we are on of cutting down civil service. Right now, we are ahead of schedule on reaching that cut of 272,900 that the administration set as a goal after they did their assessment of all the civil service and of all the Government positions.

I hope we will vote this down so that we do not do more damage here than we are doing good. We are heading in the right direction right now, and to just automatically say we are going to arbitrarily pick a number off the top of our head and whack away is the wrong way to go, and I urge my colleagues to vote against the amendment.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Let me, first of all, say that there is no one who has shown more commitment to Government efficiency and making sure we have spent our tax dollars properly than the Senator from Ohio, so it is no fun disagreeing with him on an issue like this.

Let me, as I must, respond to a few of the points he made.

First of all, to hear some of the comments from the Senator from Ohio and some of the questions of the Senator from Nebraska, you would think what we are proposing to do is to essentially eliminate all political appointees.

That is not what we are doing. The figure that has been bantered about is we are cutting the number of political appointees by a third, but that is not the case. The estimate we have is that the number averages about 2,700 or 2,800 political appointees. The effect of this amendment would take it down to about 2,300.

That is far less than one-third. It is more like 17 percent or something close to it. I understand the comparison between the rounding off at 3,000 versus the original bill at 2,000 would have produced that result, but that is not the effect here. Neither I nor Mr. Volcker's commission or Mr. Light at any point suggested you do not need political appointees. In fact, I took great care in my original remarks to indicate that you absolutely do need some political appointees. You must have them in order to implement the political will that accompanied a Chief Executive's election to office. So there is no disagreement on that point. The only question is what is the proper level, and that goes to the second question.

Are we, as the Senator from Ohio suggested, singling out political employees for a cut? Or is it just the opposite, that they have been singled out for protection? Federal employment in general, in this area, only went up 5 percent between 1980 and 1992; political employment has gone up 17 percent. It is awfully hard to explain to the people back home, while various local jobs at the Federal level as well as so many other things are cut, this area continues to grow and grow quickly.

I think it is interesting the very period that figure comes from, the 17 percent growth, is the 12 years we are always talking about out here—what happened between 1980 and 1992 with our Federal deficit. That was the period of exponential growth in the deficit and that is what we have been trying to remedy. It seems to me this is admittedly small in the big picture but, again, one example of how things got out of control. In effect, blank checks were being written all over this Government, including in the area of constantly adding political appointees.

That leads me to the point I want to stress to my friend from Ohio. He is absolutely right, the progress that has been made by this administration is tremendous. I am very proud of it. I would like to think I have had a small part in it. The Vice President's national performance review has been key. The reductions have been very impressive. Every American should be proud that, overall, we have made great progress, as the Senator from Ohio has suggested. All I am trying to do by this amendment is to round it out; to make sure it does look, in the words of the Senator from Ohio, fair; that it just did not happen to civil service people but it also happens to political appointees.

I think it is most unfortunate to speak of the great reductions that have been made in one area and then find the area where reductions have not been made at all is the most sensitive area, of political appointees.

So, some of the language that has been used to describe this amendment—being unfair or arbitrary or taking a meat-ax approach—I think, is wrong. This is very consistent with the philosophy and spirit of the national performance review.

I want to respond to the Senator from Ohio by pointing out four ways in which this is not at all a meat-ax approach.

First, I reiterate, this does not eliminate all political appointees. It reduces them from a figure of about 2,800 now to about 2,300.

Second, it does not have to happen tomorrow. The President has an entire year to get down to this figure. That is the effective date of the amendment. It is not immediate.

Third, and this is a question the Senator from Ohio properly raised and it deserves an answer. We put no constraints in this provision on how the President is to do this. We do not micromanage it. We do not say that some specific number has to come from this department or this area of political appointees. We give the President full discretion to make this determination, as it generally should be. Sometimes I get concerned. We have experienced this, for example, in the area of foreign policy, where some folks in this body were trying to micromanage the State Department in every respect. That is wrong. But it is appropriate for us, in the appropriations process, to set an overall level, a maximum number of political appointees, and then say: Mr. President, we want you to reach that level within a year; we, of course, will understand you will make your own determinations how this is to happen.

Finally, though it may not be the most important, because I think the Government efficiency aspect and cutting spending are both critical, I think a last point needs to be emphasized from my earlier presentation. That is these experts, Mr. Volcker, Mr. Light and others, concluded not only that we did not need all these folks, necessarily, to have a Federal Government that can implement the policies of the President, but that it actually is harder for a President to be effective, or a Governor to be effective, when there are too many political appointees to manage; when there are so many they become a life and an entity of their own and the President no longer has the time nor the ability to manage all of that.

That is the title of Mr. Light's book, "Thickening Government, Federal Hierarchy and the Diffusion of Accountability." We are noting here, not only about limiting the number of employees, we are talking about making sure the political appointees who are put in their positions are actually accountable to the Chief Executive who was elected and whose policies we are concerned about continuing. This is not a hatchet job or meat-ax approach. It is a modest amendment. It gives the President a year to go forward with this change and I think it is perfectly consistent and would be a proud addition to the President's tremendous record and progress, not only on reducing the number of Federal employees, but his magnificent record on reducing the Federal deficit from what would have been $300 billion and is now estimated to be only about $117 billion, moving in the right direction for the coming fiscal year.

I yield the floor.

Mr. KERRY. I am pleased to join once again with my colleague from Wisconsin, Senator FEINGOLD, in reducing waste from the budget and streamlining government. Senator FEINGOLD and I have stood shoulder to shoulder on a number of occasions to cut corporate welfare and to reduce the Federal deficit.

Just a few months ago, we were joined by Senator MCCAIN and Senator THOMPSON in a bold attempt to reduce unnecessary and wasteful corporate welfare in the Federal budget by $60 billion over the next 6 years. It is sometimes difficult to stare down the special interests and take aim at the excess in our budget, but I am determined to continue the fight to ensure our children a debt-free future. Mr. President, I appreciate having the Senator from Wisconsin as a comrade in arms.

Last year, I introduced a bill which reduced spending by more than $90 billion by the year 2002. One provision of that bill calls for a reduction of political appointees in the Federal Government to 2,000. The proposal by the Senator from Wisconsin is not quite as ambitious, but it is a fine start to rein in the surge in political appointees.

Mr. President, let me be clear on this point: The great growth of political appointees has not occurred under the Clinton Administration. As a matter of fact, Vice President Gore has been a stalwart in reducing the size of government. Facing the legacy of 12 years of irresponsible growth in government under the Reagan-Bush Administrations, our current Vice President has worked with the Congress to reduce the federal payroll to the size it was when John Kennedy was in the White House.

This amendment supports the spirit of the Vice President's efforts and reflects my efforts to curtail the growth of political appointees in the Federal Government.

Mr. President, in my home state of Massachusetts, political appointees are known as walruses, and I am pleased to help retire a few walruses today. We need to reduce Government responsibly at the Federal level and I hope the states follow our leadership.

I urge my colleagues to support this amendment, and join us in reducing the size of government and the level of unnecessary Federal spending.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I would like to inquire of the Senator from Wisconsin how much time does he think he will debate this?

Mr. FEINGOLD. I am prepared to make the motion to table.

Mr. SHELBY. How about the Senator from Ohio?

Mr. GLENN. About 5 minutes.

Mr. SHELBY. Mr. President, I thank the Senators, both the Senator from Ohio and Wisconsin.

The language the Senator is attempting to restore here is a hot political topic, to say the least. The debate about it will, no doubt, be one of the main points the media reports in the bill. It will make, no doubt about it, the papers and the nightly news, if it is adopted.

This amendment is great political rhetoric. We all have talked about too many political appointees in the past, depending on who was the President of the United States. Right now, there are about 2 million civil employees in the executive branch of Government. Political appointees are responsible for final decisionmaking there, as we know. We might not always like what they do, but how many of us can say we have not questioned actions of the career bureaucracy? Do we want to have a system like Great Britain and Japan and others, in which their career bureaucracy runs the Government? I hope not. Political appointees, on the other hand, are accountable. They are accountable for the decisions they make. I believe, overall, the civil bureaucracy is not.

The American people, I think, deserve accountability from their Government officials. By reducing political appointees and increasing the size and the power of a faceless bureaucracy, we are reducing accountability. Do we want to do that? We may need to adjust where they are, but is one-tenth of 1 percent too much for political representation? I hope not. I hope my colleagues, at the proper time, will vote against the motion to table this amendment, as I agree with the Senator from Ohio, this is not the time and this is not the place.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. I have just a few comments here and then we will be finished with this.

I ask unanimous consent to have printed in the RECORD an article out of the Washington Post from back in 1994, April 21, 1994, called "The Permanent Non-Government."

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

[From the Washington Post, Apr. 21, 1994]

THE PERMANENT NON-GOVERNMENT

This is no way to run a government. Indeed, to judge from a General Accounting Office study release yesterday, it's a small miracle that the government runs at all. The study, conducted at the request of Sen. John Glenn, found that political appointees stay on the job for only 2.1 years. In other words, they usually leave about the time they might be expected to have figured out what they're doing.

For some big jobs in troubled agencies, the turnover rates are actually worse. The Federal Aviation Administration has had seven appointed and four acting administrators in the past 15 years; the Federal Housing Administration has had 13 commissioners within the past 14 years. And to point out just how bad it can get, Sen. Glenn, the chairman of the Senate Governmental Affairs Committee, noted that within an 18-month period in 1991 and 1992, three different people served in the Education Department as assistant secretary for post-secondary education.

President Clinton has been unusually dilatory in filling government jobs, but the problem of getting people to stick around is not new—the GAO study covered 10 years and three administrations. And once people leave, it takes a long time to get new people behind their desks—from six to 20 months depending on the agency. This all adds up to a big problem, since a president has just four years to make a mark on the government. As Sen. Glenn said in a letter to Mr. Clinton, "the fact remains that when senior positions are in a constant state of flux, it diminishes the ability of any president to carry out an agenda, to bring needed change in the way government works, or to ensure that the long-term interests, including the use of hard-earned taxpayer dollars, are properly managed." Among other things, Sen. Glenn urged Mr. Clinton to seek long-term commitments from his appointees and "fill vacant positions expeditiously."

This is sound advice, especially the part about the vacancies. But the study ought to force a broader inquiry by the reinventing government crew in Vice President Gore's office. Obviously not all of the jobs in question are equally important, nor are the turnovers equally damaging. For some appointees, 2.1 years in government may turn out to be two years too long. And there's nothing wrong with a successful deputy assistant secretary rising to become an assistant secretary. But taking hold of the government and giving it direction is a difficult task.

Sen. Glenn's study suggests that the entire appointment and confirmation process could use radical streamlining—people will serve in their posts longer if they get there faster. The relationship between civil servants and political appointees also needs fixing. With this kind of turnover, top civil servants have to spend an inordinate amount of time "educating" political appointees about their jobs. Yet the United States has tended to reject the British model of having a shallow layer of political appointees on top of a large mandarin blass. But if we don't like the British model, how can we make the one we have created work better? Sen. Glenn deserves some answers.

Mr. GLENN. It goes into some of these things about the high turnover rate that we have of these appointees that come in. I think that is almost scandalous in the turnover rate.

Since I mentioned this a moment ago, we have had a chance to look up the figures here. Back in May of 1994, I had hearings on this subject. We looked into what had happened over the past decade. In fact it covered an 11-year period, back through the Reagan and Bush years. I am not pointing it out just politically, because I think the same kinds of figures apply, maybe slightly reduced, in the Clinton years so far, also.

At that time, over that 11-year period, during the Reagan and Bush years, 30 percent of political appointees had left the Government within 18 months of their appointment. Almost one-third of the people did not even stay beyond 18 months after being politically appointed. And 50 percent—this was the average for that 11-year period—50 percent of the political appointees were out of Government 27 months after their appointment.

You know, a person comes in here and it takes them a little while to find out where the washroom is and who they write to and hiring their secretary and one thing or another, so the first 2 or 3 months they are here they are not as productive as they should be. And once they decide they are going to leave, they are out there and they are short-timers, as we used to say in the service. Because they are short-timers and you cannot expect anything out of them, so do not give them anything real to do. So, take that 6 months out of the service; 30 percent are gone after 18 months, you get 1 year out of these people and you cannot expect the President's appointees, whether it is Reagan, Bush or anybody else, to do a good job in implementing their policies if their political appointees are going to turn over in that fast a period of time.

I don't have complete, up-to-date, current figures that compare with those. I think it has improved a little bit, but I think it is still one of the major problems we face in administering Government, is getting these political appointees, not just reducing their overall numbers, but getting them to come in and stay long enough to do the job for which they were appointed to do. I just wanted to get those figures in the RECORD.

I gave all my reasons for opposing this before. I would feel much better if we had hearings and detailed the exact effect of this thing. I urge my colleagues to vote against the amendment.

I yield the floor and yield back whatever time I have remaining.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, very briefly, again I salute the Senator from Ohio for his knowledge in this area. It is extensive and a great contribution to Government efficiency.

I want to be clear. The great growth in this area did not occur under President Clinton. I am, of course, a Democrat supporting his reelection, and I am in no way pointing my finger at this administration. The facts don't show that at all. This has been a gradual process over the years which both parties participated in. I want to be clear about that.

I also want to point out, because I was very appreciative of the figures just placed in the RECORD, yes, there is a high turnover rate. This is something I mentioned in my remarks.

I will add, I gave a number of reasons why I didn't think we had a harsh provision. That turnover rate means it is going to be very easy, comparatively speaking, for the President to deal with this. If that is the turnover rate during the course of the next year, a lot of those folks who turn over won't have to be replaced. In other words, we're not talking here about mass firings; we are talking about not replacing, in many cases, those who have simply chosen to leave after a brief tenure.

Mr. President, if it is consistent with the managers' wishes, I now intend to move to table.

Mr. President, I now move to table that portion of the committee amendment beginning on page 129, line 20 through line 18 on page 130.

Mr. SHELBY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the committee amendment beginning on page 129, line 20 through page 130, line 18. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay".

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 62, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—36

Baucus	Grams	McCain
Biden	Grassley	Nickles
Bingaman	Gregg	Pressler
Bradley	Harkin	Santorum
Brown	Hutchison	Smith
Bryan	Inhofe	Snowe
Coats	Kassebaum	Specter
Cohen	Kerry	Thomas
Coverdell	Kohl	Thompson
DeWine	Kyl	Warner
Feingold	Leahy	Wellstone
Frist	Lugar	Wyden

NAYS—62

Abraham	Faircloth	Lott
Akaka	Feinstein	Mack
Ashcroft	Ford	McConnell
Bennett	Frahm	Mikulski
Bond	Glenn	Moseley-Braun
Boxer	Gorton	Moynihan
Breaux	Graham	Murkowski
Bumpers	Gramm	Murray
Burns	Hatch	Nunn
Byrd	Heflin	Pell
Campbell	Helms	Reid
Chafee	Hollings	Robb
Cochran	Inouye	Rockefeller
Conrad	Jeffords	Roth
Craig	Johnston	Sarbanes
D'Amato	Kempthorne	Shelby
Daschle	Kennedy	Simon
Dodd	Kerrey	Simpson
Domenici	Lautenberg	Stevens
Dorgan	Levin	Thurmond
Exon	Lieberman	

NOT VOTING—2

Hatfield	Pryor

The motion to lay on the table the excepted committee amendment beginning on page 129, line 20 through page 130, line 18 was rejected.

The PRESIDING OFFICER. The question is on agreeing to the excepted committee amendment.

The excepted committee amendment on page 129, line 20 through page 130, line 18 was agreed to.

Mr. SHELBY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. What is the pending business?

The PRESIDING OFFICER. The committee amendment with the second-degree amendment from Senator KASSEBAUM.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent the Kassebaum amendment temporarily be laid aside.

Mr. SHELBY. Reserving the right to object at this time, I object.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from New Jersey has the floor.

Mr. LAUTENBERG. Mr. President, is the question, then, the matter of finishing amendments or some other procedural thing that has to be attended to?

Otherwise, Mr. President, I have been waiting here for about 2 hours.

Mr. SHELBY. I respond to the Senator from New Jersey that I have a couple of things. I would like to adopt the committee amendment, the motion failed to table a few minutes ago, and I would like to move to reconsider the vote. I have a unanimous-consent to modify an amendment. It will take 2 minutes at the most.

Senator SPECTER also has been trying to speak.

Mr. LAUTENBERG. I have been waiting for recognition. I ask unanimous consent to permit the manager to dispose of the committee business with the right to regain the floor after the manager has disposed.

Mr. SPECTER. Reserving the right to object, I worked it out with the manager 5 minutes to speak after he finished the business matters. If I could be incorporated in that, I shall not be long. I would not raise an objection. I worked it out with the manager.

Mr. LAUTENBERG. Mr. President, it is my understanding that recognition is given based on the request from the floor. Now, I do not want to get stuck on this too much but I have been waiting a long time. I would indulge the Senator from Pennsylvania if I have an assurance that it would be no more than 5 minutes of time that he would occupy.

I would be happy to modify my unanimous-consent agreement if that is the understanding we can get.

Mr. SPECTER. Mr. President, that is what I understand.

Mr. LAUTENBERG. Therefore, Mr. President, I ask unanimous consent that the manager have the opportunity to clear up committee business, that the Senator from Pennsylvania be recognized for not more than 5 minutes, and that I then regain the right to the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SHELBY. Mr. President, I ask unanimous consent to set aside the Kassebaum amendment temporarily.

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

AMENDMENT NO. 5273, AS MODIFIED

Mr. SHELBY. Mr. President, I ask that a modification be made to amendment No. 5273, which was previously adopted. This has been cleared by the ranking member, Senator KERREY. I send the modification to the desk.

The PRESIDING OFFICER. The Senator has that right. The amendment is so modified.

The amendment (No. 5273), as modified, is as follows:

At the end of title V of the bill, insert the following new sections:

SEC. 5___. COMMEMORATIVE COIN PROGRAM REFORM.

(a) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—Section 5112 of title 31, United States Code, as amended by sections 524 and 530 of this Act, is amended by adding at the end the following new subsection:

"(m) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—

"(1) MAXIMUM NUMBER.—Beginning January 1, 1999, the Secretary may mint and issue commemorative coins under this section

during any calendar year with respect to not more than 2 commemorative coin programs.

"(2) MINTAGE LEVELS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in carrying out any commemorative coin program, the Secretary shall mint—

"(i) not more than 750,000 clad half-dollar coins;

"(ii) not more than 500,000 silver one-dollar coins; and

"(iii) not more than 100,000 gold five-dollar or ten-dollar coins.

"(B) EXCEPTION.—If the Secretary determines, based on independent, market-based research conducted by a designated recipient organization of a commemorative coin program, that the mintage levels described in subparagraph (A) are not adequate to meet public demand for that commemorative coin, the Secretary may waive one or more of the requirements of subparagraph (A) with respect to that commemorative coin program.

"(C) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this paragraph, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(b) RECOVERY OF MINT EXPENSES REQUIRED BEFORE PAYMENT OF SURCHARGES TO ANY RECIPIENT ORGANIZATION.—

(1) CLARIFICATION OF LAW RELATING TO DEPOSIT OF SURCHARGES IN THE NUMISMATIC PUBLIC ENTERPRISE FUND.—Section 5134(c)(2) of title 31, United States Code, is amended by inserting ", including amounts attributable to any surcharge imposed with respect to the sale of any numismatic item" before the period.

(2) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(f) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—

"(1) PAYMENT OF SURCHARGES.—Notwithstanding any other provision of law, no amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall be paid from the fund to any designated recipient organization unless—

"(A) all numismatic operation and program costs allocable to the program under which such numismatic item is produced and sold have been recovered; and

"(B) the designated recipient organization submits an audited financial statement that demonstrates to the satisfaction of the Secretary of the Treasury that, with respect to all projects or purposes for which the proceeds of such surcharge may be used, the organization has raised funds from private sources for such projects and purposes in an amount that is equal to or greater than the maximum amount the organization may receive from the proceeds of such surcharge.

"(2) ANNUAL AUDITS.—

"(A) ANNUAL AUDITS OF RECIPIENTS REQUIRED.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such amount, for an annual audit, in accordance with generally accepted government auditing standards by an independent public accountant selected by the organization, of all such payments to the organization beginning in the first fiscal year of the organization in which any such amount is received and continuing until all amounts received by such organization from the fund with respect to such surcharges are fully expended or placed in trust.

"(B) MINIMUM REQUIREMENTS FOR ANNUAL AUDITS.—At a minimum, each audit of a designated recipient organization pursuant to subparagraph (A) shall report—

"(i) the amount of payments received by the designated recipient organization from the fund during the fiscal year of the organization for which the audit is conducted that are derived from the proceeds of any surcharge imposed on the sale of any numismatic item;

"(ii) the amount expended by the designated recipient organization from the proceeds of such surcharges during the fiscal year of the organization for which the audit is conducted; and

"(iii) whether all expenditures by the designated recipient organization during the fiscal year of the organization for which the audit is conducted from the proceeds of such surcharges were for authorized purposes.

"(C) RESPONSIBILITY OF ORGANIZATION TO ACCOUNT FOR EXPENDITURES OF SURCHARGES.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall take appropriate steps, as a condition for receiving any such payment, to ensure that the receipt of the payment and the expenditure of the proceeds of such surcharge by the organization in each fiscal year of the organization can be accounted for separately from all other revenues and expenditures of the organization.

"(D) SUBMISSION OF AUDIT REPORT.—Not later than 90 days after the end of any fiscal year of a designated recipient organization for which an audit is required under subparagraph (A), the organization shall—

"(i) submit a copy of the report to the Secretary of the Treasury; and

"(ii) make a copy of the report available to the public.

"(E) USE OF SURCHARGES FOR AUDITS.—Any designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may use the amount received to pay the cost of an audit required under subparagraph (A).

"(F) WAIVER OF PARAGRAPH.—The Secretary of the Treasury may waive the application of any subparagraph of this paragraph to any designated recipient organization for any fiscal year after taking into account the amount of surcharges that such organization received or expended during such year.

"(G) NONAPPLICABILITY TO FEDERAL ENTITIES.—This paragraph shall not apply to any Federal agency or department or any independent establishment in the executive branch that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item.

"(H) AVAILABILITY OF BOOKS AND RECORDS.—An organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such payment, to the Inspector General of the Department of the Treasury or the Comptroller General of the United States, upon the request of such Inspector General or the Comptroller General, all books, records, and work papers belonging to or used by the organization, or by any independent public accountant who audited the organization in accordance with subparagraph (A), which may relate to the receipt or expenditure of any such amount by the organization.

"(3) USE OF AGENTS OR ATTORNEYS TO INFLUENCE COMMEMORATIVE COIN LEGISLATION.—No portion of any payment from the fund to any designated recipient organization of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may be used, directly or indirectly, by the organization to compensate any agent or attorney for services rendered to support or influence in any way legislative action of the Congress relating to such numismatic item.

"(4) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this subsection, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(3) SCOPE OF APPLICATION.—The amendments made by this section shall apply with respect to the proceeds of any surcharge imposed on the sale of any numismatic item that are deposited in the Numismatic Public Enterprise Fund after the date of the enactment of this Act.

(4) REPEAL OF EXISTING RECIPIENT REPORT REQUIREMENT.—Section 302 of Public Law 103–186 (31 U.S.C. 5112 note) is repealed.

(c) QUARTERLY FINANCIAL REPORTS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g) QUARTERLY FINANCIAL REPORTS.—

"(1) IN GENERAL.—Not later than the 30th day of each month following each calendar quarter through and including the final period of sales with respect to any commemorative coin program authorized on or after the date of enactment of the Treasury, Postal Service, and General Government Appropriations Act, 1997, the Mint shall submit to the Congress a quarterly financial report in accordance with this subsection.

"(2) REQUIREMENTS.—Each report submitted under paragraph (1) shall include, with respect to the calendar quarter at issue—

"(A) a detailed financial statement, prepared in accordance with generally accepted accounting principles, that includes financial information specific to that quarter, as well as cumulative financial information relating to the entire program;

"(B) a detailed accounting of—

"(i) all costs relating to marketing efforts;

"(ii) all funds projected for marketing use;

"(iii) all costs for employee travel relating to the promotion of commemorative coin programs;

"(iv) all numismatic items minted, sold, not sold, and rejected during the production process; and

"(v) the costs of melting down all rejected and unsold products;

"(C) adequate market-based research for all commemorative coin programs; and

"(D) a description of the efforts of the Mint in keeping the sale price of numismatic items as low as practicable.".

(d) CITIZENS COMMEMORATIVE COIN ADVISORY COMMITTEE.—

(1) FIXED TERMS FOR MEMBERS.—Section 5135(a)(4) of title 31, United States Code, is amended to read as follows:

"(4) TERMS.—Each member appointed under clause (i) or (iii) of paragraph (3)(A) shall be appointed for a term of 4 years.".

(2) CHAIRPERSON.—Section 5135(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(7) CHAIRPERSON.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Chairperson of the Advisory Committee shall be elected by the members of the Advisory Committee from among such members.

"(B) EXCEPTION.—The member appointed pursuant to paragraph (3)(A)(ii) (or the alternate to that member) may not serve as the Chairperson of the Advisory Committee, beginning on June 1, 1999.".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 5___. MINT MANAGERIAL STAFFING REFORM.

Section 5131 of title 31, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

Mr. SHELBY. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

NO INTELLIGENCE FAILURE IN SAUDI ARABIA

Mr. SPECTER. Mr. President, I thank the distinguished managers and my colleague from New Jersey for a brief opportunity to comment about a trip which I made to Saudi Arabia, to Dhahran on August 25 and Riyadh on August 26, and a report made by the staff of the Intelligence Committee.

Mr. President, the Khobar Towers at Dhahran, Saudi Arabia, was the scene of a tragic terrorist attack killing 19 Americans and wounding hundreds of other Americans. There has been a suggestion made that there was an intelligence failure leading to that attack. In my capacity as chairman of the Intelligence Committee, the committee has made an exhaustive study of this subject, and I made a personal visit to Saudi Arabia, to Dhahran on August 25 and Riyadh on August 26, and my personal conclusion, backed up by the staff report, was that there was no intelligence failure.

In fact, in the preceding year, there had been more than 100 intelligence reports on alerts of a general nature, and very specific reports on an alert to the danger of a car bomb at Khobar Towers. That was the essence of a report by the Office of Special Investigations of the U.S. Air Force in January 1996. There had been previous reports about terrorist attacks at Khobar Towers—the same report about a car bombing, which, in fact, did take place in Riyadh on November 13, 1995, claiming the lives of five Americans; the State Department alert on June 13, just 12 days before the terrorist attack; and a report by the Defense Intelligence Agency on June 17, just 8 days before the attack, which emphasized the vulnerability of the area and the necessity for increased security. Specifically, what the DIA report said about Khobar Towers, with a large picture, was, "A pattern appears to be developing that warrants improved security efforts."

Notwithstanding these warnings, improved security efforts were not undertaken by the Pentagon, by ranking military-civilian DOD authorities.

I visited the scene, Mr. President, and was amazed to see how close that fence was to those towers—less than 60 feet away, which was an open and notorious invitation to terrorism. For anybody to say, on the basis of this record, on the basis of what I have personally observed, and on the basis of a staff report by the Intelligence Committee, that there was intelligence failure is, simply stated, preposterous. It was obvious that that fence had to be moved back. That issue has been raised in hearings before the Senate oversight committees and has not yet been answered by top officials in the Pentagon.

Requests have been made for the oversight committees to be informed about what military personnel made what request of Saudi officials and what the responses of those Saudi officials were, and no information has been provided to the oversight committees. The Intelligence Committee asked ranking DOD officials what the obligation was to report up the chain of command any failure by Saudi officials to move the fence back, and that has not been done.

But on the face of this record, Mr. President, it is plain that there has not been a failure of intelligence on the terrorist attack at Khobar Towers on June 25, 1996.

The United States Code requires that the oversight Intelligence Committee be informed of significant intelligence failures. My conclusion is that there was no such intelligence failure, but, in fact, there was a failure of DOD officials to follow up on a well-known and obvious terrorist threat.

I ask unanimous consent that the full text of the report by the staff of the Intelligence Committee be printed in the RECORD.

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

EXECUTIVE SUMMARY

In the wake of the June 25, 1996, deadly bombing at the Khobar Towers housing complex Saudi Arabia, the Senate Select Committee on Intelligence staff undertook an inquiry to determine the adequacy of the intelligence concerning the terrorist threat situation in Saudi Arabia. The Committee staff reviewed the collection posture, the analytical products available and the dissemination of threat information.

CONCLUSION

The Khobar Towers tragedy was not the result of an intelligence failure.

Threat level

Intelligence regarding the terrorist threat in Saudi Arabia was sufficient to prompt the Defense Intelligence Agency (DIA), in July 1995, to raise the Terrorist Threat Level for Saudi Arabia From Low to Medium.

Reporting from enhanced intelligence efforts following the November 13, 1995 bombing of the Office of the Program Manager, Saudi Arabian National Guard (OPM-SANG), in which 5 Americans were killed by a car bomb, prompted DIA to raise the Threat Level to High, where it stayed until the Khobar Towers bombing.

The threat in Saudi Arabia is now considered Critical—the highest Threat Level on the Department of Defense scale.

Collection

The U.S. intelligence Community in Saudi Arabia gave its highest priority to the terrorist target and aggressively collected against a range of internal and external threats including Iran, Hizballah, and others.

Analysis

From April 1995 through the time of the Khobar Towers bombing in June 1996 the intelligence analytic community published more than 100 products on the topic of terrorism on the Arabian peninsula. Among these were several Counter Terrorism Center Threat Assessments and DIA Threat indicators.

Among the most significant analytical products were the June 13, 1996 Department of State, Bureau of Intelligence and Research report and the June 17, 1996 Military Intelligence Digest article outlining numerous suspicious incidents that had occurred at Khobar Towers, which noted that "a pattern appears to be developing that warrants improved security efforts."

The above warnings incorporated intelligence such as (1) ongoing Iranian and radical Islamic fundamentalist groups' attempts to target American servicemen in Saudi Arabia for terrorist acts; (2) the heightened threat that accompanied the execution, carried out on May 31, of the four suspects in the November OPM-SANG attack; and (3) well before the Khobar attack, there was reporting that Khobar might be the target of a bombing attempt.

Vulnerability assessments

The Air Force Office of Special Investigations (AFOSI) conducted a vulnerability assessment of the Khobar Towers facility and published its findings in January 1996.

This AFOSI assessment highlighted various weakness that could be exploited by terrorists, but emphasized the particular vulnerability of perimeter security given the proximity of the outside fence to many of the buildings as well as the lack of the protective coating Mylar on the windows of the Khobar Towers compound where Americans were housed.

In fact, this weakness had already come to the attention of the base security personnel, who approached the Saudis with a request to move the perimeter 10 feet back. The request to move the fence, made initially in November 1995, was still pending in June 1996, but successive base commanders did not push hard enough for a meaningful movement of the fence for fear of offending host country sensibilities.

The recommendation concerning Mylar was made part of a "five-year plan" for security enhancements on the compound and thus had been delayed indefinitely at the time of the June 25 attack.

Dissemination

Analytical products, threat and vulnerability assessments, and valuable raw intelligence were readily available to senior military commanders in Saudi Arabia and their civilian counterparts at the Pentagon.

Among the most significant were monthly briefings prepared and presented in Saudi Arabia beginning in April 1995 that informed senior military commanders of the three

most vulnerable U.S. installations in Saudi Arabia; of the three, two have been attacked (OPM-SANG and Khobar Towers) and the third (the PX Commissary in Riyadh) has been closed.

SENATE SELECT COMMITTEE ON INTELLIGENCE STAFF REPORT ON THE KHOBAR TOWERS TERRORIST ATTACK

SCOPE, OBJECTIVES, AND METHODOLOGY

The Staff of the Senate Select Committee on Intelligence has conducted a preliminary inquiry into the United States Intelligence Community's collection, analysis and dissemination of intelligence concerning terrorist threats in Saudi Arabia prior to the June 25, 1996, bombing at the Khobar Towers housing complex in Dhahran, Saudi Arabia. The Committee staff reviewed raw and finished intelligence produced from late 1994 through June 1996. These products include reports from the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the State Department and others. The staff also interviewed individuals in the Intelligence Community, the Defense Department, and the State Department and accompanied the Chairman of the Committee, Senator Arlen Specter, on a trip to Dhahran, Riyadh, and Jeddah, Saudi Arabia and other Middle East countries from August 24–29, 1996.

During and immediately following the visit to Saudi Arabia and the Middle East, Committee staff interviewed field commanders and military personnel who played a critical force protection and security role just prior to and immediately after the blast. The staff also interviewed the FBI lead investigator on the scene in Dhahran, as well as top ranking Intelligence Community personnel. Finally, the staff accompanied Senator Specter to meetings with Saudi Crown Prince Abdullah and Defense Minister Sultan while in Jeddah, as well as other Middle East leaders with unique insight into terrorist activity in the region such as Prime Minister Netanyahu of Israel, President Assad of Syria, and President Arafat of the Palestinian Authority.

Since the Khobar blast, the Senate Select Committee on Intelligence has held seven hearings focusing on terrorism, Saudi, Arbia, and support to the military in the region. The Committee received testimony from Secretary of Defense William J. Perry, CIA Director John Deutch, FBI Director Louis Freeh, numerous other Administration officials, academicians and other experts.

BACKGROUND

On June 25, 1996, at approximately 10:00 p.m. local time, a massive explosion shook the Khobar Towers housing compound in Dhahran, Saudi Arabia. The blast killed 19 American military service personnel and at least one Saudi civilian, wounded more than 200 Americans and injured hundreds of other civilians. At the time, the Khobar Towers complex was home for the airmen of the U.S. Air Force's 4404th Fighter Wing (Provisional) under the operational command the U.S. Central Command (USCENTCOM). The complex also housed forces from the United Kingdom, France, and Saudi Arabia participating in the United Nations effort to enforce the "no-fly" zone in southern Iraq.

Before the explosion, American personnel at an observation post on the roof of Building 131 at the northeast corner of the Khobar complex reported seeing a fuel truck and a car approach the northwest end of the Khobar Towers compound from the north and turn east onto 31st Street just outside the perimeter fence separating the compound from a public parking lot. The truck and the car that it was following traveled along the perimeter fence toward the northeast corner of the compound and then stopped. A car already in place and facing the two approaching vehicles flashed its lights, presumably to signal to them that their approach was "all clear." The two companion vehicles then continued to travel along the perimeter fence. When the vehicles reached a point adjacent to Building 131, they turned left pointing away from the building, and stopped. The fuel truck backed into the hedges along the perimeter fence directly in front of Building 131 as the third car idled and then departed. Two men exited from the truck and hurried into the remaining car, which then sped away.

Noting this suspicious activity, the U.S. personnel at the Building 131 observation post began an evacuation, but within three to four minutes the bomb exploded, completely demolishing the front facade of this eight-story building. The explosion severely damaged five adjacent buildings and blew out windows throughout the compound. According to a recent report by the House National Security Committee, the size of the blast indicates that the truck carried between 3,000 and 5,000 pounds of explosives. In addition to the American causalities, hundreds of Saudi and third country nationals living in the complex and immediate vicinity were also wounded. U.S. intelligence experts and 4404th Wing leaders have concluded that Americans were the target of the terrorist attack.

The attack at Khobar Towers was the second major terrorist incident directed at U.S. interests, and U.S. military presence specifically, in Saudi Arabia in the past year. On November 13, 1995, a car bomb containing approximately 250 pounds of explosives detonated outside the headquarters of the Office of the Program Manager of the Saudi Arabian National Guard (OPM–SANG) in Riyadh. The building was used by American military forces as a training facility for Saudi military personnel. Five Americans died and 34 were wounded in this attack. Prior to this incident DIA categorized the threat to Americans in Saudi Arabia as medium. Six weeks after this incident, that threat level was raised to high.

ADEQUACY OF INTELLIGENCE

Collection

Pursuant to Presidential Decision Directive 35 (PDD–35), terrorism targets in the Middle East are Tier 1 targets and receive the highest priority for collection. Thus, current Director of Central Intelligence John Deutch has placed from the beginning of his tenure the utmost urgency on collection against these targets.

Even prior to the issuance of PDD–35, however, the U.S. intelligence collection posture in Saudi Arabia had shifted focus. In late 1994, the U.S. Intelligence Community in Saudi Arabia began reporting an increase in threatening activity directed against Americans in the region. Much of this heightened activity was carried out by agents of Iran, either alone or in cooperation with elements of regional radical Islamic fundamentalists. During a visit to Saudi Arabia in December 1994, DCI James Woolsey raised with senior Saudi officials the CIA concern over Iranian intentions and activities in the region.

Upon his confirmation in May 1995, Deutch concentrated immediately upon the issue of antiterrorism and force protection as a top priority. Deutch visited Saudi Arabia on October 22, 1995, and raised with senior Saudi officials his "serious concerns" over Iranian intentions in the region as he emphasized the commitment of the United States to fighting the terrorist threat. Deutch also dispatched other senior CIA officials to Saudi Arabia for detailed discussions of how to address this problem. Intelligence was focused during this period on Iranian operatives in the Eastern Province who were attempting to gather intelligence on the Dhahran Air Base.

After the OPM–SANG attack on November 13, 1995, collection against terrorist targets in general intensified. Intelligence Community personnel interviewed in Saudi Arabia said that almost all of their time was devoted to counterterrorism and force protection issues and much of this work was driven by the requirements of the military commanders in the theater.

Analysis

By March 1995, the Intelligence Community had determined that Iranian operations in Saudi Arabia were no longer simply intelligence gathering activities but contained the potential for the execution of terrorist acts. It had been previously learned that weapons and explosives had been moved in and stored in apparent support of these acts.

From the period beginning in April 1995 through the time of the Khobar Towers bombing in June 1996, the Intelligence Community issued finished analysis that clearly highlighted the ongoing and increasing terrorist threat in Saudi Arabia. The CIA and DCI's Counter Terrorism Center (CTC) issued at least 41 different reports on terrorism on the Arabian peninsula. Ten of these were specific threat assessments and six were CTC commentaries focused on the threat to U.S. personnel in Saudi Arabia.

During the same period, the Defense Intelligence Agency produced more than 60 intelligence products on the terrorist threat in Saudi Arabia. Many of these were factual in nature, reporting on terrorist incidents such as the OPM–SANG bombing, but many others reflected the Intelligence Community's analytical judgment of higher threat levels. In July 1995, DIA raised the terrorist threat level for Saudi Arabia from Low to Medium. After the OPM–SANG attack, the threat level was raised again to High where it stayed until the Khobar Towers bombing. The threat in Saudi Arabia is now considered Critical—the highest threat level on the DIA scale. Perhaps the most significant single DIA analytical product was a June 17, 1996 Military Intelligence Digest article outlining numerous suspicious incidents that had occurred at Khobar Towers and noting that "a pattern appears to be developing that warrants improved security efforts." This report followed only four days after the Department of State, Bureau of Intelligence and Research published "Saudi Arabia/Terrorism: US Targets?" focusing attention on the same series of incidents occurring at the Khobar facility.

Some officials prior to June 25 bombing believed that the earlier events and planning for terrorist acts were actually leading up to a larger bombing campaign against U.S. forces in the Eastern province. These officials postulated after the June 25 attack that Khobar Towers was the likely end-game of the earlier bombing scheme.

Dissemination

The emphasis that the DCIs placed on providing intelligence for force protection was reflected by the U.S. intelligence officers in the field as well. As early as January 1995 intelligence officers briefed the commander of Joint Task Force/SouthWest Asia (JTF/

SWA) and the commander of the Air Base in Dhahran of the serious threat posed to U.S. forces in the Eastern province.

These briefings continued throughout 1995. The incoming JTF/SWA commander, Major General Franklin, and his Deputy, Admiral Irwin, were briefed on March 16, 1995 along with General Keck, Commander of the 4404th Air Wing, on the most recent intelligence.[1] Follow up briefings were ordered for JTF/SWA command and security personnel to alert them to the threat. By April 5, 1995, all senior military commanders in the region had received detailed briefings on the threat posed by the increased Iranian presence and activity in the area.

On April 20, 1995 the senior U.S. intelligence official in Saudi Arabia briefed the top military commanders in the region on the Iranian plotting against U.S. military personnel in Saudi Arabia. Discussions were held on actions to be taken to beef up security awareness at various installations throughout Saudi Arabia where a U.S. military presence existed. The intelligence official provided his assessments on the "softest targets" in the kingdom (OPM-SANG, Khobar Towers, and the PX-Commissary in Riyadh).[2] A decision was then made to brief all military commanders in the region on a more regular basis on the serious terrorist threat to U.S. military personnel in the region. The military, based upon these threats, sent out a general threat advisory to remain in effect through June 15, 1996. The plan was apparently to supplement this general threat notice with the regular briefings.

On April 30, 1995, the briefings were expanded to include the "working level" commanders in the various units in Saudi Arabia. As part of these briefings, Major General Franklin put out an advisory to senior military commanders including the following: "Our facilities and access procedures should be reexamined to ensure we are doing the necessary things to minimize unauthorized individuals or vehicles from entering our compounds. Of special concern are unattended vehicles parked near entrances and exits or close to our work and living areas."

At the same time Major General Boice, Commander of the U.S. Military Training Mission increased the threat posture for the troops under his command from "no security threat" to "threat alpha." On June 25, 1995 Security officers from across the Kingdom held the first monthly (and later weekly, after OPM-SANG) counter-intelligence/force protection meeting.

In sum, prior to the OPM-SANG bombing there was extensive information available to U.S. personnel in Saudi Arabia concerning the nature of the threat posed by Iranian and other terrorist groups. After the OPM-SANG bombing, more specific intelligence threat information became available. Notable among these are:

Well before the Khobar attack, there was reporting that Khobar might be the target of a bombing attempt; there were a variety of reports in 1996 indicating that large quantities of explosive had been smuggled into the Eastern province of Saudi Arabia; threats from associates of those Saudi dissidents beheaded by the Saudi government on May 31, 1996 for their alleged role in the November 13, 1995 bombing of OPM-SANG;[3] a Department of State, Bureau of Intelligence and Research report on June 13, 1996 focusing attention on a series of incidents around the Khobar facility; and a June 17, 1996 Pentagon intelligence report highlighting the same incidents at Khobar Towers concluding that a suspicious "pattern [of surveillance of the Khobar compound's perimeter and other similar incidents] seems to be developing that warrants improved security efforts;"

In addition, military commanders in the region were very familiar with the terrorism vulnerability assessment of the Khobar Towers compound conducted by the Air Force Office of Special Investigations (OSI) in January 1996. Included within the OSI vulnerability assessment is a "threat scenario," based upon a State Department threat warning system, that included: "an assessment that a 'park and abandon' car bomb was a threat to the compound's security, and an additional assessment that moving back the perimeter fence would lessen the damage that would result from a 'park and abandon' car bomb;[4] a recommendation for the additional security measure of Mylar protective coating on the compound's windows to avoid shattering and fragmentation of glass; the Air Force made this recommendation part of a 5-year plan and thus delayed the addition of Mylar indefinitely."[5]

This intelligence and the vulnerability assessments were combined in three separate but related series of meetings. First, a monthly force protection meeting was convened, co-chaired by the Defense Attache and senior intelligence officer. These force protection meetings were made more frequent (once a week) following the OPM-SANG bombing. Second, regular political-military meetings were held at the U.S. Embassy, at which the threat intelligence and vulnerability assessments were discussed. Third, after the OPM-SANG bombing an Emergency Action Committee composed of the most senior military and intelligence officials in the region met regularly and discussed threat intelligence and vulnerability information as the major topic at each meeting.

As discussed above, senior military commanders in the region were fully briefed on the vulnerability and intelligence threat information. Further, General Shalikashvili, Chairman of the Joint Chiefs of Staff, was briefed at length on all intelligence and vulnerability assessments by the senior intelligence officer in Saudi Arabia in May 1996. This officer referred to his briefing of General Shalikashvili as "intense and to the point" concerning the threat and vulnerability information. Also, senior military commanders in the regions were quite familiar with the Long Commission Report of the Beirut bombing in 1983, which destroyed the U.S. Marine barracks, killing 241 Marines.[6]

THERE WAS NOT AN INTELLIGENCE FAILURE

Section 502 of the National Security Act of 1947 makes it incumbent upon the Director of Central Intelligence, as well as the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities to: "* * * keep the intelligence committees [House and Senate] fully and currently informed of all intelligence activities. . . . including any . . . *significant intelligence failure*"; 50 United States Code §413a*(1)(*italic added*).

The totality of the threat information available to the Department of Defense, as well as the posture of the Intelligence Community at the time of the Khobar Towers bombing makes clear that an intelligence failure, either in collection, dissemination or analysis, did not occur. Military commanders in the region and in Washington received highly relevant threat information for a year and a half prior to the Khobar Towers bombing. Intelligence personnel in the region briefed this information exhaustively throughout the region, and the DCI Counterterrorism Center ensured that senior policymakers in Washington were made aware of the threat and vulnerability information.

CONCLUSION

Regarding the question of the adequacy of the collection, analysis and dissemination of intelligence concerning terrorist threats in Saudi Arabia to Defense Department officials in Washington and military commanders in the field prior to the June 25, 1996, bombing at the Khobar Towers housing complex, the available information leads the Committee staff to conclude that the U.S. Intelligence Community provided sufficient information not only to suggest active terrorist targeting of U.S. personnel and facilities, but also to predict probable terrorist targets. Further, having concluded that the DCI was fully cognizant of and attentive to the force protection issues in the Eastern Province prior to the June 25 attack, and that consecutive DCIs ensured that this force protection information was disseminated to proper Defense Department recipients, the Committee staff concludes that an intelligence failure did not occur. Therefore, the Director of Central Intelligence is not obligated to report a significant intelligence failure to the intelligence oversight committees pursuant to Section 502(1) of the National Security Act of 1947.

FOOTNOTES

[1] An April 3, 1995, a U.S. intelligence cable noted that "U.S. military commanders here are very/very concerned about the Iranian efforts in Saudi Arabia."

[2] After this briefing, the Commander of OPM-SANG, General Nash, approached the same intelligence official to express concern for physical security at the OPM-SANG facility and to specifically ask the official to pass along his concern to U.S. and Saudi intelligence and security officials, which he did.

[3] Between May 31 (the date of the execution of the alleged OPM-SANG co-conspirators) and the date of the Khobar bombing on June 25, a primary focus of intelligence was on the threat of associates of the executed individuals seeking revenge against U.S. persons.

[4] Senator Specter and staff found the distance to be slightly less than 60 feet from the perimeter fence to the front of Building 131. This is significant because (a) the Defense Department had previously placed the distance at 80 feet; (b) according to the House National Security Committee in a recent study, the AFOSI report makes clear that targets closest to perimeter most vulnerable; and (c) the AFOSI report concluded that "every effort should be made to maximize the distance between a given structure and a potential threat." It is also significant because the military commanders apparently never asked the Saudis to move the fence back 400 feet, as DoD had previously claimed. The request was instead to move the fence back 10 feet, which the Saudis quite correctly deemed a purely cosmetic and *de minimus* action and did not take seriously.

[5] Accordingly to tests conducted by military experts since the Khobar attack, even if a bomb the size of OPM-SANG had been used (250 pounds) rather than the 3000-5000 pound device that a House National Security Committee report said was used at Khobar Towers, there would still have been 12 fatalities because the glass on the windows of Building 131 were not treated with Mylar to prevent shattering (as had been recommended by the OSI report).

[6] The Secretary of Defense has recently testified that the military was not prepared for a bomb the size of the Khobar device because an explosive that large was unheard of in the region. This testimony is inconsistent with the fact that the U.S. Marine barracks in Beirut was destroyed by a 12,000 pound bomb in 1983, killing 241 U.S. Marines.

Footnotes at end of article.

TREASURY, POSTAL SERVICE, AND GENERAL APPROPRIATIONS ACT, 1997

The Senate continued with the consideration of the bill.

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

Mr. LAUTENBERG. I thank the Chair. I ask unanimous consent that the pending Kassebaum amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 5241 TO EXCEPTED COMMITTEE AMENDMENT ON PAGE 16 LINE 16, THROUGH PAGE 17 LINE 2

(Purpose: To prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 5241 to excepted committee amendment on Page 16, line 16 through page 17, line 2.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the Committee amendment insert the following:

SEC. ___. GUN BAN FOR INDIVIDUALS COMMITTING DOMESTIC VIOLENCE.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.".

(b) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.";

(2) in subsection (g)—

(A) by striking "or" at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel,"; and

(3) in subsection (s)(3)(B)(i), by inserting before the semicolon the following: "and has not been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel".

(c) RULES AND REGULATIONS.—Section 926(a) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.".

Mr. LAUTENBERG. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. LAUTENBERG. Mr. President, I will proceed as planned. We will wait for the manager to be represented here.

This amendment, very simply, would establish a policy of zero tolerance when it comes to guns and domestic violence. The amendment would prohibit any person convicted of domestic violence from possessing a firearm. In the simplest words, the amendment says that a spouse abuser, wife beater, or child abuser should not have a gun.

Mr. President, the amendment probably sounds familiar. In fact, the Senate adopted this exact proposal as an amendment to the antistalking bill in late July. Unfortunately, when it got to the House of Representatives they, despite a commitment of support, let it be known that they will not let this "no guns for domestic abuser" amendment survive. They will not act on the antistalking bill, and there is no indication that they intended to do so at any time soon. Since the stalking bill may not become law, we, therefore, need to pursue another vehicle that has a realistic chance of being enacted, and this is one of the few such vehicles remaining.

Mr. President, this amendment ought not to be controversial. As I said, it passed unanimously before as an amendment to the stalking bill. That happened only after Senators, like Senator LOTT, Senator DASCHLE, Senator CRAIG, Senator HUTCHISON, and I, got together and reached an agreement on changes to my original proposal. The compromise that we reached was acceptable to all involved, even if none of us was entirely happy. That is the way it usually has to be with any compromise.

So, again, this amendment is identical to that proposal and should not be controversial. I would also note that since the Senate approved this proposal in July, both President Clinton and former Senator Bob Dole have endorsed the concept of keeping guns from those convicted of domestic violence. As a matter of fact, the spokesman for Senator Dole said, "Bob Dole believes that all guns, not just handguns, should be kept out of the hands of domestic abusers."

Mr. President, I couldn't put it better myself. Our colleague, Senator HUTCHISON, has also praised this proposal. This is what she had to say when the agreement was reached, and the amendment was passed along with the stalking bill. She said: "Because of Senator LAUTENBERG's amendment, we are also going to be able to keep people who batter their wives or people with whom they live from having handguns. So I think this is going to be a great bill that will give women and children of this country some protection that they do not now have, and I am very pleased to be supportive of this compromise."

Clearly, Mr. President, this amendment has strong bipartisan support. So I am hopeful that it will again win easy approval. But I want to take a few minutes to explain why it is so important.

Under current Federal law, it is illegal for persons convicted of felonies to possess firearms. Yet, many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies. At the end of the day, due to outdated laws or thinking, perhaps after a plea bargain, they are, at most, convicted of a misdemeanor. In fact, most of those who commit family violence are never even prosecuted. But when they are, one-third of the cases that would be considered felonies, if committed by strangers, are instead filed as misdemeanors. The fact is that in many places domestic violence is not taken as seriously as other forms of brutal behavior. Often acts of serious spouse abuse are not even considered felonies.

In over 30 States, even today, beating your wife or your child is a misdemeanor. In just the past few years, some judges have demonstrated outrageous callousness and disregard for women's lives. Right up the road in Baltimore County, just 2 years ago a State circuit court judge was hearing a case involving a man who shot his wife in the head and killed her. As he handed down the light sentence, with time to be served weekends only, and not a very long time at that, the judge said that the worst part of his job is, and I quote, "Sentencing noncriminals as criminals," as if shooting your wife in the head was not criminal behavior.

Or take the case of a man who tracked down his wife, shot her five times in the face and killed her. The judge in that case gave the man a minimal sentence to be served on weekends. In explaining why he was being so lenient, the judge said the victim provoked her husband by not telling him

that she was leaving their abusive marriage.

These are just two examples of the way that our criminal justice system often treats domestic violence—not as a serious crime. Yet, the scope of the problem is enormous. Every year there are 2 million cases of domestic violence reported. Many of those cases are never finally resolved because the plaintiff withdraws the complaint, or it is dismissed casually. When women are killed in domestic disputes, however, the murderers are holding a gun about 65 percent of the time.

Put another way: Two-thirds of domestic violence murders involve firearms. In 150,000 cases of abuse, spousal abuse, a gun is present. That means that perhaps it is put to a woman's head or put to her face in front of a child, or children, and even though the trigger is not pulled, the trauma is enormous. There is no reason for someone who beats their wives or abuses their children to own a gun. When you combine wife beaters and guns, the end result is more death.

This amendment would close this dangerous loophole and keep guns away from violent individuals who threaten their own families, people who have shown that they cannot control themselves and are prone to fits of violent rage directed, unbelievably enough, against their own loved ones.

The amendment says: Abuse your wife, lose your gun; beat your child, lose your gun; assault your ex-wife, lose your gun; no ifs, ands, or buts. It may sound like a tough policy, but when it comes to domestic violence it is time to get tough. There is no margin of error when it comes to domestic abuse and guns. A firearm in the hands of an abuser all too often means death. By their nature, acts of domestic violence are especially dangerous and require special attention.

These crimes involve people who have a history together, and perhaps share a home or a child. These are not violent acts between strangers, and they do not arise from a chance meeting. Even after a split, the individuals involved, often by necessity, have a continuing relationship of some sort. The people who commit these crimes often have a history of violence or threatening behavior, and, yet, frequently they are permitted to possess firearms with no legal restrictions.

The statistics and the data are clear. Domestic violence, no matter how it is labeled, leads to more domestic violence, and guns in the hands of convicted wife beaters leads to death.

Mr. President, this legislation has been endorsed by over 30 prominent national organizations, including, by way of example, the National Coalition Against Domestic Violence, the National Network to End Domestic Violence, the Family Violence Prevention Fund, the American Academy of Pediatrics, and the YWCA of the United States.

The amendment would save the lives of many innocent Americans, but it would also send a message about our Nation's commitment to ending domestic violence and about our determination to protect the millions of women and children who suffer from this abuse.

Again, I do not expect this to be a controversial amendment since it has already passed this body unanimously.

Once again, I will ask for the yeas and nays, but it is essential that we have someone from the majority side in the Chamber. Otherwise, it is deemed unfair. But I think it is unfair not to have someone from the majority side in the Chamber unless this is a subject that does not matter, killing your wife, if you want to beat her up first.

This is an important piece of legislation. It was a very disappointing experience we had when it went over to the House after being unanimously passed in this body and then casually dropped. But we want to have everybody have a chance to vote on this, and once again, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LAUTENBERG. I thank the Chair and yield the floor.

Mr. KERREY. 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. WELLSTONE. 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. WELLSTONE. Mr. President, I come to the floor to speak on behalf of this amendment proposed by my colleague and good friend, Senator LAUTENBERG from New Jersey, and I want to start out in a very direct way and say that from my experiences and the experiences of my wife, Sheila, working in this area of domestic violence, I have learned that, all too often, the only difference between a battered woman and a dead woman is the presence of a gun.

That is what this amendment is all about. The facts, unfortunately, speak for themselves. If you work in the area of domestic abuse or if you just pick up the newspaper in your own State, you will read stories about violence, abuse, and murders within families and among intimates happening all the time, and, colleagues, you will realize that in all too many cases the only difference between a battered woman and a dead woman is the presence of a gun. That is what this amendment that my colleague has introduced speaks to.

In the historic Violence Against Women Act that was enacted into law as a part of the 1994 crime bill, thanks to the tireless efforts of Senator BIDEN and Senator HATCH, there was a provision which was accepted—eventually and after much negotiation—that I offered in the Senate and Representative TORRICELLI, and Representative SCHROEDER sponsored in the House. This provision prohibits anyone who has a restraining order issued against them from owning or possessing a gun, and it also prohibits anyone from selling or giving a gun to someone they know has a restraining order against them for having abused their spouse or their child.

This was a severely modified and much weaker version of what was originally known as the Domestic Violence Firearm Prevention Act, a bill that I introduced. Senator LAUTENBERG now takes the next logical step with this very important piece of legislation, which would prohibit the possession of a firearm by someone who has been convicted of an act of domestic violence.

I imagine my colleague, Senator LAUTENBERG, went through all the statistics. Let me just simply state, again, that: Four women a day are killed at the hands of their batterer; every 15 seconds a woman is battered in our country. The leading single cause of injury among women in America today is violence in the home. It is just unconscionable.

The good news—and it really is, I think, good news—is that no longer in our country, no longer in our States, and no longer in our communities are we saying that this violence in the home is not our business, no longer do we just turn our gaze away from it without doing anything about it. I think we have finally realized that this violence in homes, all too often directed at women and their children, is really everybody's business. If we do not stop the violence in the homes, it is going to continue to spill out into the streets and into our communities.

The problem which Senator LAUTENBERG speaks to with this amendment, of which I am so proud to be an original cosponsor, is as follows: In all too many cases, unfortunately, if you beat up or batter your neighbor's wife, it is a felony. If you beat up or batter, brutalize your own wife or your own child, it is a misdemeanor.

If the offense is a misdemeanor, then under the current law there is a huge loophole. We do not let people who have been convicted of a felony purchase that firearm. What the Senator from New Jersey is trying to do is plug this loophole and prohibit someone convicted of domestic abuse, whether felony or misdemeanor, of purchasing a firearm. For example, in my State of

Minnesota, an act of domestic violence is not characterized as a felony unless there is permanent physical impairment, the use of a weapon, or broken bones.

I just want to simply say one more time to colleagues, because I can rattle off all the statistics, this is no small issue in our country. We are talking about significant violence. For any Senator who says that we do not want to prohibit any law-abiding citizen from purchasing a gun, I respond that we are not talking about law-abiding citizens. We are talking about citizens who have been convicted of an act of violence against a spouse or child and we are saying in those cases, the law should prohibit that person from purchasing gun, from owning a gun. Once again, the reason we support this law is because we know that in all too many cases, the only difference between a battered woman and a dead woman is the presence of a gun.

Mr. President, for a period of time I was coming to the floor to announce the domestic violence hotline number which was set up under a provision of the Violence Against Women Act. Since its opening on February 21, 1996, the hotline has received over 30,000 calls for help from residents in 50 States and the District of Columbia, Puerto Rico, and the Virgin Islands. Let me announce that one more time. The hotline has received since February 21, 30,000 calls for help from 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. I want to announce the number one more time. The number is 1-800-799-SAFE.

We in the U.S. Senate, by adopting this amendment, will be saying three things. We will be saying we will not tolerate this violence; we will not ignore this violence; and we will no longer say that it is someone else's responsibility. All of us have a chance to make a difference.

My fellow Senators, someone's safety depends on your vote. My fellow Senators, someone's safety depends on your vote. That is usually the safety of a woman and a child. There is no more important vote than the one that is coming up on this amendment.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I thank my colleague from Minnesota for his eloquent reminder about what it is we are considering here. The statistics, the data do not have to be reiterated. It is very clear. The underlying problem is, in this country of ours, that domestic violence, no matter how severe the beating, is often dismissed as a squabble.

I have heard reports of judges saying, "Oh, he didn't really mean it. He didn't intend to hurt you. Can't you go home and settle it between you?" And very often, of the cases reported, there is so much trauma attached to the recipient of the abuse that she—typically it is a she—is afraid to pursue the case any further because, along with the continuing relationships, inevitably are the threats of further disassociation, which, in many cases, could mean the end of income, support, mean the end of some reassurance that there is a roof over their heads. So they sell their souls. They quit when, if they knew that the State cared more about it, they would continue to pursue it.

The other thing is, they are afraid that the guy, the fellow who first treated them to a fist in the face, may come home with a gun and take their lives.

One can only imagine what kind of rage exists within a man who would beat up a woman, and often in front of the children they have. It is an outrageous condition that exists. And this country has not yet taken it seriously enough.

We hope this amendment will send a loud and clear message that you are not going to get away with this kind of thing, because we are going to take away your gun. We are going to take away that extra chance that the woman might be killed.

You heard it from my friend and colleague, Senator WELLSTONE, the Senator from Minnesota: Four women a day will lose their lives. I can tell you this, from the research that we have done, that is a very conservative estimate. The data are not good in that situation.

With that, Mr. President, I yield the floor. We are ready to vote. I urge the adoption of the amendment.

GUNS AND DOMESTIC ABUSE

Mrs. MURRAY. Mr. President, I rise to speak in favor of the Lautenberg amendment to the Treasury-postal appropriations bill, taking guns away from individuals convicted of domestic violence. I am a cosponsor of his original bill, and want to congratulate Senator LAUTENBERG on offering this important legislation in the form of an amendment today.

Just getting the gun out of the home would make the difference in so many of these horrible stories we hear about domestic violence, in the news, or from people on the street. I don't know how many people on the floor of the Senate have heard the cries of a family in crisis; I don't know if you have ever had to dial 911 out of worry for a neighbor. But, I have.

If this amendment makes a difference for one victim of domestic violence, it will have done its job.

One woman I know told me the story of her abusive ex-husband. He was physically abusive, and had been convicted of misdemeanors. What is more, he knew he was prone to violence against his family, and did not trust himself. He purposely separated the gun and the bullets at two different ends of their house, so he would not be able to shoot her in the heat of the moment.

But the measures he took were not quite enough, when he came home one night, drunk, and yelling that the house wasn't clean enough for him. Because he was able to find the bullets, find the gun, load it, and point it at his wife. That she is alive today is a miracle.

This man was not the sort of law-abiding citizen we so frequently hear about from the NRA. He had a record. He did not even trust himself. This man should not have had a gun.

If he did not have a gun, the man in the story may have used some other weapon. But we know from the research that nearly 65 percent of all murder victims known to have been killed by intimates were shot to death. We have seen that firearms-associated family and intimate assaults are 12 times more likely to be fatal than those not associated with firearms. A California study showed when a domestic violence incident is fatal, 68 percent of the time the homicide was done with a firearm.

Again, the gun is the key ingredient most likely to turn a domestic violence incident into a homicide. But the people this amendment would take guns away from—these people have already broken the law, and in a very relevant way. In the face of the reality of domestic violence and the role guns play in homicides in such situations, the Senate cannot allow convicted abusers to have guns.

Unfortunately, this amendment will not make life better for many women who are abused, even when guns are present in the home. We know that most domestic violence is not even reported, and of the cases that are reported, many do not lead to a conviction. This is a problem associated with the horrible effects of victimization, and has a different set of solutions.

But, for thousands of women and men in this country, this amendment would mean immediate results. To get the gun out of the home will mean the difference between life and death. I urge the Senate to pass the Lautenberg amendment.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Lautenberg amendment, because I believe it offer women a vital protection against those who might do them harm.

Every year, an estimated 2 million women are victimized by domestic violence.

Of these 2 million, nearly 6,000 die.

And 70 percent of the time, the perpetrators of the deadly violence use a gun.

Mr. President, we already prohibit convicted felons from possessing a firearm. But is an unfortunate fact that many domestic violence offenders are

never convicted of a felony. Outdated or ineffective laws often treat domestic violence as a lesser offense.

Sometimes, victims are reluctant to cooperate for fear of more violence.

And sometimes victims just don't want to pull themselves through the ordeal of a trial.

And finally, plea bargains often result in misdemeanor convictions for what are really felony crimes.

As a result, Mr. President, many perpetrators of severe and recurring domestic violence are still permitted to posses a gun. Mr. President, these people are like ticking time bombs. It is only a matter of time before the violence get out of hand, and the gun results in tragedy.

Something must be done to close this dangerous loophole.

This amendment looks to the type of crime, rather than the classification of the conviction. Anyone convicted of a domestic violence offense would be prohibited from possessing a firearm. Fewer abusers will have guns, and fewer of the abused will wake up each morning wondering whether they will live through the day. I thank the Senator from New Jersey for his efforts, and I yield the floor.

The PRESIDING OFFICER. The question occurs an amendment No. 5241. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

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

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 289 Leg.]

YEAS—97

Abraham	Exon	Kyl
Akaka	Faircloth	Lautenberg
Ashcroft	Feingold	Leahy
Baucus	Feinstein	Levin
Bennett	Ford	Lieberman
Biden	Frahm	Lott
Bond	Frist	Lugar
Boxer	Glenn	Mack
Bradley	Gorton	McCain
Breaux	Graham	McConnell
Brown	Gramm	Mikulski
Bryan	Grams	Moseley-Braun
Bumpers	Grassley	Moynihan
Burns	Gregg	Murkowski
Byrd	Harkin	Murray
Campbell	Hatch	Nickles
Chafee	Helms	Nunn
Coats	Hollings	Pell
Cochran	Hutchison	Pressler
Cohen	Inhofe	Pryor
Conrad	Inouye	Reid
Coverdell	Jeffords	Robb
Craig	Johnston	Rockefeller
D'Amato	Kassebaum	Roth
Daschle	Kempthorne	Santorum
DeWine	Kennedy	Sarbanes
Dodd	Kerrey	Shelby
Domenici	Kerry	Simon
Dorgan	Kohl	Simpson
Smith	Thomas	Wellstone
Snowe	Thompson	Wyden
Specter	Thurmond	
Stevens	Warner	

NAYS—2

Bingaman Heflin

NOT VOTING—1

Hatfield

The amendment (No. 5241) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Senator DASCHLE and I have continued to confer, and a number of Senators have started asking about the plans for the night. I am looking at the list of amendments here. We still have a good number, somewhere between 25 and 30 first-degree amendments, but only 2 or 3 of them are relevant to this underlying bill.

Our intent is to keep working. The managers have been working, trying to get things agreed to. We have a couple of pending amendments we are trying to get to an understanding on how to vote on them. We are acting in good faith.

As I look at this list, so many of these amendments, really, should not be offered. We should go ahead and get this work done. We are in agreement now, the leadership on both sides of the aisle, that we are going to get it done tonight. We are going to keep working and dealing with these amendments. We are going to keep voting until we get this bill completed. Then we will be able to advise Members when we get it done tonight, we will have debate tomorrow but no votes.

We are now coming close to getting an understanding on what we can do on Monday, with votes early Tuesday morning. Members can do what needs to be done, fulfill commitments and religious holidays, but to get that done we must finish this bill tonight.

So, please, we should not offer these amendments that are not serious. We should the job done. Our intent is to keep going tonight.

We are honoring my colleague, SONNY MONTGOMERY, after 30 years of service in Congress. I will be there for 3 minutes to introduce him. Other than that, I would love to be here the rest of the night.

I yield the floor.

Mr. KERREY. Mr. President, I echo what the majority leader said. There are many evenings where we arrive here at 2 or 3 o'clock in the morning, and then we start to do the sorts of things that we could have done at 5 o'clock in the evening.

We know what needs to be done. We have put out contacts to offices. There are many amendments that we are prepared to accept, but we need Members to come to the floor and offer the amendments up or notify us if they are willing to take the amendments down. Otherwise we will be here until 2, 3, or 4 o'clock in the morning. We could wrap this thing up quickly.

The substantive disagreements, at least on the bill itself, have all been taken care of. We have some disagreements on some amendments we are working on right now that we think we can work out, as well as getting a managers' amendment to wrap this up.

I hope those who would like to get out of here at a relatively nice hour tonight, or those who desire not to have votes tomorrow, will get down here as quickly as they can. Both Senator SHELBY and I are willing to work with Members to see whatever reasonable differences there are and we will work them out.

AMENDMENTS NOS. 5313 AND 5314, EN BLOC

Mr. SHELBY. Mr. President, I have several managers' amendments. I send two amendments to the desk which have been cleared on each side. I ask unanimous consent these amendments be considered and approved en bloc and that any statements be placed at the appropriate place in the RECORD.

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

The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY] proposes amendments en bloc numbered 5313 and 5314.

The amendments are as follows:

AMENDMENT NO. 5313

(Purpose: To provide funding for the review of trade issues)

On page 19, line 2, before the period add the following new provision: "*:Provided further*, That of the funds appropriated $2,500,000 may be made available for the review of trade issues authorized by Public Law 103–182".

AMENDMENT NO. 5314

Insert at the appropriate place: "*Provided further*, That from funds made available for Basic Repairs and Alterations, $2,000,000 may be transferred to the Policy and Operations appropriation".

The PRESIDING OFFICER. The question is on agreeing to the amendments.

The amendments (Nos. 5313 and 5314) were agreed to.

Mr. KERREY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. SHELBY. The clerk will call the roll.

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. DASCHLE. 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. DASCHLE. Mr. President, I ask unanimous consent to lay aside the pending amendments so that I may call up an amendment at this time.

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

AMENDMENT NO. 5234

(Purpose: To remove inequities between congressional and contract employees regarding access to health insurance)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for himself, Mr. DORGAN, and Mr. SIMON, proposes an amendment numbered 5234.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill, insert the following:

TITLE___—HEALTH INSURANCE EQUITY FOR CONGRESSIONAL AND CONTRACT EMPLOYEES

SEC. 01. SHORT TITLE OF TITLE.

This title may be cited as the "Congressional Contractor Health Insurance Equity Act".

SEC. 02. DEFINITIONS.

For purposes of this title:

(1) CONTRACT.—The term "contract" means any contract for items or services or any lease of Government property (including any subcontract of such contract or any sublease of such lease)—

(A) the consideration with respect to which is greater than $75,000 per year,

"(B) with respect to a contract for services, requires at least 1000 hours of services, and

(B) entered into between any entity or instrumentality of the legislative branch of the Federal Government and any individual or entity employing at least 15 full-time employees.

(2) EMPLOYEE.—The term "employee" has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(6)).

(3) ENTITY OF THE LEGISLATIVE BRANCH.—The term "entity of the legislative branch" includes the following:

(A) The House of Representatives.

(B) The Senate.

(C) The Capitol Guide Service.

(D) The Capitol Police.

(E) The Congressional Budget Office.

(F) The Office of the Architect of the Capitol.

(G) The Office of the Attending Physician.

(H) The Office of Compliance.

(4) GROUP HEALTH PLAN.—The term "group health plan" means any plan or arrangement which provides, or pays the cost of, health benefits that are actuarially equivalent to the benefits provided under the standard option service benefit plan offered under chapter 89 of title 5, United States Code.

(5) INSTRUMENTALITY OF THE LEGISLATIVE BRANCH.—The term "instrumentality of the legislative branch" means the following:

(A) The General Accounting Office.

(B) The Government Printing Office.

(C) The Library of Congress.

SEC. 03. GENERAL REQUIREMENTS CONCERNING CONTRACTS COVERED UNDER THIS ACT.

(a) IN GENERAL.—Any contract made or entered into by any entity or instrumentality of the legislative branch of the Federal Government shall contain provisions that require that—

(1) all persons employed by the contractor in the performance of the contract or at the location of the leasehold be offered health insurance coverage under a group health plan; and

(2) with respect to the premiums for such plan with respect to each employee—

(A) the contractor pay a percentage equal to the average Government contribution required under section 8906 of title 5, United States Code, for health insurance coverage provided under chapter 89 of such title; and

(B) the employee pay the remainder of such premiums.

(b) OPTION TO PURCHASE.—

(1) IN GENERAL.—Notwithstanding section 8914 of title 5, United States Code, a contractor to which subsection (a) applies that does not offer health insurance coverage under a group health plan to its employees on the date on which the contract is to take effect, may obtain any health benefits plan offered under chapter 89 of title 5, United States Code, for all persons employed by the contractor in the performance of the contract or at the location of the leasehold. Any contractor that exercises the option to purchase such coverage shall make any Government contributions required for such coverage under section 8906 of title 5, United States Code, with the employee paying the contribution required for such coverage for Federal employees.

(2) CALCULATION OF AMOUNT OF PREMIUMS.—Subject to paragraph (3)(B), the Director of the Office of Personnel Management shall calculate the amount of premiums for health benefits plans made available to contractor employees under paragraph (1) separately from Federal employees and annuitants enrolled in such plans.

(3) REVIEW BY OFFICE OF PERSONNEL MANAGEMENT.—

(A) ANNUAL REVIEW.—The Director of the Office of Personnel Management shall review at the end of each calendar year whether the nonapplication of paragraph (2) would result in higher adverse selection, risk segmentation in, or a substantial increase in premiums for such health benefits plans. Such review shall include a study by the Director of the health care utilization and risks of contractor employees. The Director shall submit a report to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate which shall contain the results of such review.

(B) NONAPPLICATION OF PARAGRAPH (2).—Beginning in the calendar year following a certification by the Director of the Office of Personnel Management under subparagraph (A) that the nonapplication of paragraph (2) will not result in higher adverse selection, risk segmentation in, or a substantial increase in premiums for such health benefits plans, paragraph (2) shall not apply.

(4) REQUIREMENT OF OPM.—The Director of the Office of Personnel Management shall take such actions as are appropriate to enable a contractor described in paragraph (1) to obtain the health insurance described in such paragraph.

(c) ADMINISTRATIVE FUNCTIONS.—

(1) IN GENERAL.—The office within the entity or instrumentality of the legislative branch of the Federal Government which administers the health benefits plans for Federal employees of such entity or instrumentality shall perform such tasks with respect to plan coverage purchased under subsection (b) by contractors with contracts with such entity or instrumentality.

(2) WAIVER AUTHORITY.—Waiver of the requirements of this title may be made by such office upon application.

SEC. 04. EFFECTIVE DATE.

(a) IN GENERAL.—This title shall apply with respect to contracts executed, modified, or renewed on or after January 1, 1997.

(b) TERMINATION.—

(1) IN GENERAL.—This title shall not apply on and after October 1, 2001.

(2) TRANSITION RULE.—In the case of any contract under which, pursuant to this title, health insurance coverage is provided for calendar year 2001, the contractor and the employees shall, notwithstanding section 03(a)(2), pay 1⅓ of the otherwise required monthly premium for such coverage in monthly installments during the period beginning on January 1, 2001, and ending before October 1, 2001.

Mr. DASCHLE. Mr. President, every Member of Congress and every permanent Federal worker has access to comprehensive health insurance. This is true from the Senate cleaning crew, to the staff director of a committee, to Members of Congress and their families. We get insurance the way most working Americans do—through our employer, with a shared contribution between employer and employee. Our coverage is secure, comprehensive, and affordable.

This is not true, however, for employees of firms contracting with Congress. Many of these individuals, who work side by side with Federal workers, have no such guarantee. In fact, about 1,900 employees of companies that contract with the Congress have no insurance. Current efforts to privatize services previously performed by Federal Government workers exacerbate this situation. Who are these contractors? They include House restaurant and mailroom staff, electronics technicians, day care providers, accountants, data processors, and construction and maintenance workers.

They work hard, pay taxes, and play by the rules; yet, they don't have the same kind of health security that we take for granted. I know such people here in the Congress. One in particular is a person whom I go to every so often to have my hair cut. She has worked in the House Beauty Shop for 14 years. For 12 of those 14 years, she was a Federal Government employee and had health insurance. When the House privatized the House haircut facilities in 1995, this particular individual lost her insurance. She purchased a private health plan, but had to drop it 3 months ago because she could not afford the $187 per month premium. She asked the company who runs the shop—a large firm in San Francisco that operates hundreds of shops—if

they would pay 50 percent of the premium. Her employer, so far, has refused, and she is now without coverage. She recently had a serious case of food poisoning but, because of her lack of coverage, could not afford to go to the doctor for treatment.

This kind of situation cannot and should not be tolerated. As we devise new ways to extend health coverage to the uninsured, it just doesn't seem fair to me that we in Congress could allow these contractors, working side-by-side with Federal Government employees who we call upon every day to do the work of the Congress, to go without any coverage at all.

How can we enjoy subsidized comprehensive insurance while people who fix our computers, maintain our buildings, or cut our hair have no coverage at all? It seems to me that, in fairness, we just can't do that.

That is why I have introduced this amendment, which would require firms that contract with Congress—and only Congress—to offer health insurance to their employees. This requirement would apply to firms that employ 15 or more workers and that have Federal contracts worth at least $75,000. These contractors could buy a private health plan or could select a plan from the Federal Employee Health Benefits Program that currently is available to all permanent Federal employees. In either case, they would be required to contribute to their employees' premiums, just as the Federal Government contributes to its workers' coverage. This would ensure that everyone working full time for Congress has access at least to the comprehensive coverage that is now available to congressional employees.

This kind of action is certainly not without precedent. Several years ago, concern over high turnover among Senate day care employees led the Senate to give these contract workers the Federal health benefits coverage that we now enjoy. And Congress has a long-established history of taking action to guarantee fair working conditions for its contract workers. For 65 years, Davis-Bacon and other similar measures have guaranteed competitive wages to Federal contract workers. This bill complements these efforts.

The introduction of this amendment is not just a humanitarian gesture. It is, frankly, a very practical one. Health costs for uninsured workers who become ill are simply shifted onto others; shifted onto public programs like Medicaid, or shifted onto doctors and hospitals in the form of charity care.

In addition, the uninsured forgo preventive care and later need expensive emergency room treatment. We should not tolerate this kind of inefficient cost shifting. We should be setting an example for the rest of the Government, and certainly the private sector.

Some may say this measure will reduce cost savings from privatization. I believe Congress should contract out services performed more efficiently by the private sector. But, certainly, Congress should not save money by denying workers a basic benefit that is guaranteed to all other Federal workers. We want services that are leaner, but not meaner.

Outsourcing may be the wave of the future and, frankly, I generally support this trend. But we need to make sure that those workers caught in the transition have basic benefits to which other Federal workers are entitled.

For many years now, Members of Congress have spoken on the floor about the need to extend coverage to the uninsured. We all recognize there can be no financial security without health security. Let us simply put our money where our mouth is. Let us show our country that what is good for Members of Congress and their employees is also good for the contractors who work with us.

My hope is that my colleagues will join me in support of this amendment.

I yield the floor.

Mr. KERREY. Mr. President, my view is that this is a reasonable amendment. I understand there is no budget cost.

Mr. DASCHLE. Mr. President, if the distinguished Senator from Nebraska will yield, there is no budget cost to this. It is completely paid for. There is a negligible cost that is completely offset. So there is no increase in the deficit that is the result of this amendment.

The Senator is correct.

Mr. KERREY. I certainly support the amendment.

We are waiting for Senator STEVENS' view on this amendment. Both he and the chairman are right now at a defense appropriations conference committee. They should be back momentarily. Once they are back, we should be able to wrap this up and get a vote.

Mr. DASCHLE. 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. KERREY. 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. KERREY. Mr. President, I urge Senators who would like to get out of here tomorrow to get to the floor and offer their amendments. There are no more than seven or eight amendments on either side. We have worked this down to a relatively small amount, and now all we are doing is waiting.

There are a number of Senators who would like to have rollcall votes. It takes time to have rollcall votes. We have been working as diligently as we can. I want nobody to be surprised when it comes to 2 or 3 o'clock in the morning around here, if we wait until 7, 8, 9 o'clock before somebody comes down and offers amendments.

This is an age-old problem, and we are heading to a very predictable point here. We have done about all we can from the floor. Now we have to have Members come down and offer their amendments.

Mr. SHELBY. As the Senator from Nebraska said, we made a lot of progress. We are getting down to what we hope is the beginning of the end tonight. If people who have some amendments pending come over here and try to work with us, we might work some of them out. If we cannot work them out, maybe they can offer them and keep the process moving. It is 10 minutes to 6 now. We could be out of here in a couple of hours, maybe less, if people would cooperate. I know the Senator from Nebraska has been pushing it all day, and so have I. This is our third day on this bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative 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.

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to proceed for not to exceed 10 minutes as in morning business. And if we need to, I will be glad to yield the floor back.

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

THE DOLE ECONOMIC PLAN

Mr. EXON. Mr. President, as the Democrat leader on the Senate Budget Committee with a long and established record as a fiscal conservative, as Governor of my State longer than any other in its history, and proud of continuing that record for 18 years in the Senate, I begin today a number of statements on sound budgeting.

These will be based on fact and proven or provable economic theory, or just common sense, in a hope that I might divert America from careening again down a path that will certainly lead our Nation to new irresponsible depths—new depths indeed—of national debt, if not depression.

Alarmingly, the latest "Follow The Yellow Brick Road" path of wizardry blends $550 billion in tax breaks, unspecified spending cuts, and rosy economic scenarios into one shameless political ploy. When the unsuspecting Dorothys of the world pull back in wonderment the curtain, they discover a huffing and puffing candidate Bob Dole as the wizard. This is the same wizard who for the first 72 years of his life foreswore such economic nonsense.

Bob Dole's transformation from a deficit hawk into a carrier pigeon for supply-side economics is a great loss and disappointment to fiscal conservatives of both parties.

In my 18 years in the Senate, I often stood shoulder to shoulder with then Senator Dole. Although we have had different priorities when it came to spending cuts, we were both strong advocates of a line-item veto, a constitutional amendment to balance the budget, and a no-nonsense approach to economic policy.

But as Senator Bob Dole became Presidential candidate Bob Dole, fiscal responsibility was turned on its ear. Irresponsible tax cuts became his fetish. Listening to the advice of the campaign consultants and pollsters instead of using common sense, Bob Dole, I am afraid, has lost his moorings. And to pay for his folly, he would have us fall into a deeper pit of deficits and debt.

Mr. President, we cannot allow that to happen to the American people a second time. We cannot allow the 1980's gibberish of supply-side economics to go unchallenged again. As a freshman Senator, I supported it, as did Senator Dole. In retrospect, I acknowledge it was the worst vote that I ever cast, in the Senate.

To understand the terrible gamble Bob Dole is taking with our future, the American people should understand the history behind it. I would like to spend a few moments today describing the fiscal carnage of the 1980's, or as George Bush once christened it, "Voodoo Economics." And there is no magic to it. It is just misery.

During the 1980's, the American people got their first taste of the supply-side mumbo-jumbo. It was the Reagan-Bush feel-good, no-fuss, no-muss way to reduce the deficit and grow the economy. There was only one catch: It simply did not work.

Enacting huge tax cuts and increasing spending without balancing the budget, was a ghastly experiment gone terribly awry. Fed by a quick shot of high-octane tax cuts, the economy revved up and then sputtered. The promised revenues evaporated and the deficit exploded with a big deficit bang. A small hill of debt became a mountain.

The supply-side economics of the 1980's was a classic example of the difference between promise and performance. Supply-side tax cuts were supposed to boost the private sector's economic performance. In fact, the economy put in a mediocre showing only, during the Reagan years.

For example, private-sector job growth was 3.3 percent per year in the Carter years, compared with 2.3 percent under Reagan and 0.4 percent in the Bush years. It finally rebounded to 2.9 percent during the Clinton administration—but without, and I repeat, without supply-side economics.

Private investment, which also was supposed to receive a boost from supply-side tax cuts, slumped during the Reagan years. Real business fixed investment, which had been growing at a 7.1-percent annual clip during the Carter years, slowed to a 2.6-percent pace under Reagan, and came to a screeching halt under Bush. During the Clinton administration, business investment has soared at a 8.4 percent rate, the strongest showing since World War II.

With both private-sector employment and business investment suffering under supply-side policies, it is not surprising that private-sector gross domestic product also posted an inferior performance, by any measure. The growth of the private-sector slowed from a 3.5-percent pace under Carter to a 3.0-percent rate during the Reagan years. Having registered a meager 1.3-percent showing under Bush, private-sector growth now currently has averaged 3.2 percent during the Clinton administration.

We are often told that the Reagan tax cut led to a doubling of tax revenue by the end of the 1980's. That is merely a manipulation of the facts. Total revenue doubled during the 1980's but income tax revenue fell far short of doing so. Revenue from Social Security taxes, however, more than doubled as a direct result of a major Social Security tax increase in 1983. That tax increase, incidentally, was passed when Republicans held a majority of the U.S. Senate and Senator Bob Dole was chairman of the Senate Finance Committee.

Having failed to deliver on its economic promises, it should not be surprising then that supply-side tax cuts also failed to deliver the declining deficits promised by the Republicans.

In March 1981, the Reagan White House predicted that the deficit would shrink from its $79 billion level and the budget would be balanced by 1985. Instead, the deficit widened dramatically, hitting $212 billion in 1985—when it was supposed to be zero—and topping out at $290 billion in 1992.

A year later, the Reagan administration could see the red ink rising. President Reagan told the Nation in 1982, and I quote,

> One area of justifiable concern is the deficit. And believe me, we take it as seriously as any problem facing us. But let's recognize why such a huge deficit is projected. It is not, as some would have you believe, a product of our tax cuts.

I am here to tell you and the American people that it was because of the tax cut. But do not just take it from me. More than 10 years after President Reagan made that famous speech, his OMB Director, David Stockman, said his boss was wrong. The deficit was caused by the huge tax cuts that were the hallmark of President Reagan's first year in office.

In an article on the deficit in the March 1993 issue of New Perspectives Quarterly, Mr. Stockman wrote, and I quote,

> The root problem goes back to the July 1981 frenzy of excessive and imprudent tax cuts that shattered the Nation's fiscal responsibility . . . It ought to be obvious by now that we can't grow our way out [of the deficit].

Mr. President, the huge deficits of the Reagan years have left taxpayers with a gargantuan burden of debt and debt service. When President Reagan took his oath of office, the debt was under $1 trillion. When he left, our national debt was over $2.6 trillion, a debt expanded over fourfold since President Carter to over $4 trillion by the time President Bush left office. If it were not for the interest payments on the debt built up during the last two Republican administrations, the Federal budget would now be in surplus.

The Nation has paid a terrible price for the mistakes of the 1980s, and we are still paying for them. Supply-side economics left an economic radioactive fallout that pollutes the economy for years to come. We still do not know its halflife. I feel as though I have spent most of my Senate career trying to clean up the mess, and many of my colleagues have joined in that work, but the job is still unfinished.

We in the Senate spend a lot of time talking about the legacy we will leave our children and grandchildren. But if we are indeed concerned about mortgaging our children's future, we cannot and we must not resurrect supply-side economics. We clearly made a horrendous mistake economically in the 1980s. To duplicate it in the 1990s would be unforgivable. Neither Dorothy nor any self-respecting munchkin would or should forgive us.

The PRESIDING OFFICER (Mr. BENNETT). The time of the Senator has expired.

Mr. EXON. I thank the Chair and yield the floor.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1977

The Senate continued with consideration of the bill.

AMENDMENT NO. 5244

(Purpose: To amend title 18, United States Code, with respect to gun free schools, and for other purposes)

Mr. KOHL. I ask unanimous consent to lay aside the pending amendment.

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

Mr. KOHL. I send an amendment to the desk for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 5244.

Mr. KOHL. Mr. President, I ask unanimous consent 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 in the bill, add the following new section:

SEC. . PROHIBITION.

Section 922(q) of title 18, United States Code, is amended to read as follows:

"(q)(1) The Congress finds and declares that—

"(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

"(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

"(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate;

"(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

"(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

"(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

"(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

"(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

"(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

"(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) does not apply to the possession of a firearm—

"(i) on private property not part of school grounds;

"(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

"(iii) that is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

"(iv) by an individual for use in a program approved by a school in the school zone;

"(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

"(vi) by a law enforcement officer acting in his or her official capacity; or

"(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

"(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

"(B) Subparagraph (A) does not apply to the discharge of a firearm—

"(i) on private property not part of school grounds;

"(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

"(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

"(iv) by a law enforcement officer acting in his or her official capacity.

"(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.".

Mr. KOHL. Mr. President, today's Washington Post tells the story of young children being shot in their own neighborhoods by feuding gangs who are targetting innocent bystanders. It tells us eloquently why we must do all that we can to keep guns out of the hands of children. And the most insidious form of juvenile violence is violence in our schoolyards. We must take this opportunity to do what we can to keep our school zones from becoming war zones. So I would like to offer the Gun Free School Zones Act as an amendment.

The Gun-Free School Zones Act of 1995 is a commonsense, bipartisan, constitutional approach to combating violence in our schools. It bars bringing a gun within 1,000 feet of a school, with a few commonsense exceptions. It modifies the Supreme Court's 1995 Lopez decision to ensure the law's constitutionality. So, let me make a few points.

First, we need a Federal law. The Federal Government has a crucial role to play in dealing with the gun traffic that leads right into our classrooms. After all, how can we turn our backs on a national problem that we can help solve?

The problem is national is scope. Anyone who thinks that this is a local problem isn't looking at the evidence. Interstate commerce is exactly what is causing the problem. Sometimes these guns get into children's hands through the efforts of nationwide gangs.

One 14-year-old Madison, WI, gang member told the Wisconsin State Journal that the older leaders of his gang brought car loads of guns from Chicago to the younger gang members. For example, the Boston police recently discovered that all of the handguns being bought by gang members in one neighborhood came from Mississippi. The young man who was running guns up to Boston was arrested and shootings in the neighborhood dropped more than 60 percent, from 91 to 20.

These guns have infiltrated our school system and created a national crisis. A Lou Harris survey this year found that one in eight youths—two in five in high crime neighborhoods—reported having carried a gun for protection. One in nine said they had stayed away from school because of fear of violence. That number jumped to one in three in high-crime neighborhoods.

Although State laws can help address this national problem, not every State has a law. And not every State law is adequately drafted to do the job. Moreover, in many of these States, people do not serve any time for violating the law. In Federal cases, they do. With a Federal law, we can fill in loopholes and put violators behind bars for up to 5 years. In short, the Gun Free School Zones Act gives prosecutors the flexibility to bring violators to justice under either State or Federal statutes, whichever is appropriate—or tougher.

No one claims that our legislation is a panacea. No one claims that the violence will go away if we pass it, just as the violence did not go away when the original law was passed. But a Federal law can help. The Federal Government can step in and assist State prosecutors when they do not have the resources they need. The Federal Government can take on particularly bad offenders who will receive stiffer penalties in a Federal prosecution. And this measure has bipartisan support: The underlying bill is cosponsored by Senators SPECTER, CHAFEE, SIMON, KENNEDY, KERRY, KERREY, and others.

Finally, the new act addresses the constitutional concerns of the Supreme Court which struck down the original Gun Free School Zones Act last year. What we have done to ensure this result is simple and sufficient: In every prosecution under the act, the Government will now have to prove that the gun traveled in or affected interstate commerce. This very provision was suggested by language in Chief Justice Rehnquist's majority opinion. And the vast majority of constitutional scholars agree that this new bill complies with the Supreme Court.

In conclusion, it does not make much sense to treat a modest and sensible proposal as a major threat to the Federal-State balance. Our founding fathers were concerned with commonsense, not with alarmist predictions about the fate of Federal-State relations.

Mr. President, I ask unanimous consent that my extended remarks be printed in the RECORD.

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

EXTENDED REMARKS OF SENATOR HERB KOHL ON THE GUN FREE SCHOOL ZONES AMENDMENT

The problem of school violence is a national one that begs for national attention. Anyone who argues that the problem is an exclusively intrastate problem is not looking at the evidence. Interstate commerce is creating this problem.

The unchecked proliferation of guns and their delivery into the hands of school-aged children is national in scope. The raw materials for guns are mined in one state, are turned into guns in another state, and are put into a child's hands in another state. The gangs that arm these children and encourage them to bring guns to school operate across state lines.

The effects of guns in schools stretches across this nation. Schools and districts with particularly bad gun problems sink deeper and deeper into despair. They have difficulty procuring Federal aid or grants from national foundations. People will not move from out-of-state to that school area because they do not want their children in dangerous schools. Businesses will not relocate or establish themselves in areas with dangerous school zones.

Finally, and perhaps most tragically, the children in those schools are prevented from learning their ABC's. All they learn is to live in terror. Children from Maine to Wisconsin to Alabama to Oregon go to school in fear—fear that they may be shot, that their teacher may be terrorized by a gun-wielding student, that their school day will consist of nothing but dodging from one perilously dangerous situation to another. These children cannot learn and the educational system cannot teach. Our national economy is crippled.

The Federal Government has a role to play in combatting this national problem. We must put the full weight and investigative abilities of the Federal Government behind the drive to keep guns out of school. No state should be forced to stand alone in confronting this problem.

Although many states have their own laws, we need a Federal law for two reasons: first, many of these State laws are inadequate; and second, a Federal law will serve as a critical support and back-up system for state law enforcement officials.

But before dealing with these reasons, I want to point out that the amendment we have introduced today will not hamper, preempt or harm the enforcement of those laws in any way whatsoever.

However, about 5 to 10 states do not have laws which deal with guns in schoolyards.

In addition, of the forty plus states that have laws, almost half of them simply make it a misdemeanor to bring a gun into school. Unfortunately, that has almost no effect on a juvenile who knows that a juvenile misdemeanor record is virtually meaningless. A stiff Federal penalty means a lot more.

Some of the states also have weaker laws. Take, for example, Alabama. Alabama requires that the person charged have brought the gun to school with "intent to do bodily harm." So you can bring a gun to school, disrupt and frighten all of the students but still get off because you did not intend to actually shoot anyone. That is unacceptable. Alabama's statute also only applies to guns on public school grounds. Private schools are uncovered, so anyone can walk into a parochial or private school with a gun and without a fear of prosecution.

And there is still another reason why a federal law is needed. We need federal and state cooperation to deal with this problem. The states need our help. Sometimes they are overwhelmed and need backup. Other times, they want to use stiffer Federal penalties. This Gun-Free School Zones Act will not preempt a single state law. And after decades of dealing with complementary Federal-State laws, good State and Federal prosecutors know how to coordinate their efforts—and Federal prosecutors know to step aside when the state has a stiffer law. Just ask Bob Wortham, the former Texas U.S. Attorney nominated by Senator Gramm. Wortham prosecuted more people under the Gun-Free School Zones Act than anyone else. And he did it while getting rave reviews from state police, prosecutors, and teachers. This Act is a modest but useful measure that surely cannot threaten our State governments.

You will not hear state officials complaining about meddling federal officials. Instead, state officials welcome federal assistance in this area.

The Gun-Free School Zones Act of 1995 assures a Federal-State joint venture.

This amendment is clearly constitutional. Our original Gun Free School Zones Act was struck down as unconstitutional in *United States* versus *Lopez*. In drafting this amendment, we consulted with the Justice Department and a variety of legal experts who carefully scrutinized this bill and concluded it would easily pass the *Lopez* test.

In fact, the very provision that has been inserted into the bill to make it constitutional was suggested by a section in the Chief Justice's opinion in *Lopez*. In a portion of that opinion, the Chief Justice noted that if the law "contain[ed] . . . [a] jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce," then the law would probably be constitutional.

By requiring an "explicit connection with or effect on interstate commerce" Congress will be clearly regulating interstate commerce pursuant to its constitutional Commerce Clause power. And the fact is that guns in schools are an interstate commerce problem. There are many known instances of gangs travelling to other states to equip themselves with guns which they then bring into schools. That is what this bill seeks to regulate: the travel of guns through interstate commerce to our schoolhouse steps.

This measure does not, as some opponents have argued pave the way to federal regulation of state education. I firmly believe that education is first and last the business of the state governments. And this law does not get the Federal Government in the business of regulating schools. It simply gets the government in the business of controlling the interstate commerce in guns. Since this bill rests on the Federal Government's power to regulate interstate gun commerce, I do not believe it could be used to justify Federal regulation of state education.

Mr. LAUTENBERG. Mr. President, I rise today as an original cosponsor of the Gun Free School Zones amendment offered by Senator KOHL, which is critical to protecting the sanctity of our schools and the safety of our students.

Mr. President, each day, an estimated 135,000 students pack a gun with their books on their way to school. In 1990, the Centers for Disease Control found that 1 in 20 students carried a gun in a 30-day period. Three years later, that figure was 1 in 12.

At a time when guns are becoming increasingly prevalent on neighborhood streets, we cannot simply stand by and allow our playgrounds to become battlegrounds. We cannot expect our students to thrive in an atmosphere where they must fear for their lives and for their safety.

In 1990, Congress passed the original Gun Free School Zones Act with overwhelming bipartisan support. As many of my colleagues know, a sharply divided Supreme Court has invalidated that bill, saying that it exceeded congressional power.

I personally disagreed with the Supreme Court decision, and signed an amicus brief supporting the law's validity. But that is not the issue before us today. Today, the issue is the safety of our children.

This amendment ensures the constitutionality of the Gun Free School Zones Act by requiring the prosecutor to prove as part of each prosecution that the gun moved in, or affected, interstate commerce. That provision will place only a small burden on prosecutors and will ensure our power to keep America's schools safe.

Mr. President, this legislation has the support of the law enforcement and education communities. It has been endorsed by the National Education Association, the American Association of School Administrators, the National School Boards Association, the National Association of Elementary School Principals and the American Academy of Pediatrics.

Is this legislation a panacea, Mr. President? Of course, not. However, it is a worthwhile effort to keep our children away from the dangers of guns and violence.

Mr. President, the National Rifle Association likes to say that guns do not kill; people do. But the gun statistics I have seen belie their contentions. Firearms kill more teenagers than cancer, heart disease, AIDS, and natural diseases combined. Guns are now the leading cause of death for both white and black teenage boys.

We need to fight back the wave of gun violence that is overtaking our streets and neighborhoods once and for all. I urge my colleagues to support this important amendment and to help protect our children and our teachers from gun violence.

Mr. KERREY. Mr. President, this is a very good amendment, a change in the law that is needed as a consequence of the Supreme Court decision. I support the amendment fully.

If the Senator wants to request the yeas and nays we can move immediately to a rollcall vote.

Mr. KOHL. Mr. President, I add Senator BIDEN as a cosponsor.

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

Mr. KOHL. I would like a rollcall vote, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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

AMENDMENT NO. 5295

(Purpose: To provide for the rescheduling of flunitrazepam into schedule I of the Controlled Substances Act, and for other purposes.)

Mr. BIDEN. Mr. President, I ask unanimous consent to lay aside the pending amendment.

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

Mr. BIDEN. Mr. President, I call up amendment 5295 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] proposes an amendment numbered 5295.

Mr. BIDEN. I ask unanimous consent 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 in the bill, insert the following:

SEC. ___. RESCHEDULING OF FLUNITRAZEPAM INTO SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT.

Notwithstanding sections 201 and 202 (a) and (b) of the Controlled Substances Act (21 U.S.C. 811, 812 (a), (b)), respecting the scheduling of controlled substances, the Attorney General shall, by order—

(1) transfer flunitrazepam from schedule IV of such Act to schedule I of such Act; and

(2) add ketamine hydrochloride to schedule II of such Act.

SEC. ___. PENALTY FOR ADMINISTERING A CONTROLLED SUBSTANCE TO FACILITATE A FELONY.

(a) IN GENERAL.—The Controlled Substances Act (21 U.S.C. 100 et. seq.) is amended by adding at the end of part D the following new section:

"PENALTY FOR ADMINISTERING A CONTROLLED SUBSTANCE TO FACILITATE A FELONY

"SEC. 423. Whoever administers a controlled substance to a person without that person's knowledge for the purpose of facilitating the commission or attempted commission of a felony under Federal or State law shall, in addition to any other penalty imposed, be imprisoned for up to 10 years, fined as provided under title 18, United States Code, or both.".

(b) FEDERAL AND STATE COORDINATION.—The United States Attorney shall coordinate the prosecution of any defendant charged with an offense under section 423 of the Controlled Substances Act with State and local law enforcement agencies.

(c) CONFORMING AMENDMENT.—The table of sections for part D of the Controlled Substances Act is amended by inserting after the item relating to section 422 the following new item:

"Sec. 423. Penalty for administering a controlled substance to facilitate a felony."

Mr. BIDEN. Mr. President, let me get right to the point. What I am attempting to do here, so I do not confuse my colleagues who do not have the opportunity or requirement to deal with the drug issue as much as I do, I am attempting to change the schedule—that is the term of art—of these two particular drugs, Rohypnol, and another drug which is referred to as "Special K," and I will get into this in a minute.

They are now the lowest classified drug that you are not able to use. I want to move them up into the highest classification, which make them a schedule 1 drug, the most dangerous drugs that are out there. When you change the schedule, you change all the resources of the Government as to how much attention they pay to the illicit use of these drugs.

Now, the best time, Mr. President, to target a new drug which is coming on to the scene is at the front end. For example, I remember Senator MOYNIHAN in the early 1980's standing on the floor of the Senate and saying, "Hey, look, there is a new drug called crack cocaine." It had not been around before. "There is a new drug called crack cocaine that is being used heavily in the Bahamas. We are beginning to see it being imported in New York. We really should set a priority to deal with that drug."

Now, that is one of the whole purposes for drug strategy: You pick priorities and say, "Look, we will focus on this drug or that drug." I know the Presiding Officer knows what happened. He knew in Utah long before they found out in Iowa, and they have not found out yet in Delaware, but they knew before him in California about a thing called methamphetamines—"meth." What most people do not know, but the distinguished Presiding Officer knows, is that there are more drive-by shootings in Salt Lake City than any other major city in the country—one of finest cities, lowest crime rates in the country.

What happened? Along came this drug called "ice," or methamphetamine. It is a drug that is manufactured, that has properties that are similar in effect and that are more intense than cocaine. All of a sudden, the gangs that were manufacturing this synthetic drug, the Bloods and Crips in Southern California—things got too hot for them there, so they literally moved to Utah. Then things got too hot for them in Utah, and they moved up into Montana and Idaho. Now they have moved, literally, into Iowa, which is a major producing State now.

So what is happening then? It is like a wave. See, "ice" started in Hawaii, and we had notice of it. I have been hollering about it for 6 years now. But we did not focus on it. We always wait until the wave hits us before we focus on it. Then it hit California, and literally, you could see it working its way across America.

Now, the reason I bother to say that is that when we have moved before an abuse of a particular drug has overwhelmed our communities, we have been successful. The advantages of moving early are clear. There are fewer pushers trafficking in that drug, and, most important, there are fewer dependencies, fewer people dependent on the drug, so there are fewer people needing to go out and push the drug they are dependent on to make the money to consume the drug. Literally, we can get it before the networks are in place.

There are organized networks, and there are networks that come about as a consequence of the consumption, because the people consuming need to make money to continue to consume their drugs. So what do they do? They make a deal with their pusher and say, "I will get you two more customers." It is kind of like the old pyramid scheme. But the problem is, once the pyramid has been built, we play heck with trying to break it up at that point.

So today, we are tracking the arrival of two new drugs, Rohypnol, and a drug called "Special K"—I will get into that in a moment—as they begin their slow popularity across the country and begin to show extreme popularity in several States. So today—now—is the time to act on trying to snuff them out before they become too popular.

There is a heightened urgency because of one stark fact. These new drugs—the one with the slang name "Special K," which is an animal tranquilizer, I might add, and Rohypnol, which is a different drug—are being used primarily by our children. Now, all of a sudden, everyone from the administration to the Republican-controlled Congress, including Democrats in the Congress, has discovered that drug use among youth is up.

I came to the floor of the U.S. Senate a year and a half ago and laid out the facts, figures, numbers, and even wrote a report that you all got stuck on your desk. Understandably, like most reports, none of us read them. In the report, I start off saying, "Our Nation has already seen the first signs of a trend that chills every parent—a rising drug use among young children. This is the proper focus of our national crime debate in the months ahead."

That was a year and a half ago. I laid out all the reasons why it was there. To anybody involved in the drug problem, dealing with the drug issue, they

are not surprised by the figures. But all of a sudden, in this election year, Democrats and Republicans alike have found that we have a problem with youth violence and a problem with drug abuse among our young.

Well, I am here to tell you all again that we have an additional problem. We have an additional problem. There are two particular drugs that are gaining vast popularity among young people, and they have an incredibly negative effect, which I will describe in a moment, and we are not targeting them. They are schedule 4 drugs, which means they are at the bottom of the heap. They are viewed as the least dangerous of all the things out there. As a consequence of that, Mr. President, what happens is, local police don't focus on them, Federal resources don't focus on them, parents don't pay attention to them, nobody looks at them because they are the thing that is the least problematic. Well, these two are incredibly pernicious.

So that is why I am calling on the Senate to pass legislation to make both of these drugs subject to much stricter regulation. This can be accomplished by moving these drugs to a different schedule under the Federal Controlled Substance Act. I realize that sounds bureaucratic. But it is a big deal, how you schedule the drug. This is not a step, I might add, to be taken lightly, because there is a regulatory procedure in place for scheduling controlled substances. Unfortunately, this regulatory procedure can take years to accomplish and change. It has to be done now. It has to be done now.

In the past decade—to underscore my point here—Congress has taken legislative action by going around or over the bureaucratic procedure to reschedule drugs. Guess what? It has worked. In 1984, Mr. President, I came to the floor of the Senate and I said, "Hey, look, what I am hearing from all the drug experts in the country is that Quaaludes are being abused in proportions that we should be very worried about. They are on the verge of becoming an epidemic that, in fact, will impact upon young people." And so, with the help of many of my colleagues, we passed a law to make Quaaludes, a previously medically approved sedative, a controlled substance, a schedule 3 controlled substance.

Now, Mr. President, in the decade since that legislation took effect, Quaalude abuse has dropped significantly. Emergency room Quaalude overdoses—the best way to measure abuse is by the overdoses in the hospital emergency rooms—are down 80 percent. It worked; they are down 80 percent from 1984 to 1994.

In legislation I sponsored, which was passed as part of the 1990 Crime Control Act, steroids were reclassified as a schedule 3 substance, scheduling them to more strict controls. I see my friend from Florida on the floor. He has been deeply involved in these drug abuse issues. He can tell you that we were hearing from every athletic director, we were hearing from every coach, we were hearing from schoolteachers, we were hearing about this incredible abuse of steroids. All you had to do was pick up any magazine, from Sports Illustrated to Time magazine, several years ago, in the late 1980's and early 1990's, and they are saying, "Wow, this is a big-deal problem." It was a big-deal problem. So we rescheduled the drug. Since we rescheduled the drug, subjecting it to stricter regulation, the annual use of steroids is down 42 percent in the first 2 years after enacting this legislation.

Mr. President, I just cite this to point out to the skeptics—like in California the referendum for the use of marijuana for medical uses—to the people who have given up—whether it is William Buckley, Mayor Schmoke, George Shultz, or whoever, who are talking about legalization—the reason they are giving up on that stuff is not because they think it is good to legalize it, but they don't think we can do anything about the problem. Well, we can. It is like any disease. It is like anything, from breast cancer to any other disease you can name, the earlier you detect it, the quicker you act on it before it spreads, the better your chances are of dealing with it.

It seems to me, Mr. President, it is time to legislate stricter controls for Rohypnol and "Special K." The record-high abuse rates of the 1970's were accompanied by a unique drug culture, signified by the presence of what used to be called "club drugs." By a club drug, I mean a drug popular with youth and young adults who frequent dance clubs and often mix drugs with alcohol and other substances.

Quaaludes are one of those club drugs. That is the manner in which they were consumed because it enhanced the high and you were very mellow.

Recently club drugs have made a resurgence in popularity, and they are now showing up in both bars and what they call "raves." For some of you who are not as old as I am, "raves" are all-night dance marathons popular with teenagers.

Club drugs are typified by the way they have suddenly gained popularity and have become a drug of choice. They have become trendy among youth, and often these drugs are legally manufactured, but are being used by youth in ways unintended by the manufacturer and unapproved by the Food and Drug Administration.

Rohypnol and "Special K" are two of the drugs which have recently hit the youth scene and quickly become popular. Both of these drugs are very dangerous drugs whose current legal status does not reflect the dangers inherent in their abuse.

Rohypnol abuse was first documented in the United States in 1993. Although abuse was first noted in southern Florida, in the past 2 years abuse has spread rapidly, and Rohypnol activity has been reported in more than 30 States.

Without rapid and strong Government action, I predict that this abuse will continue. It will spread. Teenagers find Rohypnol an attractive drug for a number of reasons. Frighteningly, one of the major reasons that youth do not see Rohypnol as a dangerous drug is because it has legitimate medical use in some areas of the world, and they mistakenly believe that if they are taking that drug in its original packaging form, the manufacturer indicates that it is both safe and unadulterated. They think, "Well, how can that hurt me? Why is that a problem?"

In addition, there are few existing means for testing and prosecuting youth for Rohypnol possession and intoxication. The combination of Rohypnol and alcohol makes it possible for a young person to feel very intoxicated while remaining under the legal blood-alcohol level for driving. That is one of the reasons for its popularity.

In addition to gaining attention for the increasing rate of abuse, Rohypnol has also been the focus of another social problem, a particularly ugly crime: that is what is referred to as date rape. In fact, in many areas and in a number of newspaper accounts, Rohypnol is referred to as the "date rape drug."

Let me explain why. This connection between Rohypnol and rape is due to the drug's disinhibitory effects and its likelihood of causing amnesia when it is taken with alcohol. Unfortunately, the amnesia effect is one of the reasons why many people who abuse Rohypnol are attracted to it. It is commonly reported that people taking Rohypnol in combination with alcohol typically have blackouts and memory losses that last 8 to 24 hours. The novelty of the blackouts attract youth, particularly youth who are combining drugs and alcohol.

In addition, this has led to it being referred to as the "forget me pill" or the "forget pill." Even more frightening, many of the people are finding the drug attractive as a way of creating blackouts in other people.

So we have increasing accounts of unscrupulous males in almost every instance literally—back in our day you would hear the phrase, or my grandfather used to talk about a Mickey Finn—spiking somebody's drink. There is a real reward when a young man spikes a drink of a young woman: (a) she becomes much more uninhibited; and, (b) when he takes advantage of her, rapes her, has sex with her, molests her, she is incapable of remembering with enough specificity to prosecute him that he is the one. Let me give you an example.

She will be able to remember that she has been violated. So the damage is done physically and psychologically. But when in a courtroom being asked by a cross-examining defense attorney, "Well, tell me where you were exactly. Tell me what he was wearing. Tell me what room you were in." All of the things that go to credibility, she is incapable of remembering.

So it has become increasingly popular to abuse young women. That is why they call it—not just young women, any woman. But because it is used in this club scene, that is the place that it is used most often.

So the combination of a lack of inhibition and memory loss caused by Rohypnol mixed with alcohol makes women especially vulnerable to being victims of date rape by people who convince women to take Rohypnol while drinking, or who put the drug in the woman's drink without her knowledge.

Mr. KERREY. Will the Senator yield for just a moment?

Mr. BIDEN. Yes.

Mr. KERREY. We have just been notified by the majority leader that it is his intention to file and say no more votes past 9 o'clock, which means we would have, unless we are able to finish this bill up tonight by 9, votes on Friday.

Mr. BIDEN. Mr. President, is there any likelihood that my colleagues will be willing to accept this amendment?

Mr. KERREY. Apparently there is some Republican on this side of the aisle that has a problem.

We are talking about the Rohypnol amendment?

Mr. BIDEN. Yes. Because the drug companies, the outfit that manufactures Rohypnol, does not like it being moved into schedule 1.

I will take 2 more minutes to talk about Ketamine, and then I will yield the floor, and I am ready for a vote.

Mr. KERREY. Are you going to need a second amendment?

Mr. BIDEN. No. This is all in one amendment.

So let me just briefly explain what Ketamine is. Ketamine is an animal tranquilizer. Ketamine is a hallucinogen that is very similar to PCP. It is called "Special K." It has become a new, popular "designer" drug.

Although the drug has been in existence for several years, its abuse has rapidly become more prevalent in recent years.

In fact, a club in New Jersey was recently closed by police after it discovered teens were attending these things called "raves" where club employees distribute bottled water for the purpose of being able to take this drug called "Special K."

In addition to seizures in New Jersey, recent newspaper articles have mentioned seizures in Maryland, New York, Pennsylvania, Arizona, California, and Florida. Drug trafficking experts have also cited the presence of "Special K" in Georgia and the District of Columbia and in my home State of Delaware.

It is considered the successor to PCP, or "angel dust," as it is known in the streets, due to the similarity of the two drugs' chemical compositions and mind-altering effects. There have also been reports of PCP being sold to people who think they are buying "Special K."

The bottom line is that this is becoming an incredibly popular drug.

The point I will conclude with is I say to my colleagues that by moving Rohypnol to schedule 1 of the Federal Controlled Substances Act and adding "Special K," Ketamine, to schedule 2 of the act, this legislation will subject both drugs to tough controls, increased penalties for unlawful activities involving the two drugs, and it will increase the attention of law enforcement and direct Federal efforts against this.

Mr. President, It also enhances the penalties for people who abuse both these drugs.

In an attempt to cooperate as much as I can, I will yield the floor unless there is somebody who will argue against it.

Mr. KERREY. Would the Senator like to have the yeas and nays?

Mr. BIDEN. I would like to have the yeas and nays.

I would be delighted if it could be accepted. If it can be accepted, I will not seek a vote.

Mr. SHELBY. At this point we cannot.

Mr. BIDEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SHELBY. Mr. President, I would like to tell all the Members that have been conferring with the majority leader that he wants us to be out of here at 9 o'clock. There are a number of amendments. We have made a lot of progress. People have come over here. I know Senator MCCAIN is ready to move. He has been detained somewhere else. In just a few minutes he will get moving. There are others who have been called to the floor. If we are not through at 9 o'clock—which is in 2 hours and 20 minutes—the majority leader has informed me and asked me to share with everybody that we will be in session tomorrow on this bill.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, to underscore again, we had an amendment earlier that Senator KOHL brought down. We were ready to vote on it. A Member somewhere—Lord knows where they are —said, no, we want to come down and speak against it. They still are not here.

We would have accepted this amendment that Senator BIDEN just offered. We have a rollcall vote. I have a couple Members who want to speak against. They are not here. It is quarter to 7. It is one thing to say I want a chance to offer an amendment but if, for gosh sakes, all you want to do is speak on the amendment, put a statement in. Let us go to a vote. Do not tie this thing up forever just because you want to come and make a statement. If you are not prepared to come down to the floor to talk, then put in a written statement. I will put a written statement in for you, speak passionately for you, whatever it takes, but let us get to these votes.

Mr. MCCAIN. Mr. President, I ask unanimous consent to lay aside the pending amendment.

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

AMENDMENT NO. 5266

(Purpose: To increase funding for drug interdiction efforts by $32,769,000)

Mr. MCCAIN. Mr. President, I have amendment No. 5266 at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. HELMS, proposes an amendment numbered 5266.

Mr. MCCAIN. 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 22, line 14, strike "$4,085,355,000" and insert in lieu thereof "$4,052,586,000";

On page 42, line 26, strike "$103,000,000" and insert in lieu thereof "$135,769,000".

Mr. MCCAIN. Mr. President, I am aware, as I propose this amendment, there are I believe a couple of other speakers who wanted to come over and speak in opposition to the amendment. I hope they will display the courtesy to the managers of the bill by coming over so that we can complete our work by 9 o'clock this evening.

Mr. President, this amendment would increase funding for the High-Intensity Drug Trafficking Areas Program by $32.7 million. That $32.7 million is derived by cutting the tax law enforcement appropriated level to the amount that was passed by the House.

Sunday's Washington Post stated:

President Clinton signed Presidential decision Directive No. 14 shifting U.S. antidrug efforts away from intercepting cocaine as it passed through Mexico and the Caribbean and instead attacking the drug supply at its sources in Colombia, Bolivia, and Peru.

The two policy changes marked 1993 as a watershed year in the hemispheric war on drugs and now the results are in. Mexico became the main gateway into the United States for illegal narcotics . . . and teenage drug use in the United States doubled.

Let me repeat that, Mr. President.

Mexico became the main gateway way into the United States for illegal narcotics . . .

and teenage drug use in the United States doubled.

Mr. President, the problem of teenage drug use is growing rapidly. According to published reports, drug use by teens in general is up 105 percent, teenage marijuana use is up by 141 percent, and teenage cocaine use has risen a startling 166 percent. Clearly, something must be done.

The High-Intensity Drug Trafficking Areas Program was established by the Antidrug Abuse Act of 1988 and provides Federal assistance to State and local law enforcement agencies in the areas of our Nation most affected by drug trafficking. This program has been very successful.

It is clear that we must do more, much more. The fact that drug use among teenagers has doubled is a startling and disturbing statistic. It should cause us all to stop what we are doing and question our children's future. The facts are clear. Their future will be in jeopardy if the drug epidemic continues unabated.

Rhetoric is not going to solve the problem. The President has tried the political approach. He gutted the drug czar's office and changed our Nation's drug interdiction strategy. Now that an election is approaching and startling facts regarding the skyrocketing use of drugs are in the press, the President is paying this issue lip service. This is not enough.

We need action. We need to curb drug use. That is exactly what this amendment will do. It will fund more police on our border. It will fund more interdiction programs. It will fund a special project to curb the production and distribution of methamphetamines in the Midwest.

According to Monday's Washington Post, the President wrote:

> In the national drug control strategy, I asked Congress to be a bipartisan partner and provide the resources we need to get the job done. That is why I urge you to ensure that Congress fully funds my antidrug budget requests before you conclude your work and return home.

I think we should comply with the President's request. He said, "I urge you to ensure that Congress fully funds my antidrug budget requests before you conclude your work and return home."

This amendment represents a good start. I admit the $32 million this amendment would add to our drug interdiction program will not solve the problem. But it is a necessary first step.

We must fund these programs. As the data demonstrates, we are clearly not doing enough now.

The money to fund this increase in our drug interdiction program is derived by funding the IRS tax auditor section of the bill at the House-passed level rather than at the higher Senate amount. The House believes the IRS can fulfill its duties on the amount appropriated, especially in the auditor section. I am inclined to agree and believe the Senate add-on will be better spent on our drug control efforts. The effects of this cut have been incorporated into the bill and will not cause any budgetary problems.

Mr. President, we have to act on this matter. The future of our young people depends on stopping our country's drug epidemic, and this amendment I believe is a reasonable restraint and logical first step. I hope it will be adopted.

In deference to the fact we are working on a 9 o'clock time constraint, in deference to the fact that my colleague from Georgia, I believe, Senator COVERDELL, is waiting here to speak, and we have other amendments, I will abbreviate my remarks. But the abbreviation of my remarks should not be interpreted as a lack of concern or a lack of priority that I feel about this drug problem in America.

I happen to come from a State that cocaine is pouring through. Unfortunately, it is not all going through my State. A lot of it is stopping in Arizona. Tragically, in the poorer sections of Phoenix, AZ, and Tucson, AZ, and around my State the use of drugs is dramatically on the increase. I have met with individuals who have had personal experiences, residents of these areas, and they are deeply alarmed and deeply concerned. They blame the rise of gang activities on the economic aspects of the sale of drugs. They blame the deaths and wounding of young individuals on gang wars and gang-related activities. They blame a great deal of the problems that exist in their neighborhoods on this horrific drug problem that is going up and up and up.

I had hoped that this amendment would have been accepted. I understand that Senator SHELBY may have a motion to table this amendment.

Mr. KERREY. Mr. President, will the Senator yield?

Mr. MCCAIN. Yes.

Mr. KERREY. Sometimes brevity is the best thing to do. I must say initially perhaps it is pride of authorship; when you put a bill together yourself, you think nobody can make an improvement upon it. I have had a lot of experience with it, and especially in the Midwest we have a very serious methamphetamine problem in Nebraska.

I just checked with the chairman's staff person on this, and I believe we would be prepared to accept this amendment.

Mr. MCCAIN. I thank the Senator.

I do thank my friend from Nebraska. And I hope my friend from Nebraska will keep in mind its importance as they go to conference.

I thank my friend. I am grateful to my friend from Nebraska.

I ask unanimous consent to add Senator COVERDELL as a cosponsor.

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

Mr. MCCAIN. I thank my friend from Nebraska. I do want to point out that as on many issues the Senator from Nebraska has been a leader against this fight in the drug war and I thank him for it.

Mr. HELMS. Mr. President, I am pleased to cosponsor the amendment of the distinguished Senator from Arizona, [Mr. MCCAIN] to provide an additional $32.7 million dollars to fight the deluge of illegal hard drugs into the United States. This additional funding will go to the High-Intensity Drug Trafficking Area Program, the purpose of which is to provide increased Federal assistance to the most critical drug trafficking areas in our country.

This amendment is fully offset by a reduction in the Senate recommended IRS enforcement funding level to the level passed by the House.

Mr. President, the pending amendment is another necessary step toward recommitting our government and the American people to the war on drugs. It supplements an amendment, builds on one I offered last week during consideration of the VA-HUD appropriations bill. The Senate unanimously passed that amendment to provide an additional $20 million to fight drug use in public housing projects. I hope we will see that same level of support for the pending amendment.

This amendment is consistent with the testimony of the experts who testified at the recent Foreign Relations Committee hearing on international drug trafficking. At that hearing, over which I presided, two North Carolina law enforcement officers, Charlotte-Mecklenburg Police Dept. Sgt. Terry Sult and Sheriff B.J. Barnes of Guilford County, NC, along with a member of the L.A. gang known as the "bloods," described in graphic detail, the devastating effects of the drug trade at the local level. They also confirmed what national experts, such as John Walters, the deputy drug czar in the Bush administration, who also testified at our hearing, told us about changes in the distribution of drugs at the national level.

Mr. President, these experts all spoke of the increasing influx of illegal narcotics, the vast majority of which are produced in South America, into their communities. They also addressed the violence associated with the drug trade and the despicable practice of employing ever younger children in the peddling of this poison. According to the DEA, much of our Nation's violent crime, particularly among juveniles, is linked to drug trafficking and drug use. Recent statistics have shown that over one-third of all violent acts and almost half of all homicides among juveniles are linked to drugs.

Recent drug abuse statistics have confirmed what many of us already

knew. Namely, that our Nation has been losing ground in the war against drugs. The most recent annual survey of drug use among our Nation's youth revealed some shocking statistics. Just two examples from the survey will demonstrate the enormity of the problem we now face. For example, the survey found:

First, drug use by U.S. teenagers skyrocketed 105 percent between 1992 and 1995; and

Second cocaine use among teens increased 166 percent in the 1 year from 1994 to 1995.

These statistics reflect a continued breakdown in our social fabric. The damage this poison inflicts is measured not merely in terms of dollars and cents, but more importantly, in lost and squandered lives. Each year, illegal drugs claim the lives of 25,000 Americans and devastate countless thousands of family and friends who are left behind.

Mr. President, while there is no single solution to the problem of illegal drug use, it is abundantly clear that we must redouble our efforts if we are to stop the loss of yet another generation to the scourge of illegal drugs. The McCain amendment will focus resources on one of the areas that they are most urgently needed—in those cities and ports of entry that are most heavily impacted by drug-trafficking.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 5266) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. KERREY. Mr. President, I know the Senator from Florida is here to offer an amendment. I wonder if he can tell me how much time he has, because what I would like to do is propound a unanimous-consent request. We have two amendments up here that are waiting for votes. We are waiting for Members to come down and speak. In one case, it was an hour ago they were on the way down here. I would like to propound a unanimous-consent request that we proceed to a vote on the Kohl amendment, a 15-minute rollcall vote on the Kohl amendment, immediately followed thereafter by a 15-minute vote on the Biden amendment.

How long did the Senator want to speak?

Mr. GRAHAM. Mr. President, I believe 15 minutes.

Mr. KERREY. Mr. President, I ask unanimous consent the Kohl amendment vote begin at 7:20, immediately followed by the rollcall vote on the Biden amendment.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Florida.

Mr. GRAHAM. Mr. President, I have two unanimous-consent requests. First, that Ms. Nani Coloretti, of our office, be allowed the privilege of the floor during the consideration of the Treasury-Postal appropriations bill.

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

Mr. GRAHAM. And, second, I ask unanimous consent to be listed as a cosponsor of the amendment offered by Senator McCAIN.

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

Mr. KERREY. Will the Senator yield for a moment so I can inform colleagues, once again, the objection was offered for the purpose of allowing Senators to come over to offer a perfecting amendment on the Biden amendment. We have 2 hours and 5 minutes. Otherwise, we get votes tomorrow.

The PRESIDING OFFICER. The Senator from Florida has the floor.

Mr. GRAHAM. I ask the pending amendments be laid aside for purposes of offering an amendment.

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

AMENDMENT NO. 5245

(Purpose: To ensure medicare beneficiaries have emergency and urgent care provided and paid for by establishing a definition of an emergency medical condition that is based upon the prudent layperson standard)

Mr. GRAHAM. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 5245.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ___. REQUIREMENTS FOR MEDICARE MANAGED CARE.

(a) ACCESS TO EMERGENCY SERVICES.—Subparagraph (B) of section 1876(c)(4) of the Social Security Act (42 U.S.C. 1395mm(c)(4)) is amended to read as follows:

"(B) meet the requirements of section 3 of the Access to Emergency Medical Care Act of 1995 with respect to members enrolled with an organization under this section.".

(b) TIMELY AUTHORIZATION FOR PROMPTLY NEEDED CARE IDENTIFIED AS A RESULT OF REQUIRED SCREENING EVALUATION.—Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following:

"(9)(A) The organization must provide access 24 hours a day, 7 days a week to individuals who are authorized to make any prior authorizations required by the organization for coverage of items and services (other than emergency services) that a treating physician or other emergency department personnel identify, pursuant to a screening evaluation required under section 1867(a), as being needed promptly by an individual enrolled with the organization under this part.

"(B) The organization is deemed to have approved a request for such promptly needed items and services if the physician or other emergency department personnel involved—

"(i) has made a reasonable effort to contact an individual described in subparagraph (A) for authorization to provide an appropriate referral for such items and services or to provide the items and services to the individual and access to the person has not been provided (as required in subparagraph (A)), or

"(ii) has requested such authorization from the person and the person has not denied the authorization within 30 minutes after the time the request is made.

"(C) Approval of a request for a prior authorization determination (including a deemed approval under subparagraph (B)) shall be treated as approval of a request for any items and services that are required to treat the medical condition identified pursuant to the required screening evaluation.

"(D) In this paragraph, the term 'emergency services' means—

"(i) health care items and services furnished in the emergency department of a hospital (including a trauma center), and

"(ii) ancillary services routinely available to such department,

to the extent they are required to evaluate and treat an emergency medical condition (as defined in subparagraph (E)) until the condition is stabilized.

"(E) In subparagraph (D), the term 'emergency medical condition' means a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

"(i) placing the person's health in serious jeopardy,

"(ii) serious impairment to bodily functions, or

"(iii) serious dysfunction of any bodily organ or part.".

"(F) In subparagraph (D), the term 'stabilizationn' means, with respect to a emergency medical condition, that no material deteriorationn of the condition is likely, within reasonable medical probability, to result or occur before an individual can be transferred in compliance with the requirements of section 1867 of the Social Security Act.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective for contract years beginning on or after the date of the enactment of this Act.

Mr. GRAHAM. Mr. President, Congress has created an anomaly, a catch-22 situation which occurs in one of the most traumatic areas of our society, the hospital emergency room. The anomaly is that under the Federal Emergency Medical Treatment Act, physicians in hospitals which participate in Medicare must provide "an appropriate medical screening examination to any patient who presents himself or herself in an emergency room without regard to insurance coverage or ability to pay. If the emergency condition exists, the patient must be stabilized before transfer or release."

So, the hospital which provides Medicare services is required to receive any persons presenting themselves to the emergency room and to provide initial stabilization and screening, without regard to the persons' ability to pay.

Second, health maintenance organizations, which, today, provide Medicare services for almost 1 out of 10 Medicare beneficiaries, are not required to reimburse the emergency room if it performs the services that we have statutorily required the emergency room and its professional staff to perform.

Who is affected by this anomaly? Who is caught in the catch-22 which we have created? Obviously, it is the Medicare beneficiaries, the Medicare beneficiaries who, as we have increasingly encouraged them to do, have signed a contract with a health maintenance organization and now have found that, after having gone to the emergency room, had services provided, finds that they are denied reimbursement and become financially obligated for what, in many cases, is a very substantial bill.

Mr. President, I have, and I would like to offer as one of several items to appear immediately after my remarks, a letter from a health care organization in Clinton Township, MI, St. John Emergency Physicians. They outline an example of this instance in which a 46-year-old female patient presented herself to their emergency room department. The patient was traveling in a car with her husband when she experienced a sudden onset of shortness of breath and collapsed. She was rushed to the emergency department in an ambulance.

Despite the best efforts of the emergency room personnel, the patient, unfortunately, did not respond to any of the emergency treatment. She was pronounced dead. The cause of death was cardio-pulmonary arrest. The patient belonged to a HMO organization. They refused coverage and have sent a bill of $1,200 to the widower of the deceased patient.

That is illustrative of situations which relate to emergency rooms in HMO's.

You might say this certainly is an anomaly; this is aberrant; this cannot be a recurring condition. In fact, presently 60 percent of all of the claims disputed between Medicare beneficiaries and managed care plans involve emergency services. Sixty percent of the disputes between Medicare beneficiaries and an HMO plan relate to circumstances that revolve around emergency room services.

The purpose of this amendment is to resolve that dispute. We are not doing this for the first time. In November 1995, this Senate, by unanimous vote, adopted this amendment as part of the Medicare component of the Balanced Budget Act.

We are not the only ones to be concerned about this. Increasingly, States are adopting provisions to resolve this dispute between HMO patients and emergency rooms. To date, Maryland, Virginia, and the State of Arkansas, have all adopted legislation that relates to this subject, and action is being taken by the leaders of the industry, of the health maintenance organizations. Washington Health Week of August 26, 1996, states that:

> HMO patients who make emergency room visits may benefit from the unlikely alliance of a leading HMO company and an emergency physicians group, jointly pushing for federal standards that would make it harder to deny coverage for such services.
>
> Kaiser Foundation Health Plan and the American College of Emergency Physicians are advocating standards for emergency care coverage that include the controversial "prudent layperson" standard.

It goes on to say:

> The jointly developed standards would require managed care plans to cover non-emergency services provided in an emergency department if a prudent lay person would reasonably think that his or her condition needed emergency treatment. HMOs would have to cover medically necessary ER [emergency room] services without preauthorization. Emergency MDs [physicians] would have to notify the plan within 30 minutes after the enrollee's condition is stabilized to obtain authorization for promptly needed services. HMO's would have 30 minutes to respond. If the HMO and the doctor couldn't agree on a post-stabilization treatment, the plan would have to arrange alternative treatment.

Mr. President, that is the essence of the amendment we have offered. It is an amendment which the Senate has already adopted. It is an amendment which is increasingly being adopted by States, not just for Medicare patients but for all patients who are members of a health maintenance organization. And it is the position that is now being advocated by one of the leading HMO's in the country and the College of Emergency Physicians.

I recently had an experience, as I do on a monthly basis, taking a different job. In this case, it was working with the fire and rescue department of Palm Beach County, FL, in an area of the county which has a large number of Medicare beneficiaries in their population. I was at one of the fire and rescue stations which said they got as many as 40 calls in a 24-hour period for emergencies.

I asked them, "What would you do, for instance, if you came to the home of an older person, a home of any person, who was suffering from chest pains?"

Their answer was: "Our instructions are to provide stabilization and immediately deliver that individual to an emergency room. We are not to make any independent attempts to assess what the cause of those chest pains may be. We rely on the reasonable judgment of this lay person that those chest pains would be symptomatic of a serious life-threatening condition. We deliver that individual into the hands of persons who are capable of making the judgment as to whether, in fact, that is the circumstance."

Mr. President, that is the essence of this amendment. It is to use the standard of a prudent lay person who felt that their condition was such that it required emergency medical evaluation, and if that standard of a prudent lay person is met, then that individual should be eligible, or the physicians or the emergency room which provided the services, should be eligible for the reimbursement for the services which they provide.

As I say, that is the standard the Senate has adopted. It is the standard increasingly States have adopted. It is the standard which the leaders in the health maintenance organization industry and the College of Emergency Physicians recommended be adopted.

I urge the adoption of this amendment which will give peace of mind to millions of Americans and will help resolve the largest single source of contention between Medicare beneficiaries, for whom we have a particular responsibility, and health maintenance organizations.

Mr. President, I ask unanimous consent that several articles and a letter to which I referred be printed in the RECORD.

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

ST. JOHN EMERGENCY PHYSICIANS, P.C.,
Clifton Township, MI, October 26, 1995.

Hon. SPENCER R. ABRAHAM,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: As you know, the Medicare portion of Budget Reconciliation is currently being debated upon the Senate Floor. I write to you with an urgent request to support an amendment to be offered by Senator Bob Graham of Florida regarding access to emergency medical services.

AN EXAMPLE OF MY OWN FROM MICHIGAN

I am the Vice Chief of Emergency Medicine at St. John Hospital & Medical Center in Detroit. On March 21st of this year a 46 year old female presented to our emergency department. The patient was traveling in a car with her husband when she experienced a sudden onset of shortness of breath and then collapsed. She was rushed to our emergency department by ambulance. To make a sad story short, despite the best efforts of my colleague and the personnel in our department, the patient unfortunately did not respond to any sort of emergency treatment. She was pronounced dead. Cause of death was cardiopulmonary arrest. (I've attached a copy of the notes from this event.)

The patient belonged to Blue Care Network, a health maintenance organization for Blue Cross and Blue Shield of Michigan. Blue Care Network has denied coverage for these services because the services were not preauthorized. What is even more disturbing is that the patient's husband has been left with a bill of over $1,200.00 during this time of personal loss.

Senator, this example speaks for itself. Even with the best emergency medical transport and treatment available to us, she died. There was no time to call the HMO "gatekeeper" to get permission. There was no

time for anyone to do anything but to try and save this poor young woman's life. The denial associated with this case is simply unbelievable.

This is why Senator Bob Graham's amendment concerning the definition of an emergency is necessary. I urge your support of his effort when he offers his amendment later today or tomorrow. Thank you for your consideration.

Sincerely,

JAMES M. FOX, M.D.,
Vice Chief,
Department of Emergency Medicine.

HMO, EMERGENCY DOCS JOIN TO SEEK FEDERAL STANDARDS FOR ER COVERAGE

HMO patients who make emergency room (ER) visits may benefit from the unlikely alliance of a leading HMO company and an emergency physician group jointly pushing for federal standards that would make it harder to deny coverage for such services.

Kaiser Foundation Health Plan and the American College of Emergency Physicians are advocating standards for emergency care coverage that include the controversial "prudent layperson" standard.

ER coverage mandates, particularly the prudent layperson language, have been a source of conflict between physicians and the managed care industry.

Kaiser, the nation's second largest HMO chain, is trying to get other managed care companies to support the standards, but doesn't have any takers yet. The national HMO chain broke with the managed care industry on the issue because at least 12 states have enacted varying ER coverage mandates, and compliance with a national standard would be preferable.

The jointly developed standards would require managed care plans to cover non-emergency services provided in an emergency department if a prudent layperson would reasonably think that his or her condition needed emergency treatment. HMOs would have to cover medically necessary ER services without preauthorization. Emergency MDs would have to notify the plan within 30 minutes after the enrollee's condition is stabilized to obtain authorization for promptly needed services; HMOs would have 30 minutes to respond. If the HMO and doctor couldn't agree on a post-stabilization treatment, the plan would have to arrange alternate treatment.

Rep. Ben Cardin (D-Md) introduced legislation (HR 2011), with over 140 co-sponsors, that's similar to what Kaiser and the emergency docs are advocating. Although it is not expected to pass this year, the issue expected to reemerge in 1997.

[From the New York Times, July 9, 1995]

H.M.O'S REFUSING EMERGENCY CLAIMS, HOSPITALS, ASSERT—TWO MISSIONS IN CONFLICT

'MANAGED CARE' GROUPS INSIST THEY MUST LIMIT COSTS—DOCTORS ARE FRUSTRATED

(By Robert Pear)

WASHINGTON, July 8.—As enrollment in health maintenance organizations soars, hospitals across the country report that H.M.O.'s are increasingly denying claims for care provided in hospital emergency rooms.

Such denials create obstacles to emergency care for H.M.O. patients and can leave them responsible for thousands of dollars in medical bills. The denials also frustrate emergency room doctors, who say the H.M.O. practices discourage patients from seeking urgently needed care. But for their part, H.M.O.'s say their costs would run out of control if they allowed patients unlimited access to hospital emergency rooms.

How H.M.O.'s handle medical emergencies is an issue of immense importance, given recent trends. Enrollment in H.M.O.'s doubled in the last eight years, to 51 million, partly because employers encouraged their use as a way to help control costs.

In addition, Republicans and many Democrats in Congress say they want to increase the use of H.M.O.'s because they believe that such prepaid health plans will slow the growth of Medicare and Medicaid, the programs for the elderly and the poor, which serve 73 million people at a Federal cost of $267 billion this year.

Under Federal law, a hospital must provide "an appropriate medical screening examination" to any patient who requests care in its emergency room. The hospital must also provide any treatment needed to stabilize the patient's condition.

Dr. Toni A. Mitchell, director of emergency care at Tampa General Hospital in Florida, said: "I am obligated to provide the care, but the H.M.O. is not obligated to pay for it. This is a new type of cost-shifting, a way for H.M.O.'s to shift costs to patients, physicians and hospitals."

Most H.M.O.'s promise to cover emergency medical services, but there is no standard definition of the term. H.M.O.'s can define it narrowly and typically reserve the right to deny payment if they conclude, in retrospect, that the conditions treated were not emergencies. Hospitals say H.M.O.'s often refuse to pay for their members in such cases, even if H.M.O. doctors sent the patients to the hospital emergency rooms. Hospitals then often seek payment from the patient.

Dr. Stephan G. Lynn, director of emergency medicine at St. Luke's-Roosevelt Hospital Center in Manhattan, said: "We are getting more and more refusals by H.M.O.'s to pay for care in the emergency room. The problem is increasing as managed care becomes a more important source of reimbursement. Managed care is relatively new in New York City, but it's growing rapidly."

H.M.O.'s emphasize regular preventive care, supervised by a doctor who coordinates all the medical services that a patient may need. The organizations try to reduce costs by redirecting patients from hospitals to less expensive sites like clinics and doctors' offices.

The disputes over specific cases reflect a larger clash of missions and cultures. An H.M.O. is the ultimate form of "managed care," but emergencies are, by their very nature, unexpected and therefore difficult to manage. Doctors in H.M.O.'s carefully weigh the need for expensive tests or treatments, but in an emergency room, doctors tend to do whatever they can to meet the patient's immediate needs.

Each H.M.O. seems to have its own way of handling emergencies. Large plans like Kaiser Permanente provide a full range of emergency services around the clock at their own clinics and hospitals. Some H.M.O.'s have nurses to advise patients over the telephone. Some H.M.O. doctors take phone calls from patients at night. Some leave messages on phone answering machines, telling patients to go to hospital emergency rooms if they cannot wait for the doctors' offices to reopen.

At the United Healthcare Corporation, which runs 21 H.M.O.'s serving 3.9 million people. "It's up to the physician to decide how to provide 24-hour coverage," said Dr. Lee N. Newcomer, chief medical officer of the Minneapolis-based company.

George C. Halvorson, chairman of the Group Health Association of America, a trade group for H.M.O.'s, said he was not aware of any problems with emergency care. "This is totally alien to me," said Mr. Halvorson, who is also president of HealthPartners, an H.M.O. in Minneapolis. Donald B. White, a spokesman for the association, said, "We just don't have data on emergency services and how they're handled by different H.M.O.'s".

About 3.4 million of the nation's 37 million Medicare beneficiaries are in H.M.O.'s. Dr. Rodney C. Armstead, director of managed care at the Department of Health and Human Services, said the Government had received many complaints about access to emergency services in such plans. He recently sent letters to the 164 H.M.O.'s with Medicare contracts, reminding them of their obligation to provide emergency care.

Alan G. Raymond, vice president of the Harvard Community Health Plan, based in Brookline, Mass., said, "Employers are putting pressure on H.M.O's to reduce inappropriate use of emergency services because such care is costly and episodic and does not fit well with the coordinated care that H.M.O.'s try to provide."

Dr. Charlotte S. Yeh, chief of emergency medicine at the New England Medical Center, a teaching hospital in Boston, said: H.M.O.'s are excellent at preventive care, regular routine care. But they have not been able to cope with the very unpredictable, unscheduled nature of emergency care. They often insist that their members get approval before going to a hospital emergency department. Getting prior authorization may delay care.

"In some ways, it's less frustrating for us to take care of homeless people than H.M.O. members. At least, we can do what we think is right for them, as opposed to trying to convince an H.M.O. over the phone of what's the right thing to do."

Dr. Gary P. Young, chairman of the emergency department at Highland Hospital in Oakland, Calif., said H.M.O.'s often directed emergency room doctors to release patients or transfer them to other hospitals before it was safe to do so. "This is happening every day," he said.

The PruCare H.M.O. in the Dallas-Forth Worth area, run by the Prudential Insurance Company of America, promises "rock solid health coverage," but the fine print of its members' handbook says, "Failure to contact the primary care physician prior to emergency treatment may result in a denial of payment."

typically, in an H.M.O., a family doctor or an internist managing a patient's care serves as "gatekeeper," authorizing the use of specialists like cardiologists and orthopedic surgeons. The H.M.O.'s send large numbers of patients to selected doctors and hospitals; in return, they receive discounts on fees. But emergencies are not limited to times and places convenient to an H.M.O.'s list of doctors and hospitals.

H.M.O.'s say they charge lower premiums than traditional insurance companies because they are more efficient. But emergency room doctors say that many H.M.O.'s skimp on specialty care and rely on hospital emergency rooms to provide such services, especially at night and on weekends.

Dr. David S. Davis, who works in the emergency department at North Arundel Hospital in Glen Burnie, Md., said: "H.M.O.'s don't have to sign up enough doctors as long as they have the emergency room as a safety net. The emergency room is a backup for the

H.M.O. in all it operations." Under Maryland law, he noted, an H.M.O. must have a system to provide members with access to doctors at all hours, but it can meet this obligation by sending patients to hospital emergency rooms.

To illustrate the problem, doctors offer this example: A 57-year-old man wakes up in the middle of the night with chest pains. A hospital affiliated with his H.M.O. is 50 minutes away, so he goes instead to a hospital just 10 blocks from his home. An emergency room doctor orders several common but expensive tests to determine if a heart attack has occurred.

The essence of the emergency physician's art is the ability to identify the cause of such symptoms in a patient whom the doctor has never seen. The cause could be a heart attack. But it could also be indigestion, heartburn, stomach ulcers, anxiety, a panic attack, a pulled muscle or any of a number of other conditions.

If the diagnostic examination and tests had not been performed, the hospital and the emergency room doctors could have been cited for violating Federal law.

But in such situations, H.M.O.'s often refuse to pay the hospital, on the ground that the hospital had no contract with the H.M.O., the chest pain did not threaten the patient's life or the patient did not get authorization to use a hospital outside the H.M.O. network.

Representative Benjamin L. Cardin, Democrat of Maryland, said he would soon introduce a bill to help solve these problems. The bill would require H.M.O.'s to pay for emergency medical services and would establish a uniform definition of emergency based on the judgment of "a prudent lay person." The bill would prohibit H.M.O.'s from requiring prior authorization for emergency services. A health plan could be fined $10,000 for each violation and $1 million for a pattern of repeated violations.

The American College of Emergency Physicians, which represents more than 15,000 doctors, has been urging Congress to adopt such changes and supports the legislation.

When H.M.O.'s deny claims filed on behalf of Medicare beneficiaries, the patients have a right to appeal. The appeals are heard by a private consulting concern, the Network Design Group of Pittsford, N.Y., which acts as agent for the Government. The appeals total 300 to 400 a month, and David A. Richardson, president of the company, said that a surprisingly large proportion—about half of all Medicare appeals—involved disagreements over emergencies or other urgent medical problems.

[From the Miami Herald, July 30, 1995]

HMOs IN THE ER: A VIEW FROM THE TRENCHES

(By Paul R. Lindeman)

I arrived for my 12-hour shift in the Emergency Department at 7 p.m. As the departing physician and I went over the cases of the current patients, I was told the woman in Room 2 was being transferred to a psychiatric facility. The patient was pregnant, addicted to crack cocaine and had been assessed as suicidal by a psychiatrist.

An obstetrician was required to care for the patient during her stay at the mental health facility. The only two groups of practicing obstetricians who were on this woman's HMO "panel" and on staff at this facility both refused to accept this high-risk case. That left this unfortunate woman, and our staff, caught in the "never-never land" of managed care.

When I left the Emergency Department at 7:30 the following morning, she was still in Room 2. It took hospital administrators and attorneys all day to arrange disposition, and the patient was eventually transferred—at 6:30 that evening.

Managed-care health plans typically limit choice of doctors and hospitals and attempt to closely monitor services provided. Their goal is to curb unnecessary tests and hospitalizations to keep costs down. In the case of for-profit managed-care companies, the additional purpose is obvious. But what happens when managed care meets the emergency room?

Federal law requires a screening exam at emergency facilities, but HMOs are not required to pay. By exploiting this fact, managed care is able to shift costs onto hospitals, doctors and policyholders, thereby "saving" money.

Consider the case of a 50-year-old male who awakes at 4 a.m. with chest pain and goes to the hospital 10 blocks away—instead of his HMO hospital an extra 30 minutes away. After examination and testing, it's determined that the patient is not having a heart attack and that it's safe for him to go home.

His diagnosis is submitted on a claim form with a code for "gastritis."

His insurance company denies payment, stating that "gastritis" is not an emergency. As a result, the hospital and the company who employs the emergency department physician both bill the patient.

While this "retrospectoscope" is widely employed and an industry standard for denying payment, there are many other "savings" techniques. For instance, many HMOs require "pre-authorization" to treat a patient in the ER.

Consider now a 60-year-old female who arrives at the emergency room complaining also of chest pain. The triage nurse examines the patient, obtaining a brief history and vital signs. A call is placed to the insurance company and a recorded message is obtained without specific instruction regarding emergencies. The patient is treated but the payment is denied. Reason: Authorization was never obtained.

Here's an alternate scenario, same patient, again waiting for pre-authorization. (Noncritical patients often wait for more than an hour.) This time "the insurance company" answers the phone. Reading from a list, a series of questions is asked, limited almost exclusively to obtaining recorded numbers. Based on these numbers, the individual speaking for the company determines that it is safe for the patient to be transferred to its hospital. The emergency physician disagrees. The patient stays and is admitted to the hospital.

The HMO denies payment for the ER visit and the 24-hour hospitalization, stating that the patient should have been transferred. Again, the patient/policyholder, who pays a monthly premium for his or her insurance, is billed for all hospital and physician services.

The representative for the insurance company who decides on pre-authorization can range from someone with no medical background at all to another physician (albeit with a vested economic incentive). Generally the level of expertise is somewhere between this. Thus, the near-Orwellian scenario frequently plays out whereby a doctor who has seen and examined a patient is trying to convince a nurse, over the telephone, that a patient is sick.

Rudy Braccili Jr., business operations director for the North Broward Hospital District, was quoted in The Herald as saying. "It's just a game they play to avoid paying, and it's one of the ways they save money. They do not see the realities of people who in the middle of the night come into emergency rooms." He estimates that North District hospitals have lost millions of dollars a year because of HMOs' reluctance to pay bills.

Part of the problem is that what managed-care organizations are trying to do is often quite difficult: determine prospectively which patients are truly deserving of emergency-room care. Indeed, this may in fact be a Catch-22. I know of no way to accurately discern acute appendicitis from a "tummy ache" without a history and physical examination. Furthermore, medicine does not always lend itself to black and white. For instance, is a woman who screams and gyrates hysterically as a result of a squirming cockroach in her car an emergency?!

Unfortunately, problems with HMOs in the ER go beyond cost shifting and denial of payment. They often turn an otherwise brief encounter into a harrowing ordeal. Another example from "the trenches" is illustrative.

Our patient this time is an 85-year-old woman with a hip fracture. But instead of being admitted, her HMO mandates that she be transferred across town to the emergency department at another facility where they contract their surgical hip repairs. The patient waits three hours for the HMO ambulance service, which is "backed up."

Consumers note: Had the patient not sold her Medicare privileges to this HMO, she would have been admitted to our hospital uneventfully in a fraction of the time required to complete her managed-care sojourn.

No matter how well trained or talented the emergency physician, there are also times when she or he requires the urgent services of a consultant to provide definitive care for a patient (for instance, vascular and orthopedic surgeons to repair a severely traumatized limb). In these cases, delays in care due to managed-care bureaucracy can become a legitimate hazard to the patient.

Dr. Charlotte S. Yeh, chief of emergency medicine at the New England Medical Center, has said. "In some ways, it's less frustrating for us to take care of homeless people than HMO members. At least we can do what we think is right for them, as opposed to trying to convince an HMO over the phone of what's the right thing to do."

In my experience that is not an exaggeration. In the emergency department, the homeless—while certainly deserving of medical care—often receive better and more prompt care than the HMO policyholder.

Conventional political wisdom holds that health-care reform is dead. In fact, nothing could be further from the truth. Reform has been taking place at breakneck speed entirely independent of Washington. In the last five to 10 years, managed-care companies and the private sector have changed profoundly the manner in which many Americans now receive their health care.

As for-profit managed care has usurped decision-making authority from physicians, so have they also diverted funds from hospitals, physicians and policyholders to their own CEOs and stockholders. Last year, HMO profits grew by more than 15 percent with the four largest HMOs each reporting more than $1 billion in profits. What Democrats and Republicans alike fail to appreciate is that the allegiance of managed care is to neither the patient nor the reduction of the federal deficit, but to its CEOs and stockholders.

Mr. GRAHAM. I urge the adoption of this amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. KERREY. Does the Senator wish to request the yeas and nays?

Mr. GRAHAM. Mr. President, I request the yeas and nays, unless the managers of the bill are prepared to accept this amendment. If they are so prepared, I will waive the yeas and nays. If not, I will ask for them.

Mr. SHELBY. If the Senator from Florida will yield, we have a Member who is on his way who wants to look at this amendment, perhaps talk on it. Whether we can accept it might be premature right now. If the Senator will just withhold that request.

Mr. GRAHAM. Mr. President, I would like to ask for the yeas and nays, and if this amendment is capable of being accepted, I will ask that request be vitiated and will accept a voice vote.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second

The yeas and nays were ordered.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

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

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Florida.

Mr. HATCH. It has not been adopted yet?

Mr. KERREY. Do you want to set it aside and go to the Biden amendment?

Mr. HATCH. I ask unanimous consent that the pending amendment be set aside so we can return to the Biden amendment.

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

AMENDMENT NO. 5315 TO AMENDMENT NO. 5295

(Purpose: To amend the Controlled Substances Act to provide a penalty for the use of a controlled substance with the intent to commit a crime of violence, including rape, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. COVERDELL, proposes an amendment numbered 5315 to amendment No. 5295.

Mr. HATCH. 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:

Strike all after the 1st word and insert the following:

PROVISIONS RELATING TO USE OF A CONTROLLED SUBSTANCE WITH INTENT TO COMMIT A CRIME OF VIOLENCE.

(a) PENALTIES FOR DISTRIBUTION.—Section 401(b) of the Controlled Substances Act is amended by adding at the end the following:

"(7)(A) Whoever, with intent to commit a crime of violence as defined in section 16, United States Code (including rape) against an individual, violates subsection (a) by distributing a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined as provided under title 18, United States Code.

"(B) As used in this paragraph, the term 'without that individual's knowledge' means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.".

(b) ADDITIONAL PENALTIES RELATING TO FLUNITRAZEPAM.

(1) GENERAL PENALTIES.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(A) in subsection (b)(1)(C), by inserting "or 1 gram of flunitrazepam" after "I or II"; and

(B) in subsection (b)(1)(D), by inserting "or 30 milligrams of flunitrazepam," after "schedule III,".

(2) IMPORT AND EXPORT PENALTIES.—

(A) Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended by inserting "or flunitrazepam" after "I or II".

(B) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended by inserting "or flunitrazepam" after "I or II,".

(C) Section 1010(b)(4) of the Controlled Substances Import and Export Act is amended by inserting "(except a violation involving flunitrazepam)" after "III, IV, or V,".

(3) SENTENCING GUIDELINES.—The United States Sentencing Commission shall amend the Sentencing Guidelines so that one dosage unit of flunitrazepam shall be equivalent to one gram of marihuana for determining the offense level under the Drug Quantity Table.

(d) INCREASED PENALTIES FOR UNLAWFUL SIMPLE POSSESSION OF FLUNITRAZEPAM.—Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the sentence ending with "exceeds 1 gram." the following new sentence: "Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years and shall be fined as otherwise provided in this section."

Mr. HATCH. Mr. President, this is an amendment to the Biden amendment, both of which address a horrible problem of considerable concern to this body and, indeed, to everyone in this country who has become aware of it.

Several months ago, law enforcement officers began to find an unusual phenomenon: that unscrupulous men were abusing a prescription drug to take advantage of women, particularly young women, by sedating them and raping them.

That drug, Rohypnol—or, as it is called on the street, "roofies"—is a sedative marketed in literally dozens of countries.

Rohypnol is not sold legally in the United States, nor can it be, because the manufacturer made the business decision that the already-crowded market for sedatives did not warrant the considerable time and expense of subjecting the product to the lengthy Food and Drug Administration approval process.

Rohypnol is one of the widely used class of prescription medications known as benzodiazepine. These Valium-like drugs are commonly used to treat anxiety, sleep disorders, seizure disorders, and muscle spasms. Rohypnol is currently approved for human use in 64 countries.

Many of my colleagues have seen reports about the use of Rohypnol in date rape, during which men have apparently placed Rohypnol in their date's drink and then, after the drug has taken effect, proceeded with a sexual assault.

In response to the growing abuse of Rohypnol, the Drug Enforcement Administration instituted the formal rescheduling process for this drug by submitting a request on April 11, 1996, to the Food and Drug Administration to conduct an evaluation of the scientific and medical issues with regard to Rohypnol. That evaluation, an appropriate examination of the law enforcement and the health aspects of Rohypnol use, is continuing and ongoing.

In a letter from Health and Human Services Secretary Donna E. Shalala to me on July 24, 1996, Secretary Shalala said that the goal of the rescheduling process was to make Rohypnol subject to increased penalties for illicit use and trafficking.

Since this particular drug has become an agent of abuse and the focus of considerable debate, I agree with Secretary Shalala that it is appropriate to increase the penalties for illegal trafficking in Rohypnol.

The amendment that I have just filed accomplishes that purpose, without depriving 64 countries of a drug that they find to be safe and efficacious, a drug which we have every reason to believe would have been found to be safe and efficacious in this country if the company were willing to go through our arduous and lengthy Food and Drug Administration approval procedures.

The drug comes into our country is clandestinely, generally through Mexico, and certainly not legally. And the company that produces Rohypnol has nothing to do with that.

Mr. President, none of us are sure how many times these drug-induced rapes have occurred.

As far as I am concerned, one occurrence is one too many. I find that situation deplorable; it is a heinous crime for someone to use any sedative for the purpose of date-raping a partner.

Our amendment is a strike back at those who would use controlled substances to engage in the most reprehensible of crimes—that is, rape. That is why we need the toughened penalties for the illegal use of Rohypnol, which is what Senator COVERDELL and I are advocating with this amendment.

The approach advocated in the Biden amendment, to reschedule the drug to schedule I, is seriously flawed.

My major concern is that schedule I is the most restrictive category, which is reserved for the drugs which have a high potential for abuse, drugs which have no currently accepted medical use in treatment, and drugs for which there is a lack of accepted safety for use under medical supervision. That is what a schedule I drug is.

These standards clearly do not apply to Rohypnol, a member of the benzodiazepine class which generally falls within the less restrictive schedule IV.

If the United States were to single out this drug and place it in schedule I, it would send a strong, and inappropriate, signal to other countries that we find there is no medical use for Rohypnol. Such a signal would be false.

To reschedule Rohypnol this way simply is not right. It could unfairly result in the drug being rescheduled in some of the 64 other countries where it is not being abused as it is in the United States, where it is being used safely and efficaciously as a legitimate sedative.

Rohypnol is no different from any other drug in its class, and many health care professions are fearful that if this benzodiazepine were removed from clinical use, ultimately the others will be removed also, if and when they are implicated in similar crimes.

These pharmaceuticals are some of the most beneficial drugs in some of the most difficult areas of medical treatment, such as mental health.

Mr. President, the more appropriate—and expeditious—alternative that we offer today is to impose all the penalties that apply to schedule I drugs to Rohypnol without rescheduling the drug.

Specifically, our amendment would create an express violation under the Controlled Substances Act for unlawful distribution, with intent to commit a crime of violence, including rape, of a controlled substance to a person without that person's knowledge. The penalty will be up to 20 years without probation, and fines will be imposed of up to $2 million for an individual. The definition of "crime of violence" is provided in section 16 of title 18 of the United States Code.

We believe our amendment advocates the appropriate way to solve this problem. It does not interfere with the safe and efficacious use of a drug which is approved in 64 countries, but not our own.

I think my colleagues should agree it is not the manufacturer's fault that people are abusing this drug, bringing it across the border so it can be abused in this country in the way that Senator BIDEN has so ably explained. I deplore the situation as much as he; I just do not agree with his proposed solution to the problem.

The Hatch-Coverdell amendment also provides enhanced penalties for manufacturing, distributing, dispensing, or possessing with the intent to manufacture, dispense, or distribute large quantities of the drug flunitrazepam, marketed as Rohypnol. One gram or more of the drug will carry a penalty of not more than 20 years in prison and 30 milligrams a penalty of not more than 5 years in prison. In addition, the amendment extends the so-called long-arm provisions of 21 U.S.C. 959(a) to the unlawful manufacture and distribution of flunitrazepam outside the United States with the intent to import it unlawfully into this country. It also directs the U.S. Sentencing Commission to amend the sentencing guidelines so flunitrazepam will be subject to the same base offense level as schedule I or II depressants.

Finally, at the request of law enforcement officials, we have added a new penalty for unlawful simple possession of Rohypnol. Law enforcement officers have indicated to me their concern that they need additional tools to apprehend would-be rapists before the crime is committed. Accordingly, the final provision provides increased penalties for simple possession of flunitrazepam of not more than 3 years.

Mr. President, it has become obvious that we have a serious problem in this country with abuse of drugs by teenagers. While the overwhelming abuse of drugs by teenagers focuses on illicit drugs, the illegal diversion and misuse of medicines is also a growing problem in our country.

And I have to say that many manufacturers are concerned that if the United States takes the approach advocated by the Senator from Delaware, then we could end up harming many people who need benzodiazepines throughout the world. In other words, what my colleague is contemplating could end up affecting all drugs in this class of sedatives, drugs which are of value. And this would work to the detriment of patients all over this country, and indeed, all over the world.

I believe that the Federal Government must show it will not tolerate the use of this drug—or any drug—to facilitate rape. It is necessary and prudent that the Congress act, and approval of our amendment would be a good start.

Mr. President, in closing, I must point out that 64 other countries have found this drug to be safe and efficacious. The manufacturer has chosen not to market it in this country because of the cost of the lengthy approval process at the FDA and the number of other similar products on the market.

I cannot fault the manufacturer for that decision, because the drug approval process is too lengthy, in my estimation. Studies have shown approval times can extend from 10 to 15 years, at a cost of half a billion dollars. Approval of this drug probably would not have taken that long, but who knows? Of course, we will never know, because the manufacturer made the conscious choice not to introduce Rohypnol in the American market.

The fact remains that use of these controlled substances in violent crimes, such as rape, ought to result in a sure-fire penalty, a penalty which sends the signal to would-be perpetrators that the United States will not tolerate such crimes. That is what our amendment does.

If we want to do something about the misuse of this drug and other drugs of a similar nature, the benzodiazepines, then it seems to me this is the way to do it—impose tough penalties, let people know there are tough penalties, see a few people go to jail for years. Perhaps then we will find such drugs will not be abused anymore in this country. That is the signal we should be sending.

So, I hope my colleagues will support this amendment, because it is an important amendment.

I thank my colleague from Delaware for raising this issue. He has been one of the principal legislators raising the issue about date rape. I give him a lot of credit for that.

I give him credit for this amendment, as well, as I do my dear colleague from Georgia, Senator COVERDELL, who has worked very closely with me in formulating this amendment and bringing it to the floor today.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I rise in support of the Hatch-Coverdell amendment. It has been an honor to work with Senator HATCH, with his longstanding efforts to engage the drug war.

I point out to my colleagues in the Senate that just last week we discovered the first death from Rohypnol, a young teenager who apparently was given Rohypnol in a drink of soda, who has now lost her life as a result of this awful drug, and some predator yet to be discovered.

The Hatch amendment embraces the legislation that I introduced shortly after our hearing where we heard from two young American females who were stricken and the victims of predators with this drug called Rohypnol. It is important to note that Rohypnol cannot be detected: You cannot smell it; you cannot see it; and you cannot taste it.

The effect of our amendment is to say that anybody who uses Rohypnol or any other drug as a weapon, becomes a predator against someone, who creates a victim, will be subject to increased penalties of up to 20 years. So this legislation, just as the Senator from Utah said, puts would-be abusers

of this drug and would-be predators of this drug on notice. And, hopefully, as in the case of several other drugs in our history, we will be able to corral them through, in a sense, the warning system that this legislation creates. It creates a new Federal crime if you use a drug as a predator, as a weapon, against a victim.

So I rise in support of this amendment and urge our colleagues to pass it. I think that the quicker we make it clear how tough we are going to be on Rohypnol or the date rape drug—and it is a bipartisan effort; Senator BIDEN, from Delaware, has been working on this for some time—the more likely we are to make it clear that it is a danger.

The packaging and other features of this drug have made some teenagers almost view it as a safe drug. This stuff is a clear knockout. Ten minutes and you do not know what hit you. Worse yet, you cannot remember anywhere from 24 to 72 hours what happened. All you have to do is go to one hearing and hear one victim tell you what transpired with this awful drug in the hands of a predator, and you not only will be supporting this amendment, but you probably will be trying to think of how we can improve it and make it more effective than even this.

So, Mr. President, I do rise in support of the amendment, and I yield the floor.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 5244

Mr. THOMPSON. Mr. President, I now ask that the Senate return to the Kohl amendment No. 5244.

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

Mr. THOMPSON. Mr. President, I rise to oppose this amendment. This amendment basically makes the possession of a firearm in a school a Federal offense. I share the concern of my colleague from Wisconsin about the growing problem we have about guns in schools, but I simply believe we cannot afford to start federalizing every offense that States have traditionally been called upon to handle.

This is not only traditionally a State matter with regard to the law enforcement matter, it is also involving another traditional State matter in terms of education. So you have law enforcement with regard to an educational institution, two matters traditionally handled by the State which we are now seeking to federalize.

One of the findings in the amendment is that States and localities in school systems find it almost impossible to handle gun-related crimes by themselves. Even States, localities, and school systems that have made strong efforts to prevent and punish gun-related crimes find their efforts unavailing, due in part to the failure or inability of other States or localities to take strong measures.

Mr. President, I do not believe that is a valid finding that this Congress ought to make. My understanding is that 48 States, I believe, have passed legislation dealing in this very area. States should be left to address this particular problem in ways that they see fit. They may be more effective on a State and local level in determining how to address this problem than we in Washington, DC, for example. There might be some States that have had inducements to inform on violators. Some States have gone in the direction of voluntary surrender of guns, with amnesty provided. Some States penalize parents for failure to supervise children, as my State in Tennessee has done.

I do not believe that we should be taking an area which has traditionally been under the auspice of State and local government, and tax people at that level, and then bring the money to Washington to put in the hands of Federal officials to enforce these laws.

Schools do have problems with guns. Part of it has to do with the breakdown in discipline. Part of it has to do with regulations that have been placed on schools and lawsuits that schools have been subjected to, making it more difficult for schools to effectively handle all kinds of disciplinary problems, including guns in schools. They have not been suffering from a lack of FBI agents going around schools investigating these matters. They are serious enough offenses of a traditional Federal nature for FBI agents to be investigating. We do not need this.

This bill is very similar to a bill that Congress passed by voice vote in 1990, the gun-free school zone law, which made it a Federal offense for any person to possess a gun in a school. The Supreme Court ruled it unconstitutional and said it was beyond the power of Congress to regulate in regulating interstate commerce and held that gun possession is not an economic activity that substantially affected interstate commerce.

At a time when the Supreme Court is telling us that you cannot just have some theoretical basis, some very attenuated basis for interstate commerce, we once again are making an attempt at the Federal level. Of course, it is a very popular issue, but is an attempt at the Federal level to federalize another State and local matter.

I think Justice Kennedy's concurring opinion in that case is just as instructive today as it was back then. He said were the Federal Government to take over the regulation of entire areas of traditional State concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of Federal and State authority would blur and political responsibility would become illusionary. I think he is absolutely right. I think that States and local governments need to know it is their responsibility. People in these communities need to know it is their responsibility and they cannot pass off any problem that comes down the pike to the Federal Government.

This amendment would do nothing in terms of additional funding to rectify the problem. It would do nothing in terms of metal detectors or any other supervisory personnel or anything to assist any teachers, or anything of that nature. It would simply allow Federal agents to come into these schools and make a Federal crime out of this traditional State area and further load up our Federal dockets, which are now trying to stay afloat as it is.

Mr. President, as I say, I am very sympathetic with the problem. It is something that we are all dealing with in one way or another. As chairman of the Youth Violence Subcommittee, we certainly spent a lot of time in dealing with the problem that we have among our young people today. Part of that has to do with schools. Part of that has to do with guns. But keep the responsibility where it is. Do not get so caught up in trying to make a point, as popular as it might be, temporarily, that we one by one by one federalize shoplifting or federalize illegal parking or whatever happens to be the rage at the moment, and we wind up with one system at the Federal level, Federal agents handling everything, and as soon as we perceive a new problem, everybody in the State and local level thinks of the Federal Government first.

That is not the way we have traditionally handled these matters in this country. That is not the way we need to proceed in order to make sure we keep that separation between State and local and Federal Government. So at a time when so many of us are trying to move more and more responsibility back to the States and closer to the people who know how to handle it more effectively, I think it would be indeed ironic for us to be taking this matter, which for 200 years has been the responsibility of State and local government, and federalize it.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the motion to table the Kohl amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

Mr. NICKLES. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "nay."

The result was announced—yeas 27, nays 72, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—27

Baucus	Grassley	Leahy
Bennett	Gregg	McCain
Bond	Hatch	Murkowski
Breaux	Heflin	Nickles
Campbell	Hollings	Santorum
Cochran	Inhofe	Smith
Faircloth	Jeffords	Stevens
Feingold	Johnston	Thomas
Grams	Kyl	Thompson

NAYS—72

Abraham	Exon	Mack
Akaka	Feinstein	McConnell
Ashcroft	Ford	Mikulski
Biden	Frahm	Moseley-Braun
Bingaman	Frist	Moynihan
Boxer	Glenn	Murray
Bradley	Gorton	Nunn
Brown	Graham	Pell
Bryan	Gramm	Pressler
Bumpers	Harkin	Pryor
Burns	Helms	Reid
Byrd	Hutchison	Robb
Chafee	Inouye	Rockefeller
Coats	Kassebaum	Roth
Cohen	Kempthorne	Sarbanes
Conrad	Kennedy	Shelby
Coverdell	Kerrey	Simon
Craig	Kerry	Simpson
D'Amato	Kohl	Snowe
Daschle	Lautenberg	Specter
DeWine	Levin	Thurmond
Dodd	Lieberman	Warner
Domenici	Lott	Wellstone
Dorgan	Lugar	Wyden

NOT VOTING—1

Hatfield

The motion to table the amendment (No. 5244) was rejected.

Mr. KOHL. Mr. President, I ask that the yeas and nays be vitiated.

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

The question is on agreeing to the amendment.

The amendment (No. 5244) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 5234

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I ask for the regular order with respect to the Daschle amendment numbered 5234.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 5234.

AMENDMENT NO. 5316 TO AMENDMENT NO. 5234

(Purpose: To provide for workforce flexibility for employees of certain Federal contractors)

Mr. ASHCROFT. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The legislative clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 5316 to amendment No. 5234.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the matter proposed to be inserted, add the following:

SEC. . WORKPLACE FLEXIBILITY FOR EMPLOYEES OF FEDERAL CONTRACTORS.—Subchapter II of chapter 61 of title 5, United States Code, shall apply to contractors and employees specified in section 3(a)(1) and to contractors with an entity of the executive branch of the Federal Government, and employees of such contractors, in the same manner, and to the same extent, as such subchapter applies to agencies and employees, respectively, as defined in section 6121 of title 5, United States Code.

Mr. ASHCROFT. Mr. President, I thank you for this opportunity. The Daschle amendment No. 5234 seeks to address a disparity between the insurance coverage that would inure to the benefit of Federal workers as compared to the workers in companies that do contract business with the Federal Government. There are far many more disparities than the disparities that just relate to health insurance. As a matter of fact, conditions of employment are substantially different for individuals in the Federal Government from individuals in the private sector who do business with the Federal Government.

One of the most substantial areas in which there are significant differences between those who work for the Federal Government and those who are in the private sector who contract with or provide services to the Federal Government is in the area of the opportunity for employees and employers to cooperate for work schedules which are helpful to families or for employees to opt to take compensatory time instead of to take time and a half in terms of overtime pay.

One of the serious tensions that exists in the workplace today is the tension between the demands of the home environment and the demands of the work environment. The Federal Government addressed this a long time ago. We began in the late forties by having compensatory time available to Federal workers, and then in the 1980's, or in the late 1970's and into the 1980's, we began experimenting with allowing cooperation between Federal workers and their employers to provide for flexible time arrangements for work, so that in the Federal Government, at the option of the worker, you can work a little more than 40 hours in 1 week in order to take some time off the next week, or vice versa.

The idea is that if your daughter, for example, is getting an award at the high school sometime on a Friday afternoon, you can say to your employer, "If I can make up the time on Monday, will that be allowable?" And with that 80-hour work frame instead of the 40-hour work frame, that is something that can be done. It is achievable.

The Daschle amendment really seeks to provide an equity between those who work in the Federal Government and those who do Federal-type responsibilities but are working in the private area. It does so in the area of health care. My second-degree amendment is to take that philosophy and extend it to other benefits, benefits that help both the worker and the employer in a special way.

The GAO, for example, has studied the situation at the Federal level and found that the flex time opportunities and the compensatory time opportunities that are available to workers under the Federal system have resulted in substantial work satisfaction among Federal workers in this respect. The satisfaction was attendant by higher productivity, and the satisfaction resulted in a greater return on the resource that was devoted; on the tax dollars that were being spent, we received more for our money.

If that works for Federal workers in the setting of their Federal employment, I think it should work for the private workers who are working side by side frequently with the Federal employees on jobs, doing contracts frequently in the same work setting and the same work environment. Yet, we have a different set of work rules. And if the thrust and effect of the Daschle amendment would be to extend benefits that are consistent with the Federal job site to those who are working in conjunction with the Federal job site vis-a-vis health, it seems to me it is more than reasonable to say those things that would enhance the productivity, those things that would increase the capacity of the contractor to work effectively to fulfill his or her contract with the Federal Government is important, as well.

In my office recently I received a letter from a contractor who works with the Federal Government, and he complains that his employees work side by side with Federal Government employees and there is an ability on the part of the Federal employees to accumulate comp time and to use comp time instead of overtime because they want to spend time with their families rather than increase their earnings, for example, and that there are flex time opportunities for the Federal employees, but his employees who work right alongside them in the same work environment are subjected to a different set of work rules, a different set of benefits.

It simply does not make sense to have this duplicity in the workplace, especially when we have had the transition in the way people accommodate

work and home life. If you will look, 35 years ago when the labor relations laws of this country were created, only 18.6 percent of married women with a spouse present and children under 6 years of age were in the labor force. By 1990, nearly 60 percent of such women were in the labor force.

A 1985 survey of the Federal employees participating with Federal work schedules found 72 percent said they had more flexibility to spend time with their families; 74 percent said the schedules improved their morale. It seems to me that if these are benefits to being involved in the workplace and the thrust of the amendment is to extend the benefits similar to those that would have been earned in the Federal workplace to those who are contracting with the Federal Government, we ought to extend these flexible work time benefits, these compensatory time benefits, the potential of compressed workweek benefits that have been a part of the Federal Government for years now.

It is not that these are just something new to the Federal Government. In the late 1970's an experiment was begun and that experiment, or pilot project, was renewed over and over again until the mid-1980's, when it was decided that the program was simply so successful that it should be extended to Federal employees generally. So that in the mid-1980's, the Federal Government employees were accorded, on a broad scale, this benefit. Some in the executive branch were not accorded the benefit. And just 2 or 3 years ago, President Clinton, in an Executive order, extended these benefits to other Federal employees, recognizing their value to the employees in terms of the ability of employees to work effectively on their jobs and accommodate the needs of their families and recognizing the value of these rules to the Government.

It occurs to me the extension of these rules to those who contract with the Government, both the executive and legislative branches, is the better part of wisdom. We have seen these rules work very effectively for the achievement of governmental objectives. And when we are talking about individuals who are licensed or contracting with the Federal Government, it seems to me, in the achievement of those objectives for the Federal Government, these work rules ought to apply. It is in that respect that I have submitted this amendment and I believe it ought to be acted upon favorably by the Senate.

Favorable action here says to the work force of America: We respect the kind of tension you feel between work and home. We will help you accommodate those tensions as well as you can. And that will result in greater productivity, in more being done because the workers have higher morale and better capacity under this kind of situation. It is with that in mind I offer this second-degree amendment to the Daschle amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMON. Will my colleague yield? If my colleague will yield, I just got the amendment. I have been trying to get the amendment. Does this apply to Federal workers only or does this apply to the entire work force?

Mr. ASHCROFT. As I think my colleague from Illinois knows, I would like to apply this to the work force generally, but this applies to companies doing business with the U.S. Government, in a sense as a part of being consistent with the underlying amendment which sought to extend benefits, in the Daschle amendment, to those who are doing business with the Federal Government and had a relationship that provided a basis for a comparison of health care benefits.

Mr. SIMON. I do not know whether I am for or against his amendment now. If we can avoid voting for a little while, while we consult with some people on this, I would appreciate it.

Mr. ASHCROFT. I asked for the yeas and nays, but I have no objection to the vote not being taken immediately. I have no objection to a pause between the yeas and nays being ordered and the vote being taken.

Mr. SIMON. Mr. President, in line with what the distinguished Senator from Missouri just said, I ask unanimous consent this temporarily be set aside.

The PRESIDING OFFICER. Is there objection? The amendment to the amendment will be temporarily set aside.

Mr. GLENN. Mr. President, I support the Regulatory Accounting amendment offered by Senator STEVENS. Senator LEVIN and I have worked with our Governmental Affairs Committee chairman, Senator STEVENS, to refine the language since it was initially added to the Treasury, Postal appropriations bill. While I have reservations about legislating on appropriations, the result of our collaborative effort is a bipartisan amendment that should be supported. It will provide one significant step toward regulatory reform, a goal to which I continue to be committed.

Government regulation has proven an important element in our Nation's effort to protect public health and safety, restore our natural environment, and provide for the welfare of the American people. I believe, however, that our Government often relies too heavily on regulation, for example, without considering costs that can significantly burden businesses, State and local governments, or individuals.

Our task in regulatory reform is to address the excesses and weaknesses of our regulatory system without undermining the protections it has provided. As I said many times during the regulatory reform debate of this Congress, true regulatory reform must strike a balance between the public's concern over too much government and the public's strong support for regulations to protect the environment, public health and safety.

A necessary element of true regulatory reform is the development of objective information on which to base and question regulatory decisions. The amendment before us today should assist in this regard.

The proposal for an estimate of the costs and benefits of all Federal regulation was first made this Congress in our bipartisan Governmental Affairs Committee regulatory reform bill (S. 291). It was also in subsequent bills. A modified version was most recently added to the Treasury, Postal appropriations bill (H.R. 3756) during the Senate Appropriations Committee markup. Senator STEVENS' floor amendment—amendment No. 5226—refines that language, revising section 645 of H.R. 3756. The revised language reflects a collaborative effort by Senator STEVENS, Senator LEVIN, and me to craft a practical requirement for a useful report on Federal regulation.

Under the amendment, OMB will compile in a one-time report existing analyses and estimates of regulatory costs and benefits, both in terms of estimates of the total annual costs and benefits of all Federal regulation and in terms of specific major rules—these would be the significant rules that have gone through OMB regulatory review with a cost/benefit analysis. OMB will also provide a discussion of those costs and benefits as direct and indirect impacts on sectors of our Nation. This assessment should encompass not only various estimates of impacts, but also alternative approaches to making such estimates.

In each of these steps, OMB will not have to engage in extensive analyses of its own, but rather is expected to use existing information. The sponsors of this amendment are aware of OMB's resource constraints and intend that the report be based on a compilation of existing information, rather than new analysis. OMB should insure, of course, that all considerations of costs and benefits take into account relevant quantifiable and nonquantifiable impacts. For example, visibility over the Grand Canyon is important to our country, yet is difficult to value as an economic benefit. Thus, to be useful in regulatory decisionmaking, cost/benefit analyses must be able to address both quantifiable and nonquantifiable impacts.

Finally, the amendment requires OMB to provide recommendations for

reforming existing regulatory programs along with a description of significant public comments made on its report before submission to Congress. The recommendations for reform should include programs that should be eliminated or altered because, for example, they are too burdensome or are obsolete, as well as programs that should be strengthened to more effectively implement public policy.

While the study of regulatory costs and benefits is far from an exact science, and definitely does not provide the detail or accuracy of financial accounting, it is an area of study in which we do need to develop more widely accepted measures and methodologies. The OMB report should highlight areas in which analysis is clear and productive and those areas in which more work is needed to refine analytic techniques. It should also suggest approaches for analyzing nonquantitative impacts and for integrating them with economic analyses. In these ways, the OMB report should provide an important service by informing agencies, Congress, and the public about evaluating the costs and benefits of Federal regulation.

REGULATORY ACCOUNTING

Mr. LEVIN. Mr. President, the managers of the bill have accepted an amendment by Senator STEVENS which would require the Office of Management and Budget to submit, no later than September 30, 1997, a report to Congress that provides estimates of the total costs of Federal regulatory programs currently in place. I have agreed to support this amendment because of a number of changes Senator STEVENS was willing to make to the amendment.

As many of us know, there are several figures that are routinely used to decry the cost of regulation. Some reference a study that say regulation costs each of us $6,000 a year. Others reference studies that say the total cost of regulation is some $600 billion. These numbers are bandied about in an effort to drive home the message that regulation is expensive and to push for legislation to limit regulation.

Senator GLENN recently had GAO look at one of these studies to determine whether it used appropriate and reasonable methods. The GAO analysis was critical of the private study and highlighted several points at which the assumptions used were inappropriate or highly questionable.

Robert Hahn, an economist at the American Enterprise Institute, issued a report earlier this year in which he attempted to ascertain whether Federal regulation results in net benefits. Mr. Hahn concluded that, taken in aggregate, the net benefits from Federal environmental, health and safety regulations from 1990–1995 are $280 billion. This figure is calculated as total benefits minus total costs.

However, when Mr. Hahn examined individual regulations, he found that less than 50 percent do not pass a cost-benefit test (total benefits less total costs). But since most of those regulations giving net costs were in the $0–10 billion dollar range, while most of those giving net benefits were in the $10–100 billion range, in the aggregate the regulations give a large net benefit.

This finding suggests that any aggregate number may not be as useful in understanding the quality of our Federal regulatory programs as analysis of each individual program. For example, Mr. Hahn found that safety regulations pass cost-benefit analyses more often than health regulations and that the Clean Air Act regulations give significantly larger benefits than any other program.

This amendment would ask the Office of Management and Budget to come up with its best estimate of not only the costs of our Federal regulatory programs, but also the benefits of such programs. It would put to use the best information the Federal agencies have about the impact of the various Federal regulatory programs.

The amendment does not, and this is why I am able to support it, does not require OMB to conduct new studies or analyses or develop new data or information. That would be a time-consuming, and expensive use of taxpayer money. Better that the OMB staff use its time and money to help make new regulations follow the dictates of common sense and be cost-effective regulations.

No, this amendment simply directs OMB to put together the already available information that it has on existing Federal regulatory programs and use that to estimate the total annual costs and benefits of each. If information is unavailable, or such estimates are not possible, then the OMB should tell us in the report what is not available and why and describe the extent to which the OMB estimates are or are not reliable.

In doing his analysis, Mr. Hahn found that if cost-benefit analysis is to play a greater role in agency rule making, the quality of the analysis should be improved dramatically. Changes that he thinks would improve the quality of analysis include: standardizing and summarizing key economic assumptions; using best estimates and appropriate ranges to reflect uncertainty; and introducing peer review of the analyses and putting more weight on peer-reviewed scholarship. He recommends that OMB develop a standard format for presenting results in a clear and succinct manner. The report required by this amendment could be helpful in achieving that goal.

Mr. President, in a way, this is an experiment to see what we already have available to us, if it were put together in a useable format. It is a one-time only report which we can then use to determine the utility of continuing the requirement.

The report by OMB is also to include the estimates of the costs and benefits of the major rules that are in effect, an assessment of the direct and indirect impacts of Federal rules on both the public and private sector, and any recommendations from OMB about revising a Federal regulatory program to make it more effective or efficient. Reporting on the costs and benefits of major rules is expected to require no more than reporting, in an organized and readable manner, the cost-benefit analyses of the major rules in effect that were already done prior to promulgation. To the extent there is updated information that would change the estimates in those analyses, such updates should be included in this part of the report if it is available.

The assessment of impacts is intended to be a narrative discussion of OMB's opinion on this subject. It does not require additional information gathering; rather, the intent, here, is that the Director use the information contained in the report on the costs and benefits of Federal regulatory programs and describe the expected impacts of such programs on State and local governments, business, and individuals. Flowing from this assessment would be any recommendations the Director may have to improve the existing regulatory programs.

Mr. President, cost-benefit analysis has been at the heart of the regulatory reform debate for the past decade. Those who are knowledgeable in the field will agree that it is more art than science.

Mr. Hahn, in the report I earlier mentioned stated, "Despite my enthusiasm for cost-benefit analysis, I am leery about proposals that require the agency head to implement regulations solely on the basis of whether benefits exceed costs. Given the uncertainties in the analysis, we should not ask too much of the tool."

Precision in these analyses and assessments is far from achievable. But that doesn't mean they aren't useful. We shouldn't be bound by them, but we also shouldn't ignore them. Use of cost-benefit analysis in developing regulatory programs goes back to President Nixon. Each administration has expanded on its use. Today, such analysis is commonplace with respect to regulatory proposals that have a significant impact.

We tried to place a requirement for cost-benefit analysis for all significant rules in law last year. We failed, in part, because some Members wanted to make the requirements for using cost-benefit analysis more exacting than experience has shown us they can be. I remain hopeful that next Congress we can reach agreement and develop a reasonable proposal that guarantees that

solid cost-benefit analysis of important regulations will always be done, and that such analysis will be used appropriately.

HIGH INTENSITY DRUG TRAFFICKING AREA

Mr. GORTON. Mr. President, like many citizens across the country, the residents of Washington State have witnessed a dramatic increase in drug smuggling and drug abuse throughout Washington State in recent years. Unfortunately, these negative trends are continuing to rise, and for that reason, I believe that Washington State is an excellent candidate for designation as a high-intensity drug trafficking area [HIDTA].

For example, drug addiction and abuse is a major public health problem. Overall, according to the latest available statistics, drug-related emergency room visits in Washington State per 100,000 persons are running over 50 percent higher than the national average. Local authorities are also concerned by both the increased level of drug usage, trafficking, and gang violence associated with illicit drug trafficking.

Moreover, the Seattle-Tacoma metropolitan area, the Blaine border crossing at the international border between the United States and Canada, and the Yakima Valley in central Washington are gateways for the introduction of illegal drugs into the United States. The threats posed by heroin, marijuana, cocaine, hashish and methamphetamine merit special attention as the volume of these drugs passing through the area has a direct impact on other areas of the country.

Mr. President, because I believe that Washington State should be designated as a high-intensity drug trafficking area does not automatically qualify me as an expert on national drug control policy. In fact, I would submit that Gen. Barry McCaffery, the new Director of the Office of National Drug Control Policy, probably has a much better understanding of how different programs should be implemented to control drug trafficking and drug abuse in different regions throughout the country.

Accordingly, the Senate version of the fiscal year 1997 Treasury, Postal Service, and General Government appropriations bill provides $13 million in additional funds for the designation of new high-intensity drug trafficking areas. It also directs the Office of National Drug Control Policy to review all of the pending applications for high-intensity drug trafficking area designations including the gulf coast, the Northeast, the Northwest, the Great Plains, and the Rocky Mountain regions. I commend the chairman and the ranking member for their efforts in drafting this bill in such a manner. It allows the Office of National Drug Control Policy, not Congress, to designate new high-intensity drug trafficking Areas in the United States, which I believe is entirely appropriate.

In the House version of the fiscal year 1997 Treasury, Postal Service, and General Government Appropriations bill, the bill provides an additional $10 million for new high-intensity drug trafficking areas programs. Unfortunately, the accompanying Report designates three new high-intensity drug trafficking areas, which completely circumvents the current designation process formulated by the Office of National Drug Control Policy. I believe this is an inappropriate way to do business. The Office of National Drug Control Policy, not the Congress, should have the authority to designate new high-intensity drug trafficking Areas.

I appreciate Senator SHELBY's and Senator KERRY's attention to this matter, and I would encourage the Senate conferees to maintain the Senate's position when this issue comes before the conference.

POST-FTS2000

Mr. SHELBY. Mr. President, it should be noted that the report accompanying the Treasury appropriations bill contains language directing the release of the solicitation for the Post-FTS2000 Program by the Government no earlier than May of 1997. I want to make clear that we do not seek to delay the transition to the Post-FTS2000 Program in delaying the release of the solicitation.

As many of us know, the Telecommunications Act of 1996 was designed to open the entire telecommunications industry to competitive market forces. This landmark legislation will put local exchange carriers, cable companies and utilities in fierce competition in their respective markets. With proper implementation by the Federal Communications Commission [FCC] and State public service commission, the long-term impact of telecommunications reform undoubtedly will be new technology, better services, and new market entrants available to our citizens.

By calling for a release date for the Post-FTS2000 solicitation in the Spring of 1997, we are manifesting our view that the Federal Government customers and American taxpayers will be best served if the Post-FTS2000 Program were designed to take advantage of the benefits of increased competition which is intended to result from the 1996 Telecommunications Act and which we believe most certainly will take place. Currently, the FCC and State public service commissions are in the process of implementing the act's provisions, and thus, it seems wasteful and premature for the Government to initiate the Post-FTS2000 enterprise sooner than next May.

We owe it to our constituents to ensure the GSA pursues a Post-FTS2000 strategy that can guarantee the best quality service at a price that makes sense. However, as chairman of the subcommittee responsible for funding the GSA's activities, I have asked GSA a series of detailed questions that are intended to ensure that the Post-FTS2000 Program is the best possible strategy for meeting the Government's communications needs well into the next millennium. However, the GSA cannot address the issues I raised, and I do not believe GSA can begin its solutions with the original schedule of October, 1996.

For instance, I envision some of the largest savings in the Post-FTS2000 contract from integrating local services acquisition as that market faces competition. Yet, the current reported scope of the Post-FTS2000 contract does not provide for local services competition, or a comparison of end-to-end service cost versus a piecemeal acquisition of telecommunication services. Instead, GSA seeks competition in only a few cities under a separate acquisition. This strategy fails to address the disparity between urban and rural government locations with respect to end-to-end communications and fails to bring the benefit of competition for all telecommunications services to the Federal Government. We also want to see a business plan and requirements that reflect the Telecommunications Act, as well as the Government's plan for addressing security and interoperability.

I also point out, Mr. President, that I have consulted with my friend and colleague, Senator STEVENS, the chairman of the Governmental Affairs Committee, which has oversight jurisdiction over this program, and he agrees with our approach. In addition, my friend and colleague, the ranking minority member, Senator KERREY, is intimately aware and knowledgeable in this matter and also endorses the direction set forth today.

Mr. DOMENICI. Mr. President, I rise in strong support of H.R. 3756, the Treasury, Postal Service, and general Government appropriations bill for fiscal year 1997.

This bill provides new budget authority of $23.3 billion and new outlays of $20.5 billion to finance operations of the Department of the Treasury, including the Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and the Financial Management Service; as well as the Executive Office of the President, the Office of Personnel Management, the General Services Administration, and other agencies that perform central Government functions.

I congratulate the chairman and ranking member for producing a bill that is within the subcommittee's 602(b) allocation. When outlays from prior-year budget authority and other adjustments are taken into account, the bill totals $23.7 billion in budget authority and $23.5 billion in outlays. The total bill is at the Senate subcommittee's 602(b) nondefense allocation for budget authority and under its

allocation for outlays by $133 million. The subcommittee is also at its Violent Crime Reduction Trust Fund allocation for budget authority and under its allocation for outlays by $4 million.

Mr. President, I ask unanimous consent to have printed in the RECORD a table displaying the Budget Committee scoring of H.R. 3756, as reported by the Senate.

I urge Members to support the bill and to refrain from offering amendments that would cause the subcommittee to exceed its 602(b) allocation.

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

TREASURY-POSTAL SUBCOMMITTEE SPENDING TOTALS—SENATE-REPORTED BILL

[Fiscal year 1997, in millions of dollars]

	Budget authority	Outlays
Nondefense discretionary:		
Outlays from prior-year BA and other actions completed	.....	2,381
H.R. 3756, as reported to the Senate	11,081	8,498
Scorekeeping adjustment	.....	.....
Subtotal nondefense discretionary	11,081	10,879
Violent crime reduction trust fund:		
Outlays from prior-year BA and other actions completed	.....	9
H.R. 3756, as reported to the Senate	120	93
Scorekeeping adjustment	.....	.....
Subtotal violent crime reduction trust fund	120	102
Mandatory:		
Outlays from prior-year BA and other actions completed	129	128
H.R. 3756, as reported to the Senate	12,081	11,936
Adjustment to conform mandatory programs with Budget Resolution assumptions	301	445
Subtotal mandatory	12,511	12,509
Adjusted bill total	23,712	23,490
Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	.....
Nondefense discretionary	11,081	11,012
Violent crime reduction trust fund	120	106
Mandatory	12,511	12,509
Total allocation	23,712	23,627
Adjusted bill total compared to Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	.....
Nondefense discretionary	.....	−133
Violent crime reduction trust fund	.....	−4
Mandatory	.....	.....
Total allocation	.....	−137

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. ASHCROFT. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. HUTCHISON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Madam 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. Madam President, at the request of the Senator from Utah, Senator HATCH, before we move to the next action, I ask for the yeas and nays on amendment numbered 5295.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

ORDER OF PROCEDURE

Mr. LOTT. A lot of effort has gone into the Treasury-postal bill. We have dealt with a number of issues. We have been on this bill 25 hours and 38 minutes. I think perhaps we are tired and we need to see if we can go on to something else. I encourage the managers to continue working. If they can come back with a list of amendments we could get done in 4 hours, we would consult, try to get the Treasury-postal bill done. We have put a lot of effort into it. I think in view of everything that has gone on here and recognizing where we are now, with second-degree amendments and an amendment pending by the leader, I just do not see how we can get through extended debate tonight and a lot of votes.

What we would like to do now is to pull down the Treasury bill, and go to the Interior appropriations bill in the morning at 9:30. If we could get an agreement on taking that up, then there would not be any votes tomorrow as we try to be cooperative with our Members that have a holiday that is very important to them tomorrow.

We will be working on other issues. We would like to get the Magnuson fisheries bill through. There is an interest on both sides in getting that done. If we could get in touch with the interested players and get that done in the morning we would do that and not go to the Interior appropriations.

With regard to Monday, we would like to continue working on the Interior appropriations bill. The managers have indicated we can make progress on that. I understand, perhaps, even amendments dealing with grazing could be considered on Monday, or perhaps we could go to the aviation authorization, the FAA authorization bill. A lot of good work has been done on that by Senator MCCAIN, Senator FORD, Senator STEVENS, a number of Senators. So if we can get a time agreement on that we would take that up and then go to the Interior appropriations bill and we would have votes, then, on Tuesday morning.

We announced earlier that an amendment by the Senator from California would not be taken up before Tuesday. We have one other amendment that we would want to say would not be taken up before Tuesday on the Interior appropriations bill. I do not think there is a problem with that. I do not like setting a precedent of saying, "OK, this Senator's amendment will not be considered until a day certain." These are both in recognition of the Jewish holiday, and the fact that we will be on Interior a good bit next week, I do not see that any damage is done by doing it that way.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. In view of that, I ask unanimous consent, Madam President, that the Treasury bill be placed on the calendar and the Senate proceed to the Interior appropriations bill at 9:30 a.m. on Friday, September 13, and if we can get an agreement on the Magnuson fishery bill we may go to that instead.

Mr. DASCHLE. Reserving the right to object, and I will not object, let me just say we have worked on this side on the Treasury-postal bill to narrow the list of amendments. We began this morning with 45, tonight we are down to 6. So we have made good progress. I thank all of my colleagues on this side of the aisle for their cooperation. Hopefully, we can work out the remaining questions relating to the additional short list of amendments. I think the majority leader's recommendation is a good one. I hope we could begin the debate on the Interior bill tomorrow, perhaps taking up the Federal aviation bill on Monday, but we will work with the majority to see that we have a full schedule and protect Senators who have plans for religious purposes tomorrow.

I have no objection.

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

Mr. LOTT. I thank the Democratic leader for his cooperation. I ask unanimous consent that during the consideration of H.R. 3662, the Interior appropriations bill, that no amendments relative to Boundary Waters Canoe Area Wilderness or Voyageur's National Park be in order prior to Tuesday, September 17, 1996.

Madam President, let me withhold that request.

Madam President, we do want to make sure that is cleared by a Senator that has a direct interest in it, and we will make a call right now. It would be my intent to honor this, but I will try to get a unanimous-consent agreement locked in while we are making calls.

MORNING BUSINESS

Mr. LOTT. Madam President, I ask unanimous consent that there be a period for morning business, with Senators permitted to speak for up to 5 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Madam President, at the close of business yesterday, Wednesday, September 11, the Federal debt stood at $5,219,273,550,936.86.

One year ago, September 11, 1995, the Federal debt stood at $4,962,944,000,000.

Five years ago, September 11, 1991, the Federal debt stood at $3,619,285,000,000.

Ten years ago, September 11, 1986, the Federal debt stood at $2,105,838,000,000.

Fifteen years ago, September 11, 1981, the Federal debt stood at $980,009,000.000. This reflects an increase of more than $4 trillion—$4,239,264,550,936.86—during the 15 years from 1981 to 1996.

BIRTHDAY GREETINGS FOR MRS. ESTHER WERNER

Mr. ASHCROFT. Madam President, I rise today to recognize Mrs. Esther Werner of Creve Coeur, MI. Mrs. Werner celebrated her 90th birthday on August 2, 1996. I join her family and friends in celebration of this momentous occasion, and in wishing her continued health and happiness in the years to come.

OLYMPIC CHAMPION KENNY HARRISON

Mr. ASHCROFT. Madam President, I rise today to recognize the accomplishments of Kenny Harrison of Bridgeton, MO at the games of the XXVIth Olympiad. Mr. Harrison won America's fourth track and field gold medal by jumping 18.09 meters in the triple jump. This jump, in addition to winning Olympic gold, also established a new U.S. and Olympic record. The State of Missouri, and the entire Nation, takes great pride in Mr. Harrison's record setting performance.

HONORING THE HELBIGS ON THEIR 50TH WEDDING ANNIVERSARY

Mr. ASHCROFT. Madam President, families are the cornerstone of America. The data are undeniable: Individuals from strong families contribute to the society. In an era when nearly half of all couples married today will see their union dissolve into divorce, I believe it is both instructive and important to honor those who have taken the commitment of till death us do part seriously, demonstrating successfully the timeless principles of love, honor, and fidelity. These characteristics make our country strong.

For these important reasons, I rise today to honor Mr. Charles and Mrs. Dorothy Helbig of St. Charles, MO, who on September 21, 1996 will celebrate their 50th wedding anniversary. My wife, Janet, and I look forward to the day we can celebrate a similar milestone. Charles and Dorothy's commitment to the principles and values of their marriage deserves to be saluted and recognized. I wish them and their family all the best as they celebrate this substantial marker on their journey together.

FARM CREDIT ADMINISTRATION BOARD

Mr. GRASSLEY. Will the distinguished Chairman of the Senate Agriculture Committee yield for a question?

Mr. LUGAR. Yes, I will yield for a question.

Mr. GRASSLEY. The Farm Credit System is the vital backbone of American agriculture providing needed financing for many components of agriculture. The FCS is regulated by the Farm Credit Administration. There has been a vacancy on the FCA Board since the resignation of Board member Gary Byrne on March 31, 1995. Under previous agreement with the President, the name of a highly qualified Iowan, Ann Jorgenson, was referred in August 1995 to the White House with the understanding that the President would send her name to the Senate for confirmation. To date, the White House has neglected to act on the nomination. This Senator feels that the lack of a full Board is very disruptive to the smooth operation of the Farm Credit System.

Can the Chairman share with the Senate any information which he may have on the nomination and whether or not the Senate will be able to act on it this Congress?

Mr. LUGAR. The Senator is correct that a vacancy has existed on the three-member Farm Credit Administration Board since March 31, 1995. The Senate majority leader, Bob Dole, sent the name of Ann Jorgenson to the President in June 1995 to fill a Republican vacancy at the Farm Credit Administration. The Committee has not received any notification from the White House regarding Ann Jorgenson's nomination. If the President does not formally nominate Ms. Jorgenson, the Committee and the Senate will be unable to act on the appointment this Congress and the Board will continue without its full complement of members.

Mr. GRASSLEY. I have personally known Ann Jorgenson for many years and I am very impressed with her accomplishments, her commitment to American agriculture, and her work and knowledge in the business world. She has developed business plans and goals, written software for farm accounting, spoken numerous times at agricultural seminars on various agriculture topics, and has authored a book on putting paperwork in its place. She also serves on board of the Farm Bureau Mutual Fund. She has an admirable record of public service to the State of Iowa, having served as a member of the board of regents, which oversees Iowa's three State universities. Currently, Ann is a board member of the Iowa Department of Economic Development. The list goes on extensively.

Once the administration formally nominates Ms. Jorgenson and the Agriculture Committee has an opportunity to review her record and qualifications, I am convinced that the Senator will conclude that she is a highly qualified person for the position.

Mr. LUGAR. I look forward to having the opportunity to examine her qualifications. Her reputation is an excellent one.

Mr. GRASSLEY. Would the Senator, chairman of the Senate Agriculture Committee, join with me in urging the President to fill the vacancy on the Board of the Farm Credit System so that we may complete the confirmation process this Congress?

Mr. LUGAR. I join the Sentor in urging the President to fill the vacancy on the FCS Board. The vacancy on the Board has existed for over a year now and the Board's daily oversight of the safety and soundness of the farm credit system would be greatly enhanced with a full Board.

Mr. GRASSLEY. I ask unanimous consent that letters in support of Ann Jorgenson be printed in the RECORD.

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

U.S. SENATE,
Washington, June 28, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Nearly one year ago, then Majority Leader Senator Bob Dole sent to you the name of Ann Jorgensen to fill a Republican vacancy at the Farm Credit Administration. Her name has yet to be sent to the Senate for confirmation. I strongly support her nomination and ask that you send her name to the Senate as soon as possible.

The Farm Credit Administration is facing significant issues with regard to the Farm Credit System. It can best address these issues with a full complement of members on its Board. Ann Jorgensen has the background and experience to deal with these issues knowledgeably and thoroughly. As a former member of the Iowa Board of Regents, business owner, current member of the Iowa Department of Economic Development Board, author, and farm wife, she would bring a wealth of much needed experience to the Farm Credit Administration.

I stand ready to assist you with this nomination.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

OFFICE OF THE GOVERNOR,
Des Moines, Iowa, July 18, 1996.

Hon. WILLIAM J. CLINTON,
President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I am writing to highly recommend Ann Jorgensen of Vinton, Iowa, for a Republican position on the board of the Farm Credit Administration. It is my understanding that former Majority Leader Bob Dole sent you her name last year.

Ann Jorgensen is an individual I have called on many times to serve the State of Iowa. She is currently on one of our most important state boards, the Iowa Department of Economic Development board. She has also served on the Interstate Agricultural Grain Marketing Commission, the Iowa Alcoholic Beverages Commission, the State Board of Regents, and the Iowa Arts Council. Her service in all of these capacities has been exemplary.

I am confident that Ann Jorgensen would be a fine addition to the board of the Farm

Credit Administration as she has an extensive background in agriculture and agribusiness.

The Farm Credit Administration has a very important role in overseeing the Farm Credit System, which is a significant source of capital for rural America. As this board deals with some critical issues in the years ahead, it is important that the board have a full slate of members.

Ann Jorgensen has my highest recommendation.

Sincerely,

TERRY E. BRANSTAD,
Governor of Iowa.

NATIONAL CORN GROWERS ASSOCIATION,
Washington, DC, July 19, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On behalf of the farmer members of the National Corn Growers Association, I urge you to send to the Senate the nomination of Ann Jorgensen of Iowa to serve on the Farm Credit Administration Board. The Board has been without a third member for more than a year. If the nomination does not proceed soon, it will not be possible to complete Senate confirmation before this Congress adjourns.

The Farm Credit Administration Board serves a critical role in regulating the Farm Credit System and ensuring an adequate and flexible flow of money into rural areas. This statutory responsibility will be ever more important as farmers and their lenders refine the skills necessary to manage both production and price risk.

Ann Jorgensen is especially qualified to make certain that the Farm Credit System achieves its statutory goal of making credit available to farmers and ranchers and their cooperatives and for rural residences. Her impressive resume includes a strong, personal background in production agriculture, business development, and trade, as well as, extensive experience in rural economic development. This unique combination is exactly the mix rural America needs to continue to share in the country's economic recovery.

We strongly urge you to nominate Ann Jorgensen as soon as possible, to restore the Farm Credit Administration Board to its full complement of three members.

Sincerely,

BILL NORTHEY,
President.

AMERICAN SOYBEAN ASSOCIATION,
St. Louis, MO, July 15, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The American Soybean Association respectfully urges you to nominate Ann Jorgensen of Iowa to fill the vacant position on the Farm Credit Administration Board. Unless this nomination is sent to the Senate soon, it will be impossible to complete the confirmation process before Congress adjourns.

The Farm Credit Administration Board plays a critical role in regulating the Farm Credit System and in ensuring adequate credit is available to production agriculture and other borrowers in rural America. These functions are particularly important during the current period of volatile commodity prices, as farmers, ranchers, and their lenders manage increased risk and finance future production costs.

We know Ann Jorgensen to be a highly qualified individual who would be a valuable member of the Farm Credit Administration Board. Her extensive background in production agriculture and rural economic development is ideally suited to the task of overseeing the Farm Credit System. Her experience and perspective would perfectly complement the qualifications of the other members of the Board.

The American Soybean Association strongly urges you to nominate Ann Jorgensen, and to bring the Farm Credit Administration Board up to its full complement of three members.

Sincerely yours,

JOHN LONG,
President.

IOWA SOYBEAN ASSOCIATION,
West Des Moines, IA, July 15, 1996.

Hon. WILLIAM J. CLINTON,
President, The White House,
Washington, DC.

DEAR MR. PRESIDENT: I would like to take this opportunity to offer the support of the Iowa Soybean Association (ISA) for the appointment of Ann Jorgensen to fill the vacant position on the three member board of the Farm Credit Administration.

Ann Jorgensen understands agricultural economics and possesses the entrepreneurial spirit that has built a successful business. Her many credentials include membership on the Board of Regents for the State of Iowa and numerous Iowa economic development boards. She is a community leader and a recognized volunteer. Additionally, Senators Grassley and Harkin support her nomination and are confident that she would be a credible candidate for Senate confirmation hearings.

ISA reaffirms its support for Mrs. Jorgensen, but would also like to communicate the need to have all positions filled on the Farm Credit Administration's Board. These are extremely volatile times for farmers and it is important financial institutions that are a part of the Farm Credit System have the direction to keep agriculture a successful industry.

Again, thank you for the opportunity to offer ISA's support for the appointment of Ann Jorgensen.

Sincerely,

DOUGLAS P. LINDGREN,
President.

IOWA FARM BUREAU FEDERATION,
Des Moines, IA, July 29, 1996.

Hon. BILL CLINTON,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: I would like to take this opportunity to offer support for the appointment of Ann Jorgensen of Garrison, Iowa, to fill the vacant position on the three-member board of the Farm Credit Administration.

This position has been vacant longer than it should be and is a concern of the agriculture community. Whatever the reason for this position not being filled it is more important than ever, because of the new farm bill and the environment that it will create, that a full board be in place.

Ann Jorgensen is an extremely talented and articulate person who has a broad experience base that would be helpful in this position. Number one, she is a successful farmer but also has served on many state boards that needed her excellent judgment abilities. Ann also has what I consider a critical skill needed in any form of business or government institution and that is common sense judgment.

I sincerely ask that you consider Ann for the board position. This position needs to be filled and the agriculture community will be well served to have Ann fill that position.

Sincerely,

ED WIEDERSTEIN,
President.

NORWEST BANK IOWA, N.A.,
Des Moines, IA, August 8, 1996.

The PRESIDENT,
The White House,
Washington, DC.

DEAR PRESIDENT CLINTON: As you review the candidates to nominate for the Republican vacancy at the Farm Credit Administration, there is one name that should rise to the top of the nomination list. Ann Jorgensen, whose name was submitted to you a year ago by former Majority Leader Bob Dole, is one of Iowa's foremost agricultural leasers; she is a woman who has devoted her life to championing farm issues on the local, state and national levels.

Ann's credentials for this position speak for themselves. She is a farm owner, an agribusiness owner, an economic development leader, a renowned consultant and an author and columnist for agricultural publications. Ann is a true visionary who relies on her extensive experience in the ag industry to articulate, anticipate and analyze farm issues. Her established contacts, solid reputation and first-hand knowledge would make her an exceptional addition to the board of the Farm Credit Administration.

The Farm Credit Administration only stands to benefit from the addition of a member of Ann's caliber. Thank you for your consideration in this matter.

Warm regards,

H. LYNN HORAK.

CBO STATEMENT ON S. 1994

Mr. PRESSLER. Madam President, I rise to submit for the RECORD an intergovernmental mandates statement, as prepared by the Congressional Budget Office [CBO], for the Federal Aviation Administration Reauthorization Act of 1996 (S. 1994). The Committee on Commerce, Science, and Transportation ordered S. 1994 reported on June 13, 1996. The CBO already has provided a Federal cost estimate and a private sector mandates statement for this bill on July 16, 1996, and both are included in Senate Report 104–333 on S. 1994.

Madam President, I now ask unanimous consent that the CBO statement be printed in the RECORD at this point.

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

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 26, 1996.

Hon. LARRY PRESSLER,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed intergovernmental mandates statement for the Federal Aviation Reauthorization Act of 1996. CBO provided a federal cost estimate and a private-sector mandates statement for this bill on July 16, 1996.

The bill would impose mandates on state, local, and tribal governments as defined in Public Law 104–4.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE ESTIMATED COST OF INTERGOVERNMENTAL MANDATES

1. Bill number: Not yet assigned.

2. Bill title: Federal Aviation Reauthorization Act of 1996.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 13, 1996.

4. Bill purpose: The bill would authorize 1997 appropriations or provide contract authority for a number of Federal Aviation Administration (FAA) programs, including the state block grant, research and development, and airport improvement programs. The bill would modify the funding for essential air service and the apportionment of airport improvement funds. In addition, it would make it more difficult for the FAA Administrator to issue regulations that result in substantial economic burdens to state, local, or tribal governments. The bill would also establish new requirements pertaining to pilot records and hiring.

5. Intergovernmental mandates contained in the bill: The bill contains one mandate on state, local, and tribal governments, and one provision that could be a mandate.

Pilot Records. The bill would increase the amount of background information an air carrier must obtain before hiring an individual as a pilot. In doing so, it would impose a mandate on employers, including state, local, and tribal governments, that have employed the prospective pilot within the previous five years. The bill would require that employers provide to air carriers, upon their request and within 30 days, information on the work record of these individuals. Employers would have to obtain written consent from such individuals prior to releasing the information as well as notify them of the request and of their right to receive a copy of the records.

State Taxing Authority. The bill contains a provision intended as a technical correction to the section of Title 49 of the U.S. Code establishing the authority of states to levy certain aviation-related taxes. When that section of the code was recodified in 1994, it appeared to broaden the power of states to tax airlines. The correction is intended to return state taxing authority to the status quo as it existed before the recodification.

The impact of this provision, however, is unclear. A simple correction would impose no new mandates. There is concern among some tax experts, however, that the proposed change goes beyond the intended fix and would impose new preemptions on states' taxing authority. A number of state tax officials assert that the proposed correction would increase the ambiguities in the statute and could lead to an interpretation of the law that would prohibit states from imposing certain aviation-related property, income, and other taxes. This issue is unlikely to be resolved without litigation. If the provision is interpreted as the states fear it will be, it would constitute a mandate on state governments as defined by Public Law 104–4 because it would prohibit states from raising certain revenues.

6. Estimated direct costs to State, local, and tribal governments: (a) *Is the $50 Million Annual Threshold Exceeded?* Because of the uncertainty surrounding the interpretation of section 402, dealing with state taxing authority, CBO is uncertain whether the threshold established in Public Law 104–4 would be exceeded.

(b) *Total Direct Costs of Mandates.* Depending upon the interpretation of section 402, the bill's mandate costs could exceed the $50 million annual threshold established in Public Law 104-4. The state tax provision alone, if interpreted broadly, would have a potentially significant revenue impact that could approach or exceed the $50 million threshold. CBO cannot estimate its exact magnitude at this time. CBO estimates that the costs to state, local, and tribal governments of the requirement to provide background records on prospective pilots would be negligible.

(c) *Estimate of Necessary Budget Authority:* Not applicable.

7. Basis of estimate: Pilot Records. Based on information from industry representatives and the Departments of Transportation and Labor, CBO estimates that state, local, and tribal governments, in aggregate, would have to respond to fewer than 5,000 requests for work records of prospective pilots every year. This assumes that many of the 10,000 pilots hired annually have held four or more jobs within the previous five years (because seasonal and part-time work is common) and that fewer than 10 percent of those positions were with state, local, or tribal governments.

CBO estimates that the costs of this mandate on state, local, and tribal employers would be insignificant. Such requests for work records would be spread across numerous state, local, and tribal government offices; thus, the additional administrative burden on any individual entity would be negligible. The bill would also allow employers to charge air carriers and prospective pilots a fee for the cost of processing the request and furnishing the records.

State Taxing Authority. Based on information from several states, CBO believes that, if amended by this bill, certain subsections of 49 U.S.C. 40116 could be read together to limit states to taxing only those aviation-related goods and services for which a direct nexus to flights taking off or landing in the state could be established. Current law does not require that states show such a flight connection when levying property, income, sales, use, and other taxes on air carriers or other providers of aviation services. Many states use apportionment formulas to calculate these taxes, and it is possible that the proposed change could preclude this practice.

Based on a survey of state tax officials and information from the Multistate Tax Commission, CBO estimates that the bill could result in tax preemptions in as many as half of the states. Depending upon the interpretation of the proposed change, some states could face annual revenue losses in the millions of dollars. Ambiguities in both the existing recodified statute and the proposed change, however, make it difficult to predict the extent of the possible preemption, if any, and to quantify the revenue losses that might result from it. CBO estimates that, if interpreted broadly, the provision would have a potentially significant revenue impact that could approach or exceed the $50 million threshold.

8. Appropriation or other Federal financial assistance provided in bill to cover mandate costs: None.

9. Other impacts on State, local, and tribal governments: Pilot Records and State Department of Motor Vehicles. The bill would require air carriers to obtain information on a prospective pilot's motor vehicle driving record. State departments of motor vehicles (DMVs) would have to provide information from the National Driver Register within 30 days of receiving such a request from an air carrier. The bill would require DMV officials to obtain written consent from individuals prior to releasing such information and to notify them of the request and of their right to receive a copy of records.

Because the National Driver Register program is a voluntary federal program, these requirements would not constitute mandates as defined by Public Law 104–4. They would, however, result in some costs to states. The bill would allow states to charge the air carriers and prospective pilots a fee for the cost of processing the request and furnishing the records. Based on information from the Department of Transportation, state DMVs, and airline industry representatives, CBO estimates that the administrative costs to states of complying with this requirement would be insignificant.

Essential Air Service. The bill would benefit approximately 100 rural communities across the United States that are served by the essential air service program. The bill would replace the provision in current law that requires reauthorization of funding for the program after 1998 with a new and increased source of funding. The bill would raise the authorization to $50 million annually for the program (almost twice the fiscal year 1996 authorization) to be paid out of new fees on foreign air service. Spending on the program would, however, continue to be subject to appropriation. The bill would also allow the Secretary, not earlier than two years and 30 days after enactment of the bill, to require that state and local governments provide matching funds of up to 10 percent for payments they receive under the program.

FAA Regulations. The bill would prohibit the FAA Administration from issuing regulations that would cost state, local, and tribal governments, in aggregate, more than $50 million a year without the approval of the Secretary of Transportation. In addition, the bill would require periodic reviews of all regulations issued after enactment of the bill that result in aggregate costs of state, local, and tribal governments of $25 million or more a year.

Alaskan Aviation. The bill would provide FAA a new, one-year authorization of $10 million to be spend on improving aviation safety in Alaska. The bill would also direct the Administrator to take Alaska's unique transportation needs into consideration when amending aviation regulations.

10. Previous CBO estimates: CBO provided a preliminary analysis of the bill's mandates on state, local, and tribal governments as part of the federal cost estimate dated July 16, 1996. The initial conclusions presented in that estimate have not changed.

On July 22, 1996, CBO transmitted an intergovernmental mandates statement on H.R. 3539, the Federal Aviation Authorization Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. Both bills would reauthorize major FAA programs and amend the section of Title 49 of the U.S. Code dealing with state taxation, but they differ in several other respects. The two estimates reflect those differences.

On July 11, 1996, CBO transmitted a cost estimate and mandates statement on H.R. 3536, the Airline Pilot Hiring and Safety Act

of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. H.R. 3536 is similar to the title in this bill pertaining to background information on prospective pilots. H.R. 3536 would not, however, require state, local, and tribal government employers to provide information on the work records of prospective pilots.

11. Estimate prepared by: Karen McVey.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

THE ANNUAL CHINA MFN DEBATE

Mr. THOMAS. Madam President, the theater that is the annual China MFN debate has once again—predictably—fully run its course. The President recommended extension, United States business and our Asian trading partners held their collective breath, there was a lot of rhetoric on the floor of the House condemning China for a variety of serious misdeeds, and in the end a vast majority of the House voted to renew MFN yet again. In the wake of the debate, I believe that we should take a serious look at scrapping this annual drama and replacing it with a more pragmatic and workable solution.

That the yearly MFN debate should be scrapped seems evident from an examination of its relative pros and cons. What is gained by the annual debate? Aside from an opportunity for some in Congress to air their grievances with the PRC, not much. What is lost, on the other hand? Quite a bit.

First, the debate regularly disrupts our bilateral relationship by making the Chinese feel unfairly singled out, and not without reason. Most favored nation is a misnomer. Although the phrase implies some special treatment that the Uunited States passes out discriminately, it is actually the normal trading status with all our trade partners. Only seven countries, the majority of which we consider pariah states, are not accorded that status: Afghanistan, Azerbaijan, Cuba, Laos, North Korea, Vietnam, and Serbia. In addition, one of the main reasons given by proponents of revoking China's MFN status is that country's arguably abysmal human rights record. But while other countries have equally disturbing human rights records, no one has moved to revoke their MFN status. Turkey has long persecuted its Kurdish minority; Russia has killed hundreds of civilians in Chechnya; Indonesia invaded East Timor and continues to occupy the island illegally, jailing and killing Timorese dissidents; Nigeria jails and executes opponents of the Government—yet all four enjoy most favored nation trading status.

Second, the annual debate is damaging to the interests of U.S. companies doing business in the PRC. Companies find it very difficult to make long-term investment plans when they have to worry every year that the MFN rug might be yanked out from under them. From the Chinese side, the annual MFN renewal requirement raises the risk of doing business with U.S. firms; so instead, they have a strong incentive to do business with our European competitors who have no such constraints.

Third, the threat of revoking China's MFN—an empty threat in my view—is not an effective foreign policy tool. Revoking China's MFN status would hurt us more than the Chinese—the economic equivalent of cutting off your nose to spite your face. In 1995, United States exports to China directly supported around 200,000 American jobs. Revoking MFN, and the Chinese retaliation that would surely follow, would only serve to deprive us of a rapidly growing market. China is perfectly capable of shopping elsewhere for its needs, and our allies are more than happy to fill any void we leave. We recently saw a prime example of that willingness; last month Premier Li Peng traveled to France where he signed a $2 billion contract to buy 33 Airbuses—a contract that Boeing thought it was going to get.

Fourth, instead of using MFN as a carrot-and-stick with the PRC, I believe the best way to influence the growth of democratic ideals, human rights, and the rule of law in China is through continued and reliable economic contacts. I think anybody who has been to China, especially over the course of the last 15 years, has seen that for themselves—most dramatically in southern and eastern China. It is clear that economic development and contact with the West through trade has let a genie out of the bottle that the regime in Beijing will never be able to put back. We must continue to encourage that trend as we turn the corner to a new century.

The whole MFN renewal issue is an outdated relic of the cold war—a war that's over. The Jackson-Vanik amendment, the basis for the yearly MFN renewal requirement, was not designed with China in mind and was not created as a way to better a country's overall human rights record or its adherence to international or bilateral trade or nuclear proliferation agreements. Rather, it was originally designed to pressure the Soviet Union to allow the free emigration of Soviet Jews to Israel and other countries. Over the years, its application has moved from covering freedom of emigration from any country with a command or nonmarket economy to a tool for expressing United States displeasure with a variety of China's sins. It is somewhat ironic that of all the different issues raised by Members of Congress arguing to revoke the PRC's MFN status, I have never heard China's emigration policies mentioned even once.

With the demise of the cold war, and changing world realities, we would do better to repeal Jackson-Vanik and replace it with a more workable and pragmatic alternative. We should extend permanent MFN status to China, retaining of course the option of revoking that status should the need truly arise. That extension would remove a series of irritants from our relationship, but would not adversely affect our ability to address China's various transgressions.

We retain a whole series of options to deal with the many areas of friction in our bilateral relationship that are more narrowly tailored—and therefore more effective—than the overkill method of MFN revocation. For example, a wide variety of unfair trade practices can be addressed through provisions of the Trade Act of 1974—commonly called the Special 301 provision—as with the recent intellectual property rights dispute. Similar legislation is in place to deal with nuclear or other weapons proliferation.

I am not an apologist for the PRC—far from it. The Chinese are failing to honor many of their commitments to us, such as intellectual property rights and nuclear proliferation—note the recent well-founded allegations that the PRC has assisted Pakistan in building a missile production facility. They want to gain entry to the WTO on their own, not the WTO's terms. Their progress on the human rights front has been negligible at best, as evidenced by a rash of recent crackdowns in Tibet and Xinjiang. They are actively pursuing the purchase of Russian SS-18 ICBMs and MIRV technology. They have laid claim to the vast majority of the South China Sea, to the consternation of five other claimant countries. They have conducted a series of aggressive and inflammatory military exercises this year off the coast of Taiwan.

But despite all these issues, the revocation of China's MFN status is not a constructive remedy. It is high time that scrap this annual ritual, and replace it with a more thoughtful and pragmatic approach that builds on our efforts, rather than tears at this important relationship. I was glad to see during the latest debate that acceptance of this position seems to be growing among Members of Congress.

Madam President, while it is too late in this legislative year to take up the issue in the Congress, I hope that before we go through this dance again next year that Members from both sides of the aisle, from all the relevant committees, can sit down and formulate an alternative. The upcoming period after our sine die adjournment would be a perfect time to do so.

HURRICANE FRAN

Mr. FAIRCLOTH. Madam President, a week ago today, hurricane Fran devastated my home State of North Carolina.

Last Thursday, after the last Senate vote, I drove down to North Carolina and was there for the storm. I have viewed first hand much of the damage to my State.

The damage has been far worse and more widespread than anyone would have imagined.

Madam President, first, I want to congratulate the people of North Carolina for their handling of this storm.

I have found that in times of crisis, the American people, like no other people in the world, rise to the occasion to tackle their own problems.

The people deserved to be congratulated first and foremost.

Second, Madam President, I want to thank the thousands of volunteers, national guardsmans and those from other States who are helping with our clean-up effort. And, I want to thank the public employees who are on the scene helping our State cope with this disaster.

The storm has been devastating in the fact that it has left hundreds of thousands of people without electricity. Today, over 100,000 people are still without power. Electricity is a modern convenience that we often take for granted, but the power outages have been the most difficult of all the problems.

I have urged the Federal Emergency Management Agency to allow two key power plants to resume operations as soon as possible. I am told that they have granted this authority. I think this will help the situation immensely.

Madam President, the storm has also left, maybe a billion dollars in property and agriculture damage. North Carolinians are proud of the fact that they can solve their own problems.

But, the damage may be insurmountable without the Federal Government's help.

Madam President, in recent years, we have had a number of natural disasters in the United States. This has lead to a sharp increase in the amount of disaster costs to the Federal Government. Madam President, I think it is fair to say that the Government's money should be spent wisely, therefore, I would hope that the private sector, insurance companies, and our lending institutions, will do all that they can so that we can limit the cost of the clean-up burden that will be placed on the taxpayer.

Estimates are being drawn now of how much disaster assistance will be needed. I am hopeful that money we have already appropriated will cover the damage, however, the damages may be so great, particularly with respect to crop damage, that more could be needed.

I thank Majority Leader LOTT for his commitment to move any legislation that would provide for additional funding.

Also, I have spoken with James Lee Witt and with Secretary of Agriculture Dan Glickman, and both have assured me that they will be as helpful as possible.

Finally, Madam President, my office and I am sure all the North Carolina delegation offices stand ready to help our citizens. I have dispatched more staff to Raleigh to deal with the influx of citizens that will need our help. If they need help, my office stands ready to assist the clean-up effort.

Madam President, again, I want to praise the people of North Carolina for their determination in this crisis. And, I want to extend my personal sorrow, and I am sure the Senate's sorrow for the families of the 21 North Carolinians who died as a result of this storm.

NOTICE OF ISSUANCE OF FINAL REGULATIONS

Mr. THURMOND. Mr. President, pursuant to section 304(d) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(d)), a notice of issuance of final regulations was submitted by the Office of Compliance, U.S. Congress. The notice contains final regulations related to Federal service labor-management relations (Regulations under section 220(d) of the Congressional Accountability Act.)

The Congressional Accountability Act requires this notice be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS, PROTECTIONS AND RESPONSIBILITIES UNDER CHAPTER 71 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS (REGULATIONS UNDER SECTION 220(D) OF THE CONGRESSIONAL ACCOUNTABILITY ACT)

NOTICE OF ISSUANCE OF FINAL REGULATIONS

On July 9, 1996, the Board of Directors of the Office of Compliance adopted and submitted for publication in the Congressional Record final regulations implementing section 220(d) of the Congressional Accountability Act of 1995 (CAA), which extends to the Congress certain rights, protections, and responsibilities under chapter 71 of title 5, United States Code, relating to Federal service labor-management relations. On August 2, 1996, the House agreed both to H. Res. 504, to provide for the approval of final regulations that are applicable to the employing offices and covered employees of the House, and to H. Con. Res. 207, to provide for approval of final regulations that are applicable to employing offices and employees other than those offices and employees of the House and the Senate. As of the date of this Notice, the Senate has yet to approve the 220(d) regulations for itself or to act on H. Con. Res. 207.

The Board understands passage of H. Res. 504 to constitute approval under section 304(c) of the CAA of the Board's section 220(d) regulations as applicable to employing offices and covered employees of the House (other than those House offices expressly listed in section 220(e)(2)). Accordingly, pursuant to section 304(d) of the CAA, the Board submits these regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for issuance by publication in the Congressional Record.

Pursuant to paragraph (3) of section 304(d) of the CAA, the Board finds good cause for advancing the effective date of the House regulations from 60 days after their issuance to October 1, 1996. That date corresponds with the effective date of application of CAA section 220 to the Congress. The Board finds that the effective implementation of the CAA is furthered by making these regulations effective for the House on that effective date rather than allowing the default provisions of the CAA contained in section 411 and the derivative regulations of the executive branch to control the administration of the statute during the sixty day period otherwise required by section 304(d)(3) of the CAA.

Signed at Washington, D.C. on this 10th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

Accordingly, the Board of Directors of the Office of Compliance hereby issues the following final regulations:

[Final Regulations]

Subchapter C

2420 Purpose and scope
2421 Meaning of terms as used in this subchapter
2422 Representation proceedings
2423 Unfair labor practice proceedings
2424 Expedited review of negotiability issues
2425 Review of arbitration awards
2426 National consultation rights and consultation rights on Government-wide rules or regulations
2427 General statements of policy or guidance
2428 Enforcement of Assistant Secretary standards of conduct decisions and orders
2429 Miscellaneous and general requirements

Subchapter D

2470 General
2471 Procedures of the Board in impasse proceedings

Subchapter C

PART 2420—PURPOSE AND SCOPE

§ 2420.1 Purpose and scope

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 of the United States Code, as applied by section 220 of the Congressional Accountability Act (CAA). They prescribe the procedures, basic principles or criteria under which the Board and the General Counsel, as applicable, will:

(a) Determine the appropriateness of units for labor organization representation under 5 U.S.C. 7112, as applied by the CAA;

(b) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111, as applied by the CAA, relating to the according of exclusive recognition to labor organizations;

(c) Resolve issues relating to the granting of national consultation rights under 5 U.S.C. 7113, as applied by the CAA;

(d) Resolve issues relating to determining compelling need for employing office rules and regulations under 5 U.S.C. 7117(b), as applied by the CAA;

(e) Resolve issues relating to the duty to bargain in good faith under 5 U.S.C. 7117(c), as applied by the CAA;

(f) Resolve issues relating to the granting of consultation rights with respect to conditions of employment under 5 U.S.C. 7117(d), as applied by the CAA;

(g) Conduct hearings and resolve complaints of unfair labor practices under 5 U.S.C. 7118, as applied by the CAA;

(h) Resolve exceptions to arbitrators' awards under 5 U.S.C. 7122, as applied by the CAA; and

(i) Take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

§ 2420.2

Notwithstanding any other provisions of these regulations, the Board may, in deciding an issue, add to, delete from or modify otherwise applicable requirements as the Board deems necessary to avoid a conflict of interest or the appearance of a conflict of interest.

Part 2421—Meaning of Terms as Used in This Subchapter

Sec.
2421.1 Act; CAA.
2421.2 Chapter 71.
2421.3 General Definitions.
2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.
2421.5 Activity.
2421.6 Primary national subdivision.
2421.7 Executive Director.
2421.8 Hearing Officer.
2421.9 Party.
2421.10 Intervenor.
2421.11 Certification.
2421.12 Appropriate unit.
2421.13 Secret ballot.
2421.14 Showing of interest.
2421.15 Regular and substantially equivalent employment.
2421.16 Petitioner.
2421.17 Eligibility Period.
2421.18 Election Agreement.
2421.19 Affected by Issues raised.
2421.20 Determinative challenged ballots.

§ 2421.1 Act; CAA

The terms "Act" and "CAA" mean the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§ 1301–1438).

§ 2421.2 Chapter 71

The term "chapter 71" means chapter 71 of title 5 of the United States Code.

§ 2421.3 General definitions

(a) The term "person" means an individual, labor organization or employing office.

(b) Except as noted in subparagraph (3) of this subsection, the term "employee" means an individual—

(1) Who is a current employee, applicant for employment, or former employee of: the House of Representatives; the Senate; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; or the Office of Technology Assessment; or

(2) Whose employment in an employing office has ceased because of any unfair labor practice under section 7116 of title 5 of the United States Code, as applied by the CAA, and who has not obtained any other regular and substantially equivalent employment as determined under regulations prescribed by the Board, but does not include—

(i) An alien or noncitizen of the United States who occupies a position outside of the United States;

(ii) A member of the uniformed services;

(iii) A supervisor or a management official or;

(iv) Any person who participates in a strike in violation of section 7311 of title 5 of the United States Code, as applied the CAA.

(3) For the purpose of determining the adequacy of a showing of interest or eligibility for consultation rights, except as required by law, applicants for employment and former employees are not considered employees.

(c) The term "employing office" means—

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(d) The term "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an employing office concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by an employing office; or

(4) An organization which participates in the conduct or a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

(e) The term "dues" means dues, fees, and assessments.

(f) The term "Board" means the Board of Directors of the Office of Compliance.

(g) The term "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

(h) The term "grievance" means any complaint—

(1) By any employee concerning any matter relating to the employment of the employee;

(2) By any labor organization concerning any matter relating to the employment of any employee; or

(3) By any employee, labor organization, or employing office concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(i) The term "supervisor" means an individual employed by an employing office having authority in the interest of the employing office to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

(j) The term "management official" means an individual employed by an employing office in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the employing office.

(k) The term "collective bargaining" means the performance of the mutual obligation of the representative of an employing office and the exclusive representative of employees in an appropriate unit in the employing office to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

(l) The term "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(m) The term "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(1) Relating to political activities prohibited under subchapter III of chapter 73 of title 5 of the United States Code, as applied by the CAA;

(2) Relating to the classification of any position; or

(3) To the extent such matters are specifically provided for by Federal statute.

(n) The term "professional employee" means—

(1) An employee engaged in the performance of work—

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) Requiring the consistent exercise of discretion and judgment in its performance;

(iii) Which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) Which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(2) An employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (1)(i) of this paragraph and is performing related work under appropriate direction and guidance to qualify the employee as a professional employee described in subparagraph (1) of this paragraph.

(o) The term "exclusive representative" means any labor organization which is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of title 5 of the United States Code, as applied by the CAA.

(p) The term "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment.

(q) The term "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(r) The term "General Counsel" means the General Counsel of the Office of Compliance.

(s) The term "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

§ 2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a)(1) The term "national consultation rights" means that a labor organization that is the exclusive representative of a substantial number of the employees of the employing office, as determined in accordance with criteria prescribed by the Board, shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Board.

(b)(1) The term "consultation rights on Government-wide rules or regulations" means that a labor organization which is the exclusive representative of a substantial number of employees of an employing office determined in accordance with criteria prescribed by the Board, shall be granted consultation rights by the employing office with respect to any Government-wide rule or regulation issued by the employing office effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Board.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an employing office by any labor organization—

(i) The employing office shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The employing office shall provide the labor organization a written statement of the reasons for taking the final action.

(c) The term "exclusive recognition" means that a labor organization has been selected as the sole representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in an election.

(d) The term "unfair labor practices" means—

(1) Any of the following actions taken by an employing office—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under chapter 71, as applied by the CAA;

(ii) Encouraging or discouraging membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other condition of employment;

(iii) Sponsoring, controlling, or otherwise assisting any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(iv) Disciplining or otherwise discriminating against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under chapter 71, as applied by the CAA;

(v) Refusing to consult or negotiate in good faith with a labor organization as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii) Enforcing any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(2) Any of the following actions taken by a labor organization—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under this chapter;

(ii) Causing or attempting to cause an employing office to discriminate against any employee in the exercise by the employee of any right under this chapter;

(iii) Coercing, disciplining, fining, or attempting to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(iv) Discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;

(v) Refusing to consult or negotiate in good faith with an employing office as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii)(A) Calling, or participating in, a strike, work stoppage, or slowdown, or picketing of an employing office in a labor-management dispute if such picketing interferes with an employing office's operations; or

(B) Condoning any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(3) Denial of membership by an exclusive representative to any employee in the appropriate unit represented by such exclusive representative except for failure—

(i) To meet reasonable occupational standards uniformly required for admission, or

(ii) To tender dues uniformly required as a condition of acquiring and retaining membership.

§ 2421.5 Activity

The term "activity" means any facility, organizational entity, or geographical subdivision or combination thereof, of any employing office.

§ 2421.6 Primary national subdivision

"Primary national subdivision" of an employing office means a first-level organizational segment which has functions national in scope that are implemented in field activities.

§ 2421.7 Executive Director.

"Executive Director" means the Executive Director of the Office of Compliance.

§ 2421.8 Hearing officer

The term "Hearing Officer" means any individual designated by the Executive Director to preside over a hearing conducted pursuant to section 405 of the CAA on matters within the Office's jurisdiction, including a hearing arising in cases under 5 U.S.C. 7116, as applied by the CAA, and any other such matters as may be assigned.

§ 2421.9 Party

The term "party" means:

(a) Any labor organization, employing office or employing activity or individual filing a charge, petition, or request;

(b) Any labor organization or employing office or activity

(1) Named as

(i) A charged party in a charge,

(ii) A respondent in a complaint, or

(iii) An employing office or activity or an incumbent labor organization in a petition;

(2) Whose intervention in a proceeding has been permitted or directed by the Board; or

(3) Who participated as a party

(i) In a matter that was decided by an employing office head under 5 U.S.C. 7117, as applied by the CAA, or

(ii) In a matter where the award of an arbitrator was issued; and

(c) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

§ 2421.10 Intervenor

The term "intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Board, its agents or representatives.

§ 2421.11 Certification

The term "certification" means the determination by the Board, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

§ 2421.12 Appropriate unit

The term "appropriate unit" means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, as applied by the CAA, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), as applied by the CAA, and consistent with the provisions of 5 U.S.C. 7112, as applied by the CAA.

§ 2421.13 Secret ballot

The term "secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice

with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 2421.14 Showing of interest

The term "showing of interest" means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or other evidence approved by the Board.

§ 2421.15 Regular and substantially equivalent employment

The term "regular and substantially equivalent employment" means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights, if any, of an employee prior to the cessation of employment in an employing office because of any unfair labor practice under 5 U.S.C. 7116, as applied by the CAA.

§ 2421.16 Petitioner

Petitioner means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.17 Eligibility period

The term "eligibility period" means the payroll period during which an employee must be in an employment status with an employing office or activity in order to be eligible to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.18 Election agreement

The term "election agreement" means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Board, the Executive Director, or any other individual designated by the Board, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.19 Affected by issues raised

The phrase "affected by issues raised", as used in Part 2422, should be construed broadly to include parties and other labor organizations, or employing offices or activities that have a connection to employees affected by, or questions presented in, a proceeding.

§ 2421.20 Determinative challenged ballots

"Determinative challenged ballots" are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

Part 2422—Representation Proceedings

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§ 2422.1 Purposes of a petition

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment.* To request:

(1) (i) An election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative; and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) An election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative.

(3) Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment.* To clarify, and/or amend:

(1) A certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation.* To consolidate two or more units, with or without an election, in an employing office and for which a labor organization is the exclusive representative.

§ 2422.2 Standing to file a petition

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an employing office or activity; or a combination of the above: *provided, however,* that (a) only a labor organization has standing to file a petition pursuant to section 2422.1(a)(1); (b) only an individual has standing to file a petition pursuant to section 2422.1(a)(2); and (c) only an employing office or a labor organization may file a petition pursuant to section 2422.1(b) or (c).

§ 2422.3 Contents of a petition

(a) *What to file.* A petition must be filed on a form prescribed by the Board and contain the following information:

(1) The name and mailing address for each employing office or activity affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number of the contact person for each employing office or activity affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the certification and the date any collective bargaining agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The signature, title, mailing address and telephone number of the person filing the petition.

(b) *Compliance with 5 U.S.C. 7111(e), as applied by the CAA.* A labor organization/petitioner complies with 5 U.S.C. 7111(e), as applied by the CAA, by submitting to the employing office or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the employing activity or office and to the Department of Labor.

(c) *Showing of interest supporting a representation petition.* When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment.* When there is no exclusive representative, a petition seeking certification for dues allotment

shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

§ 2422.4 Service requirements

Every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, evidence supporting challenges to the validity of a showing of interest, and evidence supporting objections to an election. The filer must submit a written statement of service to the Executive Director.

§ 2422.5 Filing petitions

(a) *Where to file.* Petitions must be filed with the Executive Director.

(b) *Number of copies.* An original and two (2) copies of the petition and the accompanying material must be filed with the Executive Director.

(c) *Date of filing.* A petition is filed when it is received by the Executive Director.

§ 2422.6 Notification of filing

(a) *Notification to parties.* After a petition is filed, the Executive Director, on behalf of the Board, will notify any labor organization, employing office or employing activity that the parties have identified as being affected by issues raised by the petition, that a petition has been filed with the Office. The Executive Director, on behalf of the Board, will also make reasonable efforts to identify and notify any other party affected by the issues raised by the petition.

(b) *Contents of the notification.* The notification will inform the labor organization, employing office or employing activity of:

(1) The name of the petitioner;

(2) The description of the unit(s) or employees affected by issues raised in the petition; and,

(3) A statement that all affected parties should advise the Executive Director in writing of their interest in the issues raised in the petition.

§ 2422.7 Posting notice of filing of a petition

(a) *Posting notice of petition.* When appropriate, the Executive Director, on behalf of the Board, after the filing of a representation petition, will direct the employing office or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or distribute copies of a notice in a manner by which notices are normally distributed.

(b) *Contents of notice.* The notice shall advise affected employees about the petition.

(c) *Duration of notice.* The notice should be conspicuously posted for a period of ten (10) days and not be altered, defaced, or covered by other material.

§ 2422.8 Intervention and cross-petitions

(a) *Cross-petitions.* A cross-petition is a petition which involves any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions.* A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e), as applied by the CAA, and one of the following:

(1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest; or

(2) A current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition; or

(3) Evidence that it is or was, prior to a reorganization, the certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent.* An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered a party in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Board, through the Executive Director, with a written disclaimer of any representation interest in the claimed unit.

(e) *Employing office.* An employing office or activity will be considered a party if any of its employees are affected by issues raised in the petition.

(f) *Employing office or activity intervention.* An employing office or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the employing office or activity may be affected by issues raised in the petition.

§ 2422.9 Adequacy of showing of interest

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3(c) and (d) and 2422.8(c)(1).

(b) *Executive Director investigation and action.* The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Board. If the Executive Director determines, on behalf of the Board, that a showing of interest is inadequate, the Executive Director will dismiss the petition, or deny a request for intervention.

§ 2422.10 Validity of showing of interest

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Executive Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Party challenges to the validity of a showing of interest must be in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

(d) *Contents of validity challenges.* Challenges to the validity of a showing of interest must be supported with evidence.

(e) *Executive Director investigation and action.* The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Board. If the Executive Director finds, on behalf of the Board, that the showing of interest is not valid, the Executive Director will dismiss the petition or deny the request to intervene.

§ 2422.11 Challenge to the status of a labor organization

(a) *Basis of challenge to labor organization status.* The only basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4), as applied by the CAA.

(b) *Format and time for filing a challenge.* Any party filing a challenge to the status of a labor organization involved in the processing of a petition must do so in writing to the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no hearing is held, challenges must be filed prior to action being taken pursuant to § 2422.30.

§ 2422.12 Timeliness of petitions seeking an election

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve (12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement covering the claimed unit is pending employing office head review under 5 U.S.C. 7114(c), as applied by the CAA, or is in effect, paragraphs (c), (d), or (e) of this section apply.

(c) *Bar during employing office head review.* A petition seeking an election will not be considered timely if filed during the period of employing office head review under 5 U.S.C. 7114(c), as applied by the CAA. This bar expires upon either the passage of thirty (30) days absent employing office head action, or upon the date of any timely employing office head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of three (3) years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the agreement.

(e) *Contract bar where the contract is for more than three (3) years.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of more than three (3) years from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been extended prior to sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c), as applied by the CAA, and those that automatically renew without further action by the parties, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

§ 2422.13 Resolution of issues raised by a petition

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* After a petition is filed, the Executive Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

§ 2422.14 Effect of withdrawal/dismissal

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Executive Director or the Board less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the employing office or activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

(1) The date the withdrawal is approved; or

(2) The date the petition is dismissed by the Executive Director when no application for review is filed with the Board; or

(3) The date the Board rules on an application for review; or

(4) The date the Board issues a Decision and Order dismissing the petition.

Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal by petitioner.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Executive Director after the notice of pre-election investigatory hearing issues or after approval of an election agreement, whichever occurs first, will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Executive Director.

(c) *Withdrawal by incumbent.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information and cooperate

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Executive Director, furnish the Executive Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Executive Director, on behalf of the Board, may direct the employing office or activity to furnish the Executive Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* All parties are required to cooperate in every aspect of the representation process. This obligation includes cooperating fully with the Executive Director, submitting all required and requested information, and participating in prehearing conferences and pre-election investigatory hearings. The failure to cooperate in the representation process may result in the Executive Director or the Board taking appropriate action, including dismissal of the petition or denial of intervention.

§ 2422.16 Election agreements or directed elections

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Executive Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Executive Director, on behalf of the Board, will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for an investigatory hearing.* Before directing an election, the Executive Director shall provide affected parties an opportunity for a pre-election investigatory hearing on other than procedural matters.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of pre-election investigatory hearing and prehearing conference

(a) *Purpose of notice of an investigatory hearing.* The Executive Director, on behalf of the Board, may issue a notice of pre-election investigatory hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will advise affected parties about the pre-election investigatory hearing. The Executive Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference.

(c) *Prehearing conference.* A prehearing conference will be conducted by the Executive Director or her designee, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notification of the prehearing conference.

(d) *No interlocutory appeal of investigatory hearing determination.* The Executive Director's determination of whether to issue a notice of pre-election investigatory hearing is not appealable to the Board.

§ 2422.18 Pre-election investigatory hearing procedures

(a) *Purpose of a pre-election investigatory hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Pre-election investigatory hearings will be open to the public unless otherwise ordered by the Executive Director or her designee. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Pre-election investigatory hearing.* Pre-election investigatory hearings will be conducted by the Executive Director or her designee.

(d) *Production of evidence.* Parties have the obligation to produce existing documents and witnesses for the investigatory hearing in accordance with the instructions of the Executive Director or her designee. If a party willfully fails to comply with such instructions, the Board may draw an inference adverse to that party on the issue related to the evidence sought.

(e) *Transcript.* An official reporter will make the official transcript of the pre-election investigatory hearing. Copies of the official transcript may be examined in the Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions

(a) *Purpose of a motion.* Subsequent to the issuance of a notice of pre-election investigatory hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Executive Director or her designee, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Executive Director. Any response must be filed with the Executive Director within five (5) days after service of the motion. The Executive Director shall rule on the motion .

(c) *Motions made at the investigatory hearing.* During the pre-election investigatory hearing, motions will be made to the Executive Director or her designee, and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Executive Director or her designee, must be provided before the hearing closes. The Executive Director or her designee will rule on motions made at the hearing.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Board. Any response to a posthearing motion must be filed with the Board within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a pre-election investigatory hearing

(a) *Rights.* A party at a pre-election investigatory hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Executive Director or her designee and copies to all other parties. Stipulations of fact between/among the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Board.

(1) An original and two (2) copies of a brief must be filed with the Board within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Board no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Board.

§ 2422.21 Duties and powers of the Executive Director in the conduct of the pre-election investigatory hearing

(a) *Duties.* The Executive Director or her designee, on behalf of the Board, will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the investigatory hearing, and may make recommendations on the record to the Board.

(b) *Powers.* During the period a case is assigned to the Executive Director or her designee for pre-election investigatory hearing and prior to the close of the hearing, the Executive Director or her designee may take any action necessary to schedule, conduct, continue, control, and regulate the pre-election investigatory hearing, including ruling on motions when appropriate.

§ 2422.22 Objections to the conduct of the pre-election investigatory hearing

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a pre-election investigatory hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

§ 2422.23 Election procedures

(a) *Executive Director conducts or supervises election.* The Executive Director, on behalf of the Board, will decide to conduct or supervise the election. In supervised elections, employing offices or activities will perform all acts as specified in the Election Agreement or Direction of Election.

(b) *Notice of election.* Prior to the election a notice of election, prepared by the Executive Director, will be posted by the employing office or activity in places where notices to employees are customarily posted and/or distributed in a manner by which notices are normally distributed. The notice of election will contain the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot that suggests either directly or indirectly to employees that the Board endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election, file a written request with the Executive Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Executive Director, on behalf of the Board, agree otherwise, the intervening labor organization will remain on the ballot. The Executive Director's decision on the request is final and not subject to the filing of an application for review with the Board.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election will not be held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Executive Director's approval.

(1) Parties desiring to name observers must file in writing with the Executive Director a request for specifically named observers at least fifteen (15) days prior to an election. The Executive Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Executive Director's own motion. The request must name and identify the observers requested.

(2) An employing office or activity may use as its observers any employees who are not eligible to vote in the election, except:

(i) Supervisors or management officials;

(ii) Employees who have any official connection with any of the labor organizations involved; or

(iii) Non-employees of the legislative branch.

(3) A labor organization may use as its observers any employees eligible to vote in the election, except:

(i) Employees on leave without pay status who are working for the labor organization involved; or

(ii) Employees who hold an elected office in the union.

(4) Objections to a request for specific observers must be filed with the Executive Director stating the reasons in support within five (5) days after service of the request.

(5) The Executive Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Board.

§ 2422.24 Challenged ballots

(a) *Filing challenges.* A party or the Executive Director may, for good cause, challenge the eligibility of any person to participate in the election prior to the employee voting.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved challenged ballot(s) will be impounded and preserved until a determination can be made, if necessary, by the Executive Director or the Board.

§ 2422.25 Tally of ballots

(a) *Tallying the ballots.* When the election is concluded, the Executive Director or her designee will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Executive Director will serve the tally of ballots on the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 Objections to the election

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election may be filed by any party. Objections must be filed and received by the Executive Director within five (5) days after the tally of ballots has been served. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be received by the Executive Director.

(b) *Supporting evidence.* The objecting party must file with the Executive Director evidence, including signed statements, documents and other materials supporting the objections within ten (10) days after the objections are filed.

§ 2422.27 Determinative challenged ballots and objections

(a) *Investigation.* The Executive Director, on behalf of the Board, will investigate objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Executive Director action.* After investigation, the Executive Director will take appropriate action consistent with § 2422.30.

(d) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by a Hearing Officer. Exceptions and related submissions must be filed with the Board and the Board will issue a decision in accordance with Part 2423 of this chapter and section 406 of the CAA, except for the following:

(1) Section 2423.18 of this Subchapter concerning the burden of proof is not applicable;

(2) The Hearing Officer may not recommend remedial action to be taken or notices to be posted; and,

(3) References to "charge" and "complaint" in Part 2423 of this chapter will be omitted.

§ 2422.28 Runoff elections

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is "no union" or "neither," when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the objections to the election and determinative challenged ballots have been resolved.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the largest and second largest number of votes in the election.

§ 2422.29 Inconclusive elections

(a) *Inconclusive elections.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is "no union" or "neither" and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Board determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If a determination is made that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

§ 2422.30 Executive director investigations, notices of pre-election investigatory hearings, and actions; board decisions and orders

(a) *Executive Director investigation.* The Executive Director, on behalf of the Board, will make such investigation of the petition and any other matter as the Executive Director deems necessary.

(b) *Executive Director notice of pre-election investigatory hearing.* On behalf of the Board, the Executive Director will issue a notice of pre-election investigatory hearing to inquire into any matter about which a material issue of fact exists, where there is an issue as to whether a question concerning representation exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Executive Director action.* After investigation and/or hearing, when a pre-election investigatory hearing has been ordered, the Executive Director may, on behalf of the Board, approve an election agreement, dismiss a petition or deny intervention where there is an inadequate or invalid showing of interest, or dismiss a petition where there is an undisputed bar to further processing of the petition under law, rule or regulation.

(d) *Appeal of Executive Director action.* A party may file with the Board an application for review of an Executive Director action taken pursuant to section (c) above.

(e) *Contents of the Record.* When no pre-election investigatory hearing has been conducted all material submitted to and considered by the Executive Director during the investigation becomes a part of the record. When a pre-election investigatory hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

(f) *Transfer of record to Board; Board Decisions and Orders.* In cases that are submitted to the Board for decision in the first instance, the Board shall decide the issues presented based upon the record developed by the Executive Director, including the transcript of the pre-election investigatory hearing, if any, documents admitted into the record and briefs and other approved submissions from the parties. The Board may direct that a secret ballot election be held, issue an order dismissing the petition, or make such other disposition of the matter as it deems appropriate.

§ 2422.31 Application for review of an executive director action

(a) *Filing an application for review.* A party must file an application for review with the Board within sixty (60) days of the Executive Director's action. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f), as applied by the CAA, may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Board to rule on the application without recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Executive Director.

(c) *Review.* The Board may, in its discretion, grant an application for review when the application demonstrates that review is warranted on one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent;

(2) Established law or policy warrants reconsideration; or,

(3) There is a genuine issue over whether the Executive Director has:

(i) Failed to apply established law;

(ii) Committed a prejudicial procedural error;

(iii) Committed a clear and prejudicial error concerning a substantial factual matter.

(d) *Opposition.* A party may file with the Board an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Executive Director and all other parties and a statement of service must be filed with the Board.

(e) *Executive Director action becomes the Board's action.* An action of the Executive Director becomes the action of the Board when:

(1) No application for review is filed with the Board within sixty (60) days after the date of the Executive Director's action; or

(2) A timely application for review is filed with the Board and the Board does not undertake to grant review of the Executive Director's action within sixty (60) days of the filing of the application; or

(3) The Board denies an application for review of the Executive Director's action.

(f) *Board grant of review and stay.* The Board may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Executive Director unless specifically ordered by the Board.

(g) *Briefs if review is granted.* If the Board does not rule on the issue(s) in the application for review in its order granting review, the Board may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Board's order granting review.

§ 2422.32 Certifications and revocations

(a) *Certifications.* The Executive Director, on behalf of the Board, will issue an appropriate certification when:

(1) After an election, runoff, or rerun,

(i) No objections are filed or challenged ballots are not determinative, or

(ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Executive Director takes an action requiring a certification and that action becomes the action of the Board under § 2422.31(e) or the Board otherwise directs the issuance of a certification.

(b) Revocations. Without prejudice to any rights and obligations which may exist under the CAA, the Executive Director, on behalf of the Board, will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when an incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit.

§ 2422.33 Relief obtainable under Part 2423

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be the basis for similar relief if filed or raised as an unfair labor practice under Part 2423 of this Chapter: *provided, however,* that related matters may be consolidated for hearing as noted in § 2422.27(d) of this subpart.

§ 2422.34 Rights and obligations during the pendency of representation proceedings

(a) *Existing recognitions, agreements, and obligations under the CAA.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the CAA.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 5 U.S.C. 7103(a)(2), 7112(b) and (c), as applied by the CAA: *provided, however,* that its actions may be challenged, reviewed, and remedied where appropriate.

Part 2423—Unfair Labor Practice Proceedings

Sec.
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2423.31 Backpay proceedings.

§2423.1 Applicability of this part

This part is applicable to any charge of alleged unfair labor practices occurring on or after October 1, 1996.

§2423.2 Informal proceedings

(a) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Board and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the 180 day period of limitation set forth in section 220(c)(2) of the CAA, it shall be the policy of the Board and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the filing of a complaint by the General Counsel.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the General Counsel will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

§2423.3 Who may file charges

An employing office, employing activity, or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116, as applied by the CAA.

§2423.4 Contents of the charge; supporting evidence and documents

(a) A charge alleging a violation of 5 U.S.C. 7116, as applied by the CAA, shall be submitted on forms prescribed by the General Counsel and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the employing office or activity, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code made applicable by the CAA alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Board under Part 2471 of these regulations, or the Federal Mediation and Conciliation Service, or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to Part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the General Counsel any supporting evidence and documents.

§2423.5 Selection of the unfair labor practice procedure or the negotiability procedure

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 2424 of this subchapter.

§2423.6 Filing and service of copies

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the General Counsel.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the General Counsel. The General Counsel will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

(c) A charge will be deemed to be filed when it is received by the General Counsel in accordance with the requirements in paragraph (a) of this section.

§2423.7 Investigation of charges

(a) The General Counsel shall conduct such investigation of the charge as the General Counsel deems necessary. Consistent with the policy set forth in §2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the General Counsel.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the General Counsel.

(d) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Board and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Board's and the General Counsel's continuing ability to obtain all relevant information.

§2423.8 Amendment of charges

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in §2423.6.

§2423.9 Action by the general counsel

(a) The General Counsel shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to file a complaint;

(3) Approve a written settlement and recommend that the Executive Director approve a written settlement agreement in accordance with the provisions of section 414 of the CAA;

(4) File a complaint;

(5) Upon agreement of all parties, transfer to the Board for decision, after filing of a complaint, a stipulation of facts in accordance with the provisions of §2429.1(a) of this subchapter; or

(6) Withdraw a complaint.

§2423.10 Determination not to file complaint

(a) If the General Counsel determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the General Counsel may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to file a complaint.

(b) The charging party may not obtain a review of the General Counsel's decision not to file a complaint.

§2423.11 Settlement or adjustment of issues

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Executive Director or General Counsel, as appropriate, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

Precomplaint settlements

(b)(1) Prior to the filing of any complaint or the taking of other formal action, the General Counsel will afford the charging party and the respondent a reasonable period of time in which to enter into a settlement agreement to be submitted to and approved by the General Counsel and the Executive Director. Upon approval by the General Counsel and Executive Director and compliance with the terms of the settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the settlement agreement, the General Counsel may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, if the General Counsel concludes that the offered settlement will effectuate the policies

of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel and the latter shall decline to file a complaint.

Post complaint settlement policy

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the filing of a complaint, the Board favors the settlement of issues. Such settlements may be accomplished as provided in paragraph (b) of this section. The parties may, as part of the settlement, agree to waive their right to a hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily such a settlement agreement will also contain the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order.

Post complaint prehearing settlements

(d)(1) If, after the filing of a complaint, the charging party and the respondent enter into a settlement agreement, and such agreement is accepted by the General Counsel, the settlement agreement shall be submitted to the Executive Director for approval.

(2) If, after the filing of a complaint, the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel. The charging party will be so informed and provided a brief written statement by the General Counsel of the reasons therefor. The settlement agreement together with the charging party's objections, if any, and the General Counsel's written statements, shall be submitted to the Executive Director for approval. The Executive Director may approve or disapprove any settlement agreement.

(3) After the filing of a complaint, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may withdraw the complaint.

Settlements after the opening of the hearing

(e)(1) After filing of a complaint and after opening of the hearing, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may request the Hearing Officer for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve a settlement and recommend that the Executive Director approve the settlement pursuant to paragraph (b) of this section.

(2) If, after filing of a complaint and after opening of the hearing, the parties enter into a settlement agreement that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval.

(3) If the charging party fails or refuses to become a party to a settlement agreement, offered by the respondent, that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied to the CAA, the agreement shall be between the respondent and the General Counsel. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the settlement, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any such settlement agreement or return the case to the Hearing Officer for other appropriate action.

§ 2423.12 Filing and contents of the complaint

(a) After a charge is filed, if it appears to the General Counsel that formal proceedings in respect thereto should be instituted, the General Counsel shall file a formal complaint: *provided, however*, that a determination by the General Counsel to file a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Any information required pursuant to the Procedural Rules of the Office.

(c) Any such complaint may be withdrawn before the hearing by the General Counsel.

§ 2423.13 Answer to the complaint

A respondent shall file an answer to a complaint in accordance with the requirements of the Procedural Rules of the Office.

§ 2423.14 Prehearing disclosure; conduct of hearing

The procedures for prehearing discovery and the conduct of the hearing are set forth in the Procedural Rules of the Office.

§ 2423.15 Intervention

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in the Procedural Rules of the Office. The motion shall state the grounds upon which such person claims involvement.

§ 2423.16 [Reserved]

§ 2423.17 [Reserved]

§ 2423.18 Burden of proof before the hearing officer

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

2423.19 Duties and powers of the hearing officer

It shall be the duty of the Hearing Officer to inquire fully into the facts as they relate to the matter before such Hearing Officer, subject to the rules and regulations of the Office and the Board.

§ 2423.20 [Reserved]

§ 2423.21 [Reserved]

§ 2423.22 [Reserved]

§ 2423.23 [Reserved]

§ 2423.24 [Reserved]

§ 2423.25 [Reserved]

§ 2423.26 Hearing officer decisions; entry in records of the office

In accordance with the Procedural Rules of the Office, the Hearing Officer shall issue a written decision and that decision will be entered into the records of the Office.

§ 2423.27 Appeal to the Board

An aggrieved party may seek review of a decision and order of the Hearing Officer in accordance with the Procedural Rules of the Office.

§ 2423.28 [Reserved]

§2423.29 Action by the Board

(a) If an appeal is filed, the Board shall review the decision of the Hearing Officer in accordance with section 406 of the CAA, and the Procedural Rules of the Office.

(b) Upon finding a violation, the Board shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the employing office or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (1) through (3) of this paragraph (b), or such other action as will carry out the purpose of the chapter 71, as applied by the CAA.

(c) Upon finding no violation, the Board shall dismiss the complaint.

§ 2423.30 Compliance with decisions and orders of the Board

When remedial action is ordered, the respondent shall report to the Office within a specified period that the required remedial action has been effected. When the General Counsel or the Executive Director finds that the required remedial action has not been effected, the General Counsel or the Executive Director shall take such action as may be appropriate, including referral to the Board for enforcement.

§ 2423.31 Backpay proceedings

After the entry of a Board order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the General Counsel that a controversy exists which cannot be resolved without a formal proceeding, the General Counsel may issue and serve on all parties a backpay specification accompanied by a request for hearing or a request for hearing without a specification. Upon receipt of the request for hearing, the Executive Director will appoint an independent Hearing Officer. The respondent shall, within twenty (20) days after the service of a backpay specification, file an answer thereto in accordance with the Office's Procedural Rules. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the hearing procedures provided in the Procedural Rules of the Office shall be followed insofar as applicable.

Part 2424 Expedited Review of Negotiability Issues

Subpart A—Instituting an Appeal

Sec.
2424.1 Conditions governing review.
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2424.4 Content of petition; service.
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2424.7 Response of the exclusive representative; time limits for filing; service.
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Subpart B—Criteria for Determining Compelling Need for Employing Office Rules and Regulations

2424.11 Illustrative criteria.

SUBPART A—INSTITUTING AN APPEAL

§ 2424.1 Conditions governing review

The Board will consider a negotiability issue under the conditions prescribed by 5

U.S.C. 7117 (b) and (c), as applied by the CAA, namely: If an employing office involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Board when—

(a) It disagrees with the employing office's allegation that the matter as proposed to be bargained is inconsistent with any Federal law or any Government-wide rule or regulation; or

(b) It alleges, with regard to any employing office rule or regulation asserted by the employing office as a bar to negotiations on the matter, as proposed, that:

(1) The rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the employing office;

(2) The rule or regulation was not issued by the employing office or by any primary national subdivision of the employing office, or otherwise is not applicable to bar negotiations with the exclusive representative, under 5 U.S.C. 7117(a)(3), as applied by the CAA; or

(3) No compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the criteria established in subpart B of this part.

§ 2424.2 Who may file a petition

A petition for review of a negotiability issue may be filed by an exclusive representative which is a party to the negotiations.

§ 2424.3 Time limits for filing

The time limit for filing a petition for review is fifteen (15) days after the date the employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained is served on the exclusive representative. The exclusive representative shall request such allegation in writing and the employing office shall make the allegation in writing and serve a copy on the exclusive representative: *provided, however*, that review of a negotiability issue may be requested by an exclusive representative under this subpart without a prior written allegation by the employing office if the employing office has not served such allegation upon the exclusive representative within ten (10) days after the date of the receipt by any employing office bargaining representative at the negotiations of a written request for such allegation.

§ 2424.4 Content of petition; service

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the express language of the proposal sought to be negotiated as submitted to the employing office;

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Board to understand the context in which the proposal is intended to apply;

(3) A copy of all pertinent material, including the employing office's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(4) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under part 2423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the employing office head and on the principal employing office bargaining representative at the negotiations.

(c)(1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed—not the date it was originally filed.

§ 2424.5 Selection of the unfair labor practice procedure or the negotiability procedure

Where a labor organization files an unfair labor practice charge pursuant to part 2423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under this part.

§ 2424.6 Position of the employing office; time limits for filing; service

(a) Within thirty (30) days after the date of the receipt by the head of an employing office of a copy of a petition for review of a negotiability issue the employing office shall file a statement—

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be negotiated; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Board to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal employing office rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the employing office attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the employing office views the proposal to concern, which will enable the Board to understand the context in which the proposal is considered to apply by the employing office.

(b) A copy of the employing office's statement of position, including all attachments thereto shall be served on the exclusive representative.

§ 2424.7 Response of the exclusive representative; time limits for filing; service

(a) Within fifteen (15) days after the date of the receipt by an exclusive representative of a copy of an employing office's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for:

(1) Disagreeing with the employing office's allegation that the matter, as proposed to be negotiated, is inconsistent with any Federal law or Government-wide rule or regulation; or

(2) Alleging that the employing office's rules or regulations violate applicable law, or rule or regulation or appropriate authority outside the employing office; that the rules or regulations were not issued by the employing office or by any primary national subdivision of the employing office, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA; or that no compelling need exists for the rules or regulations to bar negotiations.

(b) The response shall cite the particular section of any law, rule or regulation alleged to be violated by the employing office's rules or regulations; or shall explain the grounds for contending the employing office rules or regulations are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA, or fail to meet the criteria established in subpart B of this part, or were not issued at the employing office headquarters level or at the level of a primary national subdivision.

(c) A copy of the response of the exclusive representative including all attachments thereto shall be served on the employing office head and on the employing office's representative of record in the proceeding before the Board.

§ 2424.8 Additional submissions to the Board

The Board will not consider any submission filed by any party, whether supplemental or responsive in nature, other than those authorized under § 2424.2 through 2424.7 unless such submission is requested by the Board; or unless, upon written request by any party, a copy of which is served on all other parties, the Board in its discretion grants permission to file such submission.

§ 2424.9 Hearing

A hearing may be held, in the discretion of the Board, before a determination is made under 5 U.S.C. 7117(b) or (c), as applied by the CAA. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 2424.10 Board decision and order; compliance

(a) Subject to the requirements of this subpart the Board shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the employing office a written decision on the allegation and specific reasons therefore at the earliest practicable date.

(b) If the Board finds that the duty to bargain extends to the matter proposed to be bargained, the decision of the Board shall include an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning such matter. If the Board finds that the duty to bargain does not extend to the matter proposed

to be negotiated, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue. If the Board finds that the duty to bargain extends to the matter proposed to be bargained only at the election of the employing office, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue.

(c) When an order is issued as provided in paragraph (b) of this section, the employing office or exclusive representative shall report to the Executive Director within a specified period failure to comply with an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter.

SUBPART B—CRITERIA FOR DETERMINING COMPELLING NEED FOR EMPLOYING OFFICE RULES AND REGULATIONS

§ 2424.11 Illustrative criteria

A compelling need exists for an employing office rule or regulation concerning any condition of employment when the employing office demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the employing office or primary national subdivision in a manner which is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to insure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the employing office or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

Part 2425—Review of Arbitration Awards

Sec.
2425.1 Who may file an exception; time limits for filing; opposition; service.
2425.2 Content of exception.
2425.3 Grounds for review.
2425.4 Board decision.

§ 2425.1 Who may file an exception; time limits for filing; opposition; service

(a) Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA, may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

§ 2425.2 Content of exception

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Board;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and

(e) The name and address of the arbitrator.

§ 2425.3 Grounds for review

The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(a) Because it is contrary to any law, rule or regulation; or

(b) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

§ 2425.4 Board decision

The Board shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

Part 2426—National Consultation Rights and Consultation Rights on Government-wide Rules or Regulations

Subpart A—National Consultation Rights

Sec.
2426.1 Requesting; granting; criteria.
2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.
2426.3 Obligation to consult.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.
2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.
2426.13 Obligation to consult.

SUBPART A—NATIONAL CONSULTATION RIGHTS

§ 2426.1 Requesting; granting; criteria

(a) An employing office shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the employing office level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the employing office.

(b) An employing office's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the employing office level, employees represented by the labor organization under national exclusive recognition granted at the employing office level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An employing office or a primary national subdivision of an employing office shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights

(a) Requests by labor organizations for national consultation rights shall be submitted in writing to the headquarters of the employing office or the employing office's primary national subdivision, as appropriate, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in § 2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and

(vii) A statement as appropriate:

(A) That such showing has been made to and rejected by the employing office or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that employing office or primary national subdivision;

(B) That the employing office or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or

(C) That the employing office or primary national subdivision has failed to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the employing office or primary national subdivision.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office or primary national subdivision of its refusal to accord national consultation rights pursuant to a request under § 2426.2(a) or its intention to terminate existing national consultation rights. If an

employing office or primary national subdivision fails to respond in writing to a request for national consultation rights made under §2426.2(a) within fifteen (15) days after the date the request is served on the employing office or primary national subdivision, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an employing office or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office or primary national subdivision shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigations as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for national consultation rights which shall be final: *provided, however*, that an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of hearing shall not be subject to the filing of an application for review. On behalf of the Board, the Executive Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting an investigatory hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §§2422.17 through 2422.22 of this subchapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

§2426.3 Obligation to consult

(a) When a labor organization has been accorded national consultation rights, the employing office or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in conditions of employment to an employing office or a primary national subdivision, that employing office or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any employing office or exclusive representative to engage in collective bargaining.

SUBPART B—CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

§2426.11 Requesting; granting; criteria

(a) An employing office shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an employing office; and

(2) Holds exclusive recognition for 350 or more covered employees within the legislative branch.

(b) An employing office shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

§2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations

(a) Requests by labor organizations for consultation rights on Government-wide rules or regulations shall be submitted in writing to the headquarters of the employing office, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria set forth in §2426.11 may be filed by a labor organization.

(2) A petition for determination of eligibility for consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office in which the petitioner seeks to obtain or retain consultation rights on Government-wide rules or regulations, and the persons to contact and their titles, if known;

(vi) A showing that petitioner meets the criteria as required by §2426.11; and

(vii) A statement, as appropriate:

(A) That such showing has been made to and rejected by the employing office, together with a statement of the reasons for rejection, if any, offered by that employing office;

(B) That the employing office has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination; or

(C) That the employing office has failed to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for consultation rights on Government-wide rules or regulations shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on the employing office, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office of its refusal to accord consultation rights on Government-wide rules or regulations pursuant to a request under §2426.12(a) or its intention to terminate such existing consultation rights. If an employing office fails to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office wishes to terminate consultation rights on Government-wide rules or regulations, notice of its intention to do so shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office pending disposition of the petition. If no petition has been filed within the provided time period, an employing office may terminate such consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigation as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for consultation rights which shall be final: *Provided, however*, that an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of investigatory hearing shall not be subject to the filing of an application for review. On behalf of the Board, the Executive Director, if appropriate, may cause a notice of investigatory hearing to be issued where substantial factual issues exist warranting a hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §2422.17 through 2422.22 of this chapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

§2426.13 Obligation to consult

(a) When a labor organization has been accorded consultation rights on Government-wide rules or regulations, the employing office which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed Government-wide rule or regulation issued by the employing office affecting any substantive change in any condition of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in any condition of employment to an employing office, that employing office shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

Part 2427—General Statements of Policy or Guidance

Sec.
2427.1 Scope.
2427.2 Requests for general statements of policy or guidance.
2427.3 Content of request.
2427.4 Submissions from interested parties.
2427.5 Standards governing issuance of general statements of policy or guidance.

§ 2427.1 Scope

This part sets forth procedures under which requests may be submitted to the Board seeking the issuance of general statements of policy or guidance under 5 U.S.C. 7105(a)(1), as applied by the CAA.

§ 2427.2 Requests for general statements of policy or guidance

(a) The head of an employing office (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Board for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Board for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA, or other law.

(b) The Board ordinarily will not consider a request related to any matter pending before the Board or General Counsel.

§ 2427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under § 2427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under the CAA; and

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, where appropriate.

§ 2427.4 Submissions from interested parties

Prior to issuance of a general statement of policy or guidance the Board, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

§ 2427.5 Standards governing issuance of general statements of policy or guidance

In deciding whether to issue a general statement of policy or guidance, the Board shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether a Board statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability under chapter 71, as applied by the CAA;

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Board of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the legislative branch and would otherwise promote the purposes of chapter 71, as applied by the CAA.

Part 2428—Enforcement of Assistant Secretary Standards of Conduct Decisions and Orders

Sec.
2428.1 Scope.
2428.2 Petitions for enforcement.
2428.3 Board decision.

§ 2428.1 Scope

This part sets forth procedures under which the Board, pursuant to 5 U.S.C. 7105(a)(2)(I), as applied by the CAA, will enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120, as applied by the CAA.

§ 2428.2 Petitions for enforcement

(a) The Assistant Secretary may petition the Board to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120, as applied by the CAA. The Assistant Secretary shall transfer to the Board the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Board enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Board, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

§ 2428.3 Board decision

The Board shall issue its decision on the case enforcing, enforcing as modified, or refusing to enforce, the decision and order of the Assistant Secretary.

Part 2429—Miscellaneous and General Requirements

Subpart A—Miscellaneous

Sec.
2429.1 Transfer of cases to the Board.
2429.2 [Reserved]
2429.3 Transfer of record.
2429.4 Referral of policy questions to the Board.
2429.5 Matters not previously presented; official notice.
2429.6 Oral argument.
2429.7 [Reserved]
2429.8 [Reserved]
2429.9 [Reserved]
2429.10 Advisory opinions.
2429.11 [Reserved]
2429.12 [Reserved]
2429.13 Official time.
2429.14 Witness fees.
2429.15 Board requests for advisory opinions.
2429.16 General remedial authority.
2429.17 [Reserved]
2429.18 [Reserved]

Subpart B—General Requirements

2429.21 [Reserved]
2429.22 [Reserved]
2429.23 Extension; waiver.
2429.24 [Reserved]
2429.25 [Reserved]
2429.26 [Reserved]
2429.27 [Reserved]
2429.28 Petitions for amendment of regulations.

SUBPART A—MISCELLANEOUS

§ 2429.1 Transfer of cases to the board

In any unfair labor practice case under part 2423 of this subchapter in which, after the filing of a complaint, the parties stipulate that no material issue of fact exists, the Executive Director may, upon agreement of all parties, transfer the case to the Board; and the Board may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Board within thirty (30) days from the date of the Executive Director's order transferring the case to the Board. The Board may also remand any such case to the Executive Director for further processing. Orders of transfer and remand shall be served on all parties.

§ 2429.2 [Reserved]

§ 2429.3 Transfer of record

In any case under part 2425 of this subchapter, upon request by the Board, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits, briefs and other documents filed with the arbitrator, to the Board.

§ 2429.4 Referral of policy questions to the board

Notwithstanding the procedures set forth in this subchapter, the General Counsel, or the Assistant Secretary, may refer for review and decision or general ruling by the Board any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Board shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate. The Board may decline a referral.

§ 2429.5 Matters not previously presented; official notice

The Board will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Executive Director, Hearing Officer, or arbitrator. The Board may, however, take official notice of such matters as would be proper.

§ 2429.6 Oral argument

The Board or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances and conditions as they deem appropriate.

§ 2429.7 [Reserved]
§ 2429.8 [Reserved]
§2429.9 [Reserved]
§ 2429.10 Advisory opinions

The Board and the General Counsel will not issue advisory opinions.

§ 2429.11 [Reserved]
§ 2429.12 [Reserved]
§ 2429.13 Official time

If the participation of any employee in any phase of any proceeding before the Board under section 220 of the CAA, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Board, the Executive Director, the General Counsel, any Hearing Officer, or other agent of the Board designated by the Board, such employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

§ 2429.14 Witness fees

(a) Witnesses (whether appearing voluntarily, or under a subpena) shall be paid the fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States: *Provided*, that any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to § 2429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to § 2429.13.

§ 2429.15 Board requests for advisory opinions

(a) Whenever the Board, pursuant to 5 U.S.C. 7105(i), as applied by the CAA, requests an advisory opinion from the Director of the Office of Personnel Management concerning the proper interpretation of rules, regulations, or policy directives issued by that Office in connection with any matter before the Board, a copy of such request, and any response thereto, shall be served upon the parties in the matter.

(b) The parties shall have fifteen (15) days from the date of service of a copy of the response of the Office of Personnel Management to file with the Board comments on that response which the parties wish the Board to consider before reaching a decision in the matter. Such comments shall be in writing and copies shall be served upon the other parties in the matter and upon the Office of Personnel Management.

§ 2429.16 General remedial authority

The Board shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

§ 2429.17 [Reserved]
§ 2429.18 [Reserved]

Subpart B—General Requirements

§ 2429.21 [Reserved]
§ 2429.22 [Reserved]
§ 2429.23 Extension; waiver

(a) Except as provided in paragraph (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

(b) Except as provided in paragraph (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) Time limits established in 5 U.S.C. 7105(f), 7117(c)(2) and 7122(b), as applied by the CAA, may not be extended or waived under this section.

§ 2429.24 [Reserved]
§ 2429.25 [Reserved]
§ 2429.26 [Reserved]
§ 2429.27 [Reserved]
§ 2429.28 Petitions for amendment of regulations

Any interested person may petition the Board in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

Subchapter D—Impasses

PART 2470—GENERAL

Subpart A—Purpose

Sec.
2470.1 Purpose.

Subpart B—Definitions

2470.2 Definitions.

SUBPART A—PURPOSE

§ 2470.1 Purpose

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 of the United States Code, as applied by the CAA. They prescribe procedures and methods which the Board may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

SUBPART B—DEFINITIONS

§ 2470.2 Definitions

(a) The terms *Executive Director, employing office, labor organization*, and *conditions of employment* as used herein shall have the meaning set forth in Part 2421 of these rules.

(b) The terms *designated representative* or *designee* of the Board means a Board member, a staff member, or other individual designated by the Board to act on its behalf.

(c) The term *hearing* means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119, as applied by the CAA.

(d) The term *impasse* means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(e) The term *Board* means the Board of Directors of the Office of Compliance.

(f) The term *party* means the agency or the labor organization participating in the negotiation of conditions of employment.

(g) The term *voluntary arrangements* means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119, as applied by the CAA.

Part 2471—Procedures of the Board in Impasse Proceedings

Sec.
2471.1 Request for Board consideration; request for Board approval of binding arbitration.
2471.2 Request form.
2471.3 Content of request.
2471.4 Where to file.
2471.5 Copies and service.
2471.6 Investigation of request; Board recommendation and assistance; approval of binding arbitration.
2471.7 Preliminary hearing procedures.
2471.8 Conduct of hearing and prehearing conference.
2471.9 Report and recommendations.
2471.10 Duties of each party following receipt of recommendations.
2471.11 Final action by the Board.
2471.12 Inconsistent labor agreement provisions.

§ 2471.1 Request for board consideration; request for board approval of binding arbitration

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Services or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Board to consider the matter by filing a request as hereinafter provided; or the Board may, pursuant to 5 U.S.C. 7119(c)(1), as applied by the CAA, undertake consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Board to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as hereinafter provided.

§ 2471.2 Request form

A form has been prepared for use by the parties in filing a request with the Board for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Executive Director, Office of Compliance.

§ 2471.3 Content of request

(a) A request from a party or parties to the Board for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information about the pending impasse:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Brief description of the impasse including the issues to be submitted to the arbitrator;

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and

(5) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings or, in the alternative, those provisions of the parties' labor agreement which contain this information.

§ 2471.4 Where to file

Requests to the Board provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Office of Compliance.

§ 2471.5 Copies and service

(a) Any party submitting a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. When the Board acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director, it will notify the parties to the dispute, their counsel of record or designated representatives, if any, and any mediation service which may have been utilized. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Any party submitting a response to or other document in connection with a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of the document upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) A signed and dated statement of service shall accompany each document submitted to the Board. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

(e) Unless otherwise provided by the Board or its designated representatives, any document or paper filed with the Board under these rules, together with any enclosure filed therewith, shall be submitted on 8 1/2 x 11 inch size paper.

§ 2471.6 Investigation of request; board recommendation and assistance; approval of binding arbitration

(a) Upon receipt of a request for consideration of an impasse, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Board considers appropriate.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either approve or disapprove the request; *provided, however*, that when the request is made pursuant to an agreed-upon procedure for arbitration contained in an applicable, previously negotiated agreement, the Board may use an expedited procedure and promptly approve or disapprove the request, normally within five (5) workdays.

§ 2471.7 Preliminary hearing procedures

When the Board determines that a hearing is necessary under § 2471.6, it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state: (1) The names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representatives appointed by the Board; (5) the issues to be resolved; and (6) the method, if any, by which the hearing shall be recorded.

§ 2471.8 Conduct of hearing and prehearing conference

(a) A designated representative of the Board, when so appointed to conduct a hearing, shall have the authority on behalf of the Board to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpenas;

(2) Conduct the hearing in open, or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted;

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Board in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

§ 2471.9 Report and recommendations

(a) When a report is issued after a hearing conducted pursuant to § 2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Board, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two (2) copies to the Executive Director, within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Board with a copy to each party within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any. The Board shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

§ 2471.10 Duties of each party following receipt of recommendations

(a) Within thirty (30) calendar days after receipt of a report containing recommendations of the Board or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

§ 2471.11 Final action by the board

(a) If the parties do not arrive at a settlement as a result of or during actions taken under § 2471.6(a)(2), 2471.7, 2471.8, 2471.9, and 2471.10, the Board may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71, as applied by the CAA, to resolve the impasse, including but not limited to, methods and procedures which the Board considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Board deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Board may hold hearings, administer oaths, and take the testimony or deposition of any person under oath, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4), as applied by the CAA, to exercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in § 2471.8 shall apply.

(d) Notice of any final action of the Board shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

§ 2471.12 Inconsistent labor agreement provisions

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119, as applied by the CAA, or the procedures of the Board shall be deemed to be superseded.

A JUST AND LASTING SOLUTION TO THE CYPRUS PROBLEM

Mr. PELL. Madam President, the recent shooting of two young Greek Cypriots and a Turkish Cypriot soldier have raised tension on Cyprus to a higher level than has been experienced in many years. These events demonstrate that the status quo of foreign occupation and forcible division of the island is unacceptable and dangerous to peace and stability in the area.

Above all, the recent killings highlight the need to demilitarize Cyprus as a first step toward achieving a just and lasting solution to the Cyprus problem. Last fall, the U.S. House of Representatives adopted a resolution calling for demilitarization and it was subsequently approved by the Senate Foreign Relations Committee. The need for demilitarization is even greater now than it was last year.

Neither demilitarization nor a comprehensive settlement of the Cyprus problem will occur, however, unless Turkey demonstrates the political will and flexibility to arrive at a compromise solution to the division of Cyprus. In order for that to happen, the United States and its European allies must make a concerted effort to convince Turkey that an end to the division of Cyprus is in everyone's security interest.

The Ambassador of Cyprus in Washington, Andrew J. Jacovides, has very persuasively laid out the case for such an effort in a letter to the editor of the Washington Post that was published on September 9. I ask unanimous consent that the full text of his letter be printed at this point in the RECORD.

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

CYPRUS: THE PROBLEM IS SOLVABLE

The editorial "Cyprus: Try Everything" [Aug. 26], though well intended and timely, particularly in the wake of the recent brutal murders of two unarmed young Greek Cypriots who were peacefully demonstrating their justifiable feelings against Turkish occupation, miscasts some of the main relevant issues.

The recent events demonstrate that the status quo of occupation and forcible division is unacceptable and is indeed a source of tension and instability as well as the cause of grave injustice and much human suffering. In fact, there is much more in common that can unite Greek and Turkish Cypriots than the differences that at present divide them (though, of course, this does not hold true for the Anatolian settlers or the "Grey Wolves" imported from Turkey).

The Cyprus problem is solvable, and the basis for its solution lies within the parameters defined by U.N. resolutions, voted for also by the United States. In addition to the prospect of Cyprus's accession to the European Union highlighted in The Post's editorial, the demilitarization of Cyprus is a key element. In a resolution overwhelmingly adopted by the House of Representatives last September, Congress "considers that ultimate, total demilitarization of the Republic of Cyprus would meet the security concerns of all parties involved, would enhance prospects for a peaceful and lasting resolution of the dispute regarding Cyprus, would benefit all of the people of Cyprus, and merits international support."

There has been no lack of prominent diplomats engaged in the search for a Cyprus settlement, including Richard Holbrooke, Richard Beattie and, most recently, U.N. Ambassador Madeleine Albright. We certainly welcome such engagement. What is lacking, however, is the political will and the flexibility necessary to make a breakthrough toward a compromise solution on the part of Ankara, which has long held the key to such a solution through its military, economic and political dominance of the occupied northern part of Cyprus since 1974. Regrettably, the current regime in Turkey does not hold much promise that this will happen soon, unless there is a concerted international effort directed toward Ankara.

A just and lasting solution to the Cyprus problem is to the benefit of all parties concerned and is in fact crucial to improved relations between Greece and Turkey. For the United States, which has excellent relations with Cyprus as highlighted during the recent visit of President Glafcos Clerides to Washington, such a solution enjoys bipartisan support and is in the national interest. It can be achieved with active U.S. engagement and will be a foreign policy success for the United States and indeed for any administration.

The issue is not to just "try everything" but to take all appropriate and effective steps to end the division of the island and safeguard the security and human rights of all its people in a demilitarized, federal Cyprus within the European Union.

ANDREW J. JACOVIDES,
Ambassador.

DEFERRAL OF ACTION ON CHEMICAL WEAPONS CONVENTION

Mr. PELL. Madam President, earlier today the majority and minority cooperated in the vitiation of a unanimous-consent agreement under which a landmark international agreement, the Chemical Weapons Convention, was to have been considered. I hope very much that the Senate will be able to return to that treaty under more favorable circumstances.

It is important to understand that the treaty had been subjected to a barrage of criticism in recent weeks—some of it apparently motivated by a simple desire to kill the treaty. As a result the treaty's merits were somewhat obscured.

The Senate's former majority leader, former Senator Robert Dole, the Republican Party's current candidate for President, expressed certain reservations yesterday. Mr. Dole indicated that he would only support the treaty if we had high confidence that our intelligence community would detect violations and that the treaty will be truly global and include such parties as Iraq, Iran, Syria, Libya, and North Korea.

In the context of the Dole comments it became clear that the Senate would probably have to consider two amendments offered by the majority as provided for in the unanimous-consent agreement. The first amendment appeared likely to prohibit the President from depositing the U.S. instrument of ratification unless the Director of Central Intelligence certified to the Senate that the intelligence community could monitor the treaty with high confidence. The second amendment would have prevented the President from depositing the instrument of ratification until he certified that such so-called rogue states as Iran, Iraq, Libya, North Korea, and Syria had ratified the treaty.

The first amendment would have established an impossible standard, since no Director of Central Intelligence could ever make such a certification with regard to the Chemical Weapons Convention.

It is the very nature of chemical weapons that they can be made with very simple equipment and in small spaces. Nations or terrorist groups could certainly succeed in manufacturing quantities of lethal chemicals. Certainly no Director of Central Intelligence could ever express high confidence about abilities to detect all such activities.

Most of those familiar with the treaty understand that it represents a departure from the high confidence of detection that could be applied in earlier accords dealing with strategic offensive arms, for instance. Silos can be counted and so can submarines and their missiles. Bombers at airfields are clearly visible.

We must understand now that we are entering new fields of arms control and that there are going to be fewer absolute certainties.

The important standard to be met with regard to verification of arms control agreements is that we would be able to detect any militarily significant illegal activity under the treaty and be able to respond to that activity before any damage to our national security interests could occur.

Mr. Dole tied the impossible demand for high confidence in verification to insistence that the convention be effectively verifiable. Effective verification alone is a standard most experts believe this convention should meet and has met. The need for effective verification has been a commonly accepted standard for years. Insistence on high confidence of the detection of myriad violations moves the standard to the realm of impossibility, as Mr. Dole and treaty opponents know fully.

President George Bush concluded that the treaty was indeed effectively verifiable. In a July 18, 1994, letter to me, former President Bush wrote:

The United States worked hard to ensure that the Convention could be effectively verified. At the same time, we sought the means to protect both United States security interests and commercial capabilities. I am convinced that the Convention we signed served both objectives, effectively banning

chemical weapons without creating an unnecessary burden on legitimate activities.

Our highest current military authority, General John Shalikashvili, Chairman of the Joint Chiefs of Staff, said in testimony prepared for the Committee on Foreign Relations:

While no treaty is 100 percent verifiable, the CWC is effectively verifiable. It provides for complementary and overlapping verification requirements that help deter CW violations. The CWC does this through the most intrusive verification provisions of any arms control regime to date. This verification regime consists of declarations, routine inspections of declared facilities, and short notice challenge inspection of any facility. Of note, some of the convention's imperfection was intentional in order to protect our military interests. The regime allows military commanders to protect classified information, equipment, and facilities unrelated to the Convention.

In response to concerns regarding clandestine programs, Secretary of Defense William J. Perry argued,

While we recognize that detecting illicit production of small quantities of chemical weapons will be extremely difficult, we also recognize that that would be even more difficult without a Chemical Weapons Convention. In fact, the Chemical Weapons Convention verification regime, through its declaration, routine inspection, fact-finding, consultation and challenge inspections, should prove effective in providing a wealth of information on possible chemical weapons programs that simply would not be available without the convention.

Mr. John Holum, Director of the U.S. Arms Control and Disarmament Agency stated:

While no treaty is 100 percent verifiable, the CWC will increase the risk of detection and therefore help deter illicit chemical weapons activities. Its declaration and inspection provisions will help build a web of deterrence, detection, and possible sanctions that reduces the incentives for states to build chemical weapons.

The then-Director of the Central Intelligence Agency, Mr. R. James Woolsey stated:

The Chemical Weapons Convention provides the intelligence community with a new tool to add to our collection tool kit. It is an instrument with broad applicability, which can help resolve a wide variety of problems. Moreover, it is a universal tool which can be used by diplomats and politicians, as well as intelligence specialists, to further a common goal: elimination of the threat of chemical weapons.

Mr. Woolsey also added:

The isolation and adverse attention that nonsignatories will draw upon themselves may spur greater multinational cooperation in attempting to halt offensive chemical weapons programs.

Secretary of State Christopher argued:

No treaty is 100 percent verifiable, but the Convention is carefully structured so that Parties tempted to cheat will never be sure they can evade detection and sanctions. The sooner the Convention enters into force, the sooner those countries possessing or seeking chemical weapons will have to make a choice: abide by its provisions or suffer the weight of penalties and sanctions imposed by the international community.

Secretary of Defense Perry stated:

The Chemical Weapons Convention contains the most extensive verification provisions of any arms control regime. It consists of detailed declarations, routine inspections of declared sites and short notice challenge inspections. With its complementary and overlapping verification requirements, the Chemical Weapons Convention's regime provides the means to help deter a state party from violating the provisions of the Convention. Therefore, we are confident that activities such as the destruction of declared chemical weapons stocks and production facilities can be verified. We are confident that we will be able to detect large-scale production, filling and stockpiling of chemical weapons.

With regard to the desire that the convention be truly global, I would point out that history demonstrates that well-conceived treaties, such as the Chemical Weapons Convention is, pick up parties over time and become worldwide in scope. That was certainly true of the Limited Test Ban Treaty and the nuclear Non-Proliferation Treaty. If we were to wait to join until all nations that caused us concern had joined, there is no question in my mind that the convention would be hobbled by our absence over a number of years.

It is no threat to Iraq, Iran, Syria, Libya, and North Korea to say that we will not join the treaty until they do. Rather than our applying pressure on them, it is more likely that such a stance would be used by the rogue states to apply pressure to us. It makes far more sense to start out, as envisaged by the treaty, with a minimum of 65 states parties and build from that point and be in a position to apply effective international pressure upon rogue states to behave themselves and get into the treaty.

Madam President, The Chemical Weapons Convention, if successful, will ban the production, acquisition, stockpiling, and use of chemical weapons.

In it each State Party undertakes never, under any circumstances, to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

Use chemical weapons;

Engage in any military preparations to use chemical weapons; and

Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this convention.

In addition each State Party undertakes, all in accordance with the provisions of the convention to destroy the chemical weapons it owns or possesses or that are located in any place under its jurisdiction or control;

Destroy all chemical weapons it abandoned on the territory of another State Party; and

Destroy any chemical weapons production facilities it owns or possesses or that are located in any place under its jurisdiction or control.

Finally, each State Party undertakes not to use riot control agents as a method of warfare.

The Chemical Weapons Convention provides for both routine and challenge inspections to assist in the verification of compliance with the convention.

Madam President, as chairman of the Committee on Foreign Relations, I held six public hearings and three closed sessions of the committee in 1994. In those hearings, witnesses included Secretary of State Warren Christopher; the Chairman of the Joint Chiefs of Staff, Gen. John Shalikashvili; the Director of the United States Arms Control Association, John D. Holum; the U.S. negotiator for the convention, Ambassador Stephen J. Ledogar; the Director of Central Intelligence, R. James Woolsey; and other senior officers of the national security and foreign policy agencies of the executive branch. In addition, the committee received extensive testimony from a number of nongovernmental witnesses. We were very careful to receive testimony from critics, as well as supporters, of the treaty so that the committee and the Senate would be assured the opportunity to receive a balanced and reasoned judgment on the merits of the convention.

Earlier this year, the committee held wrap-up hearings on the convention before marking up the treaty this spring. Both critics and supporters were heard. I and other supporters concluded following these final hearings that the United States would clearly benefit and could not suffer significant harm through joining the treaty and helping to ensure its success.

On April 25, the committee voted by a 2-to-1 margin, 12 to 6, to approve a substitute resolution of ratification I offered with the Senator from Indiana, [Mr. LUGAR] we were joined as co-sponsors in this venture by Senators KASSEBAUM, BIDEN, DODD, and KERRY.

In our resolution, which was fully supported by the executive branch, we made every effort to identify areas of legitimate concern and to deal effectively with them.

Madam President, I would hope that the resolution adopted by the committee with strong bipartisan support will help the Senate when it returns to consideration of this vitally important venture.

Madam President, a number of concerns have been expressed regarding the possible effects on business of the Chemical Weapons Convention. Some fear that the convention would pose a new and onerous burden on businesses throughout the country. It is important to understand that industry representatives were involved throughout the course of the negotiation and worked carefully to ensure that the chemical weapons ban would be effective and that it would be quite manageable from the standpoint of business.

Government officials also have been involved in efforts to ensure that implementation of the convention would constitute the smallest inconveniences possible.

In that connection, I received a very informative letter today from the Honorable Michael Kantor, Secretary of Commerce, and Mr. Philip Lauder, the Administrator of the Small Business administration dealing with a number of misconceptions regarding the impact of the convention on small business. Also today, I received additional information in a letter from Mr. Frederick L. Webber, president and chief executive officer of the Chemical Manufacturers Association. I ask that the letter be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. PELL. Earlier I drew to my fellow Senators, attention a letter signed by 53 senior executives of the chemical industry in support of the convention. I ask unanimous consent that that August 29 letter be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. PELL. Lastly, I would like to make a matter of public record the widespread support the convention enjoys in the arms control community. I ask unanimous consent that a September 3 letter to me and my fellow Members urging approval of the Chemical Weapons Convention also be printed in the RECORD following my remarks.

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

(See exhibit 3.)

Mr. PELL. We cannot ignore now the fact that the Chemical Weapons Convention is an integral part of a continuum of arms control agreements that developed in the period since the Second World War. In that period we have embarked on undertakings that ban nuclear weapons in outer space, on the ocean floor, that limit nuclear weapons elsewhere in the world and have resulted in the removal, following deployment, of a whole class of nuclear missiles from Europe. The nations of the world have joined together in a truly global effort to prevent the proliferation of nuclear weapons and they took advantage of the opportunity last year to extend the non-proliferation treaty indefinitely, without condition. We and the former Soviet Union forged ahead with a series of agreements limiting strategic offensive and defensive missiles and those agreements have now been broadened to include other successor states of the former Soviet Union. More than 2 decades ago the nations of the world agreed to ban biological weapons. With this agreement we are attempting to ban chemical weapons.

The result of all this is certainly not a perfect world and all of our efforts are not completely successful. We know, for instance, that there are biological weapons in the world. We know that there will be chemical weapons in the world—even under this convention when ratified. We know that we cannot solve the world's woes immediately through such accords, but we can change the goals of the world and we can change the direction of the body of nations. With the Chemical Weapons Convention we will move away from a situation which those who wish to have chemical weapons are free to have them, if not to use them, to a new situation in which the responsible nations of the world will be doing their best to banish this class of weapons from the face of the Earth.

The failure to take this could prove most unfortunate. A U.S. decision not to join the Chemical Weapons Convention would not stop it from entering into force, but would surely undermine the effectiveness of the treaty and would be harmful to critically important U.S. interests in identifying and dealing with chemical weapons threats in various parts of the world. It is not in our interest to be on the outside looking in as the Chemical Weapons Convention is set up.

Madam President, this convention enjoys the support of a number of Republican Senators and has virtually unanimous Senate Democratic support. I hope that the Senate will wisely return to consideration of this convention at an opportune and early moment. There is no question in my mind that we will pay a price for today's regrettably necessary decision. We can hope that the opportunity will return to get the United States back on track with regard to a chemical weapons ban.

EXHIBIT 1

THE SECRETARY OF COMMERCE,
Washington, DC, September 12, 1996.

Hon. CLAIBORNE PELL,
Ranking Minority Member, Senate Foreign Relations Committee, U.S. Senate, Washington, DC.

DEAR SENATOR PELL: We are writing to clarify a number of misconceptions regarding the impact of the Chemical Weapons Convention (CWC) on small business. Contrary to a number of allegations, the CWC will not impose a burdensome reporting requirement on small businesses nor will it subject them to a frequent and intrusive regime of international inspections.

The Administration estimates that about 2000 firms will be required to submit a data declaration. The reporting burden on smaller chemical companies will focus mainly on producers of "Unscheduled Discrete Organic Chemicals" (carbon compounds). The vast majority of these—some 1800–1900—firms, many of which are smaller companies, will only be required to submit annual reports that identify aggregate production ranges (e.g., this plant site produced over 10,000 metric tons of Unscheduled Discrete Organic Chemicals last year.) They will not be required to identify the specific chemicals that were produced.

Previously, the Administration had estimated that more companies would be required to submit a data declaration. However, additional analysis indicated that many did not cross the CWC production threshold for reporting. Further, administrative exemptions at the Organization for the Prohibition of Chemical Weapons [OPCW] will be crafted to exclude entire industries from reporting—biomediated processes (such as certain beverages) and polymers (such as plastics used in football helmets). In addition, plant sites that exclusively produce hydrocarbons (e.g. propane and ethylene) are completely excluded from any reporting requirements.

This "Unscheduled Discrete Organic Chemicals" data declaration does not require any information regarding imports, exports, usage or processing. We estimate that it will take a few hours to complete this "Unscheduled Discrete Organic Chemical" form the first time. Subsequent annual reporting should be much more simple and take less time.

No manufacturer of "Unscheduled Discrete Organic Chemicals" will be subject to a routine inspection during the first three years. After three years, OPCW will address the issue of inspections for manufacturers of "Unscheduled Discrete Organic Chemicals". It is unlikely that many of these producers would ever be inspected.

We anticipate that there will be very few challenge inspections and the prospect for a challenge inspection of a small producer of "Unscheduled Discrete Organic Chemicals" is remote indeed. It is likely that whatever challenge inspection requests are issued will be directed at military facilities. These facilities are well prepared to protect classified and other sensitive information.

In this regard, we want to make it clear that the Synthetic Organic Chemical Manufacturers Association (SOCMA) and its 260 members support ratification of the CWC. SOCMA's member companies are typically small businesses with fewer than 50 employees and less than $50 million in annual sales. Further, in a joint statement issued on September 10, 1996, SOCMA, the Chemical Manufacturers Association [CMA] and the Pharmaceutical Research Manufacturers Association [PHARMA] noted that "We urge the Senate to support this historic arms control agreement, and the prompt passage of the accompanying implementing legislation."

In short, the industry that will be affected by the CWC has taken a strong position in support of Senate ratification. We urge you to listen to their advice and ratify this important treaty.

Sincerely,

MICHAEL KANTOR,
Secretary of Commerce.

PHILIP LADER,
Administrator, Small Business Administration.

EXHIBIT 2

CHEMICAL MANUFACTURERS ASSOCIATION,
Arlington, VA, September 9, 1996.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR PELL: As the Senate prepares to consider the Chemical Weapons Convention (CWC), questions have been raised about the impact of the treaty on the commercial chemical industry in the United States. I want to reassure you that the U.S. chemical industry unequivocally supports this Convention.

As I stated before the Senate Foreign Relations Committee on numerous occasions, the Chemical Manufacturers Association [CMA] has carefully reviewed the impact of the CWC on industry. We tested the CWC's reporting and inspections obligations. We balanced the costs and benefits of this treaty, and found that the benefits far outweigh the costs.

The CWC will require approximately 2,000 commercial facilities in the United States to report on their activities. More than 90 percent of those facilities will only need to file a simple two-page form, once a year with the government. A second, smaller group of 200 facilites will have more detailed reporting requirements, and may be subject to on-site inspections. CMA's members worked closely with the government in drafting the reporting forms, and in two separate "road tests" of the reporting system, reported that the system was indeed reasonable. CMA members also helped craft the inspection procedures under the Convention. Those procedures have been tested in commercial facilities in the United States, to favorable reviews.

The second category of affected facilities are those that produce commercial chemicals that can be diverted into weapons production. It is important to note that even these facilities have significant protections under the CWC, such as the ability to negotiate how inspections are conducted, and the ability to protect sensitive trade secrets. Companies affected by these provisions have tested the draft U.S. reporting forms, and even offered their facilities to test inspection procedures. They reported to CMA that the CWC's benefits far out-weighed the comparatively smaller cost of implementation.

We are confident that between CMA and the other national trade associations with whom we have worked (including the Synthetic Organic Chemical Manufacturers Association and the Pharmaceutical Research and Manufacturers of America, among others), the overwhelming majority of companies that have possible CWC-related obligations know and understand their responsibilities.

The Senate should not learn belatedly about the implications of the Convention for business, and business should not learn belatedly about its obligations under the Convention. That is why education and outreach has been one of our major goals on the CWC. That is why we have worked cosely with the U.S. and other governments to focus the Convention on those facilities that may pose a risk to the goal of a world free from chemical weapons.

For your further information, I have enclosed a copy of my May 9, 1996 letter that was sent to all senators, which details the commercial impact of the CWC.

The American chemical industry fully supports this treaty. Senator, I urge you to vote in favor of the Chemical Weapons Convention.

If you have any questions concerning the chemical industry's support for the CWC, please have your staff contact me or Claude Boudrias, Legislative Representative for Trade & Tax at 703/741-5915

Sincerely,

FREDERICK L. WEBBER,
President & CEO.

EXHIBIT 3

AUGUST 29, 1996.

Hon. CLAIBORNE PELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR PELL: The undersigned senior executives of chemical companies urge your vote in support of the Chemical Weapons Convention [CWC], and quick Senate action on legislation to implement this important treaty.

The chemical industry has long supported the CWC. Our industry participated in negotiating the agreement, and in U.S. and international implementation efforts. The treaty contains substantial protections for confidential business information [CBI]. We know, because industry helped to draft the CBI provisions. Chemical companies also help test the draft CWC reporting system, and we tested the on-site inspection procedures that will help verify compliance with the treaty. In short, our industry has thoroughly examined and tested this Convention. We have concluded that the benefits of the CWC far outweigh the costs.

Indeed, the real price to pay would come from not ratifying the CWC. The treaty calls for strict restrictions on trade with nations which are not party to the Convention. The chemical industry is America's largest export industry, posting $60 billion in export sales last year. But our industry's status as the world's preferred supplier of chemical products may be jeopardized if the U.S. does not ratify the Convention. If the Senate does not vote in favor of the CWC, we stand to lose hundreds of millions of dollars in overseas sales, putting at risk thousands of good-paying American jobs.

The U.S. chemical industry has spent more than 15 years working on this agreement, and we long ago decided that ratifying the CWC is the right thing to do.

We urge you to vote in support of the Chemical Weapons Convention.

Sincerely,

J. Lawrence Wilson, Chairman & CEO, Rohm and Has Company, Chairman, Board of Directors, Chemical Manufacturers Association.

Alan R. Hirsig, President & CEO, ARCO Chemical Company, Chairman, Executive Committee, Chemical Manufacturers Association.

H.A. Wagner, Chairman, President & CEO, Air Products & Chemicals, Inc.

D.J. D'Antoni, President, Ashland Chemical Company.

Helge H. Wehmeier, President & CEO, Bayer Corporation.

John D. Ong, Chairman & CEO, The BFGoodrich Company.

Robert R. Mesel, President, BP Chemicals, Inc.

Charles M. Donohue, Vice President, Akzo Nobel Chemicals, Inc.

J. Dieter Stein, Chairman & CEO, BASF Corporation.

W.R. Cook, Chairman, President & CEO, Betz Dearborn, Inc.

Joseph M. Saggese, President & CEO, Borden Chemicals & Plastics, LP.

Dr. Aziz I. Asphahani, President & CEO, Carus Chemical Company.

Vincent A. Calarco, Chairman, President & CEO, Crompton & Knowles Corporation.

Richard A. Hazleton, Chairman & CEO, Dow Corning Corporation.

Howard J. Rudge, Senior Vice President & General Counsel, E.I. duPont de Nemours & Company.

Richard G. Fanelli, President & CEO, Enthone-OMI Inc.

J.E. Akitt, Executive Vice President, Exxon Chemical Company.

William S. Stavropoulos, President & CEO, The Dow Chemical Company.

Earnest W. Deavenport, Jr., Chairman of the Board & CEO, Eastman Chemical Company.

Bernard Azoulay, President & CEO, Elf Atochem North America.

Bruce C. Gottwald, CEO, Ethyl Corporation.

Ron W. Haddock, President & CEO, FINA, Inc.

Robert N. Burt, Chairman & CEO, FMC Corporation.

Otto Furuta, V.P. Global Logistics & Materials, Management, Great Lakes Chemical Corporation.

R. Keith Elliott, President & COO, Hercules, Inc.

Hans C. Noetzli, President & CEO, Lonza Inc.

Robert G. Potter, Executive Vice President, Monsanto Company.

Dr. William L. Orton, Senior Vice President, Chemical Operations, Givaudan-Roure Corporation.

Michael R. Boyce, President & COO, Harris Chemical Group.

Thomas F. Kennedy, President & CEO, Hoechst Celanese Corporation.

Mack G. Nichols, President & COO, Mallinckrodt Group, Inc.

S. Jay Stewart, Chairman & CEO, Morton International, Inc.

E.J. Mooney, Chairman & CEO, Nalco Chemical Company.

Jeffrey M. Lipton, President, NOVA Corporation.

Donald W. Griffin, Chairman, President & CEO, Olin Corporation.

Peter R. Heinze, Senior Vice President, Chemicals, PPG Industries, Inc.

Phillip D. Ashkettle, President & CEO, Reichhold Chemicals, Inc.

Ronald L. Spraetz, V.P., External Affairs & Quality, National Starch & Chemical Company.

J. Roger Hirl, President & CEO, Occidental Chemical Corporation.

David Wolf, President, Perstorp Polyols, Inc.

Ronald H. Yocum, Chairman, President & CEO, Quantum Chemical Company.

Thomas E. Reilly, Jr., Chairman, Reilly Industries, Inc.

Peter J. Neff, President & CEO, Rhone-Poulenc, Inc.

Nicholas P. Trainer, President, Sartomer Company.

J. Virgil Waggoner, President & CEO, Sterling Chemicals, Inc.

W.H. Joyce, Chairman, President & CEO, Union Carbide Corporation.

Arthur R. Sigel, President & CEO, Velsicol Chemical Corporation.

Roger K. Price, Senior V.P., Mining & Manufacturing, R.T. Vanderbilt Company, Inc.

F. Quinn Stepan, Chairman & President, Stepan Company.

William H. Barlow, Vice President, Business Development, Texas Brine Corporation.

Robert J. Mayaika, President, CEO & Chairman, Uniroyal Chemical Company, Inc.

John Wilkinson, Director of Government Affairs, Vulcan Chemicals.

Albert J. Costello, Chairman, President & CEO, W.R. Grace & Company.

EXHIBIT 4

APPROVE THE CHEMICAL WEAPONS CONVENTION,
Washington, DC, September 3, 1996.

DEAR SENATOR: We urge the Senate to approve the Chemical Weapons Convention when it comes to a vote in September.

The Convention, negotiated and signed by former President George Bush, is one of the most significant treaties in the history of arms control. It will ban an entire class of

weapons of mass destruction, including production, possession, transfer or use of chemical weapons. It will require all parties to destroy their chemical weapons stockpiles and production facilities and to open their chemical industries to international inspection.

The Chemical Weapons Convention is a valuable instrument for combating the spread of weapons of terror and mass destruction. The treaty's destruction and verification provision can build confidence among potential rivals that they can avoid a chemical arms race. It will also help keep these weapons out of the hands of terrorists.

The United States chemical industry strongly supports the Convention. The Pentagon strongly supports the agreement as well. It is most certainly in both the national and international interest to achieve the global elimination of a class of weapons that have proved more dangerous to innocent civilians than to military forces.

By its terms, the Convention enters into force 180 days after the 65th state has deposited its instruments of ratification with the U.N. Secretary General. Sixty-one countries have ratified the Convention at this point. Timely action by the Senate will send a clear signal of strong U.S. support, allowing the United States to exert its full leadership in persuading other countries to ratify.

We urge the Senate to approve as quickly as possible the Chemical Weapons Convention, to oppose crippling reservations or amendments, and at the same time move ahead with elimination of these heinous weapons from our arsenal.

Yours sincerely,

John B. Anderson, President, World Federalist Association.

Fr. Robert J. Brooks, Director of Government Relations, The Episcopal Church.

Mark B. Brown, Assistant Director for Advocacy, Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America.

J. Daryl Byler, Director, Washington Office, Mennonite Central Committee.

Robin Caiola, Co-Director, 20/20 Vision National Project.

Becky Cain, President, League of Women Voters.

Rev. Drew Christiansen, S.J., Director of the Office of International Peace and Justice, United States Catholic Conference.

Nancy Chupp, Legislative Director, Church Women United.

Gordon Clark, Executive Director, Peace Action.

Tom Clements, Senior Campaigner, International Nuclear Campaign, Greenpeace.

Thomas B. Cochran, Senior Scientist, Natural Resources Defense Council.

David Culp, Legislative Correspondent, Plutonium Challenge.

Johathan Dean, Adviser for International Security, Union of Concerned Scientists.

Ralph DeGennaro, Co-Director, Taxpayers for Common Sense.

Dr. Thom White Wolf Fassett, General Secretary, United Methodist Board of Church and Society.

Gerry Genesio, Executive Director, Veterans for Peace.

Stephen Goose, Program Director, Human Rights Watch, Arms Project.

Bruce Hall, Nuclear Disarmament Campaigner, Greenpeace, USA.

Howard W. Hallman, Chair, Methodists United for Peace With Justice.

John Isaacs, President, Council for a Livable World.

Amy Isaacs, National Director, Americans for Democratic Action.

Elenora Giddings Ivory, Director, Washington Office, Presbyterian Church (USA).

Wayne Jaquith, President, Public Education Center.

Spurgeon M. Keeny, Jr., President, Arms Control Association.

Michael Krepon, President, Stimson Center.

Ambassador James Leonard, Former U.S. Disarmament Negotiator.

Jay Lintner, Director, Washington Office, United Church of Christ, Office for Church in Society.

James Matlack, Director, Washington Office, American Friends Service Committee.

Lindsay Mattison, Executive Director, International Center.

Timothy A. McElwee, Director, Church of the Brethen, Washington Office.

Matthew Meselson, Professor of Molecular Biology, Harvard University.

Terence W. Miller, Director, Maryknoll Justice & Peace Office.

Bobby Muller, President, Vietnam Veterans of American Foundation.

Robert K. Musil, Executive Director, Physicians for Social Responsibility.

Maurice Paprin, President, Fund for New Priorities in America.

Albert M. Pennybacker, Director, Washington Office National Council of Churches.

Ann Rhee, Office of Public Policy, United Methodist Church, Women's Division.

Rev. Meg Riley, Director, Washington Office for Faith in Action, Unitarian Universalist Association.

Caleb Rossiter, Director, Demilitarization for Democracy.

Rabbi David Saperstein, Director, Religious Action Center for Reform Judaism.

Mark P. Schlefer, President, Lawyers Alliance for World Security, Committee for National Security.

Vice Admiral John Shanahan, U.S. Navy (Ret.), Director, Center for Defense Information.

Susan Shaer, Executive Director, Women's Action for New Directions.

Alice Slater, Executive Director, Economists Allied for Arms Reductions.

Amy E. Smithson, Senior Associate, CWC Implementation Project, The Henry L. Stimson Center.

Jeremy J. Stone, President, Federation of American Scientists.

Kathy Thorton, RSM, National Coordinator, Network: A National Catholic Social Justice Lobby.

Kay van der Horst, Director, CTA/Bellona Foundation USA.

Edith Villastrigo, Legislative Director, Women Strike for Peace.

Ross Vincent, Chair, Environmental Quality Strategy Team, Sierra Club.

Joe Volk, Executive Secretary, Friends Committee on National Legislation.

Frank Von Hippel, Princeton University.

MESSAGES FROM THE HOUSE

At 10:44 a.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 bill, without amendment

S. 1669. An act to name the Department of Veterans Affairs medical center in Jackson, Mississippi, as the "G.V. (Sonny) Montgomery Department of Veterans' Affairs Medical Center.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3539. An act to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes.

H.R. 3863. An act to amend the Higher Education Act of 1965 to permit lenders under the unsubsidized Federal Family Education Loan program to pay origination fee on behalf of borrowers.

The Message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 3666) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1997, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. LEWIS of California, Mr. DELAY, Mrs. VUCANOVICH, Mr. WALSH, Mr. HOBSON, Mr. KNOLLENBERG, Mr. FRELINGHUYSEN, Mr. NEUMANN, Mr. LIVINGSTON, Mr. STOKES, Mr. MOLLOHAN, Mr. CHAPMAN, Ms. KAPTUR, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. HYDE, Mr. SMITH of Texas, Mr. GALLEGLY, Mr. MCCOLLUM, Mr. GOODLATTE, Mr. BRYANT of Tennessee, Mr. BONO, Mr. GOODLING, Mr. CUNNINGHAM, Mr. MCKEON, Mr. SHAW, Mr. CONYERS Mr. FRANK of Massachusetts, Mr. BERMAN, Mr. BRYANT of Texas, Mr. BECERRA, Mr. MARTINEZ, Mr. GREEN of Texas, and Mr. JACOBS as the managers of the conference on the part of the House.

At 1:59 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3816) making appropriations for energy and water development for the fiscal year ending September 30, 1997, and for other purposes.

The message also announced that the House agrees to the amendment of the

Senate to the bill (H.R. 1642) to extend nondiscriminatory treatment—most-favored-nation treatment—to the products of Cambodia, and for other purposes.

ENROLLED BILLS SIGNED

A message from the House of Representatives, delivered by one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1669. An act to name the Department of Veterans Affairs medical center in Jackson, Mississippi, as the "G.V. (Sonny) Montgomery Department of Veterans Affairs Medical Center."

H.R. 1642. An act to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of Cambodia, and for other purposes.

H.R. 3230. An act to authorize appropriations for fiscal year 1997 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURE REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated.

H.R. 3863. An act to amend the Higher Education Act of 1965 to permit lenders under the unsubsidized Federal Family Education Loan program to pay origination fee on behalf of borrowers; to the Committee on Labor and Human Resources.

MEASURE PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar.

H.R. 3539. An act to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes.

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-4043. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-4044. A communication from the Deputy Assistant Secretary, Land and Minerals' management in the U.S. Department of the Interior, transmitting, pursuant to law, a rule regarding Alaska occupancy and use (RIN 1004-AC90) received on September 6, 1996; to the Committee on Energy and Natural Resources.

EC-4045. A communication from the acting Chair of the Federal Subsistence Board, transmitting, pursuant to law, a rule concerning Subsistence Management Regulations for Public Lands in Alaska (RIN 1018-AD2) received on September 9, 1996; to the Committee on Energy and Natural Resources.

EC-4046. A communication from the Director of the Office of Service Mining, U.S. Department of the Interior, transmitting, pursuant to law, a rule entitled "Alaska Regulatory Program; Final rule, approval of amendment," (received on September 10, 1996); to the Committee on Energy and Natural Resources.

EC-4047. A communication from the Congressional Review Coordinator, transmitting, pursuant to law, a rule entitled "Importation of Fruits & Vegetables," received on September 10, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC4048. A communication from the Congressional Review Coordinator, transmitting, pursuant to law, a rule entitled "Corn Cyst Nematode," received on September 10, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4049. A communication from the Director of the Office of Sustainable Fisheries in the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, transmitting, pursuant to law, a rule concerning fisheries of the exclusive economic zone off Alaska (received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4050. A communication from the Deputy Assistant Director for Fisheries in the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, transmitting, pursuant to law, a rule concerning fisheries of the Northeastern United States (RIN 0648-AJ07) received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4051. A communication from the Director of the Office of Sustainable Fisheries in the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, transmitting, pursuant to law, a rule concerning fisheries of the exclusive economic zone off Alaska (received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4052. A communication from the Director of the Office of Sustainable Fisheries in the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, transmitting, pursuant to law, a rule concerning fisheries off West Coast States and in the Western Pacific (received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4053. A communication from the Secretary of the U.S. Consumer Product Safety Commission, transmitting, pursuant to law, a report regarding a rule with respect to the standard for flamibility of children's sleepwear (received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4054. A communication from the Managing Director of the Federal Communications Commission, transmitting, pursuant to law, a report entitled "Table of Allotments, FM Broadcast Stations," (received on September 11, 1996); to the Committee on Commerce, Science, and Transportation.

EC-4055. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, two rules including one entitled "Approval and Promulgation of Air Quality Implementation Plans; Washington; Revision to the State Implementation Plan Vehicle Inspection and Maintenance Programs," (FRL5608-7, 5550-7) received on September 10, 1996; to the Committee on Environment and Public Works.

EC-4056. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, draft legislation regarding flood damage reduction at Cape Girardeau; to the Committee on Environment and Public Works.

EC-4057. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report regarding the Bayou Lafourche Jump Waterway, Louisiana; to the Committee on Environment and Public Works.

EC-4058. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, draft legislation regarding deep-draft navigation at San Juan Harbor, Puerto Rico; to the Committee on Environment and Public Works.

EC-4059. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report regarding a rule entitled "Medicare and Medicaid Programs: Hospital Standards for Potentially Infectious Blood and Blood Products," (RIN 0910-AA05) received on September 11, 1996; to the Committee on Finance.

EC-4060. A communication from the Assistant Secretary of Legislative Affairs, transmitting, pursuant to law, the report of a Presidential Determination regarding POW/MIA Military Drawdown for Vietnam; to the Committee on Foreign Relations.

EC-4061. A communication from the Administrator of the U.S. Agency for International Development, transmitting, pursuant to law, the Annual Report for fiscal year 1996; Foreign Relations.

EC-4062. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC-4063. A communication from the Assistant General Counsel of the U.S. Information Agency, transmitting, pursuant to law, a rule with respect to the Exchange Visitor Program (received on September 12, 1996); to the Committee on Foreign Relations.

EC-4064. A communication from the Director of the Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, a rule entitled "Education Tests: Minimum Standards for Administration, Interpretation, and Use," (RIN 1129-AA44) received on September 11, 1996; to the Committee on the Judiciary.

EC-4065. A communication from the Deputy Administrator of the Drug Enforcement Administration, Department of Justice, transmitting, pursuant to law, a rule regarding removal of exemption for certain pseudoephedrine products (received on September 5, 1996); to the Committee on the Judiciary.

EC-4066. A communication from the Chairman of the Board of Directors of the Tennessee Valley Authority, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1995; to the Committee on the Judiciary.

EC-4067. A communication from the Commissioner of the Immigration and Naturalization Service, U.S. Department of Justice, transmitting, pursuant to law, a rule

entitled "Introduction of New Employment Authorization Document," (RIN1115–AB73) received on September 5, 1996; to the Committee on the Judiciary.

EC–4068. A communication from the Director of the Central Intelligence Agency, transmitting, pursuant to law, the report under the Freedom of Information Act for the Calendar Year 1995; to the Committee on the Judiciary.

EC–4069. A communication from the Executive Director of the Assassination Records Review Board, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1995; to the Committee on the Judiciary.

EC–4070. A communication from the Commissioner of the Immigration and Naturalization Service, U.S. Department of Justice, transmitting, pursuant to law, a rule entitled "Immigration and Nationality Forms," (RIN1115–AD58) received on September 10, 1996; to the Committee on the Judiciary.

EC–4071. A communication from the Commissioner of the Immigration and Naturalization Service, U.S. Department of Justice, transmitting, pursuant to law, a rule entitled "Removal of Obsolete Sections of the Regulation Concerning Temporary Projected Status for Salvadorans," (RIN1115–AE43) received on September 10, 1996; to the Committee on the Judiciary.

EC–4072. A communication from the Commissioner of the Immigration and Naturalization Service, U.S. Department of Justice, transmitting, pursuant to law, a rule entitled "Children Born Outside the United States; Application for Certificate of Citizenship," (RIN1115–AE07) received on September 10, 1996; to the Committee on the Judiciary.

EC–4073. A communication from the General Counsel for the Department of Energy, transmitting, pursuant to law, a rule regarding patent waiver regulation (received on August 8, 1996); to the Committee on the Judiciary.

EC–4074. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a rule entitled "Medicare and Medicaid Programs; Hospital Standard for Potentially HIV Infectious Blood and Blood Products," (RIN 0938–AE40) received on September 11, 1996; to the Committee on Labor and Human Resources.

EC–4075. A communication from the Secretary of the U.S. Department of Education, transmitting, pursuant to law, a report entitled "Summary of Chapter 2 Annual Reports 1993–1994,"; to the Committee on Labor and Human Resources.

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. D'AMATO (for himself, Mr. MOYNIHAN, Mr. GRAMS, Mr. WELLSTONE, Mr. SIMON, and Ms. MOSELEY-BRAUN):

S. 2067. A bill to extend certain Medicare community nursing organization demonstration projects; to the Committee on Finance.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2068. A bill to provide for a study of the recommendations of the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, and for other purposes; to the Committee on Indian Affairs.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2069. A bill to suspend temporarily the duty on specialized glass for use in glass-ceramic stovetops; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. WARNER):

S. 2070. A bill to ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which producers pollution and other impacts adversely affecting the value of their homes; to the Committee on Governmental Affairs.

By Mr. KERRY:

S. 2071. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LIEBERMAN (for himself, Mrs. HUTCHISON, Mr. NUNN, Mr. DEWINE, Mr. COATS, Mr. FAIRCLOTH, Mr. BYRD, Mrs. KASSEBAUM, Mr. DORGAN, Mr. CONRAD, and Mr. HATCH):

S. Res. 290. A resolution expressing the sense of the Senate that the major broadcast television networks should revive their traditional "Family Hour" and voluntarily reserve the first hour of prime time broadcasting for family-oriented programming; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself, Mr. MOYNIHAN, Mr. GRAMS, Mr. WELLSTONE, Mr. SIMON, and Ms. MOSELEY-BRAUN):

S. 2067. A bill to extend certain Medicare community nursing organization demonstration projects; to the Committee on Finance.

COMMUNITY NURSING ORGANIZATIONS LEGISLATION

Mr. D'AMATO. Mr. President, I introduce legislation which will permit a three-year reauthorization of certain Medicare Community Nursing Organization [CNO] demonstration projects within the Health Care Financing Administration [HCFA].

In 1987, in response to the Omnibus Budget Reconciliation Act of 1987, Congress authorized the Community Nursing Organization demonstration projects to test capitated payment under the Medicare Program for community nursing and ambulatory care services furnished to beneficiaries. The demonstration projects are structured to answer two questions: First, is it feasible to have a capitated, case-managed, nurse service delivery model for home health and ambulatory care; and second, What is the impact on enrollees, providers, and the larger health care system?

These CNO programs are intended to reduce the breakup in the delivery of health care services, to reduce the use of costly emergency care services, and to improve the continuity of home health and ambulatory care for Medicare beneficiaries. CNO's are responsible with providing home health care, case management, outpatient physical and speech therapy, ambulance services, prosthetic devices, durable medical equipment, and any optional, HCFA-approved services appropriate to prevent the need to institutionalize Medicare enrollees.

HCFA awarded four CNO sites in September 1992 through the competitive procurement process: First, Visiting Nurse Service in New York, NY—a not-for-profit Medicare certified home health agency; second, Carle Clinic in Mahomet, IL—a multispecialty group practice; third, Carondelet Health Care in Tuscon, AZ—a hospital-based organization; and fourth, Living at Home/Block Nurse Program in St. Paul, MN—a not-for-profit nursing organization replicating the Block Nurse Program model. These CNO's operate under full financial risk to themselves and are financially responsible for the provision of all mandatory community nursing and ambulatory care services available to Medicare enrollees.

Mr. President, these CNO projects are consistent with congressional efforts to introduce a wider range of managed care options to Medicare beneficiaries. Their authorization needs to be extended in order to ensure a fair testing of the CNO managed care concept. We need the extention of this demonstration authority to continue to provide an important example of how coordinated care can provide additional benefits without increasing Medicare costs. In addition, further time is necessary to evaluate the impact of the CNO contribution to Medicare patients and to assess their capacity for operating under a fixed budget.

Most importantly, this demonstration extension will not increase Medicare expenditures. CNO's actually save Medicare dollars by providing better and more accessible health care in homes and in community settings, thereby allowing enrollees to avoid unnecessary hospitalizations and nursing home admissions. By demonstrating what a primary care-oriented nursing practice can accomplish with elderly or disabled patients, CNO's help illuminate methods for increasing benefits, saving funding dollars, and most importantly, improving the quality of life for patients.

Mr. President, I urge my colleagues to consider this bill carefully and join me in seeking to extend these cost-savings and patient-oriented CNO demonstrations for another 3 years.

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. 2067

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF CERTAIN MEDICARE COMMUNITY NURSING ORGANIZATION DEMONSTRATION PROJECTS

Notwithstanding any other provision of law, demonstration projects conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 my be conducted for an additional period of 3 years, and the deadline for any report required relating to the results of such projects shall be not later than 6 months after the end of such additional period.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2068. A bill to provide for a study of the recommendations of the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, and for other purposes; to the Committee on Indian Affairs.

THE ALASKA NATIVE COMMISSION STUDY ACT OF 1996

• Mr. MURKOWSKI. Mr. President, today, I am introducing the Alaska Native Commission Study bill. I am pleased that my colleague Senator STEVENS of Alaska is joining me as a cosponsor. This legislation is the product of years of study and candid self-appraisal by Alaska Natives about their standard-of-living problems and the need to address these problems. It is also the product of a congressional act that called for the study of the problems.

Public Law 101-379 established the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, better known as the Alaska Natives Commission. Among its many recommendations, the Commission called for Federal funding to examine how best to implement the recommendations of the Commission. The purpose of this bill is to establish the funding for such a study.

The need for this study is well documented. In 1989, I and Representative DON YOUNG of Alaska introduced a bill creating the Alaska Natives Commission, a publish commission jointly funded by the State and Federal Governments. The creation of the commission followed the publication in 1989 of the "Report on the Status of Alaska Natives: A Call for Action" by the Alaska Federation of Natives and was also spurred by extensive congressional hearings which focussed on the need for the first comprehensive assessment of the social, cultural, and economic condition of Alaska's 90,000 Natives since the enactment of the Alaska Native Claims Settlement Act, Public Law 92-203.

Here are but some of the findings of the Alaska Natives Commission regarding the condition of Alaska Natives:

Alcohol problems are one of the key reasons why Alaska Natives comprise 36-40 percent of the statewide prison population, even though they total only 16 percent of the population of Alaska.

Alaska Native families need help: In 1988, one out of every eleven Alaska Native children received child protection services from the State of Alaska.

Alaska Natives need to have opportunities and training for jobs: In 1990, 20 percent of the Native work force was unemployed, and for Alaska Natives living in villages, the rate can be as high as 50-80 percent, depending on the season and location.

Alaska Natives need more opportunities for an education: 12-15 percent of Alaska Native high school students drop out from village/rural schools; 60 percent of Native students entering urban high schools do not graduate.

This bill calls for the authorization of $350,000 in Federal funds to be spent by the Alaska Federation of Natives to study how to implement the recommendations of the Alaska Native Commission. This investment is needed to create realistic solutions to serious problems. I would note that Congressman YOUNG has introduced a companion bill in the House.•

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 2069. A bill to suspend temporarily the duty on specialized glass for use in glass-ceramic stovetops; to the Committee on Finance.

TEMPORARY DUTY SUSPENSION LEGISLATION

• Mr. HOLLINGS. Mr. President, I introduce legislation that will preserve jobs in South Carolina. The bill temporarily suspends the duty on specialized glass for use in glass-ceramic stove tops. Corning Company has made an investment in Fountain Inn, SC to revive a factory that has been struggling. The temporary suspension of the duty on glass-ceramic stove tops will enable Corning to keep jobs in the United States.•

By Mr. WYDEN (for himself and Mr. WARNER):

S. 2070. A bill to ensure that homeowners receive adequate notice of and opportunity to comment on activities likely to adversely affect the value of their homes; and to create procedures for homeowners to receive financial compensation for development which produces pollution and other impacts adversely affecting the value of their homes; to the Committee on Governmental Affairs.

THE HOMEOWNERS PROTECTION AND EMPOWERMENT ACT

• Mr. WYDEN. Mr. President, in this Congress, there has been considerable debate on the issue of property rights. But the debate so far has essentially ignored the interests of the largest group of property owners in America—the 60 million homeowners.

Until today, property rights legislation has tended to protect only a limited group of property owners, those whose use or development of their property is regulated by the Federal Government. The typical homeowners who we all represent live in already constructed homes; they are not developing their property. When they use their property in a typical fashion, they are not regulated under the wetlands law, the endangered species law, or any other Federal status.

The typical homeowner is helped, not hurt, by many government policies that keep our air clean and our water health and pure. When these homeowners' property rights and property values are threatened, the threat is more likely to come from pollution from neighboring factories than from government actions to protect the environment.

Today, along with Senator WARNER, I am introducing the Homeowners Protection and Empowerment Act to make sure the interests of America's homeowners are protected. Our legislation provides homeowners with the right to sue for compensation whenever their property values are diminished by an action regulated by the Federal Government. It provides homeowners with a Federal right of action against anyone responsible for decreasing a private party homeowner's property value by $10,000 or more, whether it's a Federal agency or a private party acting under authority of Federal law.

For example, if a developer fills in federally regulated wetlands, the result may be increased flooding on downstream homeowners' properties, because undeveloped wetlands help to control flooding. This increased risk of flooding diminishes the value of downstream homeowners' properties. Under the Homeowners Protection and Empowerment Act, any affected homeowner whose property value declined by at least $10,000 because of the developer's wetland filling would have the right to sue the developer for compensation.

The legislation also requires anyone conducting an activity that both requires a permit or other authorization under Federal law and generates pollution or has other property damaging impacts to give written notice about the activity and its potential impact to each homeowner living within a quarter mile of the activity.

I want to thank Senator WARNER for working with me on this legislation and for helping to clarify that the intent of the legislation is to protect typical homeowners. I look forward to working with him to move the legislation forward.•

By Mr. KERRY:

S. 2071. A bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes; to the Committee on Labor and Human Resources.

THE WORKPLACE RELIGIOUS FREEDOM ACT

• Mr. KERRY. Mr. President, I am proud today to introduce the Workplace Religious Freedom Act of 1996. This bill would protect workers from on-the-job discrimination. It represents a milestone in the protection of religious liberty, assuring that all workers have equal employment opportunities.

In 1972, Congress amended the Civil Rights Act of 1964 to require employers to reasonably accommodate an employee's religious practice or observance unless doing so would impose an undue hardship on the employer. This 1972 amendment, although completely appropriate, has been interpreted by the courts so narrowly as to place little restraint on an employer's refusal to provide religious accommodation. The Workplace Religious Freedom Act will restore to the religious accommodation provision the weight that Congress originally intended and help assure that employers have a meaningful obligation to reasonably accommodate their employees' religious practices.

The restoration of this protection is no small matter. For many religiously observant Americans the greatest peril to their ability to carry out their religious faiths on a day-to-day basis may come from employers. I have heard examples from around the country about a small minority of employers who will not make reasonable accommodation for observance of the Sabbath and other holy days; for employees who must wear religiously required garb, such as a yarmulke; or for clothing that meets modesty requirements.

The refusal of an employer, absent undue hardship, to provide reasonable accommodation of a religious practice should be seen as a form of religious discrimination, as originally intended by Congress in 1972. And religious discrimination should be treated fully as seriously as any other form of discrimination that stands between Americans and equal employment opportunities. Enactment of the Workplace Religious Freedom Act will constitute an important step toward ensuring that all members of society, whatever their religious beliefs and practices, will be protected from an invidious form of discrimination.

It is important to recognize that, in addition to protecting the religious freedom of employees, this legislation protects employers from an undue burden. Employees would be allowed to take time off only if their doing so does not pose a significant difficulty or expense for the employer. This commonsense definition of undue hardship is used in the Americans with Disabilities Act and has worked well in that context.

I believe this bill should receive bipartisan support. It has been endorsed by a wide range of organizations including the American Jewish Committee, the Baptist Joint Committee, the Christian Legal Society, and the Jewish Community Relations Council of Greater Boston.

As the Jewish high holidays and eventually Christmas approach, I feel strongly that workers should not have to worry that they will be prohibited from choosing to take time off from work to observe a religious holiday. I urge this body to pass this legislation so that all workers can have equal employment opportunities and practice their religion.•

ADDITIONAL COSPONSORS

S. 863

At the request of Mr. GRASSLEY, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 863, a bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 905

At the request of Mr. AKAKA, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 905, a bill to provide for the management of the airplane over units of the National Park System, and for other purposes.

S. 1129

At the request of Mr. ASHCROFT, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 1129, a bill to amend the Fair Labor Standards Act of 1938 to permit employers to provide for flexible and compressed schedules, to permit employers to give priority treatment in hiring decisions to former employees after periods of family care responsibility, to maintain the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes.

S. 1963

At the request of Mr. ROCKEFELLER, the names of the Senator from South Carolina [Mr. HOLLINGS], the Senator from Texas [Mrs. HUTCHISON], the Senator from Vermont [Mr. LEAHY], the Senator from Maryland [Ms. MIKULSKI], and the Senator from California [Mrs. BOXER] were added as cosponsors of S. 1963, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for Medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 1967

At the request of Mr. BROWN, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1967, a bill to provide that members of the Armed Forces who performed services for the peacekeeping efforts in Somalia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.

S. 1968

At the request of Mr. FAIRCLOTH, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 1968, a bill to reorder United States budget priorities with respect to United States assistance to foreign countries and international organizations.

S. 1969

At the request of Mr. BRADLEY, the names of the Senator from Iowa [Mr. GRASSLEY], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Virginia [Mr. ROBB], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 1969, a bill to establish a Commission on Retirement Income Policy.

S. 2018

At the request of Mr. GORTON, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 2018, a bill to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

AMENDMENT NO. 5244

At the request of Mr. KOHL, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of amendment No. 5244 proposed to H.R. 3756, a bill making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes.

At the request of Mr. ROBB, his name was added as a cosponsor of amendment No. 5244 proposed to H.R. 3756, supra.

SENATE RESOLUTION—290—RELATIVE TO MAJOR BROADCAST TELEVISION NETWORKS

Mr. LIEBERMAN (for himself, Mrs. HUTCHISON, Mr. NUNN, Mr. DEWINE, Mr. COATS, Mr. FAIRCLOTH, Mr. BYRD, Mrs. KASSEBAUM, Mr. DORGAN, Mr. CONRAD, and Mr. HATCH) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 290

Expressing the sense of the Senate that the major broadcast television networks should revive their traditional "Family Hour" and voluntarily reserve the first hour of prime time broadcasting for family-oriented programming.

Whereas the major broadcast television networks once adhered to a voluntary, self-enforced practice of setting aside the first hour of prime time for programming suitable

for audiences of all ages, especially young children;

Whereas the major networks have recently abandoned this practice and chosen to fill this hour with programs laden with sexually suggestive language and behavior and mature themes;

Whereas according to the most recent Nielsen ratings, approximately 9,000,000 children between the ages of 2 and 11 watch television during an average minute between 8:00 p.m. and 9:00 p.m. e.s.t;

Whereas the clear majority of American parents are concerned about the negative influence of television on younger viewers, who watch on average 21 hours of television a week;

Whereas that concern was recently demonstrated again in a poll conducted by U.S. News & World Report which found that 76 percent of Americans believe that television contributes to the problem of teenage pregnancy, 83 percent believe that television contributes to casual sex, 90 percent believe that television contributes to teenagers having sex too soon, and 92 percent believe that television contributes to violence on our streets;

Whereas the Senate is comprised of elected representatives who have a responsibility to give voice to the concerns of their constituents; and

Whereas the Senate expresses public sentiment in this resolution, and does not attempt to establish by law or otherwise mandate or dictate any requirements regarding the content of television programming: Now, therefore, be it

Resolved, That it is the sense of the Senate that the major broadcast television networks should renew their commitment to voluntarily reserving the first hour of prime time for programming suitable for members of American families of all ages.

Mr. LIEBERMAN. Mr. President, I rise today to continue a dialog on an issue that many Americans, especially millions of parents, care deeply about: the profound and often harmful influence that television is having on our children and our country.

As my colleagues know, the public's increasing anger about the pervasive presence of sex, violence, and vulgarity on the small screen has resulted in widespread criticism of the television industry. I believe that much of that criticism has been warranted. Just about a year ago this week I came to the floor to take the major networks to task for sponsoring what was widely reviled as the most lewd, crude, and rude prime-time lineup in television history, and for helping to drag our societal standards down yet another notch.

So today, with the debut of the 1996 fall season upon us, I think it is only fair and right to focus on what I see as some truly positive developments on this front, and to give praise to the television industry where praise is due.

Over the last 18 months, we have seen industry leaders embrace the V-chip, which I was proud to cosponsor along with my colleague from North Dakota, Senator CONRAD, and accept our challenge to create a self-enforced ratings system that will give parents more information about the programs coming into their homes. We have seen the nation's broadcasters acknowledge their obligation to promote more educational shows for children, and commit to airing every week at least 3 hours of programming that will enrich young minds and promote positive values.

And perhaps most encouraging of all, we have seen—quite literally seen—some modest yet significant changes in the quality of the product flowing over the airwaves. The deluge of perversity and degradation coming out of the trash talk TV shows has receded, and Rosie O'Donnell has shown with her quick wit and engaging personality that clean talk can clean up in the ratings. Also, in response to the deep concern the American people have expressed about the damage done by televised violence, the major broadcast networks have made a real effort to reduce the number of graphic killings, assaults and rapes depicted during prime time, and it has made a noticeable difference.

And, in terms of the new fall season, the reviews I've read indicate that many of the shows premiering in the next few days turn away from the smuttiness that characterized so many of the sitcoms that debuted last year and offended and disgusted so many viewers. Even more promising, the networks seem more willing to take a chance on family-oriented shows that seek to uplift as they entertain and to reinforce rather than tear down our common values. Programs such as "Second Noah," which ABC chose to bring back this fall, and "Touched By an Angel," which CBS stuck by when it struggled to gain an audience and is now one of the networks prized assets.

I think it's worth noting to my colleagues that the producer of "Touched by An Angel," Martha Williamson, will be honored at reception in the Capitol tonight for her commitment to creating entertainment that elevates us and appeals to our better rather than our baser natures. I am proud to be cohosting this reception, at which Ms. Williamson will premiere her new series, "Promised Land," also on CBS this fall, and I would encourage Members to attend.

Mr. President, by calling attention to these positive signs I do not mean to suggest that television's problems have disappeared practically overnight, or that the viewing public is suddenly satisfied. The reality is that there is still too much gratuitous and gruesome violence not only available to but targeted at our children; there are still too many shows that seek to shock and titillate, that add to the degradation of our culture and fuel the "anything-goes" mentality that I believe is at the root of the moral decline America is experiencing today.

A survey released by the American Medical Association this week left little doubt that the public remains highly concerned, showing that 75 percent of parents are "disgusted with media violence." In response, the AMA took the significant step of sending out guidelines to 60,000 doctors nationwide to help educate them and the parents they serve about the negative effects of media violence on children.

But I firmly believe that television is making progress. I also believe that many of the people who run the television industry want us to know that they're not walking away from the responsibility that goes along with their enormous power and influence. So as we continue to give voice to the public's discontent, it is also important to encourage the responsiveness industry leaders have already shown, albeit sometimes grudgingly, and to encourage them to keep moving forward.

That is why I am joining with 10 of my colleagues today to submit what we see as a very positive sense-of-the-Senate resolution, one that expresses our support for the direction the television industry seems to be moving in. Quite simply, this resolution asks the major broadcast networks to help parents do their jobs by bringing back what was once known as the "Family Hour". It urges the networks to once again set aside the first hour of prime-time for programs that I can watch together with my wife and our 8-year-old daughter without fearing that I will be embarrassed or my values will be assaulted.

In recent years, that is something that most parents have been legitimately fearful of. One of the most common complaints we hear about television concerns the proliferation of lewd jokes and gratuitous sex scenes in the early hours of prime-time, when many young children are watching. Many parents feel that this kind of content goes far beyond being inappropriate and offensive. They believe, as do we, that these messages are harmful to their children's development and undercut the fundamental values that parents are trying to instill in their families.

Our resolution asks the networks to recognize the difficulties parents face in shielding their children from this kind of content, and to help meet them halfway. In effect, it asks them to do no more than to return to a practice they once adhered to willingly. This is a case where the networks for long time acted quite responsibly and did a public service by creating a safe haven for parents with young children. That is one rerun that most American families want desperately to see again.

We do not want to pass any law or dictate what programs can or can't be shown during the 8 o'clock hour. We just want to reiterate to the people who run the networks that this an issue of grave concern to American families, and that the family hour is a

reasonable, commonsense concept that has overwhelming support. A companion resolution in the House has attracted 97 cosponsors, and 20 Senators have already endorsed the family hour movement, having signed a petition we sent to the network presidents in April.

Mr. President, the resonance of this issue was confirmed to me by a conversation I had with a leading network executive last year. He confided in me that he regrets not being able to sit down with his children and watch television together as a family, much as he did with his parents years ago, much as I did with my parents when I was young. This is one of the great joys of the medium, and it is disappointing to many parents today that they cannot share in it with their children.

It doesn't have to be that way, as CBS Entertainment has made clear this fall, when its president pledged publicly that CBS would only air programs at 8 o'clock that the whole family could watch together. Congress can help by adopting this resolution and encouraging—encouraging, not forcing—the television industry to follow CBS's lead and help restore the peace of mind that so many families are seeking. Along with my original cosponsors, Senators HUTCHISON, NUNN, and DEWINE, I strongly urge my colleagues on both sides of the aisle to support it, to make a strong statement on behalf of America's families, and I look forward to its adoption.

AMENDMENTS SUBMITTED

THE TREASURY DEPARTMENT APPROPRIATIONS ACT, 1997

BYRD AMENDMENT NO. 5258

(Ordered to lie on the table.)

Mr. BYRD submitted an amendment intended to be proposed by him to the bill (H.R. 3756) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1997, and for other purposes; as follows:

On page 49, line 18, insert before the colon ": *Provided*, That of such amount provided for non-prospectus construction projects $250,000 shall be available until expended for the acquisition, lease, construction, and equipping of flexiplace work telecommuting centers in the State of West Virginia".

KENNEDY AMENDMENT NO. 5259

(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill, H.R. 3756, surpa; as follows:

At the appropriate place, add the following new section:

SEC. . (a) None of the funds appropriated under Federal law for fiscal year 1997 to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to, any of the provisions of section 504 of Public Law 104-134 (110 Stat. 1321-53), and all funds appropriated under Federal law for fiscal year 1997 to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such section, except as provided in subsection (b) or as otherwise provided in Federal law.

(b) Notwithstanding subsection (a), subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide related legal assistance to—

(1) an alien who has been battered or subjected to extreme cruelty in the United States by—

(A)(i) a spouse or parent of the alien; or

(ii) a member of the spouse's or parent's family residing in the same household as the alien (in a case in which the spouse or parent, respectively, consented or acquiesced to such battery or cruelty); or

(B) any other person with whom the alien has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incident of the battery or cruelty took place; or

(2)(A) an alien whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (in a case in which the alien did not actively participate in the battery or cruelty); or

(B) a member of the spouse's or parent's family residing in the same household as the alien (in a case in which the spouse or parent, respectively, consented or acquiesced to such battery or cruelty and the alien did not actively participate in the battery or cruelty).

(c) Subsection (b) shall apply, notwithstanding the enactment of Federal law after the date of enactment of this Act, unless such law explicitly excludes such application by reference to this section.

(d) As used in this section:

(1) The term "battered or subjected to extreme cruelty" has the meaning given the term "was battered by or was the subject of extreme cruelty" under regulations issued pursuant to section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) (as amended by subtitle G of the Violence Against Women Act of 1994 (Pub. L. 103-322; 108 Stat. 1953)).

(2) The terms "legal assistance" and "recipient" have the meanings given the terms in section 1002 of the Legal Services Corporation Act (42 U.S.C. 2996a).

(3) The term "related legal assistance" means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described in subsection (a).

WYDEN (AND KENNEDY) AMENDMENT NO. 5260

(Ordered to lie on the table.)

Mr. WYDEN (for himself, Mr. KENNEDY, and Mr. KYL) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following new title:

TITLE —PROTECTION OF PATIENT COMMUNICATIONS

SEC. 01. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This title may be cited as the "Patient Communications Protection Act of 1996".

(b) FINDINGS.—Congress finds the following:

(1) Patients need access to all relevant information to make appropriate decisions, with their physicians, about their health care.

(2) Restrictions on the ability of physicians to provide full disclosure of all relevant information to patients making health care decisions violate the principles of informed consent and practitioner ethical standards.

(3) The offering and operation of health plans affect commerce among the States. Health care providers located in one State serve patients who reside in other States as well as that State. In order to provide for uniform treatment of health care providers and patients among the States, it is necessary to cover health plans operating in one State as well as those operating among the several States.

SEC. 02. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

(a) IN GENERAL.—

(1) PROHIBITION OF CERTAIN PROVISIONS.—Subject to paragraph (2), an entity offering a health plan (as defined in subsection (d)(2)) may not include any provision that prohibits or restricts any medical communication (as defined in subsection (b)) as part of—

(A) a written contract or agreement with a health care provider,

(B) a written statement to such a provider, or

(C) an oral communication to such a provider.

"(2) CONSTRUCTION.—Nothing in this section shall be construed as preventing an entity from exercising mutually agreed upon terms and conditions not inconsistent with paragraph (1), including terms or conditions requiring a physician to participate in, and cooperate with, all programs, policies, and procedures developed or operated by the person, corporation, partnership, association, or other organization to ensure, review, or improve the quality of health care.

(3) NULLIFICATION.—Any provision described in paragraph (1) is null and void.

(b) MEDICAL COMMUNICATION DEFINED.—In this section, the term "medical communication" means a communication made by a health care provider with a patient of the provider (or the guardian or legal representative of such patient) with respect to the patient's physical or mental condition or treatment options.

(e) ENFORCEMENT THROUGH IMPOSITION OF CIVIL MONEY PENALTY—

(1) IN GENERAL.—Any entity that violates paragraph (1) of subsection (a) shall be subject to a civil money penalty of up to $25,000 for each violation. No such penalty shall be imposed solely on the basis of an oral communication unless the communication is part of a pattern or practice of such communications and the violation is demonstrated by a preponderance of the evidence.

(2) PROCEDURES.—The provisions of subsections (c) through (l) of section 112SA of the Social Security Act (42 U.S.C. 1320a-7a) shall apply to civil money penalties under paragraph (1) in the same manner as they apply to a penalty or proceeding under section 1128A(a) of such Act.

(d) DEFINITIONS.—For purposes of this section:

(1) HEALTH CARE PROVIDER.—The term "health care provider" means anyone licensed or certified under State law to provide health care services.

(2) HEALTH PLAN.—The term "health plan" means any public or private health plan or

arrangement (including an employee welfare benefit plan) which provides, or pays the cost of, health benefits and includes an organization of health care providers that furnishes health services under a contract or agreement with such a plan.

(3) COVERAGE OF THIRD PARTY ADMINISTRATORS.—In the case of a health plan that is an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974), any third party administrator or other person with responsibility for contracts with health care providers under the plan shall be considered, for purposes of this section, to be an entity offering such health plan.

(e) NON-PREEMPTION OF STATE LAW.—A State may establish or enforce requirements with respect to the subject matter of this section, but only if such requirements are consistent with this title and are more protective of medical communications than the requirements established under this section.

(g) EFFECTIVE DATE.—Subsection (a) shall take effect 180 days after the date of the enactment of this Act and shall apply to medical communications made on or after such date, and shall terminate on September 30, 2001.

(h) OFFSET.—Notwithstanding any other provision of this Act, no more than $1,530,465,000 shall be available for building operations in fiscal year 1997.

GRAMS AMENDMENT NO. 5261

Mr. SHELBY (for Mr. GRAMS) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At appropriate place, insert the following section:

"SEC. . IMPROVEMENT OF THE IRS 1-800 HELP LINE SERVICE.

"(a) Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased manpower to provide sufficient and effective 1-800 help line for taxpayers.

(b) The Commissioner shall make the improvement of the IRS 1-800 help line service a priority and allocate resources necessary to ensure the increase in phone lines and staff to improve the IRS 1-800 help line service.

FAIRCLOTH AMENDMENT NO. 5262

Mr. SHELBY (for Mr. FAIRCLOTH) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 26, after line 9, insert the following:

SEC. . No funds available by this Act, or any other Act, to the Internal Revenue Service may be used to pay for the design and printing of more than two ink colors on the covers of income tax packages, and such ink colors must be the same colors as used to print the balance of the material in each package.

LEVIN AMENDMENT NO. 5263

Mr. SHELBY (for Mr. LEVIN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

The Senate finds:

That on June 28, 1995, the United States and Japan finalized the text of the U.S.-Japan Framework Agreement on Autos and Auto Parts in Geneva.

That the 30 page text spells out a wide-ranging set of commitments by the Government of Japan to meet the Framework objective of "achieving significantly expanded sales opportunities to result in a significant expansion of purchases of foreign parts by Japanese firms in Japan and through their transplants, as well as removing problems which affect market access, and encouraging imports of foreign autos and auto parts in Japan."

That the commitments to action by the Government of Japan and statements by the Japanese private sector address the major barriers to access that have frustrated U.S. producers of competitive autos and auto parts in their efforts to sell in Japan and to the Japanese transplants, and

That the Framework Agreement represents an unprecedented, enforceable set of commitments to open the Japanese market to foreign competitive autos and auto parts and to increase the opportunities for competitive parts suppliers to sell to the Japanese transplant manufacturers.

Therefore it is the Sense of the United States Senate to fully support the goals set out in the Framework Agreement and support the U.S. negotiators in their first annual consultations with Japan on September 18 and 19 in San Francisco in their efforts to obtain full compliance with the letter and spirit of the Framework Agreement.

THOMPSON AMENDMENT NO. 5264

Mr. SHELBY (for Mr. THOMPSON) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the General Services Administration is authorized to conduct a pilot program involving up to 10 States to provide FTS 2000 service to a State government, if:

(1) the appropriate authority of such State government makes application to the Administrator to receive FTS 2000 service and, as part of the application, agrees to pay all costs associated with access; and

(2) the Administrator finds that it would be advantageous for the federal government to provide FTS 2000 service to such State government.

(b) Nothing in this section shall be construed to authorize the administrator of the General Services Administration to implement cooperative purchasing under 40 U.S.C. 481(b)(2).

(c) The authority provided in this section shall expire on September 30, 1998.

DORGAN (AND OTHERS) AMENDMENT NO. 5265

(Ordered to lie on the table.)

Mr. DORGAN (for himself, Mr. CONRAD, and Mr. DASCHLE) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, add the following:

Notwithstanding any other provision of law, the Secretary of the Interior, through the Bureau of Indian Affairs, may directly transfer to Indian tribes in North and South Dakota portable housing units at the Grand Forks Air Force base in North Dakota which have been declared excess by the Department of Defense and requested for transfer by the Department of the Interior.

McCAIN (AND HELMS) AMENDMENT NO. 5266

Mr. McCAIN (for himself, Mr. HELMS, Mr. COVERDELL, and Mr. GRAHAM) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 22, line 14, strike "$4,085,355,000" and insert in lieu thereof "$4,052,586,000";

On page 42, line 26, strike "$103,000,000", and insert in lieu thereof "$135,769,000".

McCAIN (AND OTHERS) AMENDMENT NO. 5267

(Ordered to lie on the table.)

Mr. McCAIN (for himself, Mr. COATS, Mr. STEVENS, Mr. LOTT, Mr. ABRAHAM, Mr. ASHCROFT, Mr. PRESSLER, and Mrs. HUTCHISON) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . (a) Chapter 13 of title 31, United States Code, is amended by inserting after section 1310 the following new section:

"§ 1311. Continuing appropriations

"(a)(1) If any regular appropriation bill for a fiscal year does not become law prior to the beginning of such fiscal year or a joint resolution making continuing appropriations is not in effect, there is appropriated, out of any moneys in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, such sums as may be necessary to continue any project or activity for which funds were provided in the preceding fiscal year—

"(A) in the corresponding regular appropriation Act for such preceding fiscal year; or

"(B) if the corresponding regular appropriation bill for such preceding fiscal year did not become law, then in a joint resolution making continuing appropriations for such preceding fiscal year.

"(2) Appropriations and funds made available, and authority granted, for a project or activity for any fiscal year pursuant to this section shall be at a rate of operations not in excess of the lower of—

"(A) the rate of operations provided for in the regular appropriation Act providing for such project or activity for the preceding fiscal year,

"(B) in the absence of such an Act, the rate of operations provided for such project or activity pursuant to a joint resolution making continuing appropriations for such preceding fiscal year,

"(C) the rate of operations provided for in the House or Senate passed appropriation bill for the fiscal year in question, except that the lower of these two versions shall be ignored for any project or activity for which there is a budget request if no funding is provided for that project or activity in either version,

"(D) the rate provided in the budget submission of the President under section 1105(a) of title 31, United States Code, for the fiscal year in question, or

"(E) the annualized rate of operations provided for in the most recently enacted joint resolution making continuing appropriations for part of that fiscal year or any funding levels established under the provisions of this Act.

"(3) Appropriations and funds made available, and authority granted, for any fiscal year pursuant to this section for a project or

activity shall be available for the period beginning with the first day of a lapse in appropriations and ending with the earlier of—

"(A) the date on which the applicable regular appropriation bill for such fiscal year becomes law (whether or not such law provides for such project or activity) or a continuing resolution making appropriations becomes law, as the case may be, or

"(B) the last day of such fiscal year.

"(b) An appropriation or funds made available, or authority granted, for a project or activity for any fiscal year pursuant to this section shall be subject to the terms and conditions imposed with respect to the appropriation made or funds made available for the preceding fiscal year, or authority granted for such project or activity under current law.

"(c) Appropriations and funds made available, and authority granted, for any project or activity for any fiscal year pursuant to this section shall cover all obligations or expenditures incurred for such project or activity during the portion of such fiscal year for which this section applies to such project or activity.

"(d) Expenditures made for a project or activity for any fiscal year pursuant to this section shall be charged to the applicable appropriation, fund, or authorization whenever a regular appropriation bill or a joint resolution making continuing appropriations until the end of a fiscal year providing for such project or activity for such period becomes law.

"(e) This section shall not apply to a project or activity during a fiscal year if any other provision of law (other than an authorization of appropriations)—

"(1) makes an appropriation, makes funds available, or grants authority for such project or activity to continue for such period, or

"(2) specifically provides that no appropriation shall be made, no funds shall be made available, or no authority shall be granted for such project or activity to continue for such period.

"(f) For purposes of this section, the term 'regular appropriation bill' means any annual appropriation bill making appropriations, otherwise making funds available, or granting authority, for any of the following categories of projects and activities:

"(1) Agriculture, rural development, and related agencies programs.

"(2) The Departments of Commerce, Justice, and State, the judiciary, and related agencies.

"(3) The Department of Defense.

"(4) The government of the District of Columbia and other activities chargeable in whole or in part against the revenues of the District.

"(5) The Departments of Labor, Health and Human Services, and Education, and related agencies.

"(6) The Department of Housing and Urban Development, and sundry independent agencies, boards, commissions, corporations, and offices.

"(7) Energy and water development.

"(8) Foreign assistance and related programs.

"(9) The Department of the Interior and related agencies.

"(10) Military construction.

"(11) The Department of Transportation and related agencies.

"(12) The Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies.

"(13) The legislative branch.".

(b) CLERICAL AMENDMENT.—The analysis of chapter 13 of title 31, United States Code, is amended by inserting after the item relating to section 1310 the following new item:

"1311. Continuing appropriations.".

(c) PROTECTION OF OTHER OBLIGATIONS.—Nothing in the amendments made by this section shall be construed to effect Government obligations mandated by other law, including obligations with respect to Social Security, Medicare, and Medicaid.

SEC. 3. EFFECTIVE DATE AND SUNSET.

(a) EFFECTIVE DATE.—The amendments made by this Act shall apply with respect to fiscal years beginning with fiscal year 1997.

(b) SUNSET.—the amendments made by this Act shall sunset and have no force or effect 6 years after the date of enactment of this Act.

DASCHLE AMENDMENT NO. 5268

(Ordered to lie on the table.)

Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

ESTABLISHING A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

SEC. . NATIONAL REPOSITORY FOR INFORMATION ON EXPLOSIVES INCIDENTS AND ARSON.

(a) Section 846 of Title 18, United States Code, is amended by—

(1) designating the existing section as subsection (a); and

(2) by adding the following new subsection (b) to read as follows:

"(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Secretary by State and local authorities."

(b) There is authorized to be appropriated such sums as are necessary to establish the repository provided for in subsection (a).

KASSEBAUM AMENDMENT NO. 5269

(Ordered to lie on the table.)

Mrs. KASSEBAUM submitted an amendment intended to be proposed by her to the bill, H.R. 3756, supra; as follows:

Insert before the first section the following:

DIVISION A—GENERAL PROVISIONS

At the end of the bill, add the following:

SEC. ___. REFERENCES.

References in this division to this Act shall be deemed to be references to this division.

DIVISION B—WORKFORCE AND CAREER DEVELOPMENT

SEC. ___001. SHORT TITLE.

This division may be cited as the "Workforce and Career Development Act of 1996".

SEC. ___002. TABLE OF CONTENTS.

The table of contents is as follows:

Sec. ___001. Short title.
Sec. ___002. Table of contents.
Sec. ___003. Purpose and policy.
Sec. ___004. Definitions.
Sec. ___005. General provision.

TITLE I—STATEWIDE WORKFORCE AND CAREER DEVELOPMENT SYSTEMS

Subtitle A—State and Local Provisions

Sec. ___101. Statewide workforce and career development systems established.
Sec. ___102. State allotments.
Sec. ___103. State apportionment by activity.
Sec. ___104. State plan.
Sec. ___105. Collaborative process.
Sec. ___106. Accountability.
Sec. ___107. Identification of eligible providers of training services.
Sec. ___108. Local workforce development boards.

Subtitle B—Allocation

Sec. ___111. Distribution for employment and training activities.
Sec. ___112. Distribution for at-risk youth activities.
Sec. ___113. Funding for State vocational education activities and distribution for secondary school vocational education.
Sec. ___114. Distribution for postsecondary and adult vocational education.
Sec. ___115. Special rules for vocational education.
Sec. ___116. Distribution for adult education and literacy.
Sec. ___117. Distribution for flexible activities.

Subtitle C—Use of Funds

Sec. ___121. Employment and training activities.
Sec. ___122. At-risk youth activities.
Sec. ___123. Vocational education activities.
Sec. ___124. Adult education and literacy activities.
Sec. ___125. Flexible activities.
Sec. ___126. Requirements and restrictions relating to use of funds.

Subtitle D—National Activities

Sec. ___131. Coordination provisions.
Sec. ___132. Incentive grants and sanctions.
Sec. ___133. National emergency grants.
Sec. ___134. Evaluation; research, demonstrations, dissemination, and technical assistance.
Sec. ___135. Migrant and seasonal farmworker program.
Sec. ___136. Native American Program.
Sec. ___137. Grants to outlying areas.
Sec. ___138. National Institute for Literacy.
Sec. ___139. Labor market information.

Subtitle E—Transition Provisions

Sec. ___141. Waivers.
Sec. ___142. Technical assistance.
Sec. ___143. Applications and plans under covered Acts.
Sec. ___144. Interim authorizations of appropriations.

Subtitle F—General Provisions

Sec. ___151. Authorization of appropriations.
Sec. ___152. Local expenditures contrary to title.
Sec. ___153. Effective dates.

TITLE II—WORKFORCE AND CAREER DEVELOPMENT-RELATED ACTIVITIES

Subtitle A—Amendments to the Wagner-Peyser Act

Sec. ___201. Definitions.
Sec. ___202. Functions.
Sec. ___203. Designation of State agencies.
Sec. ___204. Appropriations.
Sec. ___205. Disposition of allotted funds.
Sec. ___206. State plans.
Sec. ___207. Repeal of Federal Advisory Council.

Sec. ___208. Regulations.
Sec. ___209. Effective date.
Subtitle B—Amendments to the Rehabilitation Act of 1973
Sec. ___211. References.
Sec. ___212. Findings and purposes.
Sec. ___213. Definitions.
Sec. ___214. Administration.
Sec. ___215. Reports.
Sec. ___216. Evaluation.
Sec. ___217. Declaration of policy.
Sec. ___218. State plans.
Sec. ___219. Individualized employment plans.
Sec. ___220. State Rehabilitation Advisory Council.
Sec. ___221. Evaluation standards and performance indicators.
Sec. ___222. Effective date.
Subtitle C—Job Corps
Sec. ___231. Definitions.
Sec. ___232. Purposes.
Sec. ___233. Establishment.
Sec. ___234. Individuals eligible for the Job Corps.
Sec. ___235. Screening and selection of applicants.
Sec. ___236. Enrollment and assignment.
Sec. ___237. Job Corps centers.
Sec. ___238. Program activities.
Sec. ___239. Support.
Sec. ___240. Operating plan.
Sec. ___241. Standards of conduct.
Sec. ___242. Community participation.
Sec. ___243. Counseling and placement.
Sec. ___244. Advisory committees.
Sec. ___245. Application of provisions of Federal law.
Sec. ___246. Special provisions.
Sec. ___247. Review of Job Corps Centers.
Sec. ___248. Administration.
Sec. ___249. Authorization of appropriations.
Sec. ___250. Effective date.
Subtitle D—Amendments to the National Literacy Act of 1991
Sec. ___261. Extension of functional literacy and life skills program for State and local prisoners.
TITLE III—MUSEUMS AND LIBRARIES
Sec. ___301. Museum and library services.
Sec. ___302. National Commission on Libraries and Information Science.
Sec. ___303. Transfer of functions from Institute of Museum Services.
Sec. ___304. Service of individuals serving on date of enactment.
Sec. ___305. Consideration.
Sec. ___306. Transition and transfer of funds.
TITLE IV—HIGHER EDUCATION
Sec. ___401. Reorganization of the Student Loan Marketing Association through the formation of a holding company.
Sec. ___402. Connie Lee privatization.
Sec. ___403. Eligible institution.
TITLE V—REPEALS AND CONFORMING AMENDMENTS
Sec. ___501. Repeals.
Sec. ___502. Conforming amendments.
Sec. ___503. Effective dates.

SEC. ___003. PURPOSE AND POLICY.

(a) PURPOSE.—The purpose of this division is to transform the vast array of Federal education, employment, and job training programs from a collection of fragmented and duplicative categorical programs into streamlined, coherent, and accountable statewide systems designed—

(1) to develop more fully the academic, occupational, and literacy skills of all segments of the population of the United States; and

(2) to meet the needs of employers in the United States to be competitive.

(b) POLICY.—It is the sense of the Congress that adult education and literacy activities are a key component of any successful statewide workforce and career development system.

SEC. ___004. DEFINITIONS.

Except as otherwise specified in this division, as used in this division:

(1) ADULT EDUCATION.—The term "adult education" means services or instruction below the postsecondary level for individuals—

(A) who have attained 16 years of age;

(B) who are not enrolled or required to be enrolled in secondary school;

(C)(i) who lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society; or

(ii) who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

(D) who lack a mastery of basic skills and are therefore unable to speak, read, or write the English language.

(2) ADULT EDUCATION AND LITERACY ACTIVITIES.—The term "adult education and literacy activities" means the activities authorized in section ___124.

(3) ALL ASPECTS OF THE INDUSTRY.—The term "all aspects of the industry" means strong experience in, and comprehensive understanding of, the industry that individuals are preparing to enter.

(4) AREA VOCATIONAL EDUCATION SCHOOL.—The term "area vocational education school" means—

(A) a specialized secondary school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(B) the department of a secondary school exclusively or principally used for providing vocational education in not fewer than 5 different occupational fields to individuals who are available for study in preparation for entering the labor market;

(C) a technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institute or school admits as regular students both individuals who have completed secondary school and individuals who have left secondary school; or

(D) the department or division of a junior college, or community college, that operates under the policies of the eligible agency and that provides vocational education in not fewer than 5 different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if the department or division admits as regular students both individuals who have completed secondary school and individuals who have left secondary school.

(5) AT-RISK YOUTH.—The term "at-risk youth" means an individual who—

(A) is not less than age 15 and not more than age 21;

(B) is low-income, defined as an individual who meets the requirements of subparagraph (A), (B), or (C) of paragraph (31); and

(C) is 1 or more of the following:

(i) A school dropout.

(ii) Homeless, a runaway, or a foster child.

(iii) Pregnant or a parent.

(iv) An offender.

(v) An individual who requires additional education, training, counseling, or related assistance in order to participate successfully in regular schoolwork, to complete an educational program, or to secure and hold employment.

(6) AT-RISK YOUTH ACTIVITIES.—The term "at-risk youth activities" means the activities authorized in section ___122, carried out for at-risk youth.

(7) CAREER GRANT.—The term "career grant" means a voucher or credit issued to a participant under subsection (e)(3) or (g) of section ___121 for the purchase of training services from eligible providers of such services.

(8) CAREER GUIDANCE AND COUNSELING.—The term "career guidance and counseling" means a program that—

(A) pertains to a body of subject matter and related techniques and methods organized for the development of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities, in individuals;

(B) assists such individuals in making and implementing informed educational and occupational choices;

(C) is comprehensive in nature; and

(D) with respect to minors, includes the involvement of parents, where practicable.

(9) CHIEF ELECTED OFFICIAL.—The term "chief elected official" means the chief elected executive officer of a unit of general local government in a local workforce development area.

(10) COMMUNITY-BASED ORGANIZATION.—The term "community-based organization" means a private nonprofit organization of demonstrated effectiveness that is representative of a community or a significant segment of a community.

(11) COOPERATIVE EDUCATION.—The term "cooperative education" means a method of instruction of education for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required academic courses and related instruction, by alternation of study in school with a job in any occupational field, which alternation shall be planned and supervised by the school and employer so that each contributes to the education and employability of the individual, and may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(12) COVERED ACTIVITY.—The term "covered activity" means an activity authorized to be carried out under a provision described in section ___501(f) (as such provision was in effect on the day before the date of enactment of this Act).

(13) DISLOCATED WORKER.—The term "dislocated worker" means an individual who—

(A)(i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii) is eligible for or has exhausted entitlement to unemployment compensation; and

(iii) is unlikely to return to a previous industry or occupation;

(B) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(C) has been unemployed long-term and has limited opportunities for employment or re-employment in the same or a similar occupation in the area in which such individual resides;

(D) was self-employed (including a farmer and a rancher) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters;

(E) is a displaced homemaker; or

(F) has become unemployed as a result of a Federal action that limits the use of, or restricts access to, a marine natural resource.

(14) DISPLACED HOMEMAKER.—The term "displaced homemaker" means an individual who—

(A) has attained 16 years of age; and

(B)(i) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills; or

(ii) is a parent whose youngest dependent child will become ineligible to receive assistance under the program for aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) not later than 2 years after the date on which the parent applies for assistance under this title.

(15) EDUCATIONAL SERVICE AGENCY.—The term "educational service agency" means a regional public multiservice agency authorized by State statute to develop and manage a service or program and provide the service or program to a local educational agency.

(16) ELIGIBLE AGENCY.—The term "eligible agency" means—

(A) in the case of vocational education activities or requirements described in title I—

(i) the individual, entity, or agency in a State responsible for administering or setting policies for vocational education in such State pursuant to State law; or

(ii) if no individual, entity, or agency is responsible for administering or setting such policies pursuant to State law, the individual, entity, or agency in a State responsible for administering or setting policies for vocational education in such State on the date of enactment of this Act; and

(B) in the case of adult education and literacy activities or requirements described in title I—

(i) the individual, entity, or agency in a State responsible for administering or setting policies for adult education and literacy services in such State pursuant to State law; or

(ii) if no individual, entity, or agency is responsible for administering or setting such policies pursuant to State law, the individual, entity, or agency in a State responsible for administering or setting policies for adult education and literacy services in such State on the date of enactment of this Act.

(17) ELIGIBLE INSTITUTION.—The term "eligible institution", used with respect to vocational education activities, means a local educational agency, an area vocational education school, an educational service agency, an institution of higher education (as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))), a State corrections educational agency, and a consortium of such entities.

(18) ELIGIBLE PROVIDER.—The term "eligible provider", used with respect to—

(A) one-stop career centers, means a provider who is designated or certified in accordance with section ___108(d)(2)(A);

(B) training services (other than on-the-job training), means a provider who is identified in accordance with section ___107;

(C) at-risk youth activities, means a provider who is awarded a grant in accordance with subsection (c) or (d) of section ___112;

(D) vocational education activities described in section ___123(b), means a provider determined to be eligible for assistance in accordance with section ___113 or ___114;

(E) adult education activities described in section ___124(b), means a provider determined to be eligible for assistance in accordance with section ___116; or

(F) other workforce and career development activities, means a public or private entity selected to be responsible for such activities, in accordance with this title.

(19) EMPLOYMENT AND TRAINING ACTIVITIES.—The term "employment and training activities" means the activities authorized in section ___121.

(20) ENGLISH LITERACY PROGRAM.—The term "English literacy program" means a program of instruction designed to help individuals of limited English proficiency achieve full competence in the English language.

(21) FAMILY AND CONSUMER SCIENCES PROGRAMS.—The term "family and consumer sciences programs" means instructional programs, services, and activities that prepare students for personal, family, community, and career roles.

(22) FAMILY LITERACY SERVICES.—The term "family literacy services" means services that are of sufficient intensity in terms of hours, and of sufficient duration, to make sustainable changes in a family and that integrate all of the following activities:

(A) Interactive literacy activities between parents and their children.

(B) Training for parents on how to be the primary teacher for their children and full partners in the education of their children.

(C) Parent literacy training.

(D) An age-appropriate education program for children.

(23) FLEXIBLE ACTIVITIES.—The term "flexible activities" means the activities authorized in section ___125.

(24) INDIVIDUAL OF LIMITED ENGLISH PROFICIENCY.—The term "individual of limited English proficiency" means an individual—

(A) who has limited ability in speaking, reading, or writing the English language; and

(B)(i) whose native language is a language other than English; or

(ii) who lives in a family or community environment where a language other than English is the dominant language.

(25) INDIVIDUAL WITH A DISABILITY.—

(A) IN GENERAL.—The term "individual with a disability" means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

(B) INDIVIDUALS WITH DISABILITIES.—The term "individuals with disabilities" means more than 1 individual with a disability.

(26) LABOR MARKET AREA.—The term "labor market area" means an economically integrated geographic area within which individuals can—

(A) find employment within a reasonable distance from their place of residence; or

(B) readily change employment without changing their place of residence.

(27) LITERACY.—The term "literacy", used with respect to an individual, means the ability of the individual to speak, read, and write English, and compute and solve problems, at levels of proficiency necessary—

(A) to function on the job, in the family of the individual, and in society;

(B) to achieve the goals of the individual; and

(C) to develop the knowledge potential of the individual.

(28) LOCAL BOARD.—The term "local board" means a local workforce development board established under section ___108.

(29) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(30) LOCAL WORKFORCE DEVELOPMENT AREA.—The term "local workforce development area" means a local workforce development area identified in accordance with section ___104(b)(4).

(31) LOW-INCOME INDIVIDUAL.—The term "low-income individual" means an individual who—

(A) receives, or is a member of a family that receives, cash welfare payments under a Federal, State, or local welfare program;

(B) had received an income, or is a member of a family that had received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and payments described in subparagraph (A)) that, in relation to family size, does not exceed the higher of—

(i) the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

(C) is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

(E) is a foster child on behalf of whom State or local government payments are made; or

(F) in cases permitted by regulations of the Secretary, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

(32) NONTRADITIONAL EMPLOYMENT.—The term "nontraditional employment", refers to occupations or fields of work for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work.

(33) ON-THE-JOB TRAINING.—The term "on-the-job training" means training in the public or private sector that is provided to a paid participant while engaged in productive work in a job that—

(A) provides knowledge or skills essential to the full and adequate performance of the job;

(B) provides reimbursement to employers of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(C) is limited in duration as appropriate to the occupation for which the participant is being trained.

(34) OUTLYING AREA.—The term "outlying area" means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(35) PARTICIPANT.—The term "participant", used with respect to an activity carried out under this division, means an individual participating in the activity.

(36) PELL GRANT RECIPIENT.—The term "Pell Grant recipient" means a recipient of financial aid under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a et seq.).

(37) POSTSECONDARY EDUCATIONAL INSTITUTION.—The term "postsecondary educational institution" means an institution of higher education (as such term is defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088)) that continues to meet the eligibility and certification requirements under title IV of such Act (20 U.S.C. 1070 et seq.).

(38) RAPID RESPONSE ASSISTANCE.—The term "rapid response assistance" means assistance provided by a State, or by an entity designated by a State, with funds provided by the State under section ___111(a)(2)(B), in the case of a permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster, that results in mass job dislocation, in order to assist dislocated workers in obtaining reemployment as soon as possible, with services including—

(A) the establishment of onsite contact with employers and employee representatives—

(i) immediately after the State is notified of a current or projected permanent closure or mass layoff; or

(ii) in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of such disaster;

(B) the provision of information and access to available employment and training activities;

(C) the provision of emergency assistance adapted to the particular closure, layoff, or disaster; and

(D) the provision of assistance to the local community in developing a coordinated response and in obtaining access to State economic development assistance.

(39) SCHOOL DROPOUT.—The term "school dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

(40) SECONDARY SCHOOL.—The term "secondary school" has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(41) SECRETARIES.—The term "Secretaries" means the Secretary of Labor and the Secretary of Education, in accordance with the interagency agreement described in section ___131.

(42) SEQUENTIAL COURSE OF STUDY.—The term "sequential course of study" means an integrated series of courses that are directly related to the educational and occupational skill preparation of an individual for a job, or to preparation for postsecondary education.

(43) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(44) STATE BENCHMARKS.—The term "State benchmarks", used with respect to a State, means—

(A) the quantifiable benchmarks required under section ___106(b) and identified in the report submitted under section ___106(c); and

(B) such other quantifiable benchmarks of the statewide progress of the State toward meeting the State goals as the State may identify in the report submitted under section ___106(c).

(45) STATE EDUCATIONAL AGENCY.—The term "State educational agency" has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(46) STATE GOALS.—The term "State goals", used with respect to a State, means—

(A) the goals specified in section ___106(a); and

(B) such other major goals of the statewide system of the State as the State may identify in the report submitted under section ___106(c).

(47) STATEWIDE SYSTEM.—The term "statewide system" means a statewide workforce and career development system, referred to in section ___101, that includes employment and training activities, activities carried out pursuant to the Wagner-Peyser Act (29 U.S.C. 49 et seq.), at-risk youth activities, vocational education activities, and adult education and literacy activities, in the State.

(48) SUPPORTIVE SERVICES.—The term "supportive services" means services such as transportation, child care, dependent care, and needs-based payments, that are necessary to enable an individual to participate in employment and training activities or at-risk youth activities.

(49) TECH-PREP PROGRAM.—The term "tech-prep program" means a program of study that—

(A) combines at least 2 years of secondary education (as determined under State law) and 2 years of postsecondary education in a nonduplicative sequential course of study;

(B) integrates academic and vocational instruction and utilizes worksite learning where appropriate;

(C) provides technical preparation in an area such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, a health occupation, business, or applied economics;

(D) builds student competence in mathematics, science, communications, economics, and workplace skills, through applied academics and integrated instruction in a coherent sequence of courses;

(E) leads to an associate degree or a certificate in a specific career field; and

(F) leads to placement in appropriate employment or further education.

(50) UNIT OF GENERAL LOCAL GOVERNMENT.—The term "unit of general local government" means any general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers.

(51) VETERAN.—The term "veteran" has the meaning given such term in section 101(2) of title 38, United States Code.

(52) VOCATIONAL EDUCATION.—The term "vocational education" means organized educational programs that—

(A) offer a sequence of courses that provide individuals with the academic knowledge and skills the individuals need to prepare for further education and careers in current or emerging employment sectors; and

(B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and occupation-specific skills, of an individual.

(53) VOCATIONAL EDUCATION ACTIVITIES.—The term "vocational education activities" means the activities authorized in section ___123.

(54) VOCATIONAL REHABILITATION PROGRAM.—The term "vocational rehabilitation program" means a program assisted under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

(55) VOCATIONAL STUDENT ORGANIZATION.—The term "vocational student organization" means an organization, for individuals enrolled in programs of vocational education activities, that engages in activities as an integral part of the instructional component of such programs, which organization may have State and national units.

(56) WORKFORCE AND CAREER DEVELOPMENT ACTIVITIES.—The term "workforce and career development activities" means employment and training activities, at-risk youth activities, vocational education activities, and adult education and literacy activities.

SEC. ___005. GENERAL PROVISION.

None of the funds made available under this division shall be used—

(1) to require any participant to choose or pursue a specific career path or major;

(2) to require any participant to enter into a specific course of study that requires, as a condition of completion, attainment of a federally funded or endorsed industry-recognized skill or standard; or

(3) to require any participant to attain or obtain a federally funded or endorsed industry-recognized skill, certificate, or standard, unless the participant has selected and is participating in a program or course of study that requires, as a condition of completion, attainment of an industry-recognized skill or standard.

TITLE I—STATEWIDE WORKFORCE AND CAREER DEVELOPMENT SYSTEMS

Subtitle A—State and Local Provisions

SEC. ___101. STATEWIDE WORKFORCE AND CAREER DEVELOPMENT SYSTEMS ESTABLISHED.

For program year 1998 and each subsequent program year, the Secretaries shall make allotments under section ___102 to States to assist the States in paying for the cost of establishing statewide workforce and career development systems and carrying out workforce and career development activities through such statewide systems, in accordance with this title.

SEC. ___102. STATE ALLOTMENTS.

(a) IN GENERAL.—The Secretaries shall allot to each State that meets the requirements of subsection (e) an amount equal to the total of the amounts made available under subparagraphs (A), (B), (C), and (D) of subsection (b)(2), adjusted in accordance with subsections (c) and (d).

(b) ALLOTMENTS BASED ON POPULATIONS.—

(1) DEFINITIONS.—As used in this subsection:

(A) ADULT RECIPIENT OF ASSISTANCE.—The term "adult recipient of assistance" means a recipient of assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) who is not a dependent child (as defined in section 406(a) of such Act (42 U.S.C. 606(a))).

(B) INDIVIDUAL IN POVERTY.—The term "individual in poverty" means an individual who—

(i) is not less than age 16;

(ii) is not more than age 64; and

(iii) is a member of a family (of 1 or more members) with an income that does not exceed the poverty line.

(C) POVERTY LINE.—The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved, using the most recent available data provided by the Bureau

of the Census, prior to the program year for which the allotment is made, and applying the definition of poverty used by the Bureau of the Census in compiling the 1990 decennial census.

(2) CALCULATION.—Except as provided in subsections (c) and (d), from the amount reserved under section ___151(b)(1), the Secretaries—

(A) using funds equal to 60 percent of such reserved amount, shall make available to each State an amount that bears the same relationship to such funds as the total number of individuals who are not less than age 15 and not more than age 65 (as determined by the Secretaries using the most recent available data provided by the Bureau of the Census, prior to the program year for which the allotment is made) in the State bears to the total number of such individuals in all States;

(B) using funds equal to 20 percent of such reserved amount, shall make available to each State an amount that bears the same relationship to such funds as the total number of individuals in poverty in the State bears to the total number of individuals in poverty in all States;

(C) using funds equal to 10 percent of such reserved amount, shall make available to each State an amount that bears the same relationship to such funds as the average number of unemployed individuals (as determined by the Secretary of Labor for the most recent 24-month period for which data are available, prior to the program year for which the allotment is made) in the State bears to the average number of unemployed individuals (as so determined) in all States; and

(D) using funds equal to 10 percent of such reserved amount, shall make available to each State an amount that bears the same relationship to such funds as the average monthly number of adult recipients of assistance (as determined by the Secretary of Health and Human Services for the most recent 12-month period for which data are available, prior to the program year for which the allotment is made) in the State bears to the average monthly number of adult recipients of assistance (as so determined) in all States.

(c) MINIMUM STATE ALLOTMENT.—

(1) DEFINITION.—As used in this subsection, the term "national average per capita payment", used with respect to a program year, means the amount obtained by dividing—

(A) the amount reserved under section ___151(b)(1) for the program year; by

(B) the total number of individuals who are not less than age 15 and not more than age 65 (as determined by the Secretaries using the most recent available data provided by the Bureau of the Census, prior to the program year for which the allotment is made) in all States.

(2) MINIMUM ALLOTMENT.—Except as provided in paragraph (3) and subsection (d), no State shall receive an allotment under this section for a program year in an amount that is less than 0.5 percent of the amount reserved under section ___151(b)(1) for the program year.

(3) LIMITATION.—No State that receives an increase in an allotment under this section for a program year as a result of the application of paragraph (2) shall receive an allotment under this section for the program year in an amount that is more than the product obtained by multiplying—

(A) the total number of individuals who are not less than age 15 and not more than age 65 (as determined by the Secretaries using the most recent available data provided by the Bureau of the Census, prior to the program year for which the allotment is made) in the State; and

(B) the product obtained by multiplying—

(i) 1.5; and

(ii) the national average per capita payment for the program year.

(4) ADJUSTMENTS.—In order to increase the allotments of States as a result of the application of paragraph (2), the Secretaries shall reduce, on a pro rata basis, the allotments of the other States (except as provided in subsection (d)).

(d) OVERALL LIMITATIONS.—

(1) DEFINITION.—As used in this subsection, the term "State percentage" means—

(A) with respect to the program year preceding program year 1998, the percentage that a State receives of the financial assistance made available to States to carry out covered activities for the year ending on June 30, 1998; and

(B) with respect to program year 1998 and each subsequent program year, the percentage that a State receives of the amount reserved under section ___151(b)(1) for the program year.

(2) LIMITATIONS.—No State shall receive an allotment under this section for a program year in an amount that would make the State percentage for the program year—

(A) less than the product obtained by multiplying—

(i) 0.98; and

(ii) the State percentage of the State for the preceding program year; or

(B) greater than the product obtained by multiplying—

(i) 1.02; and

(ii) the State percentage of the State for the preceding program year.

(e) CONDITIONS.—The Secretaries shall allot funds under subsection (a) to States that—

(1) submit State plans that contain all of the information required under section ___104(b), including the identification of State goals and State benchmarks; and

(2) prepare the plans in accordance with the requirements of sections ___104 and ___105 relating to the development of the State plan.

SEC. ___103. STATE APPORTIONMENT BY ACTIVITY.

(a) ACTIVITIES.—From the funds made available to a State through an allotment received under section ___102 for a program year—

(1) a portion equal to 32 percent of such sum shall be made available for employment and training activities;

(2) a portion equal to 16 percent of such sum shall be made available for at-risk youth activities;

(3) a portion equal to 26 percent of such sum shall be made available for vocational education activities;

(4) a portion equal to 6 percent of such sum shall be made available for adult education and literacy activities; and

(5) a portion equal to 20 percent of such sum shall be made available for flexible activities (which portion may be referred to in this title as the "flex account");

carried out through the statewide system.

(b) RECIPIENTS.—Subject to subsection (c), funds allotted to a State under section ___102 shall be distributed—

(1) to the Governor of the State for the portions described in paragraphs (1) and (2) of subsection (a), and such part of the flex account as the Governor may be eligible to receive, as determined under the State plan submitted under section ___104; and

(2) to the eligible agencies in the State for the portions described in paragraphs (3) and (4) of subsection (a), and such part of the flex account as the eligible agencies may be eligible to receive, as determined under the State plan submitted under section ___104.

(c) CONSTRUCTION.—Nothing in this title shall be construed—

(1) to negate or supersede any State law that is not inconsistent with the provisions of this title, including the legal authority under State law of any State agency, State entity, or State public official over programs that are under the jurisdiction of the agency, entity, or official;

(2) to interfere with the authority of such agency, entity, or official to enter into a contract under any provision of law; and

(3) to prohibit any individual, entity, or agency in a State that is administering activities described in section ___123 or ___124 prior to the date of enactment of this Act, or setting education policies consistent with authority under State law for such activities on the day preceding the date of enactment of this Act, from continuing to administer such activities or set such education policies consistent with authority under State law for such activities and in accordance with this title.

(d) SMITH-HUGHES VOCATIONAL EDUCATION ACT.—Notwithstanding any other provision of law, the Secretary of Education shall use funds appropriated under section 1 of the Act of February 23, 1917 (39 Stat. 929; 20 U.S.C. 11) (commonly known as the "Smith-Hughes Vocational Education Act") to make allotments to States. Such funds shall be allotted to each State in the same manner and at the same time as allotments are made under section ___102. Section ___103(a) shall not apply with respect to such funds. The requirements of this title (other than section ___103(a)) shall apply to such funds to the same extent that the requirements apply to funds made available under section ___103(a)(3).

SEC. ___104. STATE PLAN.

(a) IN GENERAL.—For a State to be eligible to receive an allotment under section ___102, the Governor of the State shall submit to the Secretaries a single comprehensive State plan that outlines a 3-year strategy for the statewide system of the State and that meets the requirements of section ___105 and this section.

(b) CONTENTS.—The State plan shall include—

(1)(A) a description of the collaborative process described in section ___105 used in developing the plan, including a description of the manner in which the individuals and entities involved in the process collaborated in the development of the plan; and

(B)(i)(I) information demonstrating the support of the individuals and entities participating in the collaborative process for the State plan; and

(II) the comments referred to in section ___105(c)(2)(C), if any; and

(ii) information demonstrating the agreement, if any, of the Governor and the eligible agencies on all elements of the State plan;

(2) a description of the State goals and State benchmarks for workforce and career development activities, that includes—

(A) information identifying the State goals and State benchmarks and how the goals and benchmarks will ensure continuous improvement of the statewide system and make the statewide system relevant and responsive to labor market and education needs at the local level;

(B) information identifying performance indicators that relate to measurement of the

State progress toward meeting the State goals and reaching the State benchmarks; and

(C) information describing how the State will coordinate workforce and career development activities to meet the State goals and reach the State benchmarks;

(3) information describing—

(A) the needs of the State with regard to current and projected demands for workers, by occupation;

(B) the skills and economic development needs of the State; and

(C) the type and availability of workforce and career development activities in the State;

(4)(A) an identification of local workforce development areas in the State, including a description of the process used for the designation of such areas, which shall take into consideration labor market areas, service areas in which related Federal programs are provided or historically have been provided, and service areas in which related State programs are provided or historically have been provided; or

(B) if the State receives an increase in an allotment under section ___102 for a program year as a result of the application of section ___102(c)(2), information stating that the State will be treated as a local workforce development area for purposes of the application of this title, at the election of the State;

(5) an identification of criteria for the appointment of members of local workforce development boards, based on the requirements of section ___108;

(6) a description of how the State will utilize the statewide labor market information system described in section ___139(d);

(7) a description of the measures that will be taken by the State to assure coordination and consistency and avoid duplication among activities receiving assistance under this title, programs receiving assistance under title II, and programs carried out under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) or the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), including a description of common data collection and reporting processes;

(8) a description of the process used by the State to provide an opportunity for public comment, and input into the development of the plan, prior to submission of the plan;

(9) information identifying how the State will obtain the active and continuous participation of business, industry, and (as appropriate) labor in the development and continuous improvement of the statewide system;

(10) assurances that the State will provide for fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State through the allotment made under section ___102;

(11) information describing the allocation within the State of the funds made available through the flex account for the State;

(12) information identifying how any funds that a State receives through the allotment made under section ___102 will be leveraged with other private and public resources (including funds made available to the State under the Wagner-Peyser Act (29 U.S.C. 49 et seq.)) to maximize the effectiveness of such resources for all activities described in subtitle C, and expand the participation of business, industry, employees, and individuals in the statewide system;

(13) information identifying how the workforce and career development activities to be carried out with funds received through the allotment made under section ___102 will be coordinated with programs carried out by the Veterans' Employment and Training Service with funds received under title 38, United States Code, in order to meet the State goals and reach the State benchmarks related to veterans;

(14) an assurance that the funds made available to the State through the allotment made under section ___102 will supplement and not supplant other public funds expended to provide activities described in subtitle C;

(15) with respect to economic development activities described in section ___121(c)(1)(C), information describing—

(A) any economic development activities that will be carried out with the funds described in section ___111(a)(2)(B);

(B) how the activities will lead directly to increased earnings of nonmanagerial employees in the State; and

(C) whether the nonmanagerial employees (including labor, as appropriate) support the activities;

(16) with respect to employment and training activities, information—

(A) describing the employment and training activities that will be carried out with the funds received by the State through the allotment made under section ___102, including a description of how the State will provide rapid response assistance to dislocated workers;

(B) describing the strategy of the State (including the timeframe for such strategy) for development of a fully operational statewide one-stop career center system as described in section ___121(d), including—

(i) criteria for use by local boards, with respect to the designation or certification of one-stop career center eligible providers, in each local workforce development area in accordance with section ___108(d)(4)(B)(i)(I);

(ii) the steps that the State will take over the 3 years covered by the plan to ensure that all publicly funded labor exchange services described in section ___121(e)(2) or ___139, and all such services authorized in the Wagner-Peyser Act (29 U.S.C. 49 et seq.), are provided through the one-stop career center system of the State; and

(iii) the steps that the State will take over the 3 years covered by the plan to provide information to individuals through the one-stop career center system on the quality of workforce and career development activities, and vocational rehabilitation program activities, as appropriate;

(C) describing the procedures the State will use to identify eligible providers of training services described in section ___121(e)(3), as required under this title;

(D) describing how the State will serve the employment and training needs of dislocated workers, low-income individuals, and other individuals with multiple barriers to employment (as determined by the State); and

(E) describing how the State will establish and implement the required career grant pilot program for dislocated workers pursuant to section ___121(g), including a description of the size, scope, and quality of such program and a description of how the State, after 3 years, will evaluate such program and use the findings of the evaluation to improve the delivery of training services described in section ___121(e)(3) for dislocated workers and other participants under section ___121;

(17) with respect to at-risk youth activities, information—

(A) describing the at-risk youth activities that will be carried out with funds received by the State through the allotment made under section ___102;

(B) describing how the State will adequately address the needs of at-risk youth in alternative education programs that teach to the same challenging academic, occupational, and skill proficiencies as are provided for all other students; and

(C) identifying the types of criteria the Governor and local boards will use to identify effective and ineffective at-risk youth activities and eligible providers of such activities;

(18) with respect to vocational education activities, information—

(A) describing the vocational education activities that will be carried out with funds received by the State through the allotment made under section ___102;

(B) describing the plan of the State to develop the academic and occupational skills of students participating in such vocational education activities, including—

(i) the integration of academic and vocational education;

(ii) the integration of classroom and worksite learning; and

(iii) linkages between secondary and postsecondary education;

(C) describing how the State will improve career guidance and counseling;

(D) describing how the State will promote the active involvement of parents and business (including small- and medium-sized businesses) in the planning, development, and implementation of such vocational education activities;

(E) describing how funds received by the State through the allotment made under section ___102 will be allocated among secondary school vocational education, or postsecondary and adult vocational education, or both;

(F) describing how the State will adequately address the needs of students who participate in such vocational education activities to be taught to the same challenging academic proficiencies as are provided for all other students;

(G) describing how the State will annually evaluate the effectiveness of such vocational education activities;

(H) describing how the State will address the professional development needs of the State with respect to such vocational education activities; and

(I) describing how the State will provide local educational agencies in the State with technical assistance; and

(19) with respect to adult education and literacy activities, information—

(A) describing the adult education and literacy activities that will be carried out with funds received by the State through the allotment made under section ___102;

(B) describing how such adult education and literacy activities described in the State plan and the State allocation of funds received through the allotment made under section ___102 for such activities are an integral part of comprehensive efforts of the State to improve education and training for all individuals; and

(C) describing how the State will annually evaluate the effectiveness of such adult education and literacy activities.

(c) SPECIAL RULES.—

(1) GOVERNOR.—The Governor of a State shall have final authority to determine the content of the portion of the State plan described in paragraphs (1) through (17) of subsection (b).

(2) ELIGIBLE AGENCIES.—An eligible agency in a State shall have final authority to determine the content of the portion of the State plan described in paragraph (18) or (19) of subsection (b), as appropriate.

(d) MODIFICATIONS TO PLAN.—A State may submit modifications to the State plan in accordance with the requirements of this section and section ___105, as necessary, during the 3-year period of the plan.

SEC. ___105. COLLABORATIVE PROCESS.

(a) IN GENERAL.—A State shall use a collaborative process to develop the State plan described in section ___104, through which individuals and entities including, at a minimum—

(1) the Governor;

(2) representatives, appointed by the Governor, of—

(A) business and industry;

(B) local chief elected officials (representing both cities and counties, where appropriate);

(C) local educational agencies (including vocational educators);

(D) postsecondary institutions (including community and technical colleges);

(E) parents; and

(F) employees (which may include labor);

(3) the lead State agency official for—

(A) the State educational agency;

(B) the eligible agency for vocational education;

(C) the eligible agency for adult education and literacy;

(D) the State agency responsible for postsecondary education; and

(E) the State agency responsible for vocational rehabilitation, and where applicable, the State agency providing vocational rehabilitation program activities for the blind;

(4) such other State agency officials, including officials responsible for economic development and employment, as the Governor may designate;

(5) representatives of the State legislature; and

(6) the representative of the Veterans' Employment and Training Service assigned to the State under section 4103 of title 38, United States Code;

shall collaborate in the development of the plan.

(b) ALTERNATIVE PROCESSES.—

(1) IN GENERAL.—For purposes of complying with subsection (a), a State may use any State collaborative process (including any council, State workforce development board, or similar entity) in existence on the date of enactment of this Act that meets or is conformed to meet the requirements of such subsection.

(2) FUNCTIONS OF STATE HUMAN RESOURCES INVESTMENT COUNCILS.—If a State uses a State human resources investment council in existence on the date of enactment of this Act, as described in paragraph (1), the functions of such board shall include—

(A) advising the Governor on the development of the statewide system, the State plan described in section ___104, and the State goals and State benchmarks;

(B) assisting in the development of performance indicators that relate to the measurement of State progress toward meeting the State goals and reaching the State benchmarks and providing guidance on how such progress may be improved;

(C) assisting the Governor in preparing the annual report to the Secretaries described in section ___106(c);

(D) assisting the Governor in developing the statewide labor market information system described in section ___139(d); and

(E) assisting in the monitoring and continuous improvement of the performance of the statewide system, including evaluation of the effectiveness of workforce and career development activities.

(c) AUTHORITY OF GOVERNOR.—

(1) FINAL AUTHORITY.—If, after a reasonable effort, the Governor is unable to obtain the support of the individuals and entities participating in the collaborative process described in subsection (a) or (b) for the State plan, the Governor shall have final authority to submit the State plan as described in section ___104, except as provided in section ___104(c) and in paragraph (3).

(2) PROCESS.—The Governor shall—

(A) provide such individuals and entities with copies of the State plan;

(B) allow such individuals and entities to submit to the Governor, not later than the end of the 30-day period beginning on the date on which the Governor provides such individuals and entities with copies of such plan under subparagraph (A), comments on such plan; and

(C) include in the State plan any such comments that—

(i) are submitted by an eligible agency and represent disagreement with such plan, with respect to provisions of the State plan described in paragraph (18) or (19) of section ___104(b), as appropriate; or

(ii) are submitted by an individual or entity participating in the collaborative process.

(3) ELIGIBLE AGENCY COMMENTS.—An eligible agency, in submitting comments under paragraph (2)(C)(i), may submit provisions for the portion of the State plan described in paragraph (18) or (19) of section ___104(b), as appropriate. The Governor shall include such provisions in the State plan submitted under section ___104. Such provisions shall be considered to be such portion of the State plan.

SEC. ___106. ACCOUNTABILITY.

(a) GOALS.—Each statewide system supported by an allotment under section ___102 shall be designed to meet—

(1) the goal of assisting participants in obtaining meaningful unsubsidized employment opportunities in the State; and

(2) the goal of enhancing and developing more fully the academic, occupational, and literacy skills of all segments of the population of the State.

(b) BENCHMARKS.—

(1) MEANINGFUL EMPLOYMENT.—To be eligible to receive an allotment under section ___102, a State shall develop and identify in the State plan submitted under section ___104, proposed quantifiable benchmarks to measure the statewide progress of the State toward meeting the goal described in subsection (a)(1), which shall include, at a minimum, measures of—

(A) placement of participants in unsubsidized employment;

(B) retention of the participants in unsubsidized employment (12 months after completion of the participation);

(C) increases in earnings, or in earnings and employer-assisted benefits, for the participants; and

(D) attainment by the participants of industry-recognized occupational skills, as appropriate.

(2) EDUCATION.—To be eligible to receive an allotment under section ___102, a State shall develop and identify in the State plan submitted under section ___104, proposed quantifiable benchmarks to measure the statewide progress of the State toward meeting the goal described in subsection (a)(2), which shall include, at a minimum, measures, for participants, of—

(A) attainment of challenging State academic proficiencies;

(B) attainment of secondary school diplomas or general equivalency diplomas;

(C) attainment of industry-recognized occupational skills according to skill proficiencies for students in career preparation programs;

(D) placement in, retention in, and completion of postsecondary education or advanced training, or placement and retention in military service, employment, or qualified apprenticeships; and

(E) attainment of the literacy skills and knowledge individuals need to be productive and responsible citizens and to become more actively involved in the education of their children.

(3) POPULATIONS.—

(A) MINIMUM MEASURES.—In developing and identifying, under paragraphs (1) and (2), measures of the progress of the State toward meeting the goals described in subsection (a), a State shall develop and identify in the State plan, in addition to statewide benchmarks, proposed quantifiable benchmarks for populations that include, at a minimum—

(i) low-income individuals;

(ii) dislocated workers;

(iii) at-risk youth;

(iv) individuals with disabilities;

(v) veterans; and

(vi) individuals of limited literacy, as determined by the State.

(B) ADDITIONAL MEASURES.—In addition to the benchmarks described in subparagraph (A), a State may develop and identify in the State plan proposed quantifiable benchmarks to measure the progress of the State toward meeting the goals described in subsection (a) for populations with multiple barriers to employment, which may include older workers, as determined by the State.

(4) APPLICATION.—

(A) MEANINGFUL EMPLOYMENT BENCHMARKS.—Benchmarks described in paragraph (1) shall apply to employment and training activities and, as appropriate, to at-risk youth activities and adult education and literacy activities.

(B) EDUCATION BENCHMARKS.—Benchmarks described in paragraph (2) shall apply to vocational education activities, at-risk youth activities, and, as appropriate, adult education and literacy activities.

(5) SPECIAL RULE.—If a State adopts for all students in the State performance indicators, attainment levels, or assessments for skills according to challenging academic, occupational, or industry-recognized skill proficiencies, the State shall, at a minimum, use such performance indicators, attainment levels, or assessments in measuring the progress of all students who participate in workforce and career development activities.

(6) TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—The Secretaries shall provide technical assistance to States requesting such assistance, which may include the development, in accordance with subparagraph (B), of model benchmarks for each of the benchmarks described in paragraphs (1) and (2) at achievable levels based on existing (as of the date of the development of the benchmarks) workforce and career development efforts in the States.

(B) COLLABORATION.—Any such model benchmarks shall be developed in collaboration with the States and other appropriate parties.

(7) INCENTIVE GRANTS.—A State that meets the requirements of section ___132(a) (including requirements relating to State benchmarks) shall be eligible to receive an incentive grant under section ___132(a).

(8) SANCTIONS.—A State that has failed to meet the State benchmarks described in

paragraphs (1) and (2) for the 3-year period covered by a State plan described in section ___104, as determined by the Secretaries, may be subject to sanctions under section ___132(b).

(c) REPORT.—

(1) IN GENERAL.—Each State that receives an allotment under section ___102 shall annually prepare and submit to the Secretaries a report that states how the State is performing on State benchmarks that relate to workforce and career development activities. The report shall include information on how the local workforce development areas in the State are performing on local benchmarks described in section ___108(d)(4)(A). The report shall also include information on the status and results of any State evaluations specified in subsection (d) that relate to employment and training activities carried out in the State. In preparing the report, the State may include information on such additional benchmarks as the State may establish to meet the State goals.

(2) INFORMATION DISSEMINATION.—The Secretaries shall make the information contained in such reports available to the general public through publication and other appropriate methods, and shall disseminate State-by-State comparisons of the information.

(3) EVALUATION.—In preparing the report for the third year of the 3-year period covered by the State plan, the State shall include the findings of the evaluation described in section ___104(b)(16)(E) of the career grant pilot program described in section ___121(g).

(d) EVALUATION OF STATE PROGRAMS.—

(1) EMPLOYMENT AND TRAINING ACTIVITIES.—Using funds reserved under section ___111(a)(2)(B), a State shall conduct ongoing evaluations of employment and training activities carried out in the State.

(2) METHODS.—The State shall—

(A) conduct such evaluations of employment and training activities through controlled experiments using experimental and control groups chosen by random assignment;

(B) in conducting such evaluations, determine, at a minimum, whether employment and training activities effectively raise the hourly wage rates of individuals receiving services through such activities; and

(C) conduct, or arrange under paragraph (3) for the conduct of, at least 1 such evaluation at any given time during any period in which the State is receiving funding under this title for such activities.

(3) MULTI-STATE AGREEMENTS.—A State may enter into an agreement with 1 or more States to arrange for the conduct of such evaluations in accordance with the requirements of paragraphs (1) and (2).

(e) FISCAL AND MANAGEMENT ACCOUNTABILITY INFORMATION SYSTEMS.—

(1) IN GENERAL.—Using funds reserved under sections ___111(a)(2)(B) and ___112(a)(2)(C), the State may operate a fiscal and management accountability information system, based on guidelines established by the Secretaries in consultation with the Governors and other appropriate parties. Such guidelines shall promote the efficient collection and use of fiscal and management information for reporting and monitoring the use of funds made available to the State for employment and training activities and at-risk youth activities and for use by the State in preparing the annual report described in subsection (c). In measuring State performance on State benchmarks, a State may, pursuant to State law, utilize quarterly wage records available through the unemployment insurance system.

(2) CONFIDENTIALITY.—In carrying out the requirements of this division, the State shall comply with section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (as added by the Family Educational Rights and Privacy Act of 1974). In addition, the State shall protect the confidentiality of information obtained through the fiscal and management accountability information system through the use of recognized security procedures.

SEC. ___107. IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.

(a) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in subsection (d), to be eligible to receive funds made available under section ___111 to provide training services described in section ___121(e)(3) (referred to in this section as "training services") and be identified as an eligible provider of such services, a provider of such services shall meet the requirements of this section.

(2) POSTSECONDARY EDUCATIONAL INSTITUTIONS.—A postsecondary educational institution shall automatically be eligible to receive such funds for—

(A) a program that leads to an associate, baccalaureate, professional, or graduate degree;

(B) a program that—

(i) is at least 2 academic years in length; and

(ii) is acceptable for academic credit toward a baccalaureate degree; or

(C) a program that—

(i) is at least 1 academic year in length;

(ii) is a training program;

(iii) leads to a certificate, degree, or other recognized educational credential; and

(iv) prepares a student for gainful employment in a recognized occupation.

(3) OTHER ELIGIBLE PROVIDERS.—

(A) PROCEDURE.—The Governor shall establish a procedure for determining the eligibility of public and private providers not described in paragraph (2) (including eligibility of postsecondary educational institutions for programs not described in paragraph (2)) to receive such funds. In determining the eligibility, the Governor shall solicit and take into consideration recommendations of the local boards concerning the identification of eligible providers of training services in local workforce development areas.

(B) LEVELS OF PERFORMANCE.—At a minimum, the Governor shall establish a procedure that requires such a provider to meet minimum acceptable levels of performance based on—

(i) verifiable program-specific performance information described in subparagraph (C) and submitted to the State agency designated under subsection (b), as required under paragraphs (2) and (3) of subsection (b); and

(ii) performance criteria relating to the rates and percentages described in subparagraph (C)(i).

(C) PERFORMANCE INFORMATION.—

(i) REQUIRED INFORMATION.—To be eligible to receive such funds, a provider shall submit information on—

(I) program completion rates for participants in the applicable program conducted by the provider;

(II) the percentage of the participants obtaining employment in an occupation related to the program conducted;

(III) where appropriate, the rates of licensure or certification of graduates of the program; and

(IV) where appropriate, the percentage of the participants who demonstrate significant gains in literacy and basic skills.

(ii) ADDITIONAL INFORMATION.—In addition to the performance information described in clause (i), the Governor may require that a provider described in this paragraph submit such other performance information as the Governor determines to be appropriate, which may include information relating to—

(I) the adequacy of space, staff, equipment, instructional materials, and student support services offered by the provider through a program conducted by the provider;

(II) the earnings of participants completing the program; and

(III) the percentage of graduates of the program who attain industry-recognized occupational skills in the subject, occupation, or industry for which training is provided.

(b) ADMINISTRATION.—

(1) DESIGNATION.—The Governor shall designate a State agency to collect and disseminate the performance information described in subsection (a)(3)(C) and submitted pursuant to this subsection and carry out other duties described in this subsection.

(2) APPLICATION.—To be eligible to receive funds as described in subsection (a), a provider shall submit an application at such time, in such manner, and containing such information as the designated State agency may require.

(3) SUBMISSION.—To be eligible to receive funds as described in subsection (a), a provider described in subsection (a)(3) shall submit the performance information described in subsection (a)(3)(C) annually to the designated State agency at such time and in such manner as the designated State agency may require. The designated State agency may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) from such a provider for purposes of enabling the provider to fulfill the applicable requirements of this paragraph.

(4) LIST OF ELIGIBLE PROVIDERS.—The designated State agency, after reviewing the performance information described in subsection (a)(3)(C) and using the procedure described in subsection (a)(3)(B), shall identify eligible providers of training services described in paragraph (2) or (3) of subsection (a), compile a list of such eligible providers, accompanied by the performance information described in subsection (a)(3)(C) for each such provider described in subsection (a)(3), and disseminate such list and information to one-stop career centers and to local boards. Such list and information shall be made widely available to participants in workforce and career development activities and others through the one-stop career center system described in section ___121(d).

(c) ENFORCEMENT.—

(1) ACCURACY OF INFORMATION.—If the designated State agency determines that a provider or individual supplying information on behalf of a provider intentionally supplies inaccurate information under this section, the agency shall terminate the eligibility of the eligible provider to receive funds described in subsection (a) for a period of time, but not less than 2 years, as prescribed in regulations issued by the Governor.

(2) COMPLIANCE WITH CRITERIA OR REQUIREMENTS.—If the designated State agency determines that an eligible provider or a program of training services carried out by an eligible provider fails to meet the required performance criteria described in subsection

(a)(3)(B)(ii) or materially violates any provision of this title or the regulations promulgated to implement this title, the agency may terminate the eligibility of the eligible provider to receive funds described in subsection (a) for such program or take such other action as the agency determines to be appropriate.

(3) ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965.—If the designated State agency determines that the eligibility of an eligible provider described in subsection (a)(2) under title IV of the Higher Education Act of 1965 has been terminated, the agency shall—

(A) terminate the automatic eligibility of the provider under subsection (a)(2); and

(B) require the provider to meet the requirements of subsection (a)(3) to be eligible to receive funds as described in subsection (a).

(4) REPAYMENT.—Any provider whose eligibility is terminated under paragraph (1) or (2) for a program shall be liable for repayment of all funds described in subsection (a) received for the program during any period of noncompliance described in such paragraph.

(5) APPEAL.—The Governor shall establish a procedure for an eligible provider to appeal a determination by the designated State agency that results in termination of eligibility under this subsection. Such procedure shall provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(d) ON-THE-JOB TRAINING EXCEPTION.—

(1) IN GENERAL.—Providers of on-the-job training shall not be subject to the requirements of subsection (a), (b), or (c).

(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop career center eligible provider in a local workforce development area shall collect such performance information from on-the-job training providers as the Governor may require, and disseminate such information through the delivery of core services described in section ___121(e)(2), as appropriate.

SEC. ___108. LOCAL WORKFORCE DEVELOPMENT BOARDS.

(a) ESTABLISHMENT.—There shall be established in each local workforce development area of a State, and certified by the Governor of the State, a local workforce development board, reflecting business and community interests in workforce and career development activities.

(b) MEMBERSHIP.—

(1) STATE CRITERIA.—The Governor of the State shall establish criteria for the appointment of members of the local boards for local workforce development areas in the State in accordance with the requirements of paragraph (2). Information identifying such criteria shall be included in the State plan submitted under section ___104.

(2) COMPOSITION.—Such criteria shall require at a minimum, that the membership of each local board—

(A) shall include—

(i) a majority of members who are representatives of business and industry in the local workforce development area, appointed from among individuals nominated by local business organizations and trade associations;

(ii) representatives of local secondary schools, representatives of postsecondary educational institutions (including representatives of community colleges), representatives of vocational educators, and representatives of providers of adult education and literacy services, where such schools, institutions, educators, or providers, as appropriate, exist; and

(iii) representatives of employees, which may include labor; and

(B) may include—

(i) individuals with disabilities;

(ii) parents;

(iii) veterans; and

(iv) representatives of community-based organizations.

(3) CHAIRPERSON.—The local board shall elect a chairperson from among the members of the board.

(c) APPOINTMENT AND CERTIFICATION OF BOARD.—

(1) APPOINTMENT OF BOARD MEMBERS AND ASSIGNMENT OF RESPONSIBILITIES.—

(A) IN GENERAL.—The chief elected official in a local workforce development area is authorized to appoint the members of the local board for such area, in accordance with the State criteria established under subsection (b).

(B) MULTIPLE UNITS OF LOCAL GOVERNMENT IN AREA.—

(i) IN GENERAL.—In a case in which a local workforce development area includes more than 1 unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of the individual chief elected officials—

(I) in the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under subsection (b); and

(II) in carrying out any other responsibilities assigned to such officials.

(ii) LACK OF AGREEMENT.—If, after a reasonable effort, the chief elected officials are unable to reach agreement as provided under clause (i), the Governor may appoint the members of the local board from individuals so nominated or recommended.

(2) CERTIFICATION.—

(A) IN GENERAL.—The Governor may annually certify 1 local board for each local workforce development area in the State.

(B) CRITERIA.—Such certification shall be based on factors including the criteria established under subsection (b) and, for a second or subsequent certification, the extent to which the local board has ensured that employment and training activities and at-risk youth activities carried out in the local workforce development area have met expected levels of performance with respect to the local benchmarks required under subsection (d)(4)(A).

(C) FAILURE TO ACHIEVE CERTIFICATION.—Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local workforce development area pursuant to the process described in paragraph (1) and this paragraph.

(3) DECERTIFICATION.—Notwithstanding paragraph (2), the Governor may decertify a local board at any time for fraud or abuse, or failure to carry out the functions specified for the local board in paragraphs (1) through (3) of subsection (d), after providing notice and an opportunity for comment. If the Governor decertifies a local board for a local workforce development area, the Governor may require that a local board be appointed and certified for the local workforce development area pursuant to a plan developed by the Governor in consultation with the chief elected official in the local workforce development area and in accordance with the criteria established under subsection (b).

(4) EXCEPTION.—Notwithstanding subsection (b) and paragraphs (1) and (2), if a State described in section ___104(b)(4)(B) indicates in the State plan that the State will be treated as a local workforce development area for purposes of the application of this title, the Governor may designate the individuals and entities involved in the collaborative process described in section ___105 to carry out any of the functions described in subsection (d).

(d) FUNCTIONS OF LOCAL BOARD.—The functions of the local board shall include the following:

(1) LOCAL PLAN.—

(A) IN GENERAL.—Each local board shall develop and submit to the Governor a comprehensive multiyear strategic local plan. The local plan shall be consistent with the State goals and State plan described in section ___104.

(B) CONTENTS.—The local plan shall include—

(i) an identification of the workforce development needs of local industries, jobseekers, and workers;

(ii) a description of employment and training activities and at-risk youth activities to be carried out in the local workforce development area as required under sections ___121 and ___122, that, with activities authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), will contribute to the coherent delivery of workforce and career development activities;

(iii) a description of the local benchmarks negotiated with the Governor pursuant to paragraph (4)(A), to be used by the local board for measuring the performance of eligible providers, and the performance of the one-stop career center system, in the local workforce development area;

(iv) a description of the process negotiated with the Governor pursuant to paragraph (4)(B) that the local board will use to designate or certify, and to conduct oversight with respect to, one-stop career center eligible providers in the local workforce development area, that will—

(I) ensure that the most effective and efficient providers will be chosen; and

(II) ensure the continuous improvement of such providers and ensure that such providers will continue to meet the labor market needs of local employers and participants;

(v) a description of how the local board will ensure the continued participation of the chief elected official in the local workforce development area in carrying out the duties of the local board, including the participation of such official in carrying out the oversight responsibilities of the board;

(vi) a description of how the local board will obtain the active and continuous participation of representatives of business and industry, employees (which may include labor), local educational agencies, postsecondary educational institutions, providers of adult education and literacy services, vocational educators, other providers of workforce and career development activities, community-based organizations, parents, and consumers (including individuals with disabilities, older workers, and veterans), where appropriate, in the development and continuous improvement of the employment and training activities to be carried out in the local workforce development area;

(vii) a description of the steps the local board will take to work with local educational agencies, postsecondary educational institutions, vocational educators, providers of adult education and literacy services, and other representatives of the educational community to address local employment, education, and training needs;

(viii) a description of the process that will be used to fully involve representatives of business, employees (which may include labor), the local education community (including vocational educators and teachers), parents, and community-based organizations in the development and implementation of at-risk youth activities in the local workforce development area, including a description of the process used to ensure that the most effective and efficient providers are chosen to carry out the activities; and

(ix) such other information as the Governor may require.

(C) CONSULTATION.—The local board shall—

(i) consult with the chief elected official in the appropriate local workforce development area in the development of the local plan; and

(ii) provide the chief elected official with a copy of the local plan.

(D) APPROVAL.—

(i) IN GENERAL.—The chief elected official shall—

(I) approve the local plan; or

(II) reject the local plan and make recommendations to the local board on how to improve the local plan.

(ii) SUBMISSION.—If, after a reasonable effort, the local board is unable to obtain the approval of the chief elected official for the local plan, the local board shall submit the plan to the Governor for approval under subparagraph (A), and shall submit the recommendations of the chief elected official to the Governor along with the plan.

(2) SELECTION AND OVERSIGHT RESPONSIBILITIES.—

(A) ONE-STOP CAREER CENTERS.—Consistent with section ___111(c)(1)(A) and the agreement negotiated with the Governor under paragraph (4)(B)(i), the local board is authorized to designate or certify one-stop career center eligible providers, and conduct oversight with respect to such providers, in the local workforce development area.

(B) AT-RISK YOUTH ACTIVITIES.—Consistent with section ___112(d), the local board is authorized to award grants on a competitive basis to eligible providers of at-risk youth activities, and conduct oversight with respect to such providers, in the local workforce development area.

(3) IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.—Consistent with section ___107, the local board is authorized to make recommendations to the Governor concerning the identification of eligible providers of training services described in section ___121(e)(3) in the local workforce development area.

(4) NEGOTIATIONS.—

(A) LOCAL BENCHMARKS.—The local board and the Governor shall negotiate and reach agreement on local benchmarks designed to meet the goals described in section ___106(a) for the local workforce development area. In determining such benchmarks, the Governor and the local board shall take into account the State benchmarks described in section ___106(b)(1) with respect to employment and training activities and as appropriate, at-risk youth activities, the State benchmarks described in section ___106(b)(2) with respect to at-risk youth activities, and specific economic, demographic, and other characteristics of the populations to be served in the local workforce development area.

(B) LOCAL ONE-STOP DELIVERY OF SERVICES.—

(i) IN GENERAL.—Consistent with criteria identified in the State plan information submitted under section ___104(b)(16)(B)(i), the local board and the Governor shall negotiate and reach agreement on a process to be used by the local board that meets the requirements of subclauses (I) and (II) of paragraph (1)(B)(iv) for—

(I) the designation or certification of one-stop career center eligible providers in the local workforce development area, including a determination of the role of providers of activities authorized under the Wagner-Peyser Act in the one-stop delivery of services in the local workforce development area; and

(II) the continued role of the local board in conducting oversight with respect to one-stop career center eligible providers, including the ability of the local board to terminate for cause the eligibility of a provider of such services.

(ii) ESTABLISHED ONE-STOP CAREER CENTERS.—Notwithstanding section ___111(c)(1)(B), if a one-stop career center has been established in a local workforce development area prior to the date of enactment of this Act, or if approval has been obtained for a plan for a one-stop career center under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) prior to the date of enactment of this Act, the local board and the Governor involved may agree to certify the one-stop career center provider for purposes of this subparagraph.

(e) SUNSHINE PROVISION.—The local board shall make available to the public, on a regular basis, information regarding the activities of the local board, including information regarding membership, the designation and certification of one-stop career center eligible providers, and the award of grants to eligible providers of at-risk youth activities.

(f) OTHER ACTIVITIES.—

(1) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no local board may directly carry out an employment and training activity.

(B) WAIVERS.—The Governor of the State in which the local board is located may grant to the local board a written waiver of the prohibition set forth in subparagraph (A).

(2) CONFLICT OF INTEREST.—No member of a local board may—

(A) vote on a matter under consideration by the local board—

(i) regarding the provision of services by such member (or by an organization that such member represents); or

(ii) that would provide direct financial benefit to such member or the immediate family of such member; or

(B) engage in any other activity determined by the Governor to constitute a conflict of interest.

(g) TECHNICAL ASSISTANCE.—If a local workforce development area fails to meet expected levels of performance on negotiated benchmarks described in subsection (d)(4)(A), the Governor may provide technical assistance to the local board to improve the level of performance of the local workforce development area.

Subtitle B—Allocation

SEC. ___111. DISTRIBUTION FOR EMPLOYMENT AND TRAINING ACTIVITIES.

(a) RESERVATIONS FOR STATE AND LOCAL ACTIVITIES.—

(1) IN GENERAL.—The sum of the funds made available to a State for any program year under paragraphs (1) and (5) of section ___103(a) for employment and training activities shall be made available in accordance with this section.

(2) DISTRIBUTION.—Of the sum described in paragraph (1) that is made available to a State for a program year—

(A) not less than 75 percent shall be made available to local workforce development areas under subsection (b) to carry out employment and training activities described in subsections (e) and (f) of section ___121;

(B) not less than 20 percent shall be made available to the Governor to carry out State employment and training activities described in subsections (b) and (c) of section ___121; and

(C) not more than 5 percent shall be made available for administrative expenses at the State level.

(b) WITHIN STATE FORMULA.—

(1) IN GENERAL.—The Governor shall develop a formula for the allocation of the funds described in subsection (a)(2)(A) to local workforce development areas, taking into account—

(A) the poverty rate, among individuals who are not less than age 18 and not more than age 64, as determined by the Bureau of the Census, within each local workforce development area;

(B) the unemployment rate within each local workforce development area;

(C) the proportion of the State population of individuals who are not less than age 18 and not more than age 64, residing within each local workforce development area; and

(D) such additional factors as the Governor (in consultation with local boards and local elected officials) determines to be necessary.

(2) EQUITABLE ALLOCATION.—In developing such formula, the Governor shall ensure that—

(A) the funds described in subsection (a)(2)(A) are allocated in a geographically equitable manner throughout the State; and

(B) the factors described in paragraph (1) do not receive disproportionate weight in the allocation.

(c) ELIGIBILITY.—

(1) ELIGIBILITY FOR DESIGNATION OR CERTIFICATION AS A ONE-STOP CAREER CENTER ELIGIBLE PROVIDER.—

(A) IN GENERAL.—To be eligible to receive funds made available under this section to provide employment and training activities through a one-stop career center system and be designated or certified as a one-stop career center eligible provider for a local workforce development area, an entity shall—

(i) be selected in accordance with section ___108(d)(2)(A); and

(ii) be a public or private entity, or consortium of entities, located in the local workforce development area, which entity or consortium may include an institution of higher education (as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), a local employment service office established under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), a local government agency, a private for-profit entity, a private nonprofit entity, or other interested entity, of demonstrated effectiveness, such as a local chamber of commerce or other business organization.

(B) EXCEPTION.—Elementary schools and secondary schools shall not be eligible for designation or certification as one-stop career center eligible providers.

(2) ELIGIBILITY FOR IDENTIFICATION AS AN ELIGIBLE PROVIDER OF TRAINING SERVICES.—Except as provided in section ___107(d), to be eligible to receive funds made available under this section to provide training services described in section ___121(e)(3) and be identified as an eligible provider of such services, an entity shall meet the requirements of section ___107.

SEC. ___112. DISTRIBUTION FOR AT-RISK YOUTH ACTIVITIES.

(a) RESERVATIONS FOR STATE AND LOCAL ACTIVITIES.—

(1) IN GENERAL.—The sum of the funds made available to a State for any program year under paragraphs (2) and (5) of section ___103(a) for at-risk youth activities shall be made available in accordance with this section.

(2) DISTRIBUTION.—Of the sum described in paragraph (1) that is made available to a State for a program year—

(A) not less than 75 percent shall be made available to local workforce development areas under subsection (b) to carry out at-risk youth activities;

(B) not more than 21 percent shall be made available to the Governor to carry out at-risk youth activities; and

(C) not more than 4 percent shall be made available for administrative expenses at the State level.

(b) WITHIN STATE FORMULA.—

(1) IN GENERAL.—The Governor, using the collaborative process described in subsection (a) or (b) of section ___105, shall develop a formula for the allocation of the funds described in subsection (a)(2)(A) to local workforce development areas, taking into account—

(A) the poverty rate, as determined by the Bureau of the Census, within each local workforce development area;

(B) the proportion of the State at-risk youth population residing within each local workforce development area; and

(C) such additional factors as are determined to be necessary.

(2) EQUITABLE ALLOCATION.—In developing such formula, the Governor shall ensure that—

(A) the funds described in subsection (a)(2)(A) are allocated in a geographically equitable manner throughout the State; and

(B) the factors described in paragraph (1) do not receive disproportionate weight in the allocation.

(c) STATE GRANTS.—

(1) IN GENERAL.—The Governor shall use the funds described in subsection (a)(2)(B) to award grants, on a competitive basis, to eligible providers to carry out at-risk youth activities under section ___122.

(2) ELIGIBLE PROVIDERS.—Providers eligible to receive grants under this subsection to carry out such activities include—

(A) local educational agencies, area vocational education schools, educational service agencies, institutions of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))), State corrections educational agencies, or consortia of such entities;

(B) units of general local government;

(C) private nonprofit organizations (including community-based organizations);

(D) private for-profit entities; and

(E) other organizations or entities of demonstrated effectiveness that are approved by the Governor.

(3) APPLICATION.—To be eligible to receive a grant under this subsection from the State to carry out such activities, a provider shall prepare and submit an application to the Governor of the State at such time, in such manner, and containing such information as the Governor may require.

(4) AWARD OF GRANTS.—

(A) PROCESS.—

(i) IN GENERAL.—The Governor shall develop a peer review process for reviewing the applications and awarding the grants on a competitive basis.

(ii) CRITERIA.—The Governor shall establish criteria described in section ___104(b)(17)(C) to be used in reviewing the applications.

(B) AWARDS.—

(i) IN GENERAL.—Using the process referred to in subparagraph (A), and taking into consideration the criteria referred to in subparagraph (A), the Governor shall award the grants to eligible providers.

(ii) PRIORITY.—In awarding the grants, the Governor shall give priority to providers submitting applications to serve communities, or combinations of communities, that contain a large number or a high concentration of at-risk youth.

(iii) EQUITABLE DISTRIBUTION.—In awarding the grants, the Governor shall ensure that—

(I) the funds made available through the grants are distributed in a geographically equitable manner throughout the State; and

(II) no factor receives disproportionate weight in the distribution.

(d) LOCAL GRANTS.—

(1) IN GENERAL.—From the funds made available under subsection (a)(2)(A) to a local workforce development area (other than funds described in section ___122(c)), the local board for such local workforce development area shall award grants, on a competitive basis, to eligible providers to carry out at-risk youth activities under section ___122.

(2) ELIGIBLE PROVIDERS.—Providers eligible to receive grants under this subsection to carry out such activities in a local workforce development area include the providers described in subparagraphs (A) through (D) of subsection (c)(2) and other organizations or entities of demonstrated effectiveness that are approved by the local board.

(3) APPLICATION.—To be eligible to receive a grant under this subsection from the local board to carry out such activities in a local workforce development area, a provider shall prepare and submit an application to the board at such time, in such manner, and containing such information as the board may require.

(4) AWARD OF GRANTS.—

(A) PROCESS.—

(i) IN GENERAL.—The local board shall develop a peer review process for reviewing the applications and awarding the grants on a competitive basis.

(ii) CRITERIA.—The local board shall establish criteria described in section ___104(b)(17)(C) to be used in reviewing the applications.

(B) AWARDS.—

(i) IN GENERAL.—Using the process referred to in subparagraph (A), and taking into consideration the criteria referred to in subparagraph (A), the local board shall award the grants to eligible providers.

(ii) PRIORITY.—In awarding the grants, the local board shall give priority to providers submitting applications to serve communities, or combinations of communities, that contain a large number or a high concentration of at-risk youth.

(iii) EQUITABLE DISTRIBUTION.—In awarding the grants, the local board shall ensure that—

(I) the funds made available through the grants are distributed in a geographically equitable manner throughout the local workforce development area; and

(II) no factor receives disproportionate weight in the distribution.

(5) LIMITATION.—No local board may directly carry out an at-risk youth activity.

(e) TECHNICAL ASSISTANCE.—The Governor, in consultation with the chief elected officials in a local workforce development area, shall provide technical assistance to the local board for the local workforce development area to improve the level of performance of the local workforce development area with respect to at-risk youth activities if—

(1) the local board requests such technical assistance; or

(2) the Governor, in carrying out the certification requirements of section ___108(c)(2), determines that the local board requires such technical assistance.

SEC. ___113. FUNDING FOR STATE VOCATIONAL EDUCATION ACTIVITIES AND DISTRIBUTION FOR SECONDARY SCHOOL VOCATIONAL EDUCATION.

(a) RESERVATIONS FOR STATE AND LOCAL ACTIVITIES.—

(1) IN GENERAL.—The sum of the funds made available to a State for any program year under paragraphs (3) and (5) of section ___103(a) for vocational education activities shall be made available in accordance with this section and sections ___114 and ___115.

(2) DISTRIBUTION.—Of the sum described in paragraph (1) that is made available to an eligible agency for vocational education for a program year—

(A) not less than 85 percent shall be made available to eligible providers to carry out vocational education activities under this section or section ___114;

(B) not more than 11 percent shall be made available to carry out State activities described in section ___123(a); and

(C) not more than 4 percent shall be made available for administrative expenses at the State level.

(3) STATE DETERMINATIONS.—From the amount available to an eligible agency in a State for distribution to eligible providers under paragraph (2)(A) for a program year, such agency shall determine the percentage of such amount that will be distributed in accordance with this section and section ___114 for such year for vocational education activities in such State in the area of secondary school vocational education, or postsecondary and adult vocational education, or both.

(b) ALLOCATION FOR SECONDARY SCHOOL VOCATIONAL EDUCATION.—

(1) IN GENERAL.—Except as otherwise provided in this section and section ___115, each eligible agency for vocational education in a State shall distribute the portion of the funds made available for any program year (from funds made available for the corresponding fiscal year, as determined under section ___151(c)) by such agency for secondary school vocational education under subsection (a)(3) to local educational agencies within the State as follows:

(A) SEVENTY PERCENT.—From 70 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 70 percent as the number of children who are described in paragraph (2) and reside in the school district served by such agency for the preceding fiscal year bears to the total number of such children who reside in the school districts served by all local educational agencies in the State for such preceding year.

(B) THIRTY PERCENT.—From 30 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 30 percent as the number of students enrolled in schools, and adults enrolled in training programs, under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools, and adults enrolled in training programs,

under the jurisdiction of all local educational agencies in the State for such preceding year.

(2) NUMBER OF CHILDREN.—

(A) IN GENERAL.—The number of children referred to in paragraph (1)(A) is the number of children aged 5 through 17, inclusive, from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made.

(B) POPULATION UPDATES.—In fiscal year 1999 and every 2 years thereafter, the Secretary of Education shall use updated data on the number of children aged 5 through 17, inclusive, from families with incomes below the poverty line for local educational agencies, published by the Department of Commerce, unless the Secretary of Education and the Secretary of Commerce determine that use of the updated population data would be inappropriate or unreliable, taking into consideration the recommendations of the study to be conducted by the National Academy of Sciences pursuant to section 1124(c)(4) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)(4)). If the Secretary of Education and the Secretary of Commerce determine that some or all of the data referred to in this subparagraph are inappropriate or unreliable, they shall jointly issue a report setting forth their reasons in detail. In determining the families with incomes below the poverty line, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census, in such form as those criteria have been updated by increases in the Consumer Price Index for all urban consumers, published by the Bureau of Labor Statistics.

(3) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—Subject to subsection (c), the Secretary of Education may waive the application of paragraph (1) in the case of any eligible agency that submits to the Secretary an application for such waiver that—

(A) demonstrates that an alternative formula will result in a greater distribution of funds to local educational agencies within the State that serve the highest number or greatest percentage of children described in paragraph (2) than the formula described in paragraph (1); and

(B) includes a proposal for such an alternative formula.

(c) MINIMUM ALLOCATION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no local educational agency shall receive an allocation under subsection (b) for a program year unless the amount allocated to such agency under subsection (b) is $15,000 or more. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocation requirement of this paragraph.

(2) WAIVER.—The eligible agency may waive the application of paragraph (1) in any case in which the local educational agency—

(A) is located in a rural, sparsely populated area; and

(B) demonstrates that such agency is unable to enter into a consortium for purposes of providing services under this section.

(3) REDISTRIBUTION.—Any amounts that are not allocated by reason of paragraph (1) for a program year shall be redistributed for such program year—

(A) to a local educational agency—

(i) that did not receive an allocation under subsection (b) or pursuant to paragraph (2) for such program year;

(ii) that is located in a rural, sparsely populated area; and

(iii) for which at least 15 percent of the children in the school district served by such agency are children described in subsection (b)(2); and

(B) for vocational education services and activities of sufficient, size, scope, and quality to be effective.

(d) LIMITED JURISDICTION AGENCIES.—

(1) IN GENERAL.—In applying the provisions of subsection (b), no eligible agency receiving assistance under this title shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

(2) SPECIAL RULE.—The amount to be distributed under paragraph (1) for a program year to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

(e) ALLOCATIONS TO AREA VOCATIONAL EDUCATION SCHOOLS AND EDUCATIONAL SERVICE AGENCIES.—

(1) IN GENERAL.—Each eligible agency shall distribute the portion of funds made available for any program year by such agency for secondary school vocational education under subsection (a)(3) to the appropriate area vocational education school or educational service agency in any case in which the area vocational education school or educational service agency, and the local educational agency concerned—

(A) have formed or will form a consortium for the purpose of receiving funds under this section; or

(B) have entered into or will enter into a cooperative arrangement for such purpose.

(2) ALLOCATION BASIS.—If an area vocational education school or educational service agency meets the requirements of paragraph (1), then—

(A) the amount that would otherwise be distributed to the local educational agency for a program year under this section shall be allocated to the area vocational education school, the educational service agency, and the local educational agency, based on each school's or agency's relative share of students who are attending vocational education programs (based, if practicable, on the average enrollment for the prior 3 years); or

(B) such amount may be allocated on the basis of an agreement between the local educational agency and the area vocational education school or educational service agency.

(3) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area vocational education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium or terminate a cooperative arrangement.

(4) CONSORTIUM REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraphs (1), (2), and (3), any local educational agency receiving an allocation that is not sufficient to conduct a secondary school vocational education program of sufficient size, scope, and quality to be effective may—

(i) form a consortium or enter into a cooperative agreement with an area vocational education school or educational service agency offering secondary school vocational education programs of sufficient size, scope, and quality to be effective; and

(ii) transfer such allocation to the area vocational education school or educational service agency.

(B) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this paragraph shall be used only for purposes and activities that are mutually beneficial to all members of the consortium. Such funds may not be reallocated to individual members of the consortium for purposes or activities benefiting only one member of the consortium.

(f) DATA.—The Secretary of Education shall collect information from States regarding how funds made available by the eligible agency for vocational education under subsection (a)(3) are distributed to local educational agencies in accordance with this section.

SEC. ___114. DISTRIBUTION FOR POSTSECONDARY AND ADULT VOCATIONAL EDUCATION.

(a) ALLOCATION.—

(1) IN GENERAL.—Except as provided in subsection (b) and section ___115, each eligible agency for vocational education in a State, using the portion of the funds made available for any program year by such agency for postsecondary and adult vocational education under section ___113(a)(3), shall distribute such portion to eligible institutions or consortia of eligible institutions within the State.

(2) FORMULA.—Each eligible institution or consortium of eligible institutions shall receive an amount for the program year (from funds made available for the corresponding fiscal year, as determined under section ___151(c)) from such portion that bears the same relationship to such portion as the number of individuals who are Pell Grant recipients or recipients of assistance from the Bureau of Indian Affairs and are enrolled in programs offered by such eligible institution or consortium of eligible institutions, respectively, for the preceding fiscal year bears to the number of all such individuals who are enrolled in any such program within the State for such preceding year.

(3) CONSORTIUM REQUIREMENTS.—

(A) IN GENERAL.—In order for a consortium of eligible institutions described in paragraph (1) to receive assistance pursuant to such paragraph such consortium shall operate joint projects that—

(i) provide services to all postsecondary institutions participating in the consortium; and

(ii) are of sufficient size, scope, and quality to be effective.

(B) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this section shall be used only for purposes and activities that are mutually beneficial to all members of the consortium. Such funds may not be reallocated to individual members of the consortium for purposes or activities benefiting only one member of the consortium.

(b) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary of Education may waive the application of subsection (a) in the case of any eligible agency that submits to the Secretary of Education an application for such a waiver that—

(1) demonstrates that an alternative formula will result in a greater distribution of funds to the eligible institutions or consortia

of eligible institutions within the State that serve the highest numbers of low-income individuals than the formula described in subsection (a)(2); and

(2) includes a proposal for such an alternative formula.

(c) MINIMUM AMOUNT.—

(1) IN GENERAL.—No distribution of funds provided to any eligible institution or consortium of eligible institutions for a program year under this section shall be for an amount that is less than $50,000.

(2) REDISTRIBUTION.—Any amounts that are not distributed by reason of paragraph (1) shall be redistributed to eligible institutions or consortia of eligible institutions in accordance with the provisions of this section.

SEC. ___115. SPECIAL RULES FOR VOCATIONAL EDUCATION.

(a) SPECIAL RULE FOR MINIMAL ALLOCATION.—

(1) GENERAL AUTHORITY.—Notwithstanding the provisions of section ___113 or ___114 and in order to make a more equitable distribution of funds for programs serving the highest numbers or greatest percentages of low-income individuals, for any program year for which a minimal amount is made available by an eligible agency for distribution under section ___113 or ___114 such agency may distribute such minimal amount for such year—

(A) on a competitive basis; or

(B) through any alternative method determined by the eligible agency.

(2) MINIMAL AMOUNT.—For purposes of this section, the term "minimal amount" means not more than 15 percent of the total amount made available by the eligible agency under section ___113(a)(3) for sections ___113 and ___114 for a program year.

(b) REDISTRIBUTION.—

(1) IN GENERAL.—In any program year that an eligible provider receiving financial assistance under section ___113 or ___114 does not expend all of the amounts distributed to such provider for such year under section ___113 or ___114, respectively, such provider shall return any unexpended amounts to the eligible agency for distribution under section ___113 or ___114, respectively. The eligible agency may waive the requirements of the preceding sentence, on a case-by-case basis, for good cause as determined by such agency.

(2) REDISTRIBUTION OF AMOUNTS RETURNED LATE IN A PROGRAM YEAR.—In any program year in which amounts are returned to the eligible agency under paragraph (1) for programs described in section ___113 or ___114 and the eligible agency is unable to redistribute such amounts according to section ___113 or ___114, respectively, in time for such amounts to be expended in such program year, the eligible agency shall retain such amounts for distribution in combination with amounts made available under such section for the following program year.

(c) CONSTRUCTION.—Nothing in section ___113 or ___114 shall be construed—

(1) to prohibit a local educational agency (or a consortium thereof) that receives assistance under section ___113, from working with an eligible provider (or consortium thereof) that receives assistance under section ___114, to carry out secondary school vocational education activities in accordance with this title; or

(2) to prohibit an eligible provider (or consortium thereof) that receives assistance under section ___114, from working with a local educational agency (or consortium thereof) that receives assistance under section ___113, to carry out postsecondary and adult vocational education activities in accordance with this title.

(d) LOCAL APPLICATION FOR VOCATIONAL EDUCATION ACTIVITIES.—

(1) APPLICATION REQUIRED.—Each provider in a State desiring financial assistance under this subtitle for vocational education activities shall submit an application to the eligible agency for vocational education at such time, in such manner, and accompanied by such information as such agency (in consultation with other educational entities as the eligible agency determines appropriate) may require. Such application shall cover the same period of time as the period of time applicable to the State plan submitted under section ___104.

(2) CONTENTS.—Each application described in paragraph (1) shall, at a minimum—

(A) describe how the vocational education activities required under section ___123 will be carried out with funds received under this subtitle;

(B) describe how the activities to be carried out relate to meeting the State goals, and reaching the State benchmarks, concerning vocational education activities;

(C) describe how the provider will address the needs of students who participate in vocational education activities to be taught to the same challenging academic proficiencies as all students;

(D) describe the process that will be used to independently evaluate and continuously improve the performance of the provider;

(E) describe how the provider will coordinate the activities of the provider with the activities of the local board in the local workforce development area; and

(F) describe how parents, teachers, and the community are involved in the development and implementation of activities under this section.

SEC. ___116. DISTRIBUTION FOR ADULT EDUCATION AND LITERACY.

(a) RESERVATIONS FOR STATE AND LOCAL ACTIVITIES.—

(1) IN GENERAL.—The sum of the funds made available to a State for any program year under paragraphs (4) and (5) of section ___103(a) for adult education and literacy activities shall be made available in accordance with this section.

(2) DISTRIBUTION.—Of the sum described in paragraph (1) that is made available to an eligible agency for adult education and literacy for a program year—

(A) not less than 85 percent shall be made available to award grants in accordance with this section to carry out adult education and literacy activities;

(B) not more than 10 percent shall be made available to carry out State activities described in section ___124(a); and

(C) subject to subparagraph (A), not more than 5 percent, or $50,000, whichever is greater, shall be made available for administrative expenses at the State level.

(b) GRANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), from the amount made available to an eligible agency for adult education and literacy under subsection (a)(2)(A) for a program year, such agency shall award grants, on a competitive basis, to local educational agencies, correctional education agencies, community-based organizations of demonstrated effectiveness, volunteer literacy organizations, libraries, public or private nonprofit agencies, postsecondary educational institutions, public housing authorities, and other nonprofit institutions, that have the ability to provide literacy services to adults and families, or consortia of agencies, organizations, or institutions described in this subsection, to enable such agencies, organizations, institutions, and consortia to carry out adult education and literacy activities.

(2) CONSORTIA.—An eligible agency may award a grant under this section to a consortium that includes a provider described in paragraph (1) and a for-profit agency, organization, or institution, if such agency, organization, or institution—

(A) can make a significant contribution to carrying out the objectives of this title; and

(B) enters into a contract with such provider to carry out adult education and literacy activities.

(c) GRANT REQUIREMENTS.—

(1) EQUITABLE ACCESS.—Each eligible agency awarding a grant under this section for adult education and literacy activities shall ensure that the providers described in subsection (b) will be provided direct and equitable access to all Federal funds provided under this section.

(2) SPECIAL RULE.—Each eligible agency awarding a grant under this section shall not use any funds made available under this title for adult education and literacy activities for the purpose of supporting or providing programs, services, or activities for individuals who are not individuals described in subparagraphs (A) and (B) of section ___004(1), except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy services.

(3) CONSIDERATIONS.—In awarding grants under this section, the eligible agency shall consider—

(A) the past effectiveness of a provider described in subsection (b) in providing services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by such adults);

(B) the degree to which the provider will coordinate services with other literacy and social services available in the community, including coordination with one-stop career center systems established in section ___121(d); and

(C) the commitment of the provider to serve individuals in the community who are most in need of literacy services.

(d) LOCAL ADMINISTRATIVE COST LIMITS.—

(1) IN GENERAL.—Except as provided in paragraph (2), of the funds provided under this section by an eligible agency to a provider described in subsection (b), not less than 95 percent shall be expended for provision of adult education and literacy activities. The remainder shall be used for planning, administration, personnel development, and interagency coordination.

(2) SPECIAL RULE.—In cases where the cost limits described in paragraph (1) will be too restrictive to allow for adequate planning, administration, personnel development, and interagency coordination supported under this section, the eligible agency shall negotiate with the provider described in subsection (b) in order to determine an adequate level of funds to be used for noninstructional purposes.

SEC. ___117. DISTRIBUTION FOR FLEXIBLE ACTIVITIES.

(a) EMPLOYMENT AND TRAINING ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out employment and training activities shall distribute such funds in accordance with section ___111.

(b) AT-RISK YOUTH ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to

carry out at-risk youth activities shall distribute such funds in accordance with section ___112.

(c) VOCATIONAL EDUCATION ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out vocational education activities shall distribute such funds in accordance with sections ___113, ___114, and ___115.

(d) ADULT EDUCATION AND LITERACY ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out adult education and literacy activities shall distribute such funds in accordance with section ___116.

Subtitle C—Use of Funds

SEC. ___121. EMPLOYMENT AND TRAINING ACTIVITIES.

(a) IN GENERAL.—Funds made available to States and local workforce development areas under this title for employment and training activities—

(1) shall be used to carry out the activities described in subsections (b), (e), and (g); and

(2) may be used to carry out the activities described in subsections (c) and (f).

(b) REQUIRED STATE ACTIVITIES.—A State shall use funds made available for State employment and training activities under section ___111(a)(2)(B)—

(1) to provide rapid response assistance;

(2) to provide labor market information as described in section ___139; and

(3) to conduct evaluations, under section ___106(d), of activities authorized in this section.

(c) PERMISSIBLE STATE ACTIVITIES.—A State may use funds made available for State employment and training activities under section ___111(a)(2)(B)—

(1) to provide services that may include—

(A) providing professional development and technical assistance;

(B) making incentive grants to local workforce development areas for exemplary performance in reaching or exceeding benchmarks described in section ___108(d)(4)(A);

(C) providing economic development activities (to supplement other funds provided by the State, a local agency, or the private sector for such activities) that consist of—

(i) providing services to upgrade the skills of employed workers who are at risk of being permanently laid off;

(ii) retraining employed workers in new technologies and work processes that will facilitate the conversion and restructuring of business to assist in the avoidance of a permanent closure or substantial layoff at a plant, facility, or enterprise;

(iii) providing customized assessments of the skills of workers and an analysis of the skill needs of employers;

(iv) assisting consortia of small- and medium-size employers in upgrading the skills of their workforces;

(v) providing productivity and quality improvement training programs for the workforces of small- and medium-size employers; and

(vi) establishing and implementing an employer loan program to assist employees in skills upgrading;

(D) implementing efforts to increase the number of participants trained and placed in nontraditional employment; and

(E) carrying out other activities authorized in this section that the State determines to be necessary to assist local workforce development areas in carrying out activities described in subsection (e) or (f) through the statewide system;

(2) to operate a fiscal and management accountability information system under section ___106(e);

(3) to assist in the establishment of the one-stop career center system described in subsection (d); and

(4) to carry out the career grant pilot program described in subsection (g).

(d) ESTABLISHMENT OF ONE-STOP CAREER CENTER SYSTEM.—

(1) IN GENERAL.—There shall be established in a State that receives an allotment under section ___102 a one-stop career center system, which—

(A) shall provide the core services described in subsection (e)(2);

(B) shall provide access to the activities (if any) carried out under subsection (f);

(C) shall make labor market information described in section ___139 and subsection (e)(2)(D) available and shall provide all job search, placement, recruitment, and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.); and

(D)(i) shall provide access to training services as described in subsection (e)(3), which may include serving as the point of distribution of career grants for training services to participants in accordance with subsection (e)(3); and

(ii) may serve as the point of distribution of career grants for training services to participants in accordance with subsection (g).

(2) ONE-STOP DELIVERY.—At a minimum, the one-stop career center system shall make the services described in paragraph (1) available—

(A) through a network of eligible providers that assures participants that the core services described in subsection (e)(2) will be available regardless of where the participants initially enter the statewide system, including the availability of such services through multiple, connected access points, linked electronically or technologically;

(B) through a network of career centers that can provide the services described in paragraph (1) to participants;

(C) at not less than 1 physical, co-located career center in each local workforce development area of the State, that provides the services described in paragraph (1) to participants seeking such services; or

(D) through a combination of the options described in subparagraphs (A) through (C).

(e) REQUIRED LOCAL ACTIVITIES.—

(1) IN GENERAL.—Funds made available to local workforce development areas under section ___111(a)(2)(A) shall be used—

(A) to establish the one-stop career center described in subsection (d);

(B) to provide the core services described in paragraph (2) (referred to in this section as "core services") to participants through the one-stop career center system; and

(C) to provide training services described in paragraph (3) (referred to in this section as "training services") to participants described in such paragraph.

(2) CORE SERVICES.—Funds made available to local workforce development areas under section ___111(a)(2)(A) shall be used to provide core services, which shall be available to all individuals through a one-stop career center system and shall, at a minimum, include—

(A) outreach, intake, and orientation to the information and other services available through the one-stop career center system;

(B) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(C) job search and placement assistance, and, where appropriate, career counseling;

(D) provision of accurate labor market information relating to—

(i) local, State, and, if appropriate, regional or national, occupations in demand; and

(ii) skill requirements for such occupations, where available;

(E)(i) provision of accurate information relating to the quality and availability of activities authorized in this section, at-risk youth activities, vocational education activities, adult education and literacy activities, and vocational rehabilitation program activities;

(ii) provision of information relating to adult education and literary activities, through cooperative efforts with eligible providers of adult education and literacy activities described in section ___116(b); and

(iii) referral to appropriate activities described in clauses (i) and (ii);

(F) provision of eligibility information relating to unemployment compensation, publicly funded education and training programs (including registered apprenticeships), and forms of public financial assistance, such as student aid programs, that may be available in order to enable individuals to participate in workforce and career development activities;

(G) dissemination of lists of providers and performance information in accordance with paragraph (3)(E)(ii); and

(H) provision of information regarding how the local workforce development area is performing on the local benchmarks described in section ___108(d)(4)(A), and any additional performance information provided by the local board.

(3) REQUIRED TRAINING SERVICES.—

(A) SERVICES.—Funds made available to local workforce development areas under section ___111(a)(2)(A) shall be used to provide training services to individuals who are unable to obtain employment through the core services, who after an interview, evaluation or assessment, and counseling by an eligible provider have been determined to be in need of training services, and who meet the requirements of subparagraph (B). Training services may include—

(i) occupational skills training;

(ii) on-the-job training;

(iii) skills upgrading and retraining for persons not in the workforce; and

(iv) basic skills training when provided in combination with services described in clause (i), (ii), or (iii).

(B) QUALIFICATION.—

(i) REQUIREMENT.—Except as provided in clause (ii), provision of such training services shall be limited to participants who—

(I) are unable to obtain other grant assistance for such services, including Federal Pell Grants established under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(II) who require assistance beyond the assistance made available under other grant assistance programs, including Federal Pell Grants.

(ii) REIMBURSEMENTS.—Training services may be provided under this paragraph to an individual who otherwise meets the requirements of this paragraph while an application for a Federal Pell Grant is pending, except that if such individual is subsequently awarded a Federal Pell Grant, appropriate reimbursement shall be made to the local workforce development area from such Federal Pell Grant.

(C) PRIORITY.—In the event that funds are limited within a local workforce development area, priority shall be given to dislocated workers and other unemployed individuals for receipt of training services provided under this paragraph. The appropriate

local board and the Governor shall provide policy guidance to one-stop career center eligible providers in the local workforce development area for making determinations related to such priority.

(D) DELIVERY OF SERVICES.—Training services provided under this paragraph shall be provided—

(i) except as provided in section ___107(d), through eligible providers of such services identified in accordance with section ___107; and

(ii) in accordance with subparagraph (E).

(E) CONSUMER CHOICE REQUIREMENTS.—

(i) IN GENERAL.—Training services provided under this paragraph may be provided through the use of career grants, contracts, or other methods (which may include performance-based contracting) and shall, to the extent practicable, maximize consumer choice in the selection of an eligible provider of such services.

(ii) ELIGIBLE PROVIDERS.—Each local workforce development area, through one-stop career centers, shall make available—

(I) the list of eligible providers of training services required under section ___107(b)(4), with a description of the training courses available from such providers and a list of the names of on-the-job training providers; and

(II) the performance information described in subsections (b)(4) and (d)(2) of section ___107 relating to such providers.

(iii) PURCHASE OF SERVICES.—An individual eligible for receipt of training services under this paragraph may select an eligible provider of training services from the lists of providers described in clause (ii)(I). Upon such selection, the operator of the one-stop career center shall, to the extent practicable, refer such individual to the eligible provider of training services, and arrange for payment for such services.

(F) USE OF CAREER GRANTS.—A State or a local workforce development area may deliver all training services authorized in this paragraph through the use of career grants.

(f) PERMISSIBLE LOCAL ACTIVITIES.—

(1) DISCRETIONARY ONE-STOP DELIVERY ACTIVITIES.—Funds made available to local workforce development areas under section ___111(a)(2)(A) may be used to provide, through one-stop delivery described in subsection (d)(2)—

(A) co-location of services related to workforce and career development activities, such as unemployment insurance, vocational rehabilitation program activities, veterans' employment services, or other public assistance;

(B) intensive employment-related services for participants who are unable to obtain employment through the core services, as determined by the State;

(C) dissemination to employers of information on activities carried out through the statewide system;

(D) customized screening and referral of qualified participants to employment; and

(E) customized employment-related services to employers on a fee-for-service basis.

(2) SUPPORTIVE SERVICES.—Funds made available to local workforce development areas under section ___111(a)(2)(A) may be used to provide supportive services to participants—

(A) who are receiving training services; and

(B) who are unable to obtain such supportive services through other programs providing such services.

(3) FOLLOWUP SERVICES.—Funds made available to local workforce development areas under section ___111(a)(2)(A) may be used to provide followup services for participants in activities authorized in this section who are placed in unsubsidized employment.

(4) NEEDS-RELATED PAYMENTS.—

(A) IN GENERAL.—Funds made available to local workforce development areas under section ___111(a)(2)(A) may be used to provide needs-related payments to dislocated workers who are unemployed and do not qualify for, or have ceased to qualify for, unemployment compensation, for the purpose of enabling such individuals to participate in training services.

(B) ADDITIONAL ELIGIBILITY REQUIREMENTS.—In addition to the requirements contained in subparagraph (A), a dislocated worker who has ceased to qualify for unemployment compensation may be eligible to receive needs-related payments under this paragraph only if such worker was enrolled in the training services—

(i) by the end of the 8th week of the worker's initial unemployment compensation benefits period; or

(ii) if later, by the end of the 8th week after the worker is informed that a short-term layoff will, in fact, exceed 6 months.

(C) LEVEL OF PAYMENTS.—The level of a needs-related payment made under this paragraph—

(i) shall not exceed the greater of—

(I) the applicable level of unemployment compensation; or

(II) an amount equal to the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved, for an equivalent period; and

(ii) shall be adjusted to reflect changes in total family income.

(5) CAREER GRANT PILOT PROGRAM.—Funds made available to local workforce development areas under section ___111(a)(2)(A) may be used to carry out the career grant pilot program described in subsection (g), which may be carried out in conjunction with the provision of training services under subsection (e)(3).

(g) CAREER GRANT PILOT PROGRAM FOR DISLOCATED WORKERS.—The State shall carry out (using funds made available under section ___111(a)(2)(B) or by making funds available to local workforce development areas under section ___111(a)(2)(A)) a career grant pilot program for dislocated workers that is of sufficient size, scope, and quality to measure the effectiveness of the use of career grants for the provision of training services under subsection (e)(3).

(h) LOCAL ADMINISTRATION.—Not more than 10 percent of the funds made available under section ___111(a)(2)(A) to a local workforce development area may be used for administrative expenses.

SEC. ___122. AT-RISK YOUTH ACTIVITIES.

(a) REQUIRED ACTIVITIES.—Funds made available to Governors and local workforce development areas under this title for at-risk youth activities shall be used to carry out, for at-risk youth, activities that—

(1) provide strong linkages between academic, occupational, and worksite learning;

(2) provide postsecondary educational opportunities, where appropriate;

(3) involve business and parents in the design and implementation of the activities;

(4) provide adult mentoring;

(5) provide career guidance and counseling; and

(6) are of sufficient size, scope, and quality to be effective.

(b) PERMISSIBLE ACTIVITIES.—Funds made available to Governors and local workforce development areas under this title for at-risk youth activities may be used to carry out, for at-risk youth, activities that provide—

(1) tutoring, study skills training, and instruction, leading to completion of secondary school, including dropout prevention strategies;

(2) alternative secondary school services;

(3) paid and unpaid work experience, including summer employment opportunities, that are directly linked to academic, occupational, and worksite learning; and

(4) training-related supportive services.

(c) LOCAL ADMINISTRATION.—Not more than 10 percent of the funds made available under section ___112(a)(2)(A) to a local workforce development area may be used for administrative expenses. The local board for the local workforce development area may use not more than 4 percent of the funds made available under section ___112(a)(2)(A) for the administrative expenses of the local board. The remainder of the 10 percent may be used for administrative expenses of eligible providers of at-risk youth activities in the local workforce development area.

SEC. ___123. VOCATIONAL EDUCATION ACTIVITIES.

(a) PERMISSIBLE STATE ACTIVITIES.—The eligible agency for vocational education shall use not more than 11 percent of the funds made available to the eligible agency under subtitle A for activities that may include—

(1) an assessment of the activities authorized in this section;

(2) support for tech-prep programs;

(3) support for activities authorized in this section for single parents, displaced homemakers, and single pregnant women;

(4) professional development activities, including—

(A) inservice and preservice training in state-of-the-art vocational education programs and techniques; and

(B) support of education programs for teachers of vocational education in public schools to ensure such teachers stay current with the needs, expectations, and methods of industry;

(5) support for programs that offer experience in, and understanding of, all aspects of the industry students are preparing to enter;

(6) leadership and instructional programs in technology education;

(7) support for cooperative education;

(8) support for family and consumer sciences programs;

(9) support for vocational student organizations;

(10) improvement of career guidance and counseling;

(11) technical assistance; and

(12) performance awards for 1 or more eligible providers that the eligible agency determines have achieved exceptional performance in providing activities described in this section.

(b) REQUIRED LOCAL ACTIVITIES.—The eligible agency for vocational education shall use not less than 85 percent of the funds made available to the eligible agency under subtitle A to provide financial assistance under sections ___113 and ___114 to eligible providers to enable such providers to carry out activities authorized in this section that include—

(1)(A) integrating academic and vocational education;

(B) integrating classroom and worksite learning; and

(C) linking secondary and postsecondary education, including implementing tech-prep programs;

(2) providing career guidance and counseling;

(3) providing vocational education programs of sufficient size, scope, and quality to be effective;

(4) improving and expanding access to quality, state-of-the-art activities authorized in this section;

(5) providing professional development; and

(6) involving business and parents in the design and implementation of activities authorized in this section.

SEC. ___124. ADULT EDUCATION AND LITERACY ACTIVITIES.

(a) PERMISSIBLE STATE ACTIVITIES.—The eligible agency for adult education and literacy may use not more than 10 percent of the funds made available to the eligible agency under subtitle A for activities that may include—

(1) the establishment or operation of professional development programs to improve the quality of instruction provided pursuant to local activities authorized in this section, including instruction provided by volunteers;

(2) the provision of technical assistance to eligible providers of activities authorized in this section;

(3) the provision of technology assistance to eligible providers of activities authorized in this section to enable the providers to improve the quality of such activities;

(4) the support of State or regional networks of literacy resource centers; and

(5) the monitoring and evaluation of the quality of and the improvement in activities authorized in this section.

(b) REQUIRED LOCAL ACTIVITIES.—The eligible agency for adult education and literacy shall require that each eligible provider receiving a grant under section ___116 use the grant to establish or operate 1 or more programs that provide instruction or services in 1 or more of the following categories:

(1) Adult education and literacy services.

(2) Family literacy services.

(3) English literacy programs.

SEC. ___125. FLEXIBLE ACTIVITIES.

(a) IN GENERAL.—A State may use the funds made available to the State under this title through the flex account to carry out—

(1) employment and training activities;

(2) at-risk youth activities;

(3) vocational education activities; and

(4) adult education and literacy activities.

(b) USE OF FUNDS.—

(1) EMPLOYMENT AND TRAINING ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out employment and training activities shall expend such funds in accordance with sections ___121 and ___126.

(2) AT-RISK YOUTH ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out at-risk youth activities shall expend such funds in accordance with sections ___122 and ___126.

(3) VOCATIONAL EDUCATION ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out vocational education activities shall expend such funds in accordance with sections ___123 and ___126.

(4) ADULT EDUCATION AND LITERACY ACTIVITIES.—A State that uses funds made available to the State under this title through the flex account to carry out adult education and literacy activities shall expend such funds in accordance with sections ___124 and ___126.

SEC. ___126. REQUIREMENTS AND RESTRICTIONS RELATING TO USE OF FUNDS.

(a) FISCAL REQUIREMENTS FOR VOCATIONAL EDUCATION ACTIVITIES AND ADULT EDUCATION AND LITERACY ACTIVITIES.—

(1) SUPPLEMENT NOT SUPPLANT.—Funds made available under this title for vocational education activities or adult education and literacy activities shall supplement, and may not supplant, other public funds expended to carry out activities described in section ___123 or ___124, respectively.

(2) MAINTENANCE OF EFFORT.—

(A) DETERMINATION.—

(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), and subparagraph (B), no payments shall be made under this title for any program year to a State for vocational education activities or adult education and literacy activities unless the Secretary of Education determines that the fiscal effort per student or the aggregate expenditures of such State for activities described in section ___123 or ___124, respectively, for the program year preceding the program year for which the determination is made, equaled or exceeded such effort or expenditures for activities described in section ___123 or ___124, respectively, for the second program year preceding the fiscal year for which the determination is made.

(ii) COMPUTATION.—In computing the fiscal effort or aggregate expenditures pursuant to clause (i), the Secretary of Education shall exclude capital expenditures, special one-time project costs, similar windfalls, and the cost of pilot programs.

(iii) DECREASE IN FEDERAL SUPPORT.—If the amount made available for vocational education activities or adult education and literacy activities under this title for a fiscal year is less than the amount made available for vocational education activities or adult education and literacy activities, respectively, under this title for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State required by clause (i) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

(B) SPECIAL RULE.—Notwithstanding any provision of the Carl D. Perkins Vocational Education Act (as such Act was in effect on September 24, 1990), a State shall be deemed to have met the requirements of section 503 of such Act with respect to decisions appealed by applications filed on April 30, 1993 and October 29, 1993 under section 452(b) of the General Education Provisions Act.

(C) WAIVER.—The Secretary of Education may waive the requirements of subparagraph (A) (with respect to not more than 5 percent of expenditures required for the preceding fiscal year by any eligible agency) for 1 program year only, after making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this paragraph for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

(3) EXPENDITURES OF NON-FEDERAL FUNDS FOR ADULT EDUCATION AND LITERACY ACTIVITIES.—For any program year for which an allotment is made to the State under this title, the State shall expend, on programs and activities relating to adult education and literacy activities, an amount, derived from sources other than the Federal Government, equal to 25 percent of the amount made available to a State under paragraphs (4) and (5) of section ___103(a) for adult education and literacy activities.

(b) LIMITATIONS ON ACTIVITIES THAT IMPACT EMPLOYEES.—

(1) WAGES.—No funds provided under this title shall be used to pay the wages of incumbent employees during their participation in economic development activities described in section ___121(c)(1)(C) provided through the statewide system.

(2) RELOCATION.—

(A) IN GENERAL.—No funds provided under this title for an employment and training activity shall be used or proposed for use to encourage or induce the relocation, of a business or part of a business, that results in a loss of employment for any employee of such business at the original location, if such original location is within the United States.

(B) REPAYMENT.—If the Secretary of Labor determines that a violation of this paragraph or paragraph (3) has occurred, the Secretary of Labor shall require the State that has violated this paragraph or paragraph (3), respectively, to repay to the United States an amount equal to the amount expended in violation of this paragraph or paragraph (3), respectively.

(3) TRAINING AND ASSESSMENTS FOLLOWING RELOCATION.—No funds provided under this title for an employment and training activity shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any business or part of a business, that has relocated, until 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business, results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

(4) DISPLACEMENT.—

(A) PROHIBITION ON DISPLACEMENT.—A participant in an activity authorized in section ___121 or ___122 (referred to in this section as a "specified activity") shall not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(B) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

(C) PROHIBITION ON REPLACEMENT.—A participant in a specified activity shall not be employed in a job—

(i) when any other individual is on temporary layoff, with the clear possibility of recall, from the same or any substantially equivalent job with the participating employer; or

(ii) when the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant.

(5) HEALTH AND SAFETY.—Health and safety standards established under Federal and

State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that a State workers' compensation law applies, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

(6) EMPLOYMENT CONDITIONS.—Participants employed or assigned to work in positions subsidized for specified activities shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(7) EFFECT ON OTHER LAWS.—Nothing in this division shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(8) NONDISCRIMINATION.—Except as otherwise permitted in law, no individual may be discriminated against with respect to participation in specified activities because of race, color, religion, sex, national origin, age, or disability.

(9) GRIEVANCE PROCEDURE.—A State that receives an allotment under section ___102 shall establish and maintain a grievance procedure for resolving complaints alleging violations of any of the prohibitions or requirements described in this subsection.

(10) EXCLUSIVE REMEDY.—Except as provided in paragraph (7), nothing in this division shall be construed to provide an individual with an entitlement to a service or to establish a right for an individual to bring any action for a violation of a prohibition or requirement of this title or to obtain services through an activity established under this title, except that a participant in specified activities under this title may pursue a complaint alleging a violation of any of the prohibitions or requirements described in this subsection through the grievance procedure described in paragraph (9).

(c) LIMITATIONS ON PARTICIPANTS IN TRAINING SERVICES.—

(1) DIPLOMA OR EQUIVALENT.—

(A) IN GENERAL.—No individual may participate in training services described in section ___121(e)(3) until the individual has obtained a secondary school diploma or its recognized equivalent, or is enrolled in a program or course of study to obtain a secondary school diploma or its recognized equivalent.

(B) EXCEPTION.—Nothing in subparagraph (A) shall prevent participation in such training services by an individual for whom the requirement described in subparagraph (A) has been determined to be inappropriate, pursuant to the interview, evaluation or assessment, and counseling described in section ___121(e)(3)(A).

(2) SERVICES.—

(A) REFERRAL.—If an individual who has not obtained a secondary school diploma or its recognized equivalent applies to participate in such training services, and a determination described in paragraph (1)(B) has not been made for such individual, such individual shall be referred to State-approved adult education and literacy activities that provide instruction designed to help such individual obtain a secondary school diploma or its recognized equivalent.

(B) PROVISION OF SERVICES.—Funds made available under section ___111(a)(2)(A) and allocated within the local workforce development area for the provision of such training services may be used to provide State-approved adult education and literacy activities that provide instruction designed to help individuals obtain a secondary school diploma or its recognized equivalent, to individuals who—

(i) are seeking to participate in such training services; and

(ii) are otherwise unable to obtain such services.

(d) DRUG TESTING LIMITATIONS ON PARTICIPANTS IN TRAINING SERVICES.—

(1) FINDING.—Congress finds that—

(A) the possession, distribution, and use of drugs by participants in training services should not be tolerated, and that such use prevents participants from making full use of the benefits extended through such training services at the expense of taxpayers; and

(B) applicants and participants should be tested for illegal drug use, in order to maximize the training services and assistance provided under this title.

(2) DRUG TESTS.—Each eligible provider of training services described in section ___121(e)(3) shall administer a drug test—

(A) on a random basis, to individuals who apply to participate in such training services; and

(B) to a participant in such training services, on reasonable suspicion of drug use by the participant.

(3) ELIGIBILITY OF APPLICANTS.—In order for such an applicant to be eligible to participate in such training services, the applicant shall agree to submit to a drug test administered as described in paragraph (2)(A) and, if the test is administered to the applicant, shall pass the test.

(4) ELIGIBILITY OF PARTICIPANTS.—In order for such a participant to remain eligible to participate in such training services, the participant shall agree to submit to a drug test administered as described in paragraph (2)(B) and, if the test is administered to the participant, shall pass the test. If a participant refuses to submit to the drug test, or fails the drug test, the eligible provider shall dismiss the participant from participation in such training services.

(5) REAPPLICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an individual who is an applicant and is disqualified from eligibility under paragraph (3), or who is a participant and is dismissed under paragraph (4), may reapply, not earlier than 6 months after the date of the disqualification or dismissal, to participate in such training services. If the individual demonstrates that the individual has completed a drug treatment program and passed a drug test within the 30-day period prior to the date of the reapplication, the individual may participate in such training services, under the same terms and conditions as apply to other applicants and participants, including submission to drug tests administered as described in paragraph (2).

(B) SECOND DISQUALIFICATION OR DISMISSAL.—If the individual reapplies to participate in such training services and fails a drug test administered under paragraph (2) by the eligible provider, while the individual is an applicant or a participant, the eligible provider shall disqualify the individual from eligibility for, or dismiss the individual from participation in, such training services. The individual shall not be eligible to reapply for participation in the such training services for 2 years after such disqualification or dismissal.

(6) APPEAL.—A decision by an eligible provider to disqualify an individual from eligibility for participation in such training services under paragraph (3) or (5), or to dismiss a participant as described in paragraph (4) or (5), shall be subject to expeditious appeal in accordance with procedures established by the State in which the eligible provider is located.

(7) NATIONAL UNIFORM GUIDELINES.—

(A) IN GENERAL.—The Secretary of Labor shall develop voluntary guidelines to assist eligible providers concerning the drug testing required under this subsection.

(B) PRIVACY.—The guidelines shall promote, to the maximum extent practicable, individual privacy in the collection of specimen samples for such drug testing.

(C) LABORATORIES AND PROCEDURES.—With respect to standards concerning laboratories and procedures for such drug testing, the guidelines shall incorporate the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 Fed. Reg. 11970 (1988) (or a successor to such guidelines), including the portion of the mandatory guidelines that—

(i) establishes comprehensive standards for all aspects of laboratory drug testing and laboratory procedures, including standards that require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimen samples;

(ii) establishes the minimum list of drugs for which individuals may be tested; and

(iii) establishes appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform such drug testing.

(D) SCREENING AND CONFIRMATION.—The guidelines described in subparagraph (A) shall provide that, for drug testing conducted under this subsection—

(i) each laboratory involved in the drug testing of any individual shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(ii) all tests that indicate the use, in violation of law (including Federal regulation) of a drug by the individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding the drug;

(iii) each specimen sample shall be subdivided, secured, and labeled in the presence of the individual; and

(iv) a portion of each specimen sample shall be retained in a secure manner to prevent the possibility of tampering, so that if the confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory, if the individual requests the independent test not later than 3 days after being advised of the results of the first confirmation test.

(E) CONFIDENTIALITY.—The guidelines shall provide for the confidentiality of the test results and medical information (other than information relating to a drug) of the individuals tested under this subsection, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection.

(F) SELECTION FOR RANDOM TESTS.—The guidelines shall ensure that individuals who apply to participate in the training services described in paragraph (2) are selected for drug testing on a random basis, using nondiscriminatory and impartial methods.

(8) NONLIABILITY OF LOCAL BOARDS.—A local board, and the individual members of a local board, shall be immune from civil liability with respect to any claim based in whole or

part on activities carried out to implement this subsection.

(9) REPORTING REQUIREMENTS.—An eligible provider shall make records of drug testing conducted under this subsection available for inspection by other eligible providers, including eligible providers in other local workforce development areas, for the sole purpose of enabling the providers to determine the eligibility status of an applicant pursuant to this subsection.

(10) USE OF DRUG TESTS.—No Federal, State, or local prosecutor may use drug test results obtained under this subsection in a criminal action.

(11) DEFINITIONS.—As used in this subsection:

(A) DRUG.—The term "drug" means a controlled substance, as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(B) DRUG TEST.—The term "drug test" means a biochemical drug test carried out by a facility that is approved by the eligible provider administering the test.

(C) RANDOM BASIS.—For purposes of the application of this subsection in a State, the term "random basis" has the meaning determined by the Governor of the State, in the sole discretion of the Governor.

(e) SUPPORTIVE SERVICES.—Supportive services may be provided with funds provided through the allotment described in section ___102 only to the extent that such services are not available through alternative funding sources specifically designated for such services.

(f) SPECIAL RULE FOR CRIMINAL OFFENDERS.—Notwithstanding subtitle B and this subtitle, a portion of the funds made available under subtitle A may be distributed to 1 or more State corrections agencies to enable the State corrections agencies to carry out any activity described in this subtitle for juvenile and adult criminal offenders in correctional institutions in the State, including correctional institutions operated by local authorities.

(g) SENSE OF THE CONGRESS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this title should be made in the United States.

Subtitle D—National Activities

SEC. ___131. COORDINATION PROVISIONS.

(a) COLLABORATIVE ADMINISTRATION.—The Secretary of Labor and the Secretary of Education (referred to in this section as "the Secretaries") shall enter into an interagency agreement to administer the provisions of this title (other than sections ___103(d), ___113, ___114, ___126(a), ___126(b), ___138, and ___139 (referred to in this section as the "excluded provisions")).

(b) RESPONSIBILITIES OF SECRETARIES.—Such agreement shall specify the manner in which the Secretaries shall administer this title (other than the excluded provisions), including—

(1) making allotment determinations under section ___102;

(2) reviewing State plans submitted in accordance with section ___104;

(3) carrying out the duties assigned to the Secretaries under section ___106;

(4)(A) establishing uniform procedures, including grantmaking procedures; and

(B) issuing uniform guidelines and regulations, subject to subsection (e);

(5) carrying out the duties assigned to the Secretaries under this subtitle (other than sections ___138 and ___139);

(6) preparing and submitting to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual report on the absolute and relative performance of States in reaching State benchmarks; and

(7) reviewing federally funded education, employment, and job training programs, other than activities authorized under this title, and submitting recommendations to the Committees described in paragraph (6) regarding the integration of such programs into the statewide systems.

(c) CONTENTS.—The interagency agreement shall include, at a minimum—

(1) a description of the methods the Secretaries will use to work together to carry out their duties and responsibilities under this title in a manner that will ensure that neither the Department of Labor nor the Department of Education duplicates the work of the other department; and

(2) a description of the manner in which the Secretaries will utilize personnel and other resources of the Department of Labor and the Department of Education to administer this title (other than the excluded provisions).

(d) ADMINISTRATION OF THE ACT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretaries shall prepare and submit to the President, the Committee on Economic and Educational Opportunities of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, the interagency agreement. Such agreement shall also be available to the public through publication in the Federal Register.

(2) APPROVAL.—Not later than 200 days after the date of enactment of this Act, the President shall—

(A) approve or disapprove the interagency agreement made by the Secretaries; and

(B) if the agreement is disapproved, make recommendations to the Secretaries with respect to an alternative plan and require the Secretaries to submit such a plan in accordance with this section not later than 30 days after the date of the disapproval.

(e) LIMITATION ON FEDERAL REGULATIONS.—The Secretary of Labor or the Secretary of Education may issue regulations under this title only to the extent necessary to administer and ensure compliance with the specific requirements of this title.

(f) EFFECT ON PERSONNEL.—

(1) IN GENERAL.—The Secretaries shall take such actions as may be necessary, including reduction in force actions, consistent with sections 3502 and 3595 of title 5, United States Code, to ensure that the positions of personnel that relate to a covered activity and are not otherwise minimally necessary to carry out this division are terminated.

(2) SCOPE.—

(A) INITIAL REDUCTIONS.—Not later than July 1, 1998, the Secretaries shall take the actions described in paragraph (1), including reduction in force actions, with respect to not less than ⅓ of the number of positions of personnel that relate to a covered activity.

(B) SUBSEQUENT REDUCTIONS.—Not later than July 1, 2003, the Secretaries shall take the actions described in paragraph (1)—

(i) with respect to not less than 60 percent of the number of positions of personnel that relate to a covered activity, unless the Secretaries submit (prior to July 1, 2003) a report to Congress demonstrating why such actions have not occurred; or

(ii) with respect to not less than 40 percent of the number of positions of personnel that relate to a covered activity, if the Secretaries submit the report referred to in clause (i).

(C) CALCULATION.—For purposes of calculating, under this paragraph, the number of positions of personnel that relate to a covered activity, such number shall include the number of positions of personnel that are terminated under paragraph (1).

SEC. ___132. INCENTIVE GRANTS AND SANCTIONS.

(a) INCENTIVE GRANTS.—

(1) AWARD OF GRANTS.—From amounts reserved under section ___151(b)(5) for any fiscal year, the Secretaries may award incentive grants to States, each of which shall be awarded for not more than $15,000,000 per fiscal year to a State that—

(A)(i) reaches or exceeds, during the most recent 12-month period for which data are available, State benchmarks required under section ___106(b), including the benchmarks required under section ___106(b)(3); or

(ii) demonstrates continuing progress toward reaching or exceeding, during the 3-year period covered by the State plan submitted under section ___104, the benchmarks described in clause (i);

(B) obtains an eligibility determination described in paragraph (2)(A) for such benchmarks; and

(C) demonstrates, in the State plan information submitted under section ___104(b)(1)(B)(ii), that the Governor and eligible agencies have agreed on all elements of the State plan.

(2) ELIGIBILITY DETERMINATIONS.—

(A) INITIAL DETERMINATIONS.—

(i) DETERMINATION.—Not later than 30 days after receipt of the State plan submitted under section ___104, the Secretaries shall—

(I) compare the proposed State benchmarks identified in the State plan with State benchmarks proposed in other State plans; and

(II) determine if the proposed State benchmarks, taken as a whole, are sufficient to make the State eligible to qualify for an incentive grant under this subsection, if the State meets the requirements of subparagraphs (A) and (C) of paragraph (1).

(ii) NOTIFICATION, REVISION, AND TECHNICAL ASSISTANCE.—If the Secretaries determine that a State is not eligible to qualify for an incentive grant pursuant to clause (i)(II), the Secretaries shall provide, upon request, technical assistance to the State regarding the necessary action to be taken to make the State eligible to qualify for such grant under this subsection. Such State shall have 30 days after the date on which the State receives notification of ineligibility or the date on which the State receives technical assistance, whichever is later, to revise the State benchmarks in order to become eligible to qualify for an incentive grant under this subsection, if the State meets the requirements of subparagraphs (A) and (C) of paragraph (1).

(B) GRANT DETERMINATIONS.—Not later than 30 days after receipt of an annual report submitted under section ___106(c) that contains an application for such an incentive grant from a State that meets the requirements of paragraph (1), the Secretaries shall—

(i) compare the progress the State has made toward reaching or exceeding the State benchmarks, as described in such annual report, with the progress made by the other States towards reaching or exceeding their State benchmarks, as described in such annual reports of the other States; and

(ii) determine if the progress the State has made toward reaching or exceeding the State benchmarks, taken as a whole, is sufficient to enable the State to receive an incentive grant under this subsection.

(3) USE OF FUNDS.—A State that receives an incentive grant may use funds made available through the grant only to carry out workforce and career development activities. Determinations concerning the distribution of such funds shall be made by the individuals and entities participating in the collaborative process described in subsection (a) or (b) of section ___105.

(b) SANCTIONS.—

(1) FINDING.—If a State fails to meet the State benchmarks required under section ___106(b) for the 3 years covered by a State plan described in section ___104, the Secretaries shall determine whether the failure is attributable to—

(A) employment and training activities;

(B) at-risk youth activities;

(C) vocational education activities; or

(D) adult education and literacy activities.

(2) TECHNICAL ASSISTANCE OR REDUCTION OF ALLOTMENTS.—

(A) IN GENERAL.—The Secretaries may—

(i) provide technical assistance to the State to improve the level of performance of the State; or

(ii) on making a determination described in paragraph (1), reduce, by not more than 10 percent, the portion of the allotment made under section ___102 for the category of activities to which the failure is attributable.

(B) PORTION OF THE ALLOTMENT.—For purposes of subparagraph (A), in determining a portion of an allotment for a category of activities, the Secretaries shall include in such portion any funds allocated to such category from the flex account.

(3) FUNDS RESULTING FROM REDUCED ALLOTMENTS.—The Secretaries may use an amount retained as a result of a reduction in an allotment made under paragraph (2)(A)(ii) to award an incentive grant under subsection (a).

SEC. ___133. NATIONAL EMERGENCY GRANTS.

(a) IN GENERAL.—From the amounts reserved under section ___151(b)(5), the Secretary of Labor, in accordance with the interagency agreement developed pursuant to section ___131, is authorized to award national emergency grants, in a timely manner—

(1) to an entity described in subsection (b) to provide employment and training assistance to workers affected by major economic dislocations, such as plant closures, mass layoffs, or closures and realignments of military installations; and

(2) to provide assistance to the Governor of any State within the boundaries of which is an area that has suffered an emergency or a major disaster as defined in paragraphs (1) and (2), respectively, of section 102 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) (referred to in this section as the "disaster area").

(b) EMPLOYMENT AND TRAINING ASSISTANCE REQUIREMENTS.—

(1) APPLICATION.—To be eligible to receive a grant under subsection (a)(1), an entity shall submit an application to the Secretary of Labor at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require.

(2) ELIGIBLE ENTITY.—For purposes of this section, the term "entity" means a State, unit of general local government, or public or private local entity, including a for profit or nonprofit entity.

(c) DISASTER RELIEF EMPLOYMENT ASSISTANCE REQUIREMENTS.—Funds made available under subsection (a)(2)—

(1) shall be used exclusively to provide employment on projects that provide food, clothing, shelter, and other humanitarian assistance for disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area; and

(2) may be expended through public and private agencies and organizations engaged in such projects.

SEC. ___134. EVALUATION; RESEARCH, DEMONSTRATIONS, DISSEMINATION, AND TECHNICAL ASSISTANCE.

(a) SINGLE PLAN.—

(1) IN GENERAL.—The Secretaries, as part of the interagency agreement required under section ___131, shall develop a single plan for evaluation and assessment, research, demonstrations, dissemination, and technical assistance activities with regard to the activities assisted under this title.

(2) PLAN.—Such plan shall—

(A) identify the activities the Secretaries will carry out under this section;

(B) describe how such activities will be carried out collaboratively;

(C) describe how the Secretaries will evaluate such activities in accordance with subsection (b); and

(D) include such other information as the Secretaries determine to be appropriate through the interagency agreement.

(b) EVALUATION AND ASSESSMENT.—

(1) IN GENERAL.—From amounts made available under paragraph (3), the Secretaries shall provide for the conduct of an independent evaluation and assessment of employment and training activities, at-risk youth activities, vocational education activities, and adult education and literacy activities, through studies and analyses conducted independently through grants and contracts awarded on a competitive basis.

(2) CONTENTS.—Such evaluation and assessment shall include descriptions of—

(A) the extent to which State, local, and tribal entities have developed, implemented, or improved the statewide system;

(B) the degree to which the expenditures at the Federal, State, local, and tribal levels address improvement in employment and training activities, at-risk youth activities, vocational education activities, and adult education and literacy activities, including the impact of funds provided under this title on the delivery of such activities;

(C) the extent to which vocational education activities and at-risk youth activities succeed in preparing individuals participating in such activities for entry into postsecondary education, further learning, or high-skill, high-wage careers;

(D) the effect of benchmarks, performance measures, and other measures of accountability on the delivery of employment and training activities, at-risk youth activities, vocational education activities, and adult education and literacy activities, including family literacy services;

(E) the extent to which employment and training activities enhance the employment and earnings of participants in such activities, reduce income support costs, improve the employment competencies of such participants, and increase the level of employment of program participants over the level of employment that would have existed in the absence of such activities, which may be evaluated using experimental and control groups chosen by scientific random assignment; and

(F) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults, and of children in the case of family literacy services, lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes such as reductions in recidivism in the case of prison-based adult education and literacy activities.

(3) AUTHORIZATION.—There are authorized to be appropriated $15,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002 to carry out this subsection.

(c) RESEARCH.—

(1) IN GENERAL.—The Secretaries, pursuant to the interagency agreement, shall award grants, on a competitive basis, to an institution of higher education, a public or private organization or agency, or a consortium of such institutions, organizations, or agencies to establish a national research center or centers—

(A) to carry out research for the purpose of developing, improving, and identifying the most successful methods and techniques for addressing the education, employment, and training needs of adults;

(B) to carry out research for the purpose of developing, improving, and identifying the most successful methods for successfully addressing the education, employment, and training needs of at-risk youth;

(C) to carry out research to increase the effectiveness and improve the implementation of vocational education activities, including conducting research and development, and providing technical assistance, with respect to—

(i) combining academic, vocational education, and worksite learning;

(ii) identifying ways to establish effective linkages among employment and training activities, at-risk youth activities, and vocational education activities, at the State and local levels; and

(iii) conducting studies providing longitudinal information or formative evaluation with respect to vocational education activities;

(D) to carry out research to increase the effectiveness of and improve the quality of adult education and literacy activities, including family literacy services;

(E) to provide technical assistance to State and local recipients of assistance under this title in developing and using benchmarks and performance measures for improvement of workforce and career development activities; and

(F) to carry out such other activities as the Secretaries determine to be appropriate to achieve the purposes of this title.

(2) SUMMARY.—The Secretaries shall provide an annual report summarizing the evaluations and assessments described in subsection (b), and the research conducted pursuant to this subsection, and the findings of such evaluations and assessments, and research, to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(3) AUTHORIZATION.—There are authorized to be appropriated $15,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002 to carry out this subsection.

(d) DEMONSTRATIONS, DISSEMINATION, AND TECHNICAL ASSISTANCE.—

(1) AUTHORITY.—

(A) PROGRAMS AND ASSISTANCE AUTHORIZED.—The Secretaries, pursuant to the interagency agreement, are authorized to carry out demonstration programs, to replicate model programs, to disseminate best

practices information, and to provide technical assistance, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing the activities assisted under this title.

(B) ACTIVITIES.—Such activities may be carried out directly or through grants, contracts, cooperative agreements, or through the national center or centers, and may include projects—

(i) conducted jointly with the Department of Defense to develop training programs utilizing computer-based and other innovative learning technologies;

(ii) which promote the use of distance learning—

(I) to enable students to take courses through the use of media technology, such as video, teleconferencing, computers, or the Internet; and

(II) to deliver continuing education, skills upgrading and retraining services, and postsecondary education, directly to the community or to individuals who would not otherwise have access to such education and services; and

(iii) conducted through partnerships with national organizations which have special expertise in developing, organizing, and administering employment and training services for individuals with disabilities at the national, State, and local levels.

(2) CLEARINGHOUSE.—The Secretaries shall maintain a clearinghouse, through the national center or centers, that will collect and disseminate to Federal, State, and local organizations, agencies, and service providers data and information, including information on best practices, about the condition of statewide systems and employment and training activities, at-risk youth activities, vocational education activities, and adult education and literacy activities.

(3) TECHNICAL ASSISTANCE.—The Secretaries shall provide technical assistance to States and local areas to enhance the capacity of such States and local areas to develop and deliver effective activities under this title.

(4) AUTHORIZATION.—There are authorized to be appropriated $30,000,000 for fiscal year 1998 and such sums as may be necessary for each of fiscal years 1999 through 2002 to carry out this subsection.

(e) TRANSITION PERIOD.—Notwithstanding any other provision of law, the Secretaries may use funds made available under section 404 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2404) to prepare, during the period beginning on January 1, 1998, and ending June 30, 1998, to award a grant under subsection (c) on July 1, 1998.

(f) DEFINITION.—As used in this section, the term "institution of higher education" has the meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(g) CONFORMING AMENDMENTS.—Section 404(a)(2) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2404(a)(2)) is amended—

(1) in subparagraph (A), by striking "for a period of 5 years" and inserting "until June 30, 1998"; and

(2) in the first sentence of subparagraph (B), by striking "5".

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on July 1, 1998.

(2) TRANSITION PROVISIONS.—Subsection (e) shall take effect on January 1, 1998.

(3) AMENDMENTS.—The amendments made by subsection (g) shall take effect on the date of enactment of this Act.

SEC. ___135. MIGRANT AND SEASONAL FARMWORKER PROGRAM.

(a) IN GENERAL.—From amounts reserved under section ___151(b)(2), the Secretaries shall make grants to, or enter into contracts with, eligible entities to carry out the activities described in subsection (d).

(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant or enter into a contract under this section, an entity shall have an understanding of the problems of migrant farmworkers or seasonal farmworkers, a familiarity with the area to be served, and the ability to demonstrate a capacity to administer effectively a diversified program of workforce and career development activities for migrant farmworkers or seasonal farmworkers, respectively.

(c) PROGRAM PLAN.—

(1) IN GENERAL.—To be eligible to receive a grant or enter into a contract under this section, an entity described in subsection (b) shall submit to the Secretaries a plan that describes a 3-year strategy for meeting the needs of migrant farmworkers or seasonal farmworkers, and the dependents of such farmworkers, in the area to be served by such entity.

(2) CONTENTS.—Such plan shall—

(A) identify the education and employment needs of the population to be served and the manner in which the services to be provided will strengthen the ability of the individuals served to obtain or be retained in unsubsidized employment;

(B) describe the services to be provided and the manner in which such services are to be integrated with other appropriate services; and

(C) describe the goals and benchmarks to be used to assess the performance of such entity in carrying out the activities assisted under this section.

(d) AUTHORIZED ACTIVITIES.—Funds made available under this section shall be used to carry out comprehensive workforce and career development activities and related services for migrant farmworkers or seasonal farmworkers which may include employment, training, educational assistance, literacy assistance, an English literacy program, worker safety training, housing, supportive services, and the continuation of the case management database on participating migrant farmworkers or seasonal farmworkers.

(e) CONSULTATION WITH GOVERNORS AND LOCAL BOARDS.—In making grants and entering into contracts under this section, the Secretaries shall consult with the Governors and local boards of the States in which the eligible entities will carry out the activities described in subsection (d).

(f) REGULATIONS.—The Secretaries shall consult with migrant and seasonal farmworker groups and States in establishing regulations to carry out this section, including performance standards for eligible entities which take into account the economic circumstances of migrant farmworkers and seasonal farmworkers.

(g) DEFINITIONS.—As used in this section:

(1) MIGRANT FARMWORKER.—The term "migrant farmworker" means a seasonal farmworker whose farm work requires travel such that the worker is unable to return to a permanent place of residence within the same day.

(2) SEASONAL FARMWORKER.—The term "seasonal farmworker" means a person who during the eligibility determination period (12 consecutive months out of 24 months prior to application) has been primarily employed in farm work that is characterized by chronic unemployment or under employment.

SEC. ___136. NATIVE AMERICAN PROGRAM.

(a) PURPOSE AND POLICY.—

(1) PURPOSE.—The purpose of this section is to support workforce and career development activities for Indian and Native Hawaiian individuals in order—

(A) to develop more fully the academic, occupational, and literacy skills of such individuals;

(B) to make such individuals more competitive in the workforce; and

(C) to promote the economic and social development of Indian and Native Hawaiian communities in accordance with the goals and values of such communities.

(2) INDIAN POLICY.—All programs assisted under this section shall be administered in a manner consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and the government-to-government relationship between the Federal Government and Indian tribal governments.

(b) DEFINITIONS.—As used in this section:

(1) ALASKA NATIVE.—The term "Alaska Native" means a Native as such term is defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(2) INDIAN, INDIAN TRIBE, AND TRIBAL ORGANIZATION.—The terms "Indian", "Indian tribe", and "tribal organization" have the meanings given such terms in subsections (d), (e), and (l), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(3) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(4) NATIVE HAWAIIAN AND NATIVE HAWAIIAN ORGANIZATION.—The terms "Native Hawaiian" and "Native Hawaiian organization" have the meanings given such terms in paragraphs (1) and (3), respectively, of section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

(5) TRIBALLY CONTROLLED COMMUNITY COLLEGE.—The term "tribally controlled community college" has the meaning given such term in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

(6) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTION.—The term "tribally controlled postsecondary vocational institution" means an institution of higher education that—

(A) is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or Indian tribes;

(B) offers a technical degree or certificate granting program;

(C) is governed by a board of directors or trustees, a majority of whom are Indians;

(D) demonstrates adherence to stated goals, a philosophy, or a plan of operation, that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(E) has been in operation for at least 3 years;

(F) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(G) enrolls the full-time equivalent of not fewer than 100 students, of whom a majority are Indians.

(c) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—From amounts reserved under section ___151(b)(3), the Secretaries shall make grants to, or enter into contracts or cooperative agreements with, Indian tribes, tribal organizations, Alaska Native entities, tribally controlled community colleges, tribally controlled postsecondary vocational institutions, Indian-controlled organizations serving Indians, or Native Hawaiian organizations to carry out the authorized activities described in subsection (d).

(2) TRANSFER OF AUTHORITY FOR VOCATIONAL EDUCATION ACTIVITIES.—In carrying out paragraph (1), the Secretaries may agree that the Secretary of Education may provide any portion of assistance under paragraph (1) devoted to vocational education activities, including assistance provided to entities described in paragraph (1) that are not eligible for funding pursuant to the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.).

(3) SPECIAL AUTHORITY RELATING TO SECONDARY SCHOOLS OPERATED OR SUPPORTED BY THE BUREAU OF INDIAN AFFAIRS.—An Indian tribe, a tribal organization, or an Alaska Native entity, that receives funds through a grant made or contract entered into under paragraph (1) may use the funds to provide assistance to a secondary school operated or supported by the Bureau of Indian Affairs to enable such school to carry out vocational education activities.

(d) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—Funds made available under this section shall be used to carry out the activities described in paragraphs (2) and (3) that—

(A) are consistent with this section; and

(B) are necessary to meet the needs of Indians or Native Hawaiians preparing to enter, renter, or retain unsubsidized employment.

(2) WORKFORCE AND CAREER DEVELOPMENT ACTIVITIES AND SUPPLEMENTAL SERVICES.—

(A) IN GENERAL.—Funds made available under this section shall be used for—

(i) comprehensive workforce and career development activities for Indians or Native Hawaiians; or

(ii) supplemental services for Indian or Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii.

(B) SPECIAL RULE.—Notwithstanding any other provision of this section, individuals who were eligible to participate in programs under section 401 of the Job Training Partnership Act (29 U.S.C. 1671) (as such section was in effect on the day before the date of enactment of this Act) shall be eligible to participate in an activity assisted under subparagraph (A)(i).

(3) VOCATIONAL EDUCATION ACTIVITIES AND ADULT EDUCATION AND LITERACY ACTIVITIES.—Funds made available under this section shall be used for—

(A) vocational education activities and adult education and literacy activities conducted by entities described in subsection (c); or

(B) the support of tribally controlled postsecondary vocational institutions in order to ensure continuing and expanded educational opportunities for Indian students.

(e) PROGRAM PLAN.—In order to receive a grant or enter into a contract or cooperative agreement under this section an entity described in subsection (c) shall submit to the Secretaries a plan that describes a 3-year strategy for meeting the needs of Indian or Native Hawaiian individuals, as appropriate, in the area served by such entity. Such plan—

(1) shall be consistent with the purposes of this section;

(2) shall identify the population to be served;

(3) shall identify the education and employment needs of the population to be served and the manner in which the services to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment;

(4) shall describe the services to be provided and the manner in which such services are to be integrated with other appropriate services; and

(5) shall describe the goals and benchmarks to be used to assess the performance of entities in carrying out the activities assisted under this section.

(f) CONSOLIDATION OF FUNDS.—Each entity receiving assistance under this section may consolidate such assistance with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C 3401 et seq.).

(g) NONDUPLICATIVE AND NONEXCLUSIVE SERVICES.—Nothing in this section shall be construed—

(1) to limit the eligibility of any entity described in subsection (c) to participate in any activity offered by a State or local entity under this title; or

(2) to preclude or discourage any agreement, between any entity described in subsection (c) and any State or local entity, to facilitate the provision of services by such entity or to the population served by such entity.

(h) ADMINISTRATIVE PROVISIONS.—

(1) ORGANIZATIONAL UNIT ESTABLISHED.—The Secretaries shall designate a single organizational unit that shall have as the unit's primary responsibility the administration of the activities authorized in this section.

(2) REGULATIONS.—The Secretaries shall consult with the entities described in subsection (c)—

(A) in establishing regulations to carry out this section, including performance standards for entities receiving assistance under this section, that take into account the economic circumstances of such entities; and

(B) in developing a funding distribution plan that takes into consideration previous levels of funding, and sources of funds not provided pursuant to this title.

(3) TECHNICAL ASSISTANCE.—The Secretaries, through the unit established under paragraph (1), are authorized to provide technical assistance to entities described in subsection (c) that receive assistance under this section to enable such entities to improve the workforce and career development activities provided by such entities.

SEC. ___137. GRANTS TO OUTLYING AREAS.

(a) APPLICABILITY OF TITLE TO OUTLYING AREAS.—The provisions of this title (other than this section) shall apply to each outlying area to the extent practicable in the same manner and to the same extent as the provisions apply to a State.

(b) ALLOTMENT.—

(1) IN GENERAL.—For each program year the Secretaries shall allot funds in accordance with paragraph (2) for each outlying area that meets the applicable requirements of this title to enable the outlying area to carry out workforce and career development activities.

(2) POPULATION DATA.—Except as provided in subsection (c), from the amount reserved under section ___151(b)(4), the Secretaries shall allot for each outlying area an amount that bears the same relationship to such funds as the total number of individuals who are not less than age 15 but not more than age 65 (as determined by the Secretaries using the most recent census data prior to the program year for which the allotment is made) in the outlying area bears to the total number of such individuals in all outlying areas.

(c) GRANT AWARDS.—

(1) UNITED STATES TERRITORIES.—The Secretaries shall award grants from allotments under subsection (b) to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

(2) LIMITATION FOR FREELY ASSOCIATED STATES.—

(A) COMPETITIVE GRANTS.—Using funds allotted for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau under subsection (b), the Secretaries shall award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau to carry out workforce and career development activities.

(B) AWARD BASIS.—The Secretaries shall award grants pursuant to subparagraph (A) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

(C) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this paragraph for any program year that begins after September 30, 2001.

(D) ADMINISTRATIVE COSTS.—The Secretaries may provide not more than 5 percent of the amount made available for grants under this paragraph to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this section.

SEC. ___138. NATIONAL INSTITUTE FOR LITERACY.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the National Institute for Literacy (in this section referred to as the "Institute"). The Institute shall be administered under the terms of an interagency agreement entered into by the Secretary of Education with the Secretary of Labor and the Secretary of Health and Human Services (in this section referred to as the "Interagency Group"). The Interagency Group may include in the Institute any research and development center, institute, or clearinghouse established within the Department of Education, the Department of Labor, or the Department of Health and Human Services whose purpose is determined by the Interagency Group to be related to the purpose of the Institute.

(2) OFFICES.—The Institute shall have offices separate from the offices of the Department of Education, the Department of Labor, and the Department of Health and Human Services.

(3) BOARD RECOMMENDATIONS.—The Interagency Group shall consider the recommendations of the National Institute for Literacy Advisory Board (in this section referred to as the "Board") established under subsection (d) in planning the goals of the Institute and in the implementation of any programs to achieve such goals.

(4) DAILY OPERATIONS.—The daily operations of the Institute shall be carried out by the Director of the Institute appointed under subsection (g).

(b) DUTIES.—

(1) IN GENERAL.—The Institute shall improve the quality and accountability of the adult basic skills and literacy delivery system by—

(A) providing national leadership for the improvement and expansion of the system for delivery of literacy services;

(B) coordinating the delivery of such services across Federal agencies;

(C) identifying effective models of basic skills and literacy education for adults and families that are essential to success in job training, work, the family, and the community;

(D) supporting the creation of new methods of offering improved literacy services;

(E) funding a network of State or regional adult literacy resource centers to assist State and local public and private nonprofit efforts to improve literacy by—

(i) encouraging the coordination of literacy services;

(ii) carrying out evaluations of the effectiveness of adult education and literacy activities;

(iii) enhancing the capacity of State and local organizations to provide literacy services; and

(iv) serving as a reciprocal link between the Institute and providers of workforce and career development activities for the purpose of sharing information, data, research, expertise, and literacy resources;

(F) supporting the development of models at the State and local level of accountability systems that consist of goals, performance measures, benchmarks, and assessments that can be used to improve the quality of adult education and literacy activities;

(G) providing technical assistance, information, and other program improvement activities to national, State, and local organizations, such as—

(i) providing information and training to local boards and one-stop career centers concerning how literacy and basic skills services can be incorporated in a coordinated workforce development model;

(ii) improving the capacity of national, State, and local public and private organizations that provide literacy and basic skills services, professional development, and technical assistance, such as the State or regional adult literacy resource centers referred to in subparagraph (E); and

(iii) establishing a national literacy electronic database and communications network;

(H) working with the Interagency Group, Federal agencies, and the Congress to ensure that such Group, agencies, and the Congress have the best information available on literacy and basic skills programs in formulating Federal policy with respect to the issues of literacy, basic skills, and workforce and career development; and

(I) assisting with the development of policy with respect to literacy and basic skills.

(2) GRANTS, CONTRACTS, AND AGREEMENTS.—The Institute may make grants to, or enter into contracts or cooperative agreements with, individuals, public or private institutions, agencies, organizations, or consortia of such institutions, agencies, or organizations to carry out the activities of the Institute. Such grants, contracts, or agreements shall be subject to the laws and regulations that generally apply to grants, contracts, or agreements entered into by Federal agencies.

(c) LITERACY LEADERSHIP.—

(1) FELLOWSHIPS.—The Institute, in consultation with the Board, may award fellowships, with such stipends and allowances as the Director considers necessary, to outstanding individuals pursuing careers in adult education or literacy in the areas of instruction, management, research, or innovation.

(2) USE OF FELLOWSHIPS.—Fellowships awarded under this subsection shall be used, under the auspices of the Institute, to engage in research, education, training, technical assistance, or other activities to advance the field of adult education or literacy, including the training of volunteer literacy providers at the national, State, or local level.

(3) INTERNS AND VOLUNTEERS.—The Institute, in consultation with the Board, may award paid and unpaid internships to individuals seeking to assist the Institute in carrying out its mission. Notwithstanding section 1342 of title 31, United States Code, the Institute may accept and use voluntary and uncompensated services as the Institute determines necessary.

(d) NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established a National Institute for Literacy Advisory Board. The Board shall consist of 10 individuals appointed by the President, with the advice and consent of the Senate, from individuals who—

(i) are not otherwise officers or employees of the Federal Government; and

(ii) are representative of entities or groups described in subparagraph (B).

(B) ENTITIES OR GROUPS DESCRIBED.—The entities or groups referred to in subparagraph (A) are—

(i) literacy organizations and providers of literacy services, including—

(I) nonprofit providers of literacy services;

(II) providers of programs and services involving English language instruction; and

(III) providers of services receiving assistance under this title;

(ii) businesses that have demonstrated interest in literacy programs;

(iii) literacy students;

(iv) experts in the area of literacy research;

(v) State and local governments; and

(vi) representatives of employees.

(2) DUTIES.—The Board—

(A) shall make recommendations concerning the appointment of the Director and staff of the Institute;

(B) shall provide independent advice on the operation of the Institute; and

(C) shall receive reports from the Interagency Group and the Director.

(3) FEDERAL ADVISORY COMMITTEE ACT.—Except as otherwise provided, the Board established by this subsection shall be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(4) TERMS.—

(A) IN GENERAL.—Each member of the Board shall be appointed for a term of 3 years, except that the initial terms for members may be 1, 2, or 3 years in order to establish a rotation in which ⅓ of the members are selected each year. Any such member may be appointed for not more than 2 consecutive terms.

(B) VACANCY APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Board shall be filled in the manner in which the original appointment was made. A vacancy in the Board shall not affect the powers of the Board.

(5) QUORUM.—A majority of the members of the Board shall constitute a quorum but a lesser number may hold hearings. Any recommendation of the Board may be passed only by a majority of the Board's members present.

(6) ELECTION OF OFFICERS.—The Chairperson and Vice Chairperson of the Board shall be elected by the members of the Board. The term of office of the Chairperson and Vice Chairperson shall be 2 years.

(7) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of the members of the Board.

(e) GIFTS, BEQUESTS, AND DEVISES.—The Institute may accept, administer, and use gifts or donations of services, money, or property, both real and personal.

(f) MAILS.—The Board and the Institute may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) DIRECTOR.—The Interagency Group, after considering recommendations made by the Board, shall appoint and fix the pay of a Director.

(h) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Institute may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the maximum rate payable under section 5376 of title 5, United States Code.

(i) EXPERTS AND CONSULTANTS.—The Board and the Institute may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(j) REPORT.—The Institute shall submit a report biennially to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Each report submitted under this subsection shall include—

(1) a comprehensive and detailed description of the Institute's operations, activities, financial condition, and accomplishments in the field of literacy for the period covered by the report;

(2) a description of how plans for the operation of the Institute for the succeeding two fiscal years will facilitate achievement of the goals of the Institute and the goals of the literacy programs within the Department of Education, the Department of Labor, and the Department of Health and Human Services; and

(3) any additional minority, or dissenting views submitted by members of the Board.

(k) FUNDING.—Any amounts appropriated to the Secretary of Education, the Secretary of Labor, or the Secretary of Health and Human Services for purposes that the Institute is authorized to perform under this section may be provided to the Institute for such purposes.

(l) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal

years 1998 through 2002 to carry out this section.

SEC. ___139. LABOR MARKET INFORMATION.

(a) SYSTEM CONTENT.—

(1) IN GENERAL.—The Secretary of Labor, in accordance with the provisions of this section, shall oversee the maintenance and continuous improvement of the system of labor market information that includes—

(A) statistical programs of data collection, compilation, estimation, and publication conducted in cooperation with the Bureau of Labor Statistics;

(B) State and local employment information, including other appropriate statistical data related to labor market dynamics (compiled by and for States and localities with technical assistance provided by the Secretary) that will—

(i) assist individuals to make informed choices relating to employment and training; and

(ii) assist employers to locate and train individuals who are seeking employment and training;

(C) technical standards for data and information described in subparagraphs (A) and (B) that, at a minimum, meet the criteria of chapter 35 of title 44, United States Code;

(D) analysis of data and information described in subparagraphs (A) and (B) for uses such as State and local policymaking;

(E) wide dissemination of such data, information, and analysis, training for users of the data, information, and analysis, and voluntary technical standards for dissemination mechanisms; and

(F) programs of—

(i) research and demonstration; and

(ii) technical assistance for States and localities.

(2) INFORMATION TO BE CONFIDENTIAL.—

(A) IN GENERAL.—No officer or employee of the Federal Government or agent of the Federal Government may—

(i) use the information furnished under the provisions of this section for any purpose other than the statistical purposes for which such information is furnished;

(ii) make any publication from which the data contained in the information so furnished under this section can be used to identify any individual; or

(iii) permit any individual other than the sworn officers, employees, or agents of any Federal department or agency to examine individual reports through which the information is furnished.

(B) IMMUNITY FROM LEGAL PROCESS.—

(i) IN GENERAL.—Any information that is collected and retained for purposes of this section shall be immune from the legal process and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed as providing immunity from the legal process for information that is independently collected or produced for purposes other than for purposes of this section.

(b) SYSTEM RESPONSIBILITIES.—

(1) IN GENERAL.—The labor market information system shall be planned, administered, overseen, and evaluated through a cooperative governance structure involving the Federal Government, States, and local entities.

(2) DUTIES.—The Secretary, with respect to data collection, analysis, and dissemination of labor market information for the system, shall carry out the following duties:

(A) Assign responsibilities within the Department of Labor for elements of the system content described in subsection (a) to ensure that all statistical and administrative data collected is consistent.

(B) Actively seek the cooperation of other Federal agencies to establish and maintain mechanisms for ensuring complementarity and nonduplication in the development and operation of statistical and administrative data collection activities.

(C) Eliminate gaps and duplication in statistical undertakings, with the systemization of wage surveys as an early priority.

(D) In collaboration with the States and the Bureau of Labor Statistics, develop and maintain the necessary elements of the system described in subsection (a), including the development of consistent definitions for use by the States in collecting the data and information described in subparagraphs (A) and (B) of subsection (a)(1) and the development of the annual plan under subsection (c).

(c) ANNUAL PLAN.—

(1) IN GENERAL.—The Secretary, in collaboration with the States and the Bureau of Labor Statistics, and with the assistance of other appropriate Federal agencies, shall prepare an annual plan that shall describe the cooperative Federal-State governance structure for the labor market information system. The plan shall—

(A) describe the elements of the system, including consistent definitions, formats, collection methodologies, and other necessary system elements, for use in collecting the data and information described in subparagraphs (A) and (B) of subsection (a)(1);

(B) describe how the system will ensure that—

(i) such data are timely;

(ii) administrative records are consistent in order to facilitate aggregation of such data;

(iii) paperwork and reporting are reduced to a minimum; and

(iv) States and localities are fully involved in the maintenance and continuous improvement of the system at the State and local levels;

(C) evaluate the performance of the system and recommend needed improvements; and

(D) describe current (as of the date of the submission of the plan) spending and spending needs to carry out activities under this section.

(2) COOPERATION WITH THE STATES.—The Secretary and the Bureau of Labor Statistics, in cooperation with the States, shall develop the plan by holding formal consultations, which shall be held on not less than a semiannual basis, with—

(A) State representatives who have expertise in labor market information, selected by the Governors of each State;

(B) representatives from each of the ten Federal regions of the Department of Labor, elected by and from among individuals who perform the duties described in subsection (d)(2) pursuant to a process agreed upon by the Secretary and the States; and

(C) employers or representatives of employers, elected pursuant to a process agreed upon by the Secretary and the States.

(d) STATE RESPONSIBILITIES.—

(1) DESIGNATION OF STATE AGENCY.—In order to receive Federal financial assistance under this section, the Governor of a State—

(A) shall designate a single State agency or entity within the State to be responsible for the management of the portions of the system described in subsection (a) that comprise a statewide labor market information system; and

(B) may establish a process for the oversight of such system.

(2) DUTIES.—In order to receive Federal financial assistance under this section, the State agency or entity designated under paragraph (1)(A) shall—

(A) consult with employers and local boards, where appropriate, about the labor market relevance of the data to be collected and disseminated through the statewide labor market information system;

(B) maintain and continuously improve the portions of the system described in subsection (a) that comprise a statewide labor market information system in accordance with this section;

(C) ensure the performance of contract and grant responsibilities for data collection, analysis, and dissemination for such system;

(D) conduct such other data collection, analysis, and dissemination activities as will ensure an effective statewide labor market information system; and

(E) participate in the development of the annual plan described in subsection (c).

(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the ability of a State agency or entity to conduct additional data collection, analysis, and dissemination activities with State funds or with Federal funds from sources other than this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $65,000,000 for fiscal year 1998 and such sums as may be necessary for each of the fiscal years 1999 through 2002.

Subtitle E—Transition Provisions

SEC. ___141. WAIVERS.

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, and except as provided in subsection (d), the Secretary may waive any requirement under any provision of law relating to a covered activity, or of any regulation issued under such a provision, for—

(A) a State that requests such a waiver and submits an application as described in subsection (b); or

(B) a local entity that requests such a waiver and complies with the requirements of subsection (c);

in order to assist the State or local entity in planning or developing a statewide system or workforce and career development activities to be carried out through the statewide system.

(2) TERM.—Each waiver approved pursuant to this section shall be for a period beginning on the date of the approval and ending on June 30, 1998.

(b) STATE REQUEST FOR WAIVER.—

(1) IN GENERAL.—A State may submit to the Secretary a request for a waiver of 1 or more requirements referred to in subsection (a). The request may include a request for different waivers with respect to different areas within the State.

(2) APPLICATION.—To be eligible to receive a waiver described in subsection (a), a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including information—

(A) identifying the requirement to be waived and the goal that the State (or the local entity applying to the State under subsection (c)) intends to achieve through the waiver;

(B) identifying, and describing the actions that the State will take to remove, similar State requirements;

(C) describing the activities to which the waiver will apply, including information on how the activities may be continued, or related to activities carried out, under the statewide system of the State;

(D) describing the number and type of persons to be affected by such waiver; and

(E) providing evidence of support for the waiver request by the State agencies or officials with jurisdiction over the requirement to be waived.

(c) LOCAL ENTITY REQUEST FOR WAIVER.—

(1) IN GENERAL.—A local entity that seeks a waiver of 1 or more requirements referred to in subsection (a) shall submit to the State a request for the waiver and an application containing sufficient information to enable the State to comply with the requirements of subsection (b)(2). The State shall determine whether to submit a request and an application for a waiver to the Secretary, as provided in subsection (b).

(2) TIME LIMIT.—

(A) IN GENERAL.—The State shall make a determination concerning whether to submit the request and application for a waiver as described in paragraph (1) not later than 30 days after the date on which the State receives the application from the local entity.

(B) DIRECT SUBMISSION.—

(i) IN GENERAL.—If the State does not make a determination to submit or does not submit the request and application within the 30-day time period specified in subparagraph (A), the local entity may submit the request and application to the Secretary.

(ii) REQUIREMENTS.—In submitting such a request, the local entity shall obtain the agreement of the State involved to comply with the requirements of this section that would otherwise apply to a State submitting a request for a waiver. In reviewing an application submitted under this section by a local entity, the Secretary shall comply with the requirements of this section that would otherwise apply to the Secretary with respect to review of such an application submitted by a State.

(d) WAIVERS NOT AUTHORIZED.—The Secretary may not waive any requirement of any provision referred to in subsection (a), or of any regulation issued under such provision, relating to—

(1) the allocation of funds to States, local entities, or individuals;

(2) public health or safety, civil rights, occupational safety and health, environmental protection, displacement of employees, or fraud and abuse;

(3) the eligibility of an individual for participation in a covered activity, except in a case in which the State or local entity can demonstrate that the individuals who would have been eligible to participate in such activity without the waiver will participate in a similar covered activity; or

(4) a required supplementation of funds by the State or a prohibition against the State supplanting such funds.

(e) ACTIVITIES.—Subject to subsection (d), the Secretary may approve a request for a waiver described in subsection (a) that would enable a State or local entity to use the assistance that would otherwise have been used to carry out 2 or more covered activities (if the State or local entity were not using the assistance as described in this section)—

(1) to address the high priority needs of unemployed persons and at-risk youth in the appropriate State or community for workforce and career development activities;

(2) to improve efficiencies in the delivery of the covered activities; or

(3) in the case of overlapping or duplicative activities—

(A) by combining the covered activities and funding the combined activities; or

(B) by eliminating 1 of the covered activities and increasing the funding to the remaining covered activity.

(f) APPROVAL OR DISAPPROVAL.—The Secretary shall approve or disapprove any request submitted pursuant to subsection (b) or (c), not later than 60 days after the date of the submission, and shall issue a decision that shall include the reasons for approving or disapproving the request.

(g) FAILURE TO ACT.—If the Secretary fails to approve or disapprove the request within the 60-day period described in subsection (f), the request shall be deemed to be approved on the day after such period ends. If the Secretary subsequently determines that the waiver relates to a matter described in subsection (d) and issues a decision that includes the reasons for the determination, the waiver shall be deemed to terminate on the date of issuance of the decision.

(h) DEFINITIONS.—As used in this section:

(1) LOCAL ENTITY.—The term "local entity" means—

(A) a local educational agency responsible for carrying out the covered activity at issue; or

(B) the local public or private agency or organization responsible for carrying out the covered activity at issue.

(2) SECRETARY.—The term "Secretary" means—

(A) the Secretary of Labor, with respect to any act relating to a covered activity carried out by the Secretary of Labor;

(B) the Secretary of Education, with respect to any act relating to a covered activity carried out by the Secretary of Education; and

(C) the Secretary of Labor and the Secretary of Education, acting jointly, with respect to a covered activity under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.).

(3) STATE.—The term "State" means—

(A) an eligible agency responsible for carrying out the covered activity at issue; or

(B) the Governor, with respect to any act by another State entity responsible for carrying out the covered activity at issue.

SEC. ___142. TECHNICAL ASSISTANCE.

Beginning on the date of the enactment of this Act, the Secretaries shall provide technical assistance to States that request such assistance in—

(1) preparing the State plan required under section ___104; or

(2) developing the State benchmarks required under section ___106(b).

SEC. ___143. APPLICATIONS AND PLANS UNDER COVERED ACTS.

Notwithstanding any other provision of law, no State or local entity shall be required to comply with any provision of law relating to a covered activity that would otherwise require the entity to submit an application or a plan to a Federal agency during fiscal year 1997 for funding of a covered activity. In determining whether to provide funding to the State or local entity for the covered activity, the Secretary of Labor or the Secretary of Education, as appropriate, shall consider the last application or plan, as appropriate, submitted by the entity for funding of the covered activity.

SEC. ___144. INTERIM AUTHORIZATIONS OF APPROPRIATIONS.

(a) CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.—Section 3(a) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2302(a)) is amended by striking "for each of the fiscal years" and all that follows through "1995" and inserting "for each of fiscal years 1992 through 1998".

(b) ADULT EDUCATION ACT.—Section 313(a) of the Adult Education Act (20 U.S.C. 1201b(a)) is amended by striking "for each of the fiscal years" and all that follows through "1995" and inserting "for each of fiscal years 1993 through 1998".

Subtitle F—General Provisions

SEC. ___151. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title (except sections ___134, ___138, and ___139) such sums as may be necessary for each of fiscal years 1998 through 2002.

(b) RESERVATIONS.—Of the amount appropriated under subsection (a) for a fiscal year—

(1) 90 percent shall be reserved for making allotments under section ___102;

(2) $70,000,000 shall be reserved for carrying out section ___135;

(3) $90,000,000 shall be reserved for carrying out section ___136;

(4) $14,000,000 shall be reserved for carrying out section ___137; and

(5) the remainder shall be reserved for carrying out sections ___132 and ___133.

(c) PROGRAM YEAR.—

(1) IN GENERAL.—Appropriations for any fiscal year for programs and activities carried out under this title or subtitle C of title II shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

(2) ADMINISTRATION.—Funds obligated for any program year for employment and training activities and at-risk youth activities may be expended by each recipient during the program year and the 2 succeeding program years.

SEC. ___152. LOCAL EXPENDITURES CONTRARY TO TITLE.

(a) REPAYMENT BY STATE.—Except as provided in sections ___107(c)(4) and ___126(b)(2)(B), if the Secretaries require a State to repay funds as a result of a determination that an eligible provider of employment and training activities or at-risk youth activities in a local workforce development area of the State has expended funds made available under this title in a manner contrary to the objectives of this title, and such expenditure does not constitute fraud, embezzlement, or other criminal activity, the Governor of the State may use an amount deducted under subsection (b) to repay the funds.

(b) DEDUCTION BY STATE.—The Governor may deduct an amount equal to the expenditure described in subsection (a) from a subsequent program year allocation to the local workforce development area from funds available for local administration for employment and training activities or at-risk youth activities, as appropriate.

SEC. ___153. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in section ___134 and subsection (b), this title shall take effect on July 1, 1998.

(b) ADMINISTRATION AND NATIONAL INSTITUTE FOR LITERACY.—Sections ___131 and ___138, subtitle E, section ___151, and this section shall take effect on the date of enactment of this Act.

TITLE II—WORKFORCE AND CAREER DEVELOPMENT-RELATED ACTIVITIES

Subtitle A—Amendments to the Wagner-Peyser Act

SEC. ___201. DEFINITIONS.

Section 2 of the Wagner-Peyser Act (29 U.S.C. 49a) is amended—

(1) in paragraph (1), by striking "Job Training Partnership Act" and inserting "Workforce and Career Development Act of 1996";

(2) by striking paragraphs (2) and (4);

(3) by redesignating paragraphs (3) and (5) as paragraphs (6) and (7), respectively;

(4) by inserting after paragraph (1) the following:

"(2) the term 'local workforce development area' has the meaning given such term in section ___004 of the Workforce and Career Development Act of 1996;

"(3) the term 'local workforce development board' means a local workforce development board established under section ___108 of the Workforce and Career Development Act of 1996;

"(4) the term 'one-stop career center system' means a one-stop career center system established under section ___121(d) of the Workforce and Career Development Act of 1996;

"(5) the term 'public employment office' means an office that provides employment services to the general public and is part of a one-stop career center system;"; and

(5) in paragraph (6) (as redesignated in paragraph (3)), by striking the semicolon and inserting "; and".

SEC. ___202. FUNCTIONS.

(a) IN GENERAL.—Section 3(a) of the Wagner-Peyser Act (29 U.S.C. 49b(a)) is amended to read as follows:

"(a) The Secretary of Labor shall—

"(1) assist in the coordination and development of a nationwide system of labor exchange services for the general public, provided as part of the one-stop career center systems of the States;

"(2) assist in the development of continuous improvement models for such nationwide system that ensure private sector satisfaction with the system and meet the demands of jobseekers relating to the system; and

"(3) ensure, for individuals otherwise eligible to receive unemployment compensation, the continuation of any activities in which the individuals are required to participate to receive the compensation.".

(b) CONFORMING AMENDMENTS.—Section 508(b) of the Unemployment Compensation Amendments of 1976 (42 U.S.C. 603a(b)) is amended—

(1) by striking "the third sentence of section 3(a)" and inserting "section 3(b)"; and

(2) by striking "49b(a)" and inserting "49b(b))".

SEC. ___203. DESIGNATION OF STATE AGENCIES.

Section 4 of the Wagner-Peyser Act (29 U.S.C. 49c) is amended—

(1) by striking "a State shall, through its legislature," and inserting "a Governor, in consultation with the State legislature, shall"; and

(2) by striking "United States Employment Service" and inserting "Secretary".

SEC. ___204. APPROPRIATIONS.

Section 5(c) of the Wagner-Peyser Act (29 U.S.C. 49d(c)) is amended by striking paragraph (3).

SEC. ___205. DISPOSITION OF ALLOTTED FUNDS.

Section 7 of the Wagner-Peyser Act (29 U.S.C. 49f) is amended—

(1) in subsection (b)(2), by striking "private industry council" and inserting "local workforce development board";

(2) in subsection (c)(2), by striking "any program under" and all that follows and inserting "any workforce and career development activity carried out under the Workforce and Career Development Act of 1996.";

(3) in subsection (d)—

(A) by striking "United States Employment Service" and inserting "Secretary"; and

(B) by striking "Job Training Partnership Act" and inserting "Workforce and Career Development Act of 1996"; and

(4) by adding at the end the following:

"(e) All job search, placement, recruitment, labor market information, and other labor exchange services authorized under subsection (a) shall be provided as part of the one-stop career center system established by the State.".

SEC. ___206. STATE PLANS.

Section 8 of the Wagner-Peyser Act (29 U.S.C. 49g) is amended—

(1) in subsection (a) to read as follows:

"(a) Any State desiring to receive assistance under this Act shall submit to the Secretary, as part of the State plan submitted under section ___104 of the Workforce and Career Development Act of 1996, detailed plans for carrying out the provisions of this Act within such State.";

(2) by striking subsections (b), (c), and (e); and

(3) by redesignating subsection (d) as subsection (b).

SEC. ___207. REPEAL OF FEDERAL ADVISORY COUNCIL.

Section 11 of the Wagner-Peyser Act (29 U.S.C. 49j) is hereby repealed.

SEC. ___208. REGULATIONS.

Section 12 of the Wagner-Peyser Act (29 U.S.C. 49k) is amended by striking "The Director, with the approval of the Secretary of Labor," and inserting "The Secretary".

SEC. ___209. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on July 1, 1998.

Subtitle B—Amendments to the Rehabilitation Act of 1973

SEC. ___211. REFERENCES.

Except as otherwise expressly provided in this subtitle, whenever in this subtitle 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 Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

SEC. ___212. FINDINGS AND PURPOSES.

Section 2 (29 U.S.C. 701) is amended—

(1) in subsection (a)(4), by striking "the provision of individualized training, independent living services, educational and support services," and inserting "implementation of a statewide system that provides meaningful and effective participation for individuals with disabilities in workforce and career development activities and activities carried out through the vocational rehabilitation program established under title I, and through the provision of independent living services, support services,"; and

(2) in subsection (b)(1)(A)—

(A) by striking "and coordinated"; and

(B) by inserting "that are coordinated with statewide systems" after "vocational rehabilitation".

SEC. ___213. DEFINITIONS.

Section 7 (29 U.S.C. 706) is amended by adding at the end the following new paragraphs:

"(36) The term 'statewide system' means a statewide system, as defined in section ___004 of the Workforce and Career Development Act of 1996.

"(37) The term 'workforce and career development activities' has the meaning given such term in section ___004 of the Workforce and Career Development Act of 1996.".

SEC. ___214. ADMINISTRATION.

Section 12(a)(1) (29 U.S.C. 711(a)(1)) is amended by inserting ", including providing assistance to achieve the meaningful and effective participation by individuals with disabilities in the activities carried out through a statewide system" before the semicolon.

SEC. ___215. REPORTS.

Section 13 (29 U.S.C. 712) is amended in the fourth sentence by striking "The data elements" and all that follows through "age," and inserting the following: "The information shall include all information that is required to be submitted in the report described in section ___106(c) of the Workforce and Career Development Act of 1996 and that pertains to the employment of individuals with disabilities, including information on age,".

SEC. ___216. EVALUATION.

Section 14(a) (29 U.S.C. 713(a)) is amended in the third sentence by striking "to the extent feasible," and all that follows through the end of the sentence and inserting the following: "to the maximum extent appropriate, be consistent with the State benchmarks established under paragraphs (1) and (2) of section ___106(b) of the Workforce and Career Development Act of 1996. For purposes of this section, the Secretary may modify or supplement such benchmarks to the extent necessary to address unique considerations applicable to the participation of individuals with disabilities in the vocational rehabilitation program established under title I and activities carried out under other provisions of this Act.".

SEC. ___217. DECLARATION OF POLICY.

Section 100(a) (29 U.S.C. 720(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (E), by striking "; and" and inserting a semicolon;

(B) in subparagraph (F)—

(i) by inserting "workforce and career development activities and" before "vocational rehabilitation services"; and

(ii) by striking the period and inserting "; and"; and

(C) by adding at the end the following subparagraph:

"(G) linkages between the vocational rehabilitation program established under this title and other components of the statewide system are critical to ensure effective and meaningful participation by individuals with disabilities in workforce and career development activities."; and

(2) in paragraph (2)—

(A) by striking "a comprehensive" and inserting "statewide comprehensive"; and

(B) by striking "program of vocational rehabilitation that is designed" and inserting "programs of vocational rehabilitation, each of which is—

"(A) coordinated with a statewide system; and

"(B) designed".

SEC. ___218. STATE PLANS.

(a) IN GENERAL.—Section 101(a) (29 U.S.C. 721(a)) is amended—

(1) in the first sentence, by striking ", or shall submit" and all that follows through "et seq.)" and inserting ", and shall submit the State plan on the same dates as the State submits the State plan described in section ___104 of the Workforce and Career Development Act of 1996 to the Secretaries (as defined in section ___004 of such Act)";

(2) by inserting after the first sentence the following: "The State designated unit shall also submit the State plan for vocational rehabilitation services for review and comment to the individuals and entities participating in the collaborative process described in subsection (a) or (b) of section ___105 of the Workforce and Career Development Act of 1996 and such individuals and entities shall submit comments on the State plan to the State designated unit.";

(3) in paragraph (15)—

(A) by striking ", including—" and all that follows through "(C) review of" and inserting ", including review of";

(B) by striking "paragraph (9)(C)" and inserting "paragraph (9)(D)";

(C) by striking "most severe disabilities; and" and inserting "most severe disabilities;"; and

(D) by striking subparagraph (D);

(4) by striking paragraphs (10), (27), (28), and (30);

(5) in paragraph (19)—

(A) by striking "(19)" and inserting "(19)(A)"; and

(B) by inserting "and" after the semicolon;

(6) in paragraph (20), by striking "(20)" and inserting "(B)";

(7) by redesignating—

(A) paragraphs (11) through (18) as paragraphs (10) through (17), respectively;

(B) paragraph (19) (as amended by paragraphs (5) and (6)) as paragraph (18);

(C) paragraphs (21) through (26) as paragraphs (19) through (24), respectively;

(D) paragraph (29) as paragraph (25); and

(E) paragraphs (31) through (36) as paragraphs (26) through (31), respectively;

(8) in paragraph (5)—

(A) by striking subparagraph (A) and inserting the following:

"(A) contain the plans, policies, and methods to be followed in carrying out the State plan and in the administration and supervision of the plan, including—

"(i)(I) the results of a comprehensive, statewide assessment of the rehabilitation needs of individuals with disabilities (including individuals with severe disabilities, individuals with disabilities who are minorities, and individuals with disabilities who have been unserved, or underserved, by the vocational rehabilitation system) who are residing within the State; and

"(II) the response of the State to the assessment;

"(ii) a description of the method to be used to expand and improve services to individuals with the most severe disabilities, including individuals served under part C of title VI;

"(iii) with regard to community rehabilitation programs—

"(I) a description of the method to be used (such as a cooperative agreement) to utilize the programs to the maximum extent feasible; and

"(II) a description of the needs of and utilization of the programs, including the community rehabilitation programs funded under the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.) and such programs funded by State use contracting programs; and

"(iv) an explanation of the methods by which the State will provide vocational rehabilitation services to all individuals with disabilities within the State who are eligible for such services, and, in the event that vocational rehabilitation services cannot be provided to all such eligible individuals with disabilities who apply for such services, information showing and providing the justification for the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided (which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first the individuals with the most severe disabilities in accordance with criteria established by the State, and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving individuals with disabilities, established in regulations prescribed by the Commissioner);";

(B) in subparagraph (B), by striking "; and" and inserting a semicolon; and

(C) by striking subparagraph (C) and inserting the following subparagraphs:

"(C) with regard to the statewide assessment of rehabilitation needs described in subparagraph (A)(i)—

"(i) provide that the State agency will make reports at such time, in such manner, and containing such information, as the Commissioner may require to carry out the functions of the Commissioner under this title, and comply with such provisions as are necessary to assure the correctness and verification of such reports; and

"(ii) provide that reports made under clause (i) will include information regarding individuals with disabilities and, if an order of selection described in subparagraph (A)(iv) is in effect in the State, will separately include information regarding individuals with the most severe disabilities, on—

"(I) the number of such individuals who are evaluated and the number rehabilitated;

"(II) the costs of administration, counseling, provision of direct services, development of community rehabilitation programs, and other functions carried out under this Act; and

"(III) the utilization by such individuals of other programs pursuant to paragraph (10); and

"(D) describe—

"(i) how a broad range of rehabilitation technology services will be provided at each stage of the rehabilitation process;

"(ii) how a broad range of such rehabilitation technology services will be provided on a statewide basis; and

"(iii) the training that may be provided to vocational rehabilitation counselors, client assistance personnel, personnel of the eligible providers of core services described in subsection (e)(2) of section ___121 of the Workforce and Career Development Act of 1996 through one-stop career centers described in subsection (d) of such section, and other related services personnel;";

(9) in subparagraph (A)(i)(II) of paragraph (7), by striking ", based on projections" and all that follows through "relevant factors";

(10) in paragraph (9)—

(A) in subparagraph (B), by striking "written rehabilitation program" and inserting "employment plan"; and

(B) in subparagraph (C), by striking "plan in accordance with such program" and inserting "State plan in accordance with the employment plan";

(11) in paragraph (10) (as redesignated in paragraph (7))—

(A) in subparagraph (A), by striking "State's public" and all that follows and inserting "Federal, State, and local programs that are not part of the statewide system of the State;"; and

(B) in subparagraph (C)—

(i) by striking "if appropriate—" and all that follows through "entering into" and inserting "if appropriate, entering into";

(ii) by redesignating subclauses (I), (II), and (III) as clauses (i), (ii), and (iii), respectively; and

(iii) by indenting the clauses and aligning the margins of the clauses with the margins of clause (ii) of subparagraph (A) of paragraph (7);

(12) in paragraph (20) (as redesignated in paragraph (7)), by striking "referrals to other Federal and State programs" and inserting "referrals within the statewide system of the State to programs"; and

(13) in paragraph (22) (as redesignated in paragraph (7))—

(A) in subparagraph (B), by striking "written rehabilitation program" and inserting "employment plan"; and

(B) in subparagraph (C)—

(i) in clause (ii), by striking "; and" and inserting a semicolon;

(ii) in clause (iii), by striking the semicolon and inserting "; and"; and

(iii) by adding at the end the following clause:

"(iv) the manner in which students who are individuals with disabilities and who are not in special education programs can access and receive vocational rehabilitation services, where appropriate;".

(b) CONFORMING AMENDMENTS.—

(1) Section 7(22)(A)(i)(II) (29 U.S.C. 706(22)(A)(i)(II)) is amended by striking "101(a)(5)(A)" each place it appears and inserting "101(a)(5)(A)(iv)".

(2) Section 12(d) (29 U.S.C. 711(d)) is amended by striking "101(a)(5)(A)" and inserting "101(a)(5)(A)(iv)".

(3) Section 101(a) (29 U.S.C. 721(a)) is amended—

(A) in paragraph (18)(A) (as redesignated in subsection (a)(7)), by striking "paragraph (15)" and inserting "paragraph (14)";

(B) in paragraph (22) (as redesignated in subsection (a)(7)), by striking "paragraph (11)(C)(ii)" and inserting "paragraph (10)(C)";

(C) in paragraph (27) (as redesignated in subsection (a)(7)), by striking "paragraph (36)" and inserting "paragraph (31)"; and

(D) in subparagraph (C) of paragraph (31) (as redesignated in subsection (a)(7)), by striking "101(a)(1)(A)(i)" and inserting "paragraph (1)(A)(i)".

(4) Section 102 (29 U.S.C. 722) is amended—

(A) in subsection (a)(3), by striking "101(a)(24)" and inserting "101(a)(22)"; and

(B) in subsection (d)(2)(C)(ii)—

(i) in subclause (II), by striking "101(a)(36)" and inserting "101(a)(31)"; and

(ii) in subclause (III), by striking "101(a)(36)(C)(ii)" and inserting "101(a)(31)(C)(ii)".

(5) Section 103(a)(13) (29 U.S.C. 723(a)(13)) is amended by striking "101(a)(11)" and inserting "101(a)(10)".

(6) Section 105(a)(1) (29 U.S.C. 725(a)(1)) is amended by striking "101(a)(36)" and inserting "101(a)(31)".

(7) Section 107(a) (29 U.S.C. 727(a)) is amended—

(A) in paragraph (2)(F), by striking "101(a)(32)" and inserting "101(a)(27)"; and

(B) in paragraph (4)(C), by striking "101(a)(35)" and inserting "101(a)(30)".

(8) Section 111(a) (29 U.S.C. 731(a)) is amended—

(A) in paragraph (1)—

(i) by striking "101(a)(34)(A)" and inserting "101(a)(29)(A)"; and

(ii) by striking "101(a)(34)(B)" and inserting "101(a)(29)(B)"; and

(B) in paragraph (2)(A), by striking "101(a)(17)" and inserting "101(a)(16)".

(9) Section 124(a)(1)(A) (29 U.S.C. 744(a)(1)(A)) is amended by striking "101(a)(34)(B)" and inserting "101(a)(29)(B)".

(10) Section 315(b)(2) (29 U.S.C. 777e(b)(2)) is amended by striking "101(a)(22)" and inserting "101(a)(20)".

(11) Section 102(e)(23)(A) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2212(e)(23)(A)) is amended by striking "section 101(a)(36) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(36))" and inserting "section 101(a)(31) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(31))".

SEC. ___219. INDIVIDUALIZED EMPLOYMENT PLANS.

(a) IN GENERAL.—Section 102 (29 U.S.C. 722) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 102. INDIVIDUALIZED EMPLOYMENT PLANS.";

(2) in subsection (a)(6), by striking "written rehabilitation program" and inserting "employment plan";

(3) in subsection (b)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking "written rehabilitation program" and inserting "employment plan"; and

(ii) in clause (ii), by striking "program" and inserting "plan";

(B) in paragraph (1)(B)—

(i) in the matter preceding clause (i), by striking "written rehabilitation program" and inserting "employment plan";

(ii) in clause (iv)—

(I) by striking subclause (I) and inserting the following:

"(I) include a statement of the specific vocational rehabilitation services to be provided (including, if appropriate, rehabilitation technology services and training in how to use such services) that includes specification of the public or private entity that will provide each such vocational rehabilitation service and the projected dates for the initiation and the anticipated duration of each such service; and";

(II) by striking subclause (II); and

(III) by redesignating subclause (III) as subclause (II); and

(iii) in clause (xi)(I), by striking "program" and inserting "plan";

(C) in paragraph (1)(C), by striking "written rehabilitation program and amendments to the program" and inserting "employment plan and amendments to the plan"; and

(D) in paragraph (2)—

(i) by striking "program" each place the term appears and inserting "plan"; and

(ii) by striking "written rehabilitation" each place the term appears and inserting "employment";

(4) in subsection (c)—

(A) in paragraph (1), by striking "written rehabilitation program" and inserting "employment plan"; and

(B) by striking "written program" each place the term appears and inserting "plan"; and

(5) in subsection (d)—

(A) in paragraph (5), by striking "written rehabilitation program" and inserting "employment plan"; and

(B) in paragraph (6)(A), by striking the second sentence.

(b) CONFORMING AMENDMENTS.—

(1) The table of contents for the Act is amended by striking the item relating to section 102 and inserting the following:

"Sec. 102. Individualized employment plans.".

(2) Paragraphs (22)(B) and (27)(B), and subparagraphs (B) and (C) of paragraph (34) of section 7 (29 U.S.C. 706), section 12(e)(1) (29 U.S.C. 711(e)(1)), section 501(e) (29 U.S.C. 791(e)), subparagraphs (C), (D), and (E) of section 635(b)(6) (29 U.S.C. 795n(b)(6) (C), (D), and (E)), section 802(g)(8)(B) (29 U.S.C. 797a(g)(8)(B)), and section 803(c)(2)(D) (29 U.S.C. 797b(c)(2)(D)) are amended by striking "written rehabilitation program" each place the term appears and inserting "employment plan".

(3) Section 7(22)(B)(i) (29 U.S.C. 706(22)(B)(i)) is amended by striking "rehabilitation program" and inserting "employment plan".

(4) Section 107(a)(3)(D) (29 U.S.C. 727(a)(3)(D)) is amended by striking "written rehabilitation programs" and inserting "employment plans".

(5) Section 101(b)(7)(A)(ii)(II) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988 (29 U.S.C. 2211(b)(7)(A)(ii)(II)) is amended by striking "written rehabilitation program" and inserting "employment plan".

SEC. ___220. STATE REHABILITATION ADVISORY COUNCIL.

(a) IN GENERAL.—Section 105 (29 U.S.C. 725) is amended—

(1) in subsection (b)(1)(A)(vi), by inserting before the semicolon the following: "who, to the extent feasible, are individuals involved in the collaborative process described in section ___105 of the Workforce and Career Development Act of 1996"; and

(2) in subsection (c)—

(A) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively;

(B) by inserting after paragraph (2) the following new paragraph:

"(3) advise the designated State agency and the designated State unit regarding strategies for ensuring that the vocational rehabilitation program established under this title is coordinated with the statewide system of the State;"; and

(C) in paragraph (6) (as redesignated in subparagraph (A))—

(i) by striking "6024), and" and inserting "6024),"; and

(ii) by striking the semicolon at the end and inserting the following: ", and the individuals and entities involved in the collaborative process described in section ___105 of the Workforce and Career Development Act of 1996;".

(b) CONFORMING AMENDMENT.—Subparagraph (B)(iv), and clauses (ii)(I) and (iii)(I) of subparagraph (C), of paragraph (31) (as redesignated in section ___218(a)(7)) of section 101(a) (29 U.S.C. 721(a)) are amended by striking "105(c)(3)" and inserting "105(c)(4)".

SEC. ___221. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.

Section 106(a)(1) (29 U.S.C. 726(a)(1)) is amended—

(1) by striking "(1) IN GENERAL.—The Commissioner shall" and inserting the following:

"(1) EVALUATION STANDARDS AND PERFORMANCE INDICATORS.—

"(A) IN GENERAL.—The Commissioner shall"; and

(2) by adding at the end the following:

"(B) MODIFICATION OR SUPPLEMENTATION.—

"(i) IN GENERAL.—The Commissioner shall modify or supplement such standards and indicators to ensure that, to the maximum extent appropriate, such standards and indicators are consistent with the State benchmarks established under paragraphs (1) and (2) of section ___106(b) of the Workforce and Career Development Act of 1996.

"(ii) ADDITIONAL PROVISIONS.—The Commissioner—

"(I) shall, in modifying or supplementing such standards and indicators, comply with the requirements under the timetable for establishing such benchmarks under the Workforce and Career Development Act of 1996; and

"(II) may modify or supplement such standards and indicators, to the extent necessary, to address unique considerations applicable to individuals with disabilities in the vocational rehabilitation program.".

SEC. ___222. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall take effect on the date of enactment of this Act.

(b) STATEWIDE SYSTEM REQUIREMENTS.—The changes made in the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) by the amendments made by this subtitle that relate to State benchmarks, or other components of a statewide system, shall take effect on July 1, 1998.

Subtitle C—Job Corps

SEC. ___231. DEFINITIONS.

As used in this subtitle:

(1) ENROLLEE.—The term "enrollee" means an individual enrolled in the Job Corps.

(2) GOVERNOR.—The term "Governor" means the chief executive officer of a State.

(3) JOB CORPS.—The term "Job Corps" means the Job Corps described in section ___233.

(4) JOB CORPS CENTER.—The term "Job Corps center" means a center described in section ___233.

(5) OPERATOR.—The term "operator" means an entity selected under this subtitle to operate a Job Corps center.

(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.

SEC. ___232. PURPOSES.

The purposes of this subtitle are—

(1) to maintain a national Job Corps program, carried out in partnership with States and communities, to assist at-risk youth who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsible, employable, and productive citizens;

(2) to set forth standards and procedures for selecting individuals as enrollees in the Job Corps;

(3) to authorize the establishment of Job Corps centers in which enrollees will participate in intensive programs of workforce and career development activities; and

(4) to prescribe various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps.

SEC. ___233. ESTABLISHMENT.

There shall be established in the Department of Labor a Job Corps program, to carry out, in conjunction with the activities carried out under section ___247, activities described in this subtitle for individuals enrolled in the Job Corps and assigned to a center.

SEC. ___234. INDIVIDUALS ELIGIBLE FOR THE JOB CORPS.

To be eligible to become an enrollee, an individual shall be—

(1) not less than age 15 and not more than age 24;

(2) an individual who—

(A) receives, or is a member of a family that receives, cash welfare payments under a Federal, State, or local welfare program;

(B) had received an income, or is a member of a family that had received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and payments described in subparagraph (A)) that, in relation to family size, does not exceed the higher of—

(i) the poverty line (as defined by the Office of Management and Budget, and revised

annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

(C) is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

(E) is a foster child on behalf of whom State or local government payments are made; or

(F) in cases permitted by regulations of the Secretary, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements; and

(3) an individual who is 1 or more of the following:

(A) Basic skills deficient.

(B) A school dropout.

(C) Homeless or a runaway.

(D) Pregnant or a parent.

(E) An individual who requires additional education, training, or intensive counseling and related assistance, in order to secure and hold employment or participate successfully in regular schoolwork.

SEC. ___235. SCREENING AND SELECTION OF APPLICANTS.

(a) STANDARDS AND PROCEDURES.—

(1) IN GENERAL.—The Secretary shall prescribe specific standards and procedures for the screening and selection of applicants for the Job Corps, after considering recommendations from the Governors, local boards, and other interested parties.

(2) METHODS.—In prescribing standards and procedures under paragraph (1) for the screening and selection of Job Corps applicants, the Secretary shall—

(A) require enrollees to take drug tests within 30 days of enrollment in the Job Corps;

(B) allocate, where necessary, additional resources to increase the applicant pool;

(C) establish standards for outreach to and screening of Job Corps applicants;

(D) where appropriate, take measures to improve the professional capability of the individuals conducting such screening;

(E) require Job Corps applicants to pass background checks, conducted in accordance with procedures established by the Secretary; and

(F) assure that an appropriate number of enrollees are from rural areas.

(3) IMPLEMENTATION.—To the extent practicable, the standards and procedures shall be implemented through arrangements with—

(A) eligible providers of core services described in section ___121(e)(2) through one-stop career centers described in section ___121(d);

(B) agencies and organizations such as community action agencies, professional groups, and labor organizations; and

(C) agencies and individuals that have contact with youth over substantial periods of time and are able to offer reliable information about the needs and problems of the youth.

(4) CONSULTATION.—The standards and procedures shall provide for necessary consultation with individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers.

(b) SPECIAL LIMITATIONS.—No individual shall be selected as an enrollee unless the individual or organization implementing the standards and procedures determines that—

(1) there is a reasonable expectation that the individual considered for selection can participate successfully in group situations and activities, is not likely to engage in behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between the Job Corps center to which the individual might be assigned and surrounding communities; and

(2) the individual manifests a basic understanding of both the rules to which the individual will be subject and of the consequences of failure to observe the rules.

SEC. ___236. ENROLLMENT AND ASSIGNMENT.

(a) RELATIONSHIP BETWEEN ENROLLMENT AND MILITARY OBLIGATIONS.—Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

(b) ASSIGNMENT.—After the Secretary has determined that an enrollee is to be assigned to a Job Corps center, the enrollee shall be assigned to the center that is closest to the residence of the enrollee, except that the Secretary may waive this requirement for good cause, including to ensure an equitable opportunity for individuals described in section ___234 from various sections of the United States to participate in the Job Corps program, to prevent undue delays in assignment of an enrollee, to adequately meet the educational or other needs of an enrollee, and for efficiency and economy in the operation of the program.

(c) PERIOD OF ENROLLMENT.—No individual may be enrolled in the Job Corps for more than 2 years, except—

(1) in a case in which completion of an advanced career training program under section ___238(d) would require an individual to participate for more than 2 years; or

(2) as the Secretary may authorize in a special case.

SEC. ___237. JOB CORPS CENTERS.

(a) OPERATORS AND SERVICE PROVIDERS.—

(1) ELIGIBLE ENTITIES.—The Secretary shall enter into an agreement with a Federal, State, or local agency, which may be a State board or agency that operates or wishes to develop an area vocational education school facility or residential vocational school, or with a private organization, for the operation of each Job Corps center. The Secretary shall enter into an agreement with an appropriate entity to provide services for a Job Corps center.

(2) SELECTION PROCESS.—Except as provided in subsections (c) and (d), the Secretary shall select an entity to operate a Job Corps center on a competitive basis, after reviewing the operating plans described in section ___240. In selecting a private or public entity to serve as an operator for a Job Corps Center, the Secretary shall, at the request of the Governor of the State in which the center is located, convene and obtain the recommendation of a selection panel described in section ___242(b). In selecting an entity to serve as an operator or to provide services for a Job Corps center, the Secretary shall take into consideration the previous performance of the entity, if any, relating to operating or providing services for a Job Corps center.

(b) CHARACTER AND ACTIVITIES.—Job Corps centers may be residential or nonresidential in character, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with access to activities described in section ___238. In any year, no more than 20 percent of the individuals enrolled in the Job Corps may be nonresidential participants in the Job Corps.

(c) CIVILIAN CONSERVATION CENTERS.—

(1) IN GENERAL.—The Job Corps centers may include Civilian Conservation Centers operated under agreements with the Secretary of Agriculture or the Secretary of the Interior, located primarily in rural areas, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

(2) SELECTION PROCESS.—The Secretary may select an entity to operate a Civilian Conservation Center on a competitive basis, as provided in subsection (a), if the center fails to meet such national performance standards as the Secretary shall establish.

(d) INDIAN TRIBES.—

(1) GENERAL AUTHORITY.—The Secretary may enter into agreements with Indian tribes to operate Job Corps centers for Indians.

(2) DEFINITIONS.—As used in this subsection, the terms "Indian" and "Indian tribe", have the meanings given such terms in subsections (d) and (e), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. ___238. PROGRAM ACTIVITIES.

(a) ACTIVITIES PROVIDED THROUGH JOB CORPS CENTERS.—Each Job Corps center shall provide enrollees assigned to the center with access to core services described in section ___121(e)(2), and such other employment and training activities and at-risk youth activities as may be appropriate to meet the needs of the enrollees. Each Job Corps center shall provide the enrollees with such activities described in sections ___121 and ___122 as may be appropriate to meet the needs of the enrollees. The activities provided under this subsection shall provide work-based learning throughout the enrollment of the enrollees and assist the enrollees in obtaining meaningful unsubsidized employment, participating successfully in secondary education or postsecondary education programs, enrolling in other suitable training programs, or satisfying Armed Forces requirements, on completion of their enrollment.

(b) ARRANGEMENTS.—The Secretary shall arrange for enrollees assigned to Job Corps centers to receive employment and training activities and at-risk youth activities through or in coordination with the statewide system, including employment and training activities and at-risk youth activities provided through local public or private educational agencies, vocational educational institutions, or technical institutes.

(c) FISCAL AND MANAGEMENT ACCOUNTABILITY INFORMATION SYSTEM.—The Secretary shall establish a fiscal and management accountability information system for Job Corps centers, and coordinate the activities carried out through the system with activities carried out through the fiscal and management accountability information systems for States described in section ___106(e), if such systems are established.

(d) ADVANCED CAREER TRAINING PROGRAMS.—

(1) IN GENERAL.—The Secretary may arrange for programs of advanced career training for selected enrollees in which the enrollees may continue to participate for a period

of not to exceed 1 year in addition to the period of participation to which the enrollees would otherwise be limited.

(2) POSTSECONDARY EDUCATIONAL INSTITUTIONS.—The advanced career training may be provided through a postsecondary educational institution for an enrollee who has obtained a secondary school diploma or its recognized equivalent, has demonstrated commitment and capacity in previous Job Corps participation, and has an identified occupational goal.

(3) COMPANY-SPONSORED TRAINING PROGRAMS.—The Secretary may enter into contracts with appropriate entities to provide the advanced career training through intensive training in company-sponsored training programs, combined with internships in work settings.

(4) BENEFITS.—

(A) IN GENERAL.—During the period of participation in an advanced career training program, an enrollee shall be eligible for full Job Corps benefits, or a monthly stipend equal to the average value of the residential support, food, allowances, and other benefits provided to enrollees assigned to residential Job Corps centers.

(B) CALCULATION.—The total amount for which an enrollee shall be eligible under subparagraph (A) shall be reduced by the amount of any scholarship or other educational grant assistance received by such enrollee for advanced career training.

(5) DEMONSTRATION.—Each year, any operator seeking to enroll additional enrollees in an advanced career training program shall demonstrate that participants in such program have achieved a reasonable rate of completion and placement in training-related jobs before the operator may carry out such additional enrollment.

SEC. ___239. SUPPORT.

The Secretary shall provide enrollees assigned to Job Corps centers with such personal allowances, including readjustment allowances, as the Secretary may determine to be necessary or appropriate to meet the needs of the enrollees.

SEC. ___240. OPERATING PLAN.

(a) IN GENERAL.—To be eligible to operate a Job Corps center, an entity shall prepare and submit an operating plan to the Secretary for approval. Prior to submitting the plan to the Secretary, the entity shall submit the plan to the Governor of the State in which the center is located for review and comment. The entity shall submit any comments prepared by the Governor on the plan to the Secretary with the plan. Such plan shall include, at a minimum, information indicating—

(1) in quantifiable terms, the extent to which the center will contribute to the achievement of the proposed State goals and State benchmarks identified in the State plan submitted under section ___104 for the State in which the center is located;

(2) the extent to which the activities described in section ___238 and delivered through the Job Corps center are directly linked to the workforce and career development needs of the region in which the center is located;

(3) an implementation strategy to ensure that all enrollees assigned to the Job Corps center will have access to services through the one-stop delivery of core services described in section ___121(e)(2); and

(4) an implementation strategy to ensure that the curricula of all such enrollees is integrated into activities described in section ___238(a), including work-based learning, work experience, and career-building activities, and that such enrollees have the opportunity to obtain secondary school diplomas or their recognized equivalent.

(b) APPROVAL.—The Secretary shall not approve an operating plan described in subsection (a) for a center if the Secretary determines that the activities proposed to be carried out through the center are not sufficiently integrated with the activities carried out through the statewide system of the State in which the center is located.

SEC. ___241. STANDARDS OF CONDUCT.

(a) PROVISION AND ENFORCEMENT.—The Secretary shall provide, and directors of Job Corps centers shall stringently enforce, standards of conduct within the centers. Such standards of conduct shall include provisions forbidding the actions described in subsection (b)(2)(A).

(b) DISCIPLINARY MEASURES.—

(1) IN GENERAL.—To promote the proper moral and disciplinary conditions in the Job Corps, the directors of Job Corps centers shall take appropriate disciplinary measures against enrollees. If such a director determines that an enrollee has committed a violation of the standards of conduct, the director shall dismiss the enrollee from the Job Corps if the director determines that the retention of the enrollee in the Job Corps will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees.

(2) ZERO TOLERANCE POLICY.—

(A) GUIDELINES.—The Secretary shall adopt guidelines establishing a zero tolerance policy for an act of violence, for use, sale, or possession of a controlled substance, for abuse of alcohol, or for other illegal or disruptive activity.

(B) DEFINITIONS.—As used in this paragraph:

(i) CONTROLLED SUBSTANCE.—The term "controlled substance" has the meaning given the term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(ii) ZERO TOLERANCE POLICY.—The term "zero tolerance policy" means a policy under which an enrollee shall be automatically dismissed from the Job Corps after a determination by the director that the enrollee has carried out an action described in subparagraph (A).

(c) APPEAL.—A disciplinary measure taken by a director under this section shall be subject to expeditious appeal in accordance with procedures established by the Secretary.

SEC. ___242. COMMUNITY PARTICIPATION.

(a) ACTIVITIES.—The Secretary shall encourage and cooperate in activities to establish a mutually beneficial relationship between Job Corps centers in the State and nearby communities. The activities shall include the use of local boards established in the State to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest.

(b) SELECTION PANELS.—The Governor may recommend individuals to serve on a selection panel convened by the Secretary to provide recommendations to the Secretary regarding any competitive selection of an operator for a center in the State. The panel shall have not more than 7 members. In recommending individuals to serve on the panel, the Governor may recommend members of local boards established in the State, or other representatives selected by the Governor. The Secretary shall select at least 1 individual recommended by the Governor.

(c) ACTIVITIES.—Each Job Corps center director shall—

(1) give officials of nearby communities appropriate advance notice of changes in the rules, procedures, or activities of the Job Corps center that may affect or be of interest to the communities;

(2) afford the communities a meaningful voice in the affairs of the Job Corps center that are of direct concern to the communities, including policies governing the issuance and terms of passes to enrollees; and

(3) encourage the participation of enrollees in programs for improvement of the communities, with appropriate advance consultation with business, labor, professional, and other interested groups, in the communities.

SEC. ___243. COUNSELING AND PLACEMENT.

The Secretary shall ensure that enrollees assigned to Job Corps centers receive academic and vocational counseling and job placement services, which shall be provided, to the maximum extent practicable, through the delivery of core services described in section ___121(e)(2).

SEC. ___244. ADVISORY COMMITTEES.

The Secretary is authorized to make use of advisory committees in connection with the operation of the Job Corps program, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

SEC. ___245. APPLICATION OF PROVISIONS OF FEDERAL LAW.

(a) ENROLLEES NOT CONSIDERED TO BE FEDERAL EMPLOYEES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection and in section 8143(a) of title 5, United States Code, enrollees shall not be considered to be Federal employees and shall not be subject to the provisions of law relating to Federal employment, including such provisions regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) PROVISIONS RELATING TO TAXES AND SOCIAL SECURITY BENEFITS.—For purposes of the Internal Revenue Code of 1986 and title II of the Social Security Act (42 U.S.C. 401 et seq.), enrollees shall be deemed to be employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(3) PROVISIONS RELATING TO COMPENSATION TO FEDERAL EMPLOYEES FOR WORK INJURIES.—For purposes of subchapter I of chapter 81 of title 5, United States Code (relating to compensation to Federal employees for work injuries), enrollees shall be deemed to be civil employees of the Government of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of such subchapter shall apply as specified in section 8143(a) of title 5, United States Code.

(4) FEDERAL TORT CLAIMS PROVISIONS.—For purposes of the Federal tort claims provisions in title 28, United States Code, enrollees shall be considered to be employees of the Government.

(b) ADJUSTMENTS AND SETTLEMENTS.—Whenever the Secretary finds a claim for damages to a person or property resulting from the operation of the Job Corps to be a proper charge against the United States, and the claim is not cognizable under section 2672 of title 28, United States Code, the Secretary may adjust and settle the claim in an amount not exceeding $1,500.

(c) PERSONNEL OF THE UNIFORMED SERVICES.—Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Job Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade in such services.

SEC. ___246. SPECIAL PROVISIONS.

(a) ENROLLMENT OF WOMEN.—The Secretary shall immediately take steps to achieve an enrollment of 50 percent women in the Job Corps program, consistent with the need—

(1) to promote efficiency and economy in the operation of the program;

(2) to promote sound administrative practice; and

(3) to meet the socioeconomic, educational, and training needs of the population to be served by the program.

(b) STUDIES, EVALUATIONS, PROPOSALS, AND DATA.—The Secretary shall assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of carrying out the Job Corps program shall become the property of the United States.

(c) GROSS RECEIPTS.—Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the operation by the contractor of a Job Corps center or the provision of services by the contractor for a Job Corps center shall not be considered to be generating gross receipts. Such a contractor shall not be liable, directly or indirectly, to any State or subdivision of a State (nor to any person acting on behalf of such a State or subdivision) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating or providing services for a Job Corps center. Such a contractor shall not be liable to any State or subdivision of a State to collect or pay any sales, excise, use, or similar tax imposed on the sale to or use by such contractor of any property, service, or other item in connection with the operation of or provision of services for a Job Corps center.

(d) MANAGEMENT FEE.—The Secretary shall provide each operator or entity providing services for a Job Corps center with an equitable and negotiated management fee of not less than 1 percent of the contract amount.

(e) DONATIONS.—The Secretary may accept on behalf of the Job Corps or individual Job Corps centers charitable donations of cash or other assistance, including equipment and materials, if such donations are available for appropriate use for the purposes set forth in this subtitle.

SEC. ___247. REVIEW OF JOB CORPS CENTERS.

(a) NATIONAL JOB CORPS REVIEW PANEL.—

(1) ESTABLISHMENT.—The Secretary shall establish a National Job Corps Review Panel (hereafter referred to in this section as the "Panel").

(2) MEMBERSHIP.—The Panel shall be composed of nine individuals selected by the Secretary, of which—

(A) three individuals shall be members of the national office of the Job Corps;

(B) three individuals shall be representatives from the private sector who have expertise and a demonstrated record of success in understanding, analyzing, and motivating at-risk youth; and

(C) three individuals shall be members of the Office of the Inspector General of the Department of Labor.

(3) DUTIES.—The Panel shall conduct a review of the activities carried out under part B of title IV of the Job Training Partnership Act (29 U.S.C. 1691 et seq.), and, not later than July 31, 1997, the Panel shall submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report containing the results of the review, including—

(A) information on the amount of funds expended for fiscal year 1996 to carry out activities under such part, for each State and for the United States;

(B) for each Job Corps center funded under such part, information on the amount of funds expended for fiscal year 1996 under such part to carry out activities related to the direct operation of the center, including funds expended for student training, outreach or intake activities, meals and lodging, student allowances, medical care, placement or settlement activities, and administration;

(C) for each Job Corps center, information on the amount of funds expended for fiscal year 1996 under such part through contracts to carry out activities not related to the direct operation of the center, including funds expended for student travel, national outreach, screening, and placement services, national vocational training, and national and regional administrative costs;

(D) for each Job Corps center, information on the amount of funds expended for fiscal year 1996 under such part for facility construction, rehabilitation, and acquisition expenses;

(E) information on the amount of funds required to be expended under such part to complete each new or proposed Job Corps center, and to rehabilitate and repair each existing Job Corps center, as of the date of the submission of the report;

(F) a summary of the information described in subparagraphs (B) through (E) for all Job Corps centers;

(G) an assessment of the need to serve individuals described in section ___234 in the Job Corps program, including—

(i) a cost-benefit analysis of the residential component of the Job Corps program;

(ii) the need for residential education and training services for individuals described in section ___234, analyzed for each State and for the United States; and

(iii) the distribution of training positions in the Job Corps program, as compared to the need for the services described in clause (ii), analyzed for each State;

(H) an overview of the Job Corps program as a whole and an analysis of individual Job Corps centers, including a 5-year performance measurement summary that includes information, analyzed for the program and for each Job Corps center, on—

(i) the number of enrollees served;

(ii) the number of former enrollees who entered employment, including the number of former enrollees placed in a position related to the job training received through the program and the number placed in a position not related to the job training received;

(iii) the number of former enrollees placed in jobs for 32 hours per week or more;

(iv) the number of former enrollees who entered employment and were retained in the employment for more than 13 weeks;

(v) the number of former enrollees who entered the Armed Forces;

(vi) the number of former enrollees who completed vocational training, and the rate of such completion, analyzed by vocation;

(vii) the number of former enrollees who entered postsecondary education;

(viii) the number and percentage of early dropouts from the Job Corps program;

(ix) the average wage of former enrollees, including wages from positions described in clause (ii);

(x) the number of former enrollees who obtained a secondary school diploma or its recognized equivalent;

(xi) the average level of learning gains for former enrollees; and

(xii) the number of former enrollees that did not—

(I) enter employment or postsecondary education;

(II) complete a vocational education program; or

(III) make identifiable learning gains;

(I) information regarding the performance of all existing Job Corps centers over the 3 years preceding the date of submission of the report; and

(J) job placement rates for each Job Corps center and each entity providing services to a Job Corps center.

(b) RECOMMENDATIONS OF PANEL.—

(1) RECOMMENDATIONS.—The Panel shall, based on the results of the review described in subsection (a), make recommendations to the Secretary, regarding improvements in the operation of the Job Corps program, including—

(A) closing 5 Job Corps centers by September 30, 1997, and 5 additional Job Corps centers by September 30, 2000;

(B) relocating Job Corps centers described in paragraph (2)(A)(iii) in cases in which facility rehabilitation, renovation, or repair is not cost-effective; and

(C) taking any other action that would improve the operation of a Job Corps center or any other appropriate action.

(2) CONSIDERATIONS.—

(A) IN GENERAL.—In determining whether to recommend that the Secretary close a Job Corps center, the Panel shall consider whether the center—

(i) has consistently received low performance measurement ratings under the Department of Labor or the Office of Inspector General Job Corps rating system;

(ii) is among the centers that have experienced the highest number of serious incidents of violence or criminal activity in the past 5 years;

(iii) is among the centers that require the largest funding for renovation or repair, as specified in the Department of Labor Job Corps Construction/Rehabilitation Funding Needs Survey, or for rehabilitation or repair, as reflected in the portion of the review described in subsection (a)(3)(E);

(iv) is among the centers for which the highest relative or absolute fiscal year 1996 expenditures were made, for any of the categories of expenditures described in subparagraph (B), (C), or (D) of subsection (a)(3), as reflected in the review described in subsection (a);

(v) is among the centers with the least State and local support; or

(vi) is among the centers with the lowest rating on such additional criteria as the Panel may determine to be appropriate.

(B) COVERAGE OF STATES AND REGIONS.—Notwithstanding subparagraph (A), the Panel shall not recommend that the Secretary close the only Job Corps center in a State or a region of the United States.

(C) ALLOWANCE FOR NEW JOB CORPS CENTERS.—Notwithstanding any other provision of this section, if the planning or construction of a Job Corps center that received Federal funding for fiscal year 1994 or 1995 has not been completed by the date of enactment of this Act—

(i) the appropriate entity may complete the planning or construction and begin operation of the center; and

(ii) the Panel shall not evaluate the center under this section sooner than 3 years after the first date of operation of the center.

(3) REPORT.—Not later than August 30, 1997, the Panel shall submit to the Secretary a report that contains—

(A) the results of the review conducted under subsection (a) (as contained in the report submitted under such subsection); and

(B) the recommendations described in paragraph (1).

(c) IMPLEMENTATION OF PERFORMANCE IMPROVEMENTS.—The Secretary shall, after reviewing the report submitted under subsection (b)(3), implement improvements in the operation of the Job Corps program, including closing 10 individual Job Corps centers pursuant to subsection (b). In implementing such improvements, the Secretary may close such additional Job Corps centers as the Secretary determines to be appropriate. Funds saved through the implementation of such improvements shall be used to maintain overall Job Corps program service levels, improve facilities at existing Job Corps centers, relocate Job Corps centers, initiate new Job Corps centers with a priority on placing Job Corps centers in States without existing Job Corps centers, and make other performance improvements in the Job Corps program.

(d) REPORT TO CONGRESS.—The Secretary shall annually report to Congress the information specified in subparagraphs (H), (I), and (J) of subsection (a)(3) and such additional information relating to the Job Corps program as the Secretary may determine to be appropriate.

SEC. ___248. ADMINISTRATION.

The Secretary shall carry out the responsibilities specified for the Secretary in this subtitle, notwithstanding any other provision of this division.

SEC. ___249. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1998 through 2002 to carry out this subtitle.

SEC. ___250. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle shall take effect on July 1, 1998.

(b) REPORT.—Section ___247 shall take effect on the date of enactment of this Act.

Subtitle D—Amendments to the National Literacy Act of 1991

SEC. ___261. EXTENSION OF FUNCTIONAL LITERACY AND LIFE SKILLS PROGRAM FOR STATE AND LOCAL PRISONERS.

Paragraph (3) of section 601(i) of the National Literacy Act of 1991 (20 U.S.C. 1211–2(i)) is amended—

(1) by striking "1994, and" and inserting "1994,"; and

(2) by inserting ", and such sums as may be necessary for each of the fiscal years 1997, 1998, 1999, 2000, 2001, and 2002" before the period.

_TITLE III—MUSEUMS AND LIBRARIES

SEC. ___301. MUSEUM AND LIBRARY SERVICES.

The Museum Services Act (20 U.S.C. 961 et seq.) is amended to read as follows:

"TITLE II—MUSEUM AND LIBRARY SERVICES

"Subtitle A—General Provisions

"SEC. 201. SHORT TITLE.

"This title may be cited as the 'Museum and Library Services Act'.

"SEC. 202. GENERAL DEFINITIONS.

"As used in this title:

"(1) COMMISSION.—The term 'Commission' means the National Commission on Libraries and Information Science established under section 3 of the National Commission on Libraries and Information Sciences Act (20 U.S.C. 1502).

"(2) DIRECTOR.—The term 'Director' means the Director of the Institute appointed under section 204.

"(3) INSTITUTE.—The term 'Institute' means the Institute of Museum and Library Services established under section 203.

"(4) MUSEUM BOARD.—The term 'Museum Board' means the National Museum Services Board established under section 275.

"SEC. 203. INSTITUTE OF MUSEUM AND LIBRARY SERVICES.

"(a) ESTABLISHMENT.—There is established, within the National Foundation on the Arts and the Humanities, an Institute of Museum and Library Services.

"(b) OFFICES.—The Institute shall consist of an Office of Museum Services and an Office of Library Services. There shall be a National Museum Services Board in the Office of Museum Services.

"SEC. 204. DIRECTOR OF THE INSTITUTE.

"(a) APPOINTMENT.—

"(1) IN GENERAL.—The Institute shall be headed by a Director, appointed by the President, by and with the advice and consent of the Senate.

"(2) TERM.—The Director shall serve for a term of 4 years.

"(3) QUALIFICATIONS.—Beginning with the first individual appointed to the position of Director after the date of enactment of the Workforce and Career Development Act of 1996, every second individual so appointed shall be appointed from among individuals who have special competence with regard to library and information services. Beginning with the second individual appointed to the position of Director after the date of enactment of the Workforce and Career Development Act of 1996, every second individual so appointed shall be appointed from among individuals who have special competence with regard to museum services.

"(b) COMPENSATION.—The Director shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(c) DUTIES AND POWERS.—The Director shall perform such duties and exercise such powers as may be prescribed by law, including awarding financial assistance for activities described in this title.

"(d) NONDELEGATION.—The Director shall not delegate any of the functions of the Director to any person who is not an officer or employee of the Institute.

"(e) COORDINATION.—The Director shall ensure coordination of the policies and activities of the Institute with the policies and activities of other agencies and offices of the Federal Government having interest in and responsibilities for the improvement of museums and libraries and information services.

"SEC. 205. DEPUTY DIRECTORS.

"The Office of Library Services shall be headed by a Deputy Director, who shall be appointed by the Director from among individuals who have a graduate degree in library science and expertise in library and information services. The Office of Museum Services shall be headed by a Deputy Director, who shall be appointed by the Director from among individuals who have expertise in museum services.

"SEC. 206. PERSONNEL.

"(a) IN GENERAL.—The Director may, in accordance with applicable provisions of title 5, United States Code, appoint and determine the compensation of such employees as the Director determines to be necessary to carry out the duties of the Institute.

"(b) VOLUNTARY SERVICES.—The Director may accept and utilize the voluntary services of individuals and reimburse the individuals for travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent as authorized under section 5703 of title 5, United States Code, for persons employed intermittently in Federal Government service.

"SEC. 207. CONTRIBUTIONS.

"The Institute is authorized to solicit, accept, receive, and invest in the name of the United States, gifts, bequests, or devises of money and other property or services and to use such property or services in furtherance of the functions of the Institute. Any proceeds from such gifts, bequests, or devises, after acceptance by the Institute, shall be paid by the donor or the representative of the donor to the Director. The Director shall enter the proceeds in a special-interest bearing account to the credit of the Institute for the purposes specified in each case.

"Subtitle B—Library Services and Technology

"SEC. 211. SHORT TITLE.

"This subtitle may be cited as the 'Library Services and Technology Act'.

"SEC. 212. PURPOSE.

"It is the purpose of this subtitle—

"(1) to consolidate Federal library service programs;

"(2) to stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages;

"(3) to promote library services that provide all users access to information through State, regional, national and international electronic networks;

"(4) to provide linkages among and between libraries and one-stop career center systems; and

"(5) to promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills.

"SEC. 213. DEFINITIONS.

"As used in this subtitle:

"(1) INDIAN TRIBE.—The term 'Indian tribe' means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(2) LIBRARY.—The term 'library' includes—

"(A) a public library;

"(B) a public elementary school or secondary school library;

"(C) an academic library;

"(D) a research library, which for the purposes of this subtitle means a library that—

"(i) makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

"(ii) is not an integral part of an institution of higher education; and

"(E) a private library, but only if the State in which such private library is located determines that the library should be considered a library for purposes of this subtitle.

"(3) LIBRARY CONSORTIUM.—The term 'library consortium' means any local, statewide, regional, interstate, or international cooperative association of library entities which provides for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers, for improved services for the clientele of such library entities.

"(4) STATE.—The term 'State', unless otherwise specified, includes each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(5) STATE LIBRARY ADMINISTRATIVE AGENCY.—The term 'State library administrative agency' means the official agency of a State charged by the law of the State with the extension and development of public library services throughout the State.

"(6) STATE PLAN.—The term 'State plan' means the document which gives assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of this subtitle, provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under this subtitle, submits copies for approval as required by regulations promulgated by the Director, identifies a State's library needs, and sets forth the activities to be taken toward meeting the identified needs supported with the assistance of Federal funds made available under this subtitle.

"SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated $150,000,000 for fiscal year 1997 and such sums as may be necessary for each of the fiscal years 1998 through 2002 to carry out this subtitle.

"(2) TRANSFER.—The Secretary of Education shall—

"(A) transfer any funds appropriated under the authority of paragraph (1) to the Director to enable the Director to carry out this subtitle; and

"(B) not exercise any authority concerning the administration of this title other than the transfer described in subparagraph (A).

"(b) FORWARD FUNDING.—

"(1) IN GENERAL.—To the end of affording the responsible Federal, State, and local officers adequate notice of available Federal financial assistance for carrying out ongoing library activities and projects, appropriations for grants, contracts, or other payments under any program under this subtitle are authorized to be included in the appropriations Act for the fiscal year preceding the fiscal year during which such activities and projects shall be carried out.

"(2) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—In order to effect a transition to the timing of appropriation action authorized by subsection (a), the application of this section may result in the enactment, in a fiscal year, of separate appropriations for a program under this subtitle (whether in the same appropriations Act or otherwise) for two consecutive fiscal years.

"(c) ADMINISTRATION.—Not more than 3 percent of the funds appropriated under this section for a fiscal year may be used to pay for the Federal administrative costs of carrying out this subtitle.

"CHAPTER 1—BASIC PROGRAM REQUIREMENTS

"SEC. 221. RESERVATIONS AND ALLOTMENTS.

"(a) RESERVATIONS.—

"(1) IN GENERAL.—From the amount appropriated under the authority of section 214 for any fiscal year, the Director—

"(A) shall reserve 1½ percent to award grants in accordance with section 261; and

"(B) shall reserve 4 percent to award national leadership grants or contracts in accordance with section 262.

"(2) SPECIAL RULE.—If the funds reserved pursuant to paragraph (1)(B) for a fiscal year have not been obligated by the end of such fiscal year, then such funds shall be allotted in accordance with subsection (b) for the fiscal year succeeding the fiscal year for which the funds were so reserved.

"(b) ALLOTMENTS.—

"(1) IN GENERAL.—From the sums appropriated under the authority of section 214 and not reserved under subsection (a) for any fiscal year, the Director shall award grants from minimum allotments, as determined under paragraph (3), to each State. Any sums remaining after minimum allotments are made for such year shall be allotted in the manner set forth in paragraph (2).

"(2) REMAINDER.—From the remainder of any sums appropriated under the authority of section 214 that are not reserved under subsection (a) and not allotted under paragraph (1) for any fiscal year, the Director shall award grants to each State in an amount that bears the same relation to such remainder as the population of the State bears to the population of all States.

"(3) MINIMUM ALLOTMENT.—

"(A) IN GENERAL.—For the purposes of this subsection, the minimum allotment for each State shall be $340,000, except that the minimum allotment shall be $40,000 in the case of the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"(B) RATABLE REDUCTIONS.—If the sum appropriated under the authority of section 214 and not reserved under subsection (a) for any fiscal year is insufficient to fully satisfy the aggregate of the minimum allotments for all States for that purpose for such year, each of such minimum allotments shall be reduced ratably.

"(C) SPECIAL RULE.—

"(i) IN GENERAL.—Notwithstanding any other provision of this subsection and using funds allotted for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau under this subsection, the Director shall award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau to carry out activities described in this subtitle in accordance with the provisions of this subtitle that the Director determines are not inconsistent with this subparagraph.

"(ii) AWARD BASIS.—The Director shall award grants pursuant to clause (i) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.

"(iii) TERMINATION OF ELIGIBILITY.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this subtitle for any fiscal year that begins after September 30, 2001.

"(iv) ADMINISTRATIVE COSTS.—The Director may provide not more than 5 percent of the funds made available for grants under this subparagraph to pay the administrative costs of the Pacific Region Educational Laboratory regarding activities assisted under this subparagraph.

"(4) DATA.—The population of each State and of all the States shall be determined by the Director on the basis of the most recent data available from the Bureau of the Census.

"SEC. 222. ADMINISTRATION.

"(a) IN GENERAL.—Not more than 4 percent of the total amount of funds received under this subtitle for any fiscal year by a State may be used for administrative costs.

"(b) CONSTRUCTION.—Nothing in this section shall be construed to limit spending for evaluation costs under section 224(c) from sources other than this subtitle.

"SEC. 223. PAYMENTS; FEDERAL SHARE; AND MAINTENANCE OF EFFORT REQUIREMENTS.

"(a) PAYMENTS.—The Director shall pay to each State library administrative agency having a State plan approved under section 224 the Federal share of the cost of the activities described in the State plan.

"(b) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share shall be 66 percent.

"(2) NON-FEDERAL SHARE.—The non-Federal share of payments shall be provided from non-Federal, State, or local sources.

"(c) MAINTENANCE OF EFFORT.—

"(1) STATE EXPENDITURES.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—The amount otherwise payable to a State for a fiscal year pursuant to an allotment under this chapter shall be reduced if the level of State expenditures, as described in paragraph (2), for the previous fiscal year is less than the average of the total of such expenditures for the 3 fiscal years preceding that previous fiscal year. The amount of the reduction in allotment for any fiscal year shall be equal to the amount by which the level of such State expenditures for the fiscal year for which the determination is made is less than the average of the total of such expenditures for the 3 fiscal years preceding the fiscal year for which the determination is made.

"(ii) CALCULATION.—Any decrease in State expenditures resulting from the application of subparagraph (B) shall be excluded from the calculation of the average level of State expenditures for any 3-year period described in clause (i).

"(B) DECREASE IN FEDERAL SUPPORT.—If the amount made available under this subtitle for a fiscal year is less than the amount made available under this subtitle for the preceding fiscal year, then the expenditures required by subparagraph (A) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

"(2) LEVEL OF STATE EXPENDITURES.—The level of State expenditures for the purposes of paragraph (1) shall include all State dollars expended by the State library administrative agency for library programs that are consistent with the purposes of this subtitle. All funds included in the maintenance of effort calculation under this subsection shall be expended during the fiscal year for which the determination is made, and shall not include capital expenditures, special one-time project costs, or similar windfalls.

"(3) WAIVER.—The Director may waive the requirements of paragraph (1) if the Director determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

"SEC. 224. STATE PLANS.

"(a) STATE PLAN REQUIRED.—

"(1) IN GENERAL.—In order to be eligible to receive a grant under this subtitle, a State library administrative agency shall submit a State plan to the Director not later than April 1, 1997.

"(2) DURATION.—The State plan shall cover a period of 5 fiscal years.

"(3) REVISIONS.—If a State library administrative agency makes a substantive revision to its State plan, then the State library administrative agency shall submit to the Director an amendment to the State plan containing such revision not later than April 1 of the fiscal year preceding the fiscal year for which the amendment will be effective.

"(b) CONTENTS.—The State plan shall—

"(1) establish goals, and specify priorities, for the State consistent with the purposes of this subtitle;

"(2) describe activities that are consistent with the goals and priorities established under paragraph (1), the purposes of this subtitle, and section 231, that the State library administrative agency will carry out during such year using such grant;

"(3) describe the procedures that such agency will use to carry out the activities described in paragraph (2);

"(4) describe the methodology that such agency will use to evaluate the success of the activities established under paragraph (2) in achieving the goals and meeting the priorities described in paragraph (1);

"(5) describe the procedures that such agency will use to involve libraries and library users throughout the State in policy decisions regarding implementation of this subtitle; and

"(6) provide assurances satisfactory to the Director that such agency will make such reports, in such form and containing such information, as the Director may reasonably require to carry out this subtitle and to determine the extent to which funds provided under this subtitle have been effective in carrying out the purposes of this subtitle.

"(c) EVALUATION AND REPORT.—Each State library administrative agency receiving a grant under this subtitle shall independently evaluate, and report to the Director regarding, the activities assisted under this subtitle, prior to the end of the 5-year plan.

"(d) INFORMATION.—Each library receiving assistance under this subtitle shall submit to the State library administrative agency such information as such agency may require to meet the requirements of subsection (c).

"(e) APPROVAL.—

"(1) IN GENERAL.—The Director shall approve any State plan under this subtitle that meets the requirements of this subtitle and provides satisfactory assurances that the provisions of such plan will be carried out.

"(2) PUBLIC AVAILABILITY.—Each State library administrative agency receiving a grant under this subtitle shall make the State plan available to the public.

"(3) ADMINISTRATION.—If the Director determines that the State plan does not meet the requirements of this section, the Director shall—

"(A) immediately notify the State library administrative agency of such determination and the reasons for such determination;

"(B) offer the State library administrative agency the opportunity to revise its State plan;

"(C) provide technical assistance in order to assist the State library administrative agency in meeting the requirements of this section; and

"(D) provide the State library administrative agency the opportunity for a hearing.

"CHAPTER 2—LIBRARY PROGRAMS

"SEC. 231. GRANTS TO STATES.

"(a) IN GENERAL.—Of the funds provided to a State library administrative agency under section 214, such agency shall expend, either directly or through subgrants or cooperative agreements, at least 96 percent of such funds for—

"(1) establishing or enhancing electronic linkages among or between libraries, library consortia, one-stop career center systems established under section ___121(d) of the Workforce and Career Development Act of 1996, and eligible providers as such term is defined in section ___004 of such Act, or any combination thereof; and

"(2) targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

"(b) SPECIAL RULE.—Each State library administrative agency receiving funds under this chapter may apportion the funds available for the purposes described in subsection (a) between the two purposes described in paragraphs (1) and (2) of such subsection, as appropriate, to meet the needs of the individual State.

"CHAPTER 3—ADMINISTRATIVE PROVISIONS

"Subchapter A—State Requirements

"SEC. 251. STATE ADVISORY COUNCILS.

"Each State desiring assistance under this subtitle may establish a State advisory council which is broadly representative of the library entities in the State, including public, school, academic, special, and institutional libraries, and libraries serving individuals with disabilities.

"Subchapter B—Federal Requirements

"SEC. 261. SERVICES FOR INDIAN TRIBES.

"From amounts reserved under section 221(a)(1)(A) for any fiscal year the Director shall award grants to organizations primarily serving and representing Indian tribes to enable such organizations to carry out the activities described in section 231.

"SEC. 262. NATIONAL LEADERSHIP GRANTS OR CONTRACTS.

"(a) IN GENERAL.—From the amounts reserved under section 221(a)(1)(B) for any fiscal year the Director shall establish and carry out a program awarding national leadership grants or contracts to enhance the quality of library services nationwide and to provide coordination between libraries and museums. Such grants or contracts shall be used for activities that may include—

"(1) education and training of persons in library and information science, particularly in areas of new technology and other critical needs, including graduate fellowships, traineeships, institutes, or other programs;

"(2) research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects;

"(3) preservation or digitization of library materials and resources, giving priority to projects emphasizing coordination, avoidance of duplication, and access by researchers beyond the institution or library entity undertaking the project; and

"(4) model programs demonstrating cooperative efforts between libraries and museums.

"(b) GRANTS OR CONTRACTS.—

"(1) IN GENERAL.—The Director may carry out the activities described in subsection (a) by awarding grants to, or entering into contracts with, libraries, agencies, institutions of higher education, or museums, where appropriate.

"(2) COMPETITIVE BASIS.—Grants and contracts under this section shall be awarded on a competitive basis.

"(c) SPECIAL RULE.—The Director shall make every effort to ensure that activities assisted under this section are administered by appropriate library and museum professionals or experts.

"SEC. 263. STATE AND LOCAL INITIATIVES.

"Nothing in this subtitle shall be construed to interfere with State and local initiatives and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and insofar as consistent with the purposes of this subtitle, the determination of the best uses of the funds provided under this subtitle, shall be reserved for the States and their local subdivisions.

"Subtitle C—Museum Services

"SEC. 271. PURPOSE.

"It is the purpose of this subtitle—

"(1) to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and postsecondary education and with programs of nonformal education for all age groups;

"(2) to assist museums in modernizing their methods and facilities so that the museums are better able to conserve the cultural, historic, and scientific heritage of the United States; and

"(3) to ease the financial burden borne by museums as a result of their increasing use by the public.

"SEC. 272. DEFINITIONS.

"As used in this subtitle:

"(1) MUSEUM.—The term 'museum' means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or aesthetic purposes, that utilizes a professional staff, owns or utilizes tangible objects, cares for the tangible objects, and exhibits the tangible objects to the public on a regular basis.

"(2) STATE.—The term 'State' means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

"SEC. 273. MUSEUM SERVICES ACTIVITIES.

"(a) GRANTS.—The Director, subject to the policy direction of the Museum Board, may make grants to museums to pay for the Federal share of the cost of increasing and improving museum services, through such activities as—

"(1) programs that enable museums to construct or install displays, interpretations, and exhibitions in order to improve museum services provided to the public;

"(2) assisting museums in developing and maintaining professionally trained or otherwise experienced staff to meet the needs of the museums;

"(3) assisting museums in meeting the administrative costs of preserving and maintaining the collections of the museums, exhibiting the collections to the public, and providing educational programs to the public through the use of the collections;

"(4) assisting museums in cooperating with each other in developing traveling exhibitions, meeting transportation costs, and identifying and locating collections available for loan;

"(5) assisting museums in the conservation of their collections;

"(6) developing and carrying out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions; and

"(7) model programs demonstrating cooperative efforts between libraries and museums.

"(b) CONTRACTS AND COOPERATIVE AGREEMENTS.—

"(1) PROJECTS TO STRENGTHEN MUSEUM SERVICES.—The Director, subject to the policy direction of the Museum Board, is authorized to enter into contracts and cooperative agreements with appropriate entities, as determined by the Director, to pay for the Federal share of enabling the entities to undertake projects designed to strengthen museum services, except that any contracts or cooperative agreements entered into pursuant to this subsection shall be effective only to such extent or in such amounts as are provided in appropriations Acts.

"(2) LIMITATION ON AMOUNT.—The aggregate amount of financial assistance made available under this subsection for a fiscal year shall not exceed 15 percent of the amount appropriated under this subtitle for such fiscal year.

"(3) OPERATIONAL EXPENSES.—No financial assistance may be provided under this subsection to pay for operational expenses.

"(c) FEDERAL SHARE.—

"(1) 50 PERCENT.—Except as provided in paragraph (2), the Federal share described in subsections (a) and (b) shall be not more than 50 percent.

"(2) GREATER THAN 50 PERCENT.—The Director may use not more than 20 percent of the funds made available under this subtitle for a fiscal year to make grants under subsection (a), or enter into contracts or agreements under subsection (b), for which the Federal share may be greater than 50 percent.

"(d) REVIEW AND EVALUATION.—The Director shall establish procedures for reviewing and evaluating grants, contracts, and cooperative agreements made or entered into under this subtitle. Procedures for reviewing grant applications or contracts and cooperative agreements for financial assistance under this subtitle shall not be subject to any review outside of the Institute.

"SEC. 274. AWARD.

"The Director, with the advice of the Museum Board, may annually award a National Award for Museum Service to outstanding museums that have made significant contributions in service to their communities.

"SEC. 275. NATIONAL MUSEUM SERVICES BOARD.

"(a) ESTABLISHMENT.—There is established in the Institute a National Museum Services Board.

"(b) COMPOSITION AND QUALIFICATIONS.—

"(1) COMPOSITION.—The Museum Board shall consist of the Director and 14 members appointed by the President, by and with the advice and consent of the Senate.

"(2) QUALIFICATIONS.—The appointive members of the Museum Board shall be selected from among citizens of the United States—

"(A) who are members of the general public;

"(B) who are or have been affiliated with—

"(i) resources that, collectively, are broadly representative of the curatorial, conservation, educational, and cultural resources of the United States; or

"(ii) museums that, collectively, are broadly representative of various types of museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; and

"(C) who are recognized for their broad knowledge, expertise, or experience in museums or commitment to museums.

"(3) GEOGRAPHIC AND OTHER REPRESENTATION.—Members of the Museum Board shall be appointed to reflect persons from various geographic regions of the United States. The Museum Board may not include, at any time, more than 3 members from a single State. In making such appointments, the President shall give due regard to equitable representation of women, minorities, and persons with disabilities who are involved with museums.

"(c) TERMS.—

"(1) IN GENERAL.—Each appointive member of the Museum Board shall serve for a term of 5 years, except that—

"(A) of the members first appointed, 3 shall serve for terms of 5 years, 3 shall serve for terms of 4 years, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years, and 2 shall serve for terms of 1 year, as designated by the President at the time of nomination for appointment; and

"(B) any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed.

"(2) REAPPOINTMENT.—No member of the Museum Board who has been a member for more than 7 consecutive years shall be eligible for reappointment.

"(3) SERVICE UNTIL SUCCESSOR TAKES OFFICE.—Notwithstanding any other provision of this subsection, a member of the Museum Board shall serve after the expiration of the term of the member until the successor to the member takes office.

"(d) DUTIES AND POWERS.—The Museum Board shall have the responsibility to advise the Director on general policies with respect to the duties, powers, and authority of the Institute relating to museum services, including general policies with respect to—

"(1) financial assistance awarded under this subtitle for museum services; and

"(2) projects described in section 262(a)(4).

"(e) CHAIRPERSON.—The President shall designate 1 of the appointive members of the Museum Board as Chairperson of the Museum Board.

"(f) MEETINGS.—

"(1) IN GENERAL.—The Museum Board shall meet—

"(A) not less than 3 times each year, including—

"(i) not less than 2 times each year separately; and

"(ii) not less than 1 time each year in a joint meeting with the Commission, convened for purposes of making general policies with respect to financial assistance for projects described in section 262(a)(4); and

"(B) at the call of the Director.

"(2) VOTE.—All decisions by the Museum Board with respect to the exercise of the duties and powers of the Museum Board shall be made by a majority vote of the members of the Museum Board who are present. All decisions by the Commission and the Museum Board with respect to the policies described in paragraph (1)(A)(ii) shall be made by a ⅔ majority vote of the total number of the members of the Commission and the Museum Board who are present.

"(g) QUORUM.—A majority of the members of the Museum Board shall constitute a quorum for the conduct of business at official meetings of the Museum Board, but a lesser number of members may hold hearings. A majority of the members of the Commission and a majority of the members of the Museum Board shall constitute a quorum for the conduct of business at official joint meetings of the Commission and the Museum Board.

"(h) COMPENSATION AND TRAVEL EXPENSES.—

"(1) COMPENSATION.—Each member of the Museum Board who is not an officer or employee of the Federal Government shall be compensated at a rate to be fixed by the President, but not to exceed the daily equivalent of the maximum rate authorized for a position above grade GS–15 of the General Schedule under section 5108 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Museum Board. All members of the Museum Board who are officers or employees of the Federal Government shall serve without compensation in addition to compensation received for their services as officers or employees of the Federal Government.

"(2) TRAVEL EXPENSES.—The members of the Museum Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same amounts and to the same extent, as authorized under section 5703 of title 5, United States Code, for persons employed intermittently in Federal Government service.

"(i) COORDINATION.—The Museum Board, with the advice of the Director, shall take steps to ensure that the policies and activities of the Institute are coordinated with other activities of the Federal Government.

"SEC. 276. AUTHORIZATION OF APPROPRIATIONS.

"(a) GRANTS.—For the purpose of carrying out this subtitle, there are authorized to be appropriated to the Director $28,700,000 for the fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2002.

"(b) ADMINISTRATION.—Not more than 10 percent of the funds appropriated under this section for a fiscal year may be used to pay for the administrative costs of carrying out this subtitle.

"(c) SUMS REMAINING AVAILABLE.—Sums appropriated pursuant to subsection (a) for any fiscal year shall remain available for obligation until expended.".

SEC. ___302. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

(a) FUNCTIONS.—Section 5 of the National Commission on Libraries and Information Science Act (20 U.S.C. 1504) is amended—

(1) by redesignating subsections (b) through (d) as subsections (d) through (f), respectively; and

(2) by inserting after subsection (a) the following:

"(b) The Commission shall have the responsibility to advise the Director of the Institute of Museum and Library Services on

general policies with respect to the duties, powers, and authority of the Institute of Museum and Library Services relating to library services, including—

"(1) general policies with respect to—

"(A) financial assistance awarded under the Museum and Library Services Act for library services; and

"(B) projects described in section 262(a)(4) of such Act; and

"(2) measures to ensure that the policies and activities of the Institute of Museum and Library Services are coordinated with other activities of the Federal Government.

"(c)(1) The Commission shall meet not less than 1 time each year in a joint meeting with the National Museum Services Board, convened for purposes of providing advice on general policy with respect to financial assistance for projects described in section 262(a)(4) of such Act.

"(2) All decisions by the Commission and the National Museum Services Board with respect to the advice on general policy described in paragraph (1) shall be made by a ⅔ majority vote of the total number of the members of the Commission and the National Museum Services Board who are present.

"(3) A majority of the members of the Commission and a majority of the members of the National Museum Services Board shall constitute a quorum for the conduct of business at official joint meetings of the Commission and the National Museum Services Board.".

(b) MEMBERSHIP.—Section 6 of the National Commission on Libraries and Information Science Act (20 U.S.C. 1505) is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking "Librarian of Congress" and inserting "Librarian of Congress, the Director of the Institute of Museum and Library Services (who shall serve as an ex officio, nonvoting member).";

(B) in the second sentence—

(i) by striking "special competence or interest in" and inserting "special competence in or knowledge of; and

(ii) by inserting before the period the following: "and at least one other of whom shall be knowledgeable with respect to the library and information service and science needs of the elderly";

(C) in the third sentence, by inserting "appointive" before "members"; and

(D) in the last sentence, by striking "term and at least" and all that follows and inserting "term."; and

(2) in subsection (b), by striking "the rate specified" and all that follows through "and while" and inserting "the daily equivalent of the maximum rate authorized for a position above grade GS–15 of the General Schedule under section 5108 of title 5, United States Code, for each day (including traveltime) during which the members are engaged in the business of the Commission. While".

SEC. ___303. TRANSFER OF FUNCTIONS FROM INSTITUTE OF MUSEUM SERVICES.

(a) DEFINITIONS.—For purposes of this section, unless otherwise provided or indicated by the context—

(1) the term "Federal agency" has the meaning given to the term "agency" by section 551(1) of title 5, United States Code;

(2) the term "function" means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(3) the term "office" includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

(b) TRANSFER OF FUNCTIONS FROM THE INSTITUTE OF MUSEUM SERVICES AND THE LIBRARY PROGRAM OFFICE.—There are transferred to the Director of the Institute of Museum and Library Services established under section 203 of the Museum and Library Services Act—

(1) all functions that the Director of the Institute of Museum Services exercised before the date of enactment of this section (including all related functions of any officer or employee of the Institute of Museum Services); and

(2) all functions that the Director of Library Programs in the Office of Educational Research and Improvement in the Department of Education exercised before the date of enactment of this section and any related function of any officer or employee of the Department of Education.

(c) DETERMINATIONS OF CERTAIN FUNCTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—If necessary, the Office of Management and Budget shall make any determination of the functions that are transferred under subsection (b).

(d) DELEGATION AND ASSIGNMENT.—Except where otherwise expressly prohibited by law or otherwise provided by this section, the Director of the Institute of Museum and Library Services may delegate any of the functions transferred to the Director of the Institute of Museum and Library Services by this section and any function transferred or granted to such Director of the Institute of Museum and Library Services after the effective date of this section to such officers and employees of the Institute of Museum and Library Services as the Director of the Institute of Museum and Library Services may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate, except that any delegation of any such functions with respect to libraries shall be made to the Deputy Director of the Office of Library Services and with respect to museums shall be made to the Deputy Director of the Office of Museum Services. No delegation of functions by the Director of the Institute of Museum and Library Services under this section or under any other provision of this section shall relieve such Director of the Institute of Museum and Library Services of responsibility for the administration of such functions.

(e) REORGANIZATION.—The Director of the Institute of Museum and Library Services may allocate or reallocate any function transferred under subsection (b) among the officers of the Institute of Museum and Library Services, and may establish, consolidate, alter, or discontinue such organizational entities in the Institute of Museum and Library Services as may be necessary or appropriate.

(f) RULES.—The Director of the Institute of Museum and Library Services may prescribe, in accordance with chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Director of the Institute of Museum and Library Services determines to be necessary or appropriate to administer and manage the functions of the Institute of Museum and Library Services.

(g) TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.—Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Institute of Museum and Library Services. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(h) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this section, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out this section. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for such further measures and dispositions as may be necessary to effectuate the purposes of this section.

(i) EFFECT ON PERSONNEL.—

(1) IN GENERAL.—Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer of such employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this section, any person who, on the day preceding the effective date of this section, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Institute of Museum and Library Services to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(j) SAVINGS PROVISIONS.—

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) that have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official of a Federal agency, or by a court of competent jurisdiction, in the performance of functions that are transferred under this section; and

(B) that were in effect before the effective date of this section, or were final before the effective date of this section and are to become effective on or after the effective date of this section;

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the Institute of Museum and Library Services or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) PROCEEDINGS NOT AFFECTED.—This section shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Institute of Museum Services on the effective date of this section, with respect to

functions transferred by this section. Such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken from the orders, and payments shall be made pursuant to the orders, as if this section had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be construed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(3) SUITS NOT AFFECTED.—This section shall not affect suits commenced before the effective date of this section, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this section had not been enacted.

(4) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Institute of Museum Services, or by or against any individual in the official capacity of such individual as an officer of the Institute of Museum Services, shall abate by reason of the enactment of this section.

(5) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Institute of Museum Services relating to a function transferred under this section may be continued by the Institute of Museum and Library Services with the same effect as if this section had not been enacted.

(k) TRANSITION.—The Director of the Institute of Museum and Library Services may utilize—

(1) the services of such officers, employees, and other personnel of the Institute of Museum Services with respect to functions transferred to the Institute of Museum and Library Services by this section; and

(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(l) REFERENCES.—A reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to—

(1) the Director of the Institute of Museum Services with regard to functions transferred under subsection (b), shall be deemed to refer to the Director of the Institute of Museum and Library Services; and

(2) the Institute of Museum Services with regard to functions transferred under subsection (b), shall be deemed to refer to the Institute of Museum and Library Services.

(m) ADDITIONAL CONFORMING AMENDMENTS.—

(1) RECOMMENDED LEGISLATION.—After consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, the Director of the Institute of Museum and Library Services shall prepare and submit to the appropriate committees of Congress recommended legislation containing technical and conforming amendments to reflect the changes made by this section.

(2) SUBMISSION TO CONGRESS.—Not later than 6 months after the effective date of this section, the Director of the Institute of Museum and Library Services shall submit to the appropriate committees of Congress the recommended legislation referred to under paragraph (1).

SEC. ___304. SERVICE OF INDIVIDUALS SERVING ON DATE OF ENACTMENT.

Notwithstanding section 204 of the Museum and Library Services Act, the individual who was appointed to the position of Director of the Institute of Museum Services under section 205 of the Museum Services Act (as such section was in effect on the day before the date of enactment of this Act) and who is serving in such position on the day before the date of enactment of this Act shall serve as the first Director of the Institute of Museum and Library Services under section 204 of the Museum and Library Services Act (as added by section ___301 of this title), and shall serve at the pleasure of the President.

SEC. ___305. CONSIDERATION.

Consistent with title 5, United States Code, in appointing employees of the Office of Library Services, the Director of the Institute of Museum and Library Services shall give strong consideration to individuals with experience in administering State-based and national library and information services programs.

SEC. ___306. TRANSITION AND TRANSFER OF FUNDS.

(a) TRANSITION.—The Director of the Office of Management and Budget shall take appropriate measures to ensure an orderly transition from the activities previously administered by the Director of Library Programs in the Office of Educational Research and Improvement in the Department of Education to the activities administered by the Institute for Museum and Library Services under this title. Such measures may include the transfer of appropriated funds.

(b) TRANSFER.—The Secretary of Education shall transfer to the Director the amount of funds necessary to ensure the orderly transition from activities previously administered by the Director of the Office of Library Programs in the Office of Educational Research and Improvement in the Department of Education to the activities administered by the Institute for Museum and Library Services. In no event shall the amount of funds transferred pursuant to the preceding sentence be less than $200,000.

TITLE IV—HIGHER EDUCATION

SEC. ___401. REORGANIZATION OF THE STUDENT LOAN MARKETING ASSOCIATION THROUGH THE FORMATION OF A HOLDING COMPANY.

(a) AMENDMENT.—Part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) is amended by inserting after section 439 (20 U.S.C. 1087-2) the following new section:

"SEC. 440. REORGANIZATION OF THE STUDENT LOAN MARKETING ASSOCIATION THROUGH THE FORMATION OF A HOLDING COMPANY.

"(a) ACTIONS BY THE ASSOCIATION'S BOARD OF DIRECTORS.—The Board of Directors of the Association shall take or cause to be taken all such action as the Board of Directors deems necessary or appropriate to effect, upon the shareholder approval described in subsection (b), a restructuring of the common stock ownership of the Association, as set forth in a plan of reorganization adopted by the Board of Directors (the terms of which shall be consistent with this section) so that all of the outstanding common shares of the Association shall be directly owned by a Holding Company. Such actions may include, in the Board of Director's discretion, a merger of a wholly owned subsidiary of the Holding Company with and into the Association, which would have the effect provided in the plan of reorganization and the law of the jurisdiction in which such subsidiary is incorporated. As part of the restructuring, the Board of Directors may cause—

"(1) the common shares of the Association to be converted, on the reorganization effective date, to common shares of the Holding Company on a one for one basis, consistent with applicable State or District of Columbia law; and

"(2) Holding Company common shares to be registered with the Securities and Exchange Commission.

"(b) SHAREHOLDER APPROVAL.—The plan of reorganization adopted by the Board of Directors pursuant to subsection (a) shall be submitted to common shareholders of the Association for their approval. The reorganization shall occur on the reorganization effective date, provided that the plan of reorganization has been approved by the affirmative votes, cast in person or by proxy, of the holders of a majority of the issued and outstanding shares of the Association common stock.

"(c) TRANSITION.—In the event the shareholders of the Association approve the plan of reorganization under subsection (b), the following provisions shall apply beginning on the reorganization effective date:

"(1) IN GENERAL.—Except as specifically provided in this section, until the dissolution date the Association shall continue to have all of the rights, privileges and obligations set forth in, and shall be subject to all of the limitations and restrictions of, section 439, and the Association shall continue to carry out the purposes of such section. The Holding Company and any subsidiary of the Holding Company (other than the Association) shall not be entitled to any of the rights, privileges, and obligations, and shall not be subject to the limitations and restrictions, applicable to the Association under section 439, except as specifically provided in this section. The Holding Company and any subsidiary of the Holding Company (other than the Association or a subsidiary of the Association) shall not purchase loans insured under this Act until such time as the Association ceases acquiring such loans, except that the Holding Company may purchase such loans if the Association is merely continuing to acquire loans as a lender of last resort pursuant to section 439(q) or under an agreement with the Secretary described in paragraph (6).

"(2) TRANSFER OF CERTAIN PROPERTY.—

"(A) IN GENERAL.—Except as provided in this section, on the reorganization effective date or as soon as practicable thereafter, the Association shall use the Association's best efforts to transfer to the Holding Company or any subsidiary of the Holding Company (or both), as directed by the Holding Company, all real and personal property of the Association (both tangible and intangible) other than the remaining property. Subject to the preceding sentence, such transferred property shall include all right, title, and interest in—

"(i) direct or indirect subsidiaries of the Association (excluding special purpose funding companies in existence on the date of enactment of this section and any interest in any government-sponsored enterprise);

"(ii) contracts, leases, and other agreements of the Association;

"(iii) licenses and other intellectual property of the Association; and

"(iv) any other property of the Association.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed to prohibit the Association from transferring remaining property from time to time to the Holding Company or any subsidiary of the Holding Company, subject to the provisions of paragraph (4).

"(3) TRANSFER OF PERSONNEL.—On the reorganization effective date, employees of the Association shall become employees of the Holding Company (or any subsidiary of the Holding Company), and the Holding Company (or any subsidiary of the Holding Company) shall provide all necessary and appropriate management and operational support (including loan servicing) to the Association, as requested by the Association. The Association, however, may obtain such management and operational support from persons or entities not associated with the Holding Company.

"(4) DIVIDENDS.—The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association's capital would be in compliance with the capital standards and requirements set forth in section 439(r). If, at any time after the reorganization effective date, the Association fails to comply with such capital standards, the Holding Company shall transfer to the Association additional capital in such amounts as are necessary to ensure that the Association again complies with the capital standards.

"(5) CERTIFICATION PRIOR TO DIVIDEND.—Prior to any such distribution, the Association shall certify to the Secretary of the Treasury that the payment of the dividend will be made in compliance with this paragraph and shall provide copies of all calculations needed to make such certification.

"(6) RESTRICTIONS ON NEW BUSINESS ACTIVITY OR ACQUISITION OF ASSETS BY ASSOCIATION.—

"(A) IN GENERAL.—After the reorganization effective date, the Association shall not engage in any new business activities or acquire any additional program assets described in section 439(d) other than in connection with—

"(i) student loan purchases through September 30, 2007;

"(ii) contractual commitments for future warehousing advances, or pursuant to letters of credit or standby bond purchase agreements, which are outstanding as of the reorganization effective date;

"(iii) the Association serving as a lender-of-last-resort pursuant to section 439(q); and

"(iv) the Association's purchase of loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association's secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

"(B) AGREEMENT.—The Secretary is authorized to enter into an agreement described in clause (iii) of subparagraph (A) with the Association covering such secondary market activities. Any agreement entered into under such clause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under section 439(h)(7) shall not apply to loans acquired under any such agreement with the Secretary.

"(7) ISSUANCE OF DEBT OBLIGATIONS DURING THE TRANSITION PERIOD; ATTRIBUTES OF DEBT OBLIGATIONS.—After the reorganization effective date, the Association shall not issue debt obligations which mature later than September 30, 2008, except in connection with serving as a lender-of-last-resort pursuant to section 439(q) or with purchasing loans under an agreement with the Secretary as described in paragraph (6). Nothing in this section shall modify the attributes accorded the debt obligations of the Association by section 439, regardless of whether such debt obligations are incurred prior to, or at any time following, the reorganization effective date or are transferred to a trust in accordance with subsection (d).

"(8) MONITORING OF SAFETY AND SOUNDNESS.—

"(A) OBLIGATION TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—

"(i) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and

"(ii) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

"(B) SUMMARY REPORTS.—The Secretary of the Treasury may require summary reports of the information described in subparagraph (A) to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and subparagraph (A), require the Association to make reports concerning the activities of any associated person whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

"(C) SEPARATE OPERATION OF CORPORATIONS.—

"(i) IN GENERAL.—The funds and assets of the Association shall at all times be maintained separately from the funds and assets of the Holding Company or any subsidiary of the Holding Company and may be used by the Association solely to carry out the Association's purposes and to fulfill the Association's obligations.

"(ii) BOOKS AND RECORDS.—The Association shall maintain books and records that clearly reflect the assets and liabilities of the Association, separate from the assets and liabilities of the Holding Company or any subsidiary of the Holding Company.

"(iii) CORPORATE OFFICE.—The Association shall maintain a corporate office that is physically separate from any office of the Holding Company or any subsidiary of the Holding Company.

"(iv) DIRECTOR.—No director of the Association who is appointed by the President pursuant to section 439(c)(1)(A) may serve as a director of the Holding Company.

"(v) ONE OFFICER REQUIREMENT.—At least one officer of the Association shall be an officer solely of the Association.

"(vi) TRANSACTIONS.—Transactions between the Association and the Holding Company or any subsidiary of the Holding Company, including any loan servicing arrangements, shall be on terms no less favorable to the Association than the Association could obtain from an unrelated third party offering comparable services.

"(vii) CREDIT PROHIBITION.—The Association shall not extend credit to the Holding Company or any subsidiary of the Holding Company nor guarantee or provide any credit enhancement to any debt obligations of the Holding Company or any subsidiary of the Holding Company.

"(viii) AMOUNTS COLLECTED.—Any amounts collected on behalf of the Association by the Holding Company or any subsidiary of the Holding Company with respect to the assets of the Association, pursuant to a servicing contract or other arrangement between the Association and the Holding Company or any subsidiary of the Holding Company, shall be collected solely for the benefit of the Association and shall be immediately deposited by the Holding Company or such subsidiary to an account under the sole control of the Association.

"(D) ENCUMBRANCE OF ASSETS.—Notwithstanding any Federal or State law, rule, or regulation, or legal or equitable principle, doctrine, or theory to the contrary, under no circumstances shall the assets of the Association be available or used to pay claims or debts of or incurred by the Holding Company. Nothing in this subparagraph shall be construed to limit the right of the Association to pay dividends not otherwise prohibited under this subparagraph or to limit any liability of the Holding Company explicitly provided for in this section.

"(E) HOLDING COMPANY ACTIVITIES.—After the reorganization effective date and prior to the dissolution date, all business activities of the Holding Company shall be conducted through subsidiaries of the Holding Company.

"(F) CONFIDENTIALITY.—Any information provided by the Association pursuant to this section shall be subject to the same confidentiality obligations contained in section 439(r)(12).

"(G) DEFINITION.—For purposes of this paragraph, the term 'associated person' means any person, other than a natural person, who is directly or indirectly controlling, controlled by, or under common control with, the Association.

"(9) ISSUANCE OF STOCK WARRANTS.—On the reorganization effective date, the Holding Company shall issue to the Secretary of the Treasury a number of stock warrants that is equal to one percent of the outstanding shares of the Association, determined as of the last day of the fiscal quarter preceding the date of enactment of this section, with each stock warrant entitling the holder of the stock warrant to purchase from the Holding Company one share of the registered common stock of the Holding Company or the Holding Company's successors or assigns, at any time on or before September 30, 2008. The exercise price for such warrants shall be an amount equal to the average closing price of the common stock of the Association for the 20 business days prior to the date of enactment of this section on the exchange or market which is then the primary exchange or market for the common stock of the Association. The number of shares of Holding Company common stock subject to each warrant and the exercise price of each warrant shall be adjusted as necessary to reflect—

"(A) the conversion of Association common stock into Holding Company common stock as part of the plan of reorganization

approved by the Association's shareholders; and

"(B) any issuance or sale of stock (including issuance or sale of treasury stock), stock split, recapitalization, reorganization, or other corporate event, if agreed to by the Secretary of the Treasury and the Association.

"(10) RESTRICTIONS ON TRANSFER OF ASSOCIATION SHARES AND BANKRUPTCY OF ASSOCIATION.—After the reorganization effective date, the Holding Company shall not sell, pledge, or otherwise transfer the outstanding shares of the Association, or agree to or cause the liquidation of the Association or cause the Association to file a petition for bankruptcy under title 11, United States Code, without prior approval of the Secretary of the Treasury and the Secretary of Education.

"(d) TERMINATION OF THE ASSOCIATION.—In the event the shareholders of the Association approve a plan of reorganization under subsection (b), the Association shall dissolve, and the Association's separate existence shall terminate on September 30, 2008, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association's intention to dissolve, unless within 60 days after receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to section 439(q) or continues to be needed to purchase loans under an agreement with the Secretary described in paragraph (6). On the dissolution date, the Association shall take the following actions:

"(1) ESTABLISHMENT OF A TRUST.—The Association shall, under the terms of an irrevocable trust agreement that is in form and substance satisfactory to the Secretary of the Treasury, the Association and the appointed trustee, irrevocably transfer all remaining obligations of the Association to the trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the remaining obligations, money or direct noncallable obligations of the United States or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient, without consideration of any significant reinvestment of such interest, to pay the principal of, and interest on, the remaining obligations in accordance with their terms. To the extent the Association cannot provide money or qualifying obligations in the amount required, the Holding Company shall be required to transfer money or qualifying obligations to the trust in the amount necessary to prevent any deficiency.

"(2) USE OF TRUST ASSETS.—All money, obligations, or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the remaining obligations assumed by the trust.

"(3) OBLIGATIONS NOT TRANSFERRED TO THE TRUST.—The Association shall make proper provision for all other obligations of the Association not transferred to the trust, including the repurchase or redemption, or the making of proper provision for the repurchase or redemption, of any preferred stock of the Association outstanding. Any obligations of the Association which cannot be fully satisfied shall become liabilities of the Holding Company as of the date of dissolution.

"(4) TRANSFER OF REMAINING ASSETS.—After compliance with paragraphs (1) and (3), any remaining assets of the trust shall be transferred to the Holding Company or any subsidiary of the Holding Company, as directed by the Holding Company.

"(e) OPERATION OF THE HOLDING COMPANY.—In the event the shareholders of the Association approve the plan of reorganization under subsection (b), the following provisions shall apply beginning on the reorganization effective date:

"(1) HOLDING COMPANY BOARD OF DIRECTORS.—The number of members and composition of the Board of Directors of the Holding Company shall be determined as set forth in the Holding Company's charter or like instrument (as amended from time to time) or bylaws (as amended from time to time) and as permitted under the laws of the jurisdiction of the Holding Company's incorporation.

"(2) HOLDING COMPANY NAME.—The names of the Holding Company and any subsidiary of the Holding Company (other than the Association)—

"(A) may not contain the name 'Student Loan Marketing Association'; and

"(B) may contain, to the extent permitted by applicable State or District of Columbia law, 'Sallie Mae' or variations thereof, or such other names as the Board of Directors of the Association or the Holding Company deems appropriate.

"(3) USE OF SALLIE MAE NAME.—Subject to paragraph (2), the Association may assign to the Holding Company, or any subsidiary of the Holding Company, the 'Sallie Mae' name as a trademark and service mark, except that neither the Holding Company nor any subsidiary of the Holding Company (other than the Association or any subsidiary of the Association) may use the 'Sallie Mae' name on, or to identify the issuer of, any debt obligation or other security offered or sold by the Holding Company or any subsidiary of the Holding Company (other than a debt obligation or other security issued to the Holding Company or any subsidiary of the Holding Company). The Association shall remit to the Secretary of the Treasury $5,000,000 within 60 days of the reorganization effective date as compensation for the right to assign such trademark or service mark.

"(4) DISCLOSURE REQUIRED.—Until 3 years after the dissolution date, the Holding Company, and any subsidiary of the Holding Company (other than the Association), shall prominently display—

"(A) in any document offering the Holding Company's securities, a statement that the obligations of the Holding Company and any subsidiary of the Holding Company are not guaranteed by the full faith and credit of the United States; and

"(B) in any advertisement or promotional materials which use the 'Sallie Mae' name or mark, a statement that neither the Holding Company nor any subsidiary of the Holding Company is a government-sponsored enterprise or instrumentality of the United States.

"(f) STRICT CONSTRUCTION.—Except as specifically set forth in this section, nothing in this section shall be construed to limit the authority of the Association as a federally chartered corporation, or of the Holding Company as a State or District of Columbia chartered corporation.

"(g) RIGHT TO ENFORCE.—The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.

"(h) DEADLINE FOR REORGANIZATION EFFECTIVE DATE.—This section shall be of no further force and effect in the event that the reorganization effective date does not occur on or before 18 months after the date of enactment of this section.

"(i) DEFINITIONS.—For purposes of this section:

"(1) ASSOCIATION.—The term 'Association' means the Student Loan Marketing Association.

"(2) DISSOLUTION DATE.—The term 'dissolution date' means September 30, 2008, or such earlier date as the Secretary of Education permits the transfer of remaining obligations in accordance with subsection (d).

"(3) HOLDING COMPANY.—The term 'Holding Company' means the new business corporation established pursuant to this section by the Association under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring described in subsection (a).

"(4) REMAINING OBLIGATIONS.—The term 'remaining obligations' means the debt obligations of the Association outstanding as of the dissolution date.

"(5) REMAINING PROPERTY.—The term 'remaining property' means the following assets and liabilities of the Association which are outstanding as of the reorganization effective date:

"(A) Debt obligations issued by the Association.

"(B) Contracts relating to interest rate, currency, or commodity positions or protections.

"(C) Investment securities owned by the Association.

"(D) Any instruments, assets, or agreements described in section 439(d) (including, without limitation, all student loans and agreements relating to the purchase and sale of student loans, forward purchase and lending commitments, warehousing advances, academic facilities obligations, letters of credit, standby bond purchase agreements, liquidity agreements, and student loan revenue bonds or other loans).

"(E) Except as specifically prohibited by this section or section 439, any other nonmaterial assets or liabilities of the Association which the Association's Board of Directors determines to be necessary or appropriate to the Association's operations.

"(6) REORGANIZATION.—The term 'reorganization' means the restructuring event or events (including any merger event) giving effect to the Holding Company structure described in subsection (a).

"(7) REORGANIZATION EFFECTIVE DATE.—The term 'reorganization effective date' means the effective date of the reorganization as determined by the Board of Directors of the Association, which shall not be earlier than the date that shareholder approval is obtained pursuant to subsection (b) and shall not be later than the date that is 18 months after the date of enactment of this section.

"(8) SUBSIDIARY.—The term 'subsidiary' includes one or more direct or indirect subsidiaries.".

(b) TECHNICAL AMENDMENTS.—

(1) ELIGIBLE LENDER.—

(A) AMENDMENTS TO THE HIGHER EDUCATION ACT.—

(i) DEFINITION OF ELIGIBLE LENDER.—Section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F)) is amended by inserting after "Student Loan Marketing Association" the following: "or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 440,".

(ii) DEFINITION OF ELIGIBLE LENDER AND FEDERAL CONSOLIDATION LOANS.—Sections 435(d)(1)(G) and 428C(a)(1)(A) of such Act (20 U.S.C. 1085(d)(1)(G) and 1078-3(a)(1)(A)) are each amended by inserting after "Student Loan Marketing Association" the following: "or the Holding Company of the Student Loan Marketing Association, including any subsidiary of the Holding Company, created pursuant to section 440".

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on the reorganization effective date as defined in section 440(h) of the Higher Education Act of 1965 (as added by subsection (a)).

(2) ENFORCEMENT OF SAFETY AND SOUNDNESS REQUIREMENTS.—Section 439(r) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(r)) is amended—

(A) in the first sentence of paragraph (12), by inserting "or the Association's associated persons" after "by the Association";

(B) by redesignating paragraph (13) as paragraph (15); and

(C) by inserting after paragraph (12) the following new paragraph:

"(13) ENFORCEMENT OF SAFETY AND SOUNDNESS REQUIREMENTS.—The Secretary of Education or the Secretary of the Treasury, as appropriate, may request that the Attorney General bring an action in the United States District Court for the District of Columbia for the enforcement of any provision of this section, or may, under the direction or control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance with this section.".

(3) FINANCIAL SAFETY AND SOUNDNESS.—Section 439(r) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(r)) is further amended—

(A) in paragraph (1)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting "; and"; and

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

"(C)(i) financial statements of the Association within 45 days of the end of each fiscal quarter; and

"(ii) reports setting forth the calculation of the capital ratio of the Association within 45 days of the end of each fiscal quarter.";

(B) in paragraph (2)—

(i) by striking clauses (i) and (ii) of subparagraph (A) and inserting the following:

"(i) appoint auditors or examiners to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing the Association's financial safety and soundness and to determine whether the requirements of this section and section 440 are being met; and

"(ii) obtain the services of such experts as the Secretary of the Treasury determines necessary and appropriate, as authorized by section 3109 of title 5, United States Code, to assist in determining the condition of the Association for the purpose of assessing the Association's financial safety and soundness, and to determine whether the requirements of this section and section 440 are being met."; and

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

"(D) ANNUAL ASSESSMENT.—

"(i) IN GENERAL.—For each fiscal year beginning on or after October 1, 1996, the Secretary of the Treasury may establish and collect from the Association an assessment (or assessments) in amounts sufficient to provide for reasonable costs and expenses of carrying out the duties of the Secretary of the Treasury under this section and section 440 during such fiscal year. In no event may the total amount so assessed exceed, for any fiscal year, $800,000, adjusted for each fiscal year ending after September 30, 1997, by the ratio of the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) for the final month of the fiscal year preceding the fiscal year for which the assessment is made to the Consumer Price Index for All Urban Consumers for September 1997.

"(ii) DEPOSIT.—Amounts collected from assessments under this subparagraph shall be deposited in an account within the Treasury of the United States as designated by the Secretary of the Treasury and shall remain available subject to amounts specified in appropriations Acts to carry out the duties of the Secretary of the Treasury under this subsection and section 440.";

(C) in paragraph (11), by striking "paragraphs (4) and (6)(A)" and inserting "paragraphs (4), (6)(A), and (14)"; and

(D) by inserting after paragraph (13) (as added by paragraph (2)(C)) the following new paragraph:

"(14) ACTIONS BY SECRETARY.—

"(A) IN GENERAL.—For any fiscal quarter ending after January 1, 2000, the Association shall have a capital ratio of at least 2.25 percent. The Secretary of the Treasury may, whenever such capital ratio is not met, take any one or more of the actions described in paragraph (7), except that—

"(i) the capital ratio to be restored pursuant to paragraph (7)(D) shall be 2.25 percent; and

"(ii) if the relevant capital ratio is in excess of or equal to 2 percent for such quarter, the Secretary of the Treasury shall defer taking any of the actions set forth in paragraph (7) until the next succeeding quarter and may then proceed with any such action only if the capital ratio of the Association remains below 2.25 percent.

"(B) APPLICABILITY.—The provisions of paragraphs (4), (5), (6), (8), (9), (10), and (11) shall be of no further application to the Association for any period after January 1, 2000.".

(4) INFORMATION REQUIRED; DIVIDENDS.—Section 439(r) of the Higher Education Act of 1965 (20 U.S.C. 1087-2(r)) is further amended—

(A) by adding at the end of paragraph (2) (as amended in paragraph (3)(B)(ii)) the following new subparagraph:

"(E) OBLIGATION TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—

"(i) IN GENERAL.—The Association shall obtain such information and make and keep such records as the Secretary of the Treasury may from time to time prescribe concerning—

"(I) the financial risk to the Association resulting from the activities of any associated person, to the extent such activities are reasonably likely to have a material impact on the financial condition of the Association, including the Association's capital ratio, the Association's liquidity, or the Association's ability to conduct and finance the Association's operations; and

"(II) the Association's policies, procedures, and systems for monitoring and controlling any such financial risk.

"(ii) SUMMARY REPORTS.—The Secretary of the Treasury may require summary reports of such information to be filed no more frequently than quarterly. If, as a result of adverse market conditions or based on reports provided pursuant to this subparagraph or other available information, the Secretary of the Treasury has concerns regarding the financial or operational condition of the Association, the Secretary of the Treasury may, notwithstanding the preceding sentence and clause (i), require the Association to make reports concerning the activities of any associated person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the Association.

"(iii) DEFINITION.—For purposes of this subparagraph, the term 'associated person' means any person, other than a natural person, directly or indirectly controlling, controlled by, or under common control with the Association."; and

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

"(16) DIVIDENDS.—The Association may pay dividends in the form of cash or noncash distributions so long as at the time of the declaration of such dividends, after giving effect to the payment of such dividends as of the date of such declaration by the Board of Directors of the Association, the Association's capital would be in compliance with the capital standards set forth in this section.".

(c) SUNSET OF THE ASSOCIATION'S CHARTER IF NO REORGANIZATION PLAN OCCURS.—Section 439 of the Higher Education Act of 1965 (20 U.S.C. 1087-2) is amended by adding at the end the following new subsections:

"(s) CHARTER SUNSET.—

"(1) APPLICATION OF PROVISIONS.—This subsection applies beginning 18 months and one day after the date of enactment of this subsection if no reorganization of the Association occurs in accordance with the provisions of section 440.

"(2) SUNSET PLAN.—

"(A) PLAN SUBMISSION BY THE ASSOCIATION.—Not later than July 1, 2007, the Association shall submit to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Labor and Human Resources of the Senate and the Chairman and Ranking Member of the Committee on Economic and Educational Opportunities of the House of Representatives, a detailed plan for the orderly winding up, by July 1, 2013, of business activities conducted pursuant to the charter set forth in this section. Such plan shall—

"(i) ensure that the Association will have adequate assets to transfer to a trust, as provided in this subsection, to ensure full payment of remaining obligations of the Association in accordance with the terms of such obligations;

"(ii) provide that all assets not used to pay liabilities shall be distributed to shareholders as provided in this subsection; and

"(iii) provide that the operations of the Association shall remain separate and distinct from that of any entity to which the assets of the Association are transferred.

"(B) AMENDMENT OF THE PLAN BY THE ASSOCIATION.—The Association shall from time to time amend such plan to reflect changed circumstances, and submit such amendments to the Secretary of the Treasury and to the Chairman and Ranking Minority Member of the Committee on Labor and Human Resources of the Senate and Chairman and

Ranking Minority Member of the Committee on Economic and Educational Opportunities of the House of Representatives. In no case may any amendment extend the date for full implementation of the plan beyond the dissolution date provided in paragraph (3).

"(C) PLAN MONITORING.—The Secretary shall monitor the Association's compliance with the plan and shall continue to review the plan (including any amendments thereto).

"(D) AMENDMENT OF THE PLAN BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury may require the Association to amend the plan (including any amendments to the plan), if the Secretary of the Treasury deems such amendments necessary to ensure full payment of all obligations of the Association.

"(E) IMPLEMENTATION BY THE ASSOCIATION.—The Association shall promptly implement the plan (including any amendments to the plan, whether such amendments are made by the Association or are required to be made by the Secretary of the Treasury).

"(3) DISSOLUTION OF THE ASSOCIATION.—The Association shall dissolve and the Association's separate existence shall terminate on July 1, 2013, after discharge of all outstanding debt obligations and liquidation pursuant to this subsection. The Association may dissolve pursuant to this subsection prior to such date by notifying the Secretary of Education and the Secretary of the Treasury of the Association's intention to dissolve, unless within 60 days of receipt of such notice the Secretary of Education notifies the Association that the Association continues to be needed to serve as a lender of last resort pursuant to subsection (q) or continues to be needed to purchase loans under an agreement with the Secretary described in paragraph (4)(A). On the dissolution date, the Association shall take the following actions:

"(A) ESTABLISHMENT OF A TRUST.—The Association shall, under the terms of an irrevocable trust agreement in form and substance satisfactory to the Secretary of the Treasury, the Association, and the appointed trustee, irrevocably transfer all remaining obligations of the Association to a trust and irrevocably deposit or cause to be deposited into such trust, to be held as trust funds solely for the benefit of holders of the remaining obligations, money or direct noncallable obligations of the United States or any agency thereof for which payment the full faith and credit of the United States is pledged, maturing as to principal and interest in such amounts and at such times as are determined by the Secretary of the Treasury to be sufficient, without consideration of any significant reinvestment of such interest to pay the principal of, and interest on, the remaining obligations in accordance with their terms.

"(B) USE OF TRUST ASSETS.—All money, obligations, or financial assets deposited into the trust pursuant to this subsection shall be applied by the trustee to the payment of the remaining obligations assumed by the trust. Upon the fulfillment of the trustee's duties under the trust, any remaining assets of the trust shall be transferred to the persons who, at the time of the dissolution, were the shareholders of the Association, or to the legal successors or assigns of such persons.

"(C) OBLIGATIONS NOT TRANSFERRED TO THE TRUST.—The Association shall make proper provision for all other obligations of the Association, including the repurchase or redemption, or the making of proper provision for the repurchase or redemption, of any preferred stock of the Association outstanding.

"(D) TRANSFER OF REMAINING ASSETS.—After compliance with subparagraphs (A) and (C), the Association shall transfer to the shareholders of the Association any remaining assets of the Association.

"(4) RESTRICTIONS RELATING TO WINDING UP.—

"(A) RESTRICTIONS ON NEW BUSINESS ACTIVITY OR ACQUISITION OF ASSETS BY THE ASSOCIATION.—

"(i) IN GENERAL.—Beginning on July 1, 2009, the Association shall not engage in any new business activities or acquire any additional program assets (including acquiring assets pursuant to contractual commitments) described in subsection (d) other than in connection with the Association—

"(I) serving as a lender of last resort pursuant to subsection (q); and

"(II) purchasing loans insured under this part, if the Secretary, with the approval of the Secretary of the Treasury, enters into an agreement with the Association for the continuation or resumption of the Association's secondary market purchase program because the Secretary determines there is inadequate liquidity for loans made under this part.

"(ii) AGREEMENT.—The Secretary is authorized to enter into an agreement described in subclause (II) of clause (i) with the Association covering such secondary market activities. Any agreement entered into under such subclause shall cover a period of 12 months, but may be renewed if the Secretary determines that liquidity remains inadequate. The fee provided under subsection (h)(7) shall not apply to loans acquired under any such agreement with the Secretary.

"(B) ISSUANCE OF DEBT OBLIGATIONS DURING THE WIND UP PERIOD; ATTRIBUTES OF DEBT OBLIGATIONS.—The Association shall not issue debt obligations which mature later than July 1, 2013, except in connection with serving as a lender of last resort pursuant to subsection (q) or with purchasing loans under an agreement with the Secretary as described in subparagraph (A). Nothing in this subsection shall modify the attributes accorded the debt obligations of the Association by this section, regardless of whether such debt obligations are transferred to a trust in accordance with paragraph (3).

"(C) USE OF ASSOCIATION NAME.—The Association may not transfer or permit the use of the name 'Student Loan Marketing Association', 'Sallie Mae', or any variation thereof, to or by any entity other than a subsidiary of the Association.".

(d) REPEALS.—

(1) IN GENERAL.—Sections 439 of the Higher Education Act of 1965 (20 U.S.C. 1087-2) and 440 of such Act (as added by subsection (a) of this section) are repealed.

(2) EFFECTIVE DATE.—The repeals made by paragraph (1) shall be effective one year after—

(A) the dissolution date, as such term is defined in section 440(i)(2) of the Higher Education Act of 1965 (as added by subsection (a)), if a reorganization occurs in accordance with section 440 of such Act; or

(B) the date the Association is dissolved pursuant to section 439(s) of such Act (as added by subsection (c)), if a reorganization does not occur in accordance with section 440 of such Act.

(e) ASSOCIATION NAMES.—Upon dissolution in accordance with section 439 of the Higher Education Act of 1965 (20 U.S.C. 1087-2), the names "Student Loan Marketing Association", "Sallie Mae", and any variations thereof may not be used by any entity engaged in any business similar to the business conducted pursuant to section 439 of such Act (as such section was in effect on the date of enactment of this Act) without the approval of the Secretary of the Treasury.

SEC. ___402. CONNIE LEE PRIVATIZATION.

(a) STATUS OF THE CORPORATION AND CORPORATE POWERS; OBLIGATIONS NOT FEDERALLY GUARANTEED.—

(1) STATUS OF THE CORPORATION.—The Corporation shall not be an agency, instrumentality, or establishment of the United States Government, nor a Government corporation, nor a Government controlled corporation, as such terms are defined in section 103 of title 5, United States Code. No action under section 1491 of title 28, United States Code (commonly known as the Tucker Act) shall be allowable against the United States based on the actions of the Corporation.

(2) CORPORATE POWERS.—The Corporation shall be subject to the provisions of this section, and, to the extent not inconsistent with this section, to the District of Columbia Business Corporation Act (or the comparable law of another State, if applicable). The Corporation shall have the powers conferred upon a corporation by the District of Columbia Business Corporation Act (or such other applicable State law) as from time to time in effect in order to conduct the Corporation's affairs as a private, for-profit corporation and to carry out the Corporation's purposes and activities incidental thereto. The Corporation shall have the power to enter into contracts, to execute instruments, to incur liabilities, to provide products and services, and to do all things as are necessary or incidental to the proper management of the Corporation's affairs and the efficient operation of a private, for-profit business.

(3) LIMITATION ON OWNERSHIP OF STOCK.—

(A) SECRETARY OF THE TREASURY.—The Secretary of the Treasury, in completing the sale of stock pursuant to subsection (c), may not sell or issue the stock held by the Secretary of Education to an agency, instrumentality, or establishment of the United States Government, or to a Government corporation or a Government controlled corporation, as such terms are defined in section 103 of title 5, United States Code, or to a government-sponsored enterprise as such term is defined in section 622 of title 2, United States Code.

(B) STUDENT LOAN MARKETING ASSOCIATION.—The Student Loan Marketing Association shall not increase its share of the ownership of the Corporation in excess of 42 percent of the shares of stock of the Corporation outstanding on the date of enactment of this Act. The Student Loan Marketing Association shall not control the operation of the Corporation, except that the Student Loan Marketing Association may participate in the election of directors as a shareholder, and may continue to exercise the Student Loan Marketing Association's right to appoint directors under section 754 of the Higher Education Act of 1965 (20 U.S.C. 1132f-3) as long as that section is in effect.

(C) PROHIBITION.—Until such time as the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c), the Student Loan Marketing Association shall not provide financial support or guarantees to the Corporation.

(D) FINANCIAL SUPPORT OR GUARANTEES.—After the Secretary of the Treasury sells the stock of the Corporation owned by the Secretary of Education pursuant to subsection (c), the Student Loan Marketing Association may provide financial support or guarantees to the Corporation, if such support or guarantees are subject to terms and conditions

that are no more advantageous to the Corporation than the terms and conditions the Student Loan Marketing Association provides to other entities, including, where applicable, other monoline financial guaranty corporations in which the Student Loan Marketing Association has no ownership interest.

(4) NO FEDERAL GUARANTEE.—

(A) OBLIGATIONS INSURED BY THE CORPORATION.—

(i) FULL FAITH AND CREDIT OF THE UNITED STATES.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the full faith and credit of the United States.

(ii) STUDENT LOAN MARKETING ASSOCIATION.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is guaranteed by the Student Loan Marketing Association.

(iii) SPECIAL RULE.—This paragraph shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

(B) SECURITIES OFFERED BY THE CORPORATION.—No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(5) DEFINITION.—The term "Corporation" as used in this section means the College Construction Loan Insurance Association as in existence on the day before the date of enactment of this Act, and any successor corporation.

(b) RELATED PRIVATIZATION REQUIREMENTS.—

(1) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—During the six-year period following the date of enactment of this Act, the Corporation shall include, in each of the Corporation's contracts for the insurance, guarantee, or reinsurance of obligations, and in each document offering debt or equity securities of the Corporation, a prominent statement providing notice that—

(i) such obligations or such securities, as the case may be, are not obligations of the United States, nor are such obligations or such securities, as the case may be, guaranteed in any way by the full faith and credit of the United States; and

(ii) the Corporation is not an instrumentality of the United States.

(B) ADDITIONAL NOTICE.—During the five-year period following the sale of stock pursuant to subsection (c)(1), in addition to the notice requirements in subparagraph (A), the Corporation shall include, in each of the contracts and documents referred to in such subparagraph, a prominent statement providing notice that the United States is not an investor in the Corporation.

(2) CORPORATE CHARTER.—The Corporation's charter shall be amended as necessary and without delay to conform to the requirements of this section.

(3) CORPORATE NAME.—The name of the Corporation, or of any direct or indirect subsidiary thereof, may not contain the term "College Construction Loan Insurance Association", or any substantially similar variation thereof.

(4) ARTICLES OF INCORPORATION.—The Corporation shall amend the Corporation's articles of incorporation without delay to reflect that one of the purposes of the Corporation shall be to guarantee, insure, and reinsure bonds, leases, and other evidences of debt of educational institutions, including Historically Black Colleges and Universities and other academic institutions which are ranked in the lower investment grade category using a nationally recognized credit rating system.

(5) REQUIREMENTS UNTIL STOCK SALE.—Notwithstanding subsection (d), the requirements of sections 754 and 760 of the Higher Education Act of 1965 (20 U.S.C. 1132f-3 and 1132f-9), as such sections were in effect on the day before the date of enactment of this Act, shall continue to be effective until the day immediately following the date of closing of the purchase of the Secretary of Education's stock (or the date of closing of the final purchase, in the case of multiple transactions) pursuant to subsection (c)(1) of this Act.

(c) SALE OF FEDERALLY OWNED STOCK.—

(1) SALE OF STOCK REQUIRED.—The Secretary of the Treasury shall sell, pursuant to section 324 of title 31, United States Code, the stock of the Corporation owned by the Secretary of Education as soon as possible after the date of enactment of this Act, but not later than six months after such date.

(2) PURCHASE BY THE CORPORATION.—In the event that the Secretary of the Treasury is unable to sell the stock, or any portion thereof, at a price acceptable to the Secretary of Education and the Secretary of the Treasury, the Corporation shall purchase, within six months after the date of enactment of this Act, such stock at a price determined by the Secretary of the Treasury and acceptable to the Corporation based on the independent appraisal of one or more nationally recognized financial firms, except that such price shall not exceed the value of the Secretary of Education's stock as determined by the Congressional Budget Office in House Report 104-153, dated June 22, 1995.

(3) REIMBURSEMENT OF COSTS OF SALE.—The Secretary of the Treasury shall be reimbursed from the proceeds of the sale of the stock under this subsection for all reasonable costs related to such sale, including all reasonable expenses relating to one or more independent appraisals under this subsection.

(4) ASSISTANCE BY THE CORPORATION.—The Corporation shall provide such assistance as the Secretary of the Treasury and the Secretary of Education may require to facilitate the sale of the stock under this subsection.

(d) REPEAL OF STATUTORY RESTRICTIONS AND RELATED PROVISIONS.—Part D of title VII of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is repealed.

SEC. ___403. ELIGIBLE INSTITUTION.

(a) AMENDMENTS.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended by inserting after the end of the first sentence the following new sentence: "For the purposes of determining whether an institution meets the requirements of clause (6), the Secretary shall not consider the financial information of any institution for a fiscal year that began on or before April 30, 1994.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any determination made on or after July 1, 1994, by the Secretary of Education pursuant to section 481(b)(6) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)(6)).

TITLE V—REPEALS AND CONFORMING AMENDMENTS

SEC. ___501. REPEALS.

(a) GENERAL IMMEDIATE REPEALS.—The following provisions are repealed:

(1) Section 204 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1255a note).

(2) Title II of Public Law 95-250 (92 Stat. 172).

(3) The Library Services and Construction Act (20 U.S.C. 351 et seq.).

(4) Part F of the Technology for Education Act of 1994 (contained in title III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7001 et seq.)).

(5) The School Dropout Assistance Act (part C of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7261 et seq.)).

(6) The Displaced Homemakers Self-Sufficiency Assistance Act (29 U.S.C. 2301 et seq.).

(7) Section 211 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 211).

(8) Title VII of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421 et seq.), except subtitle B and section 738 of such title (42 U.S.C. 11431 et seq. and 11448).

(9) Section 201 of the National Literacy Act of 1991 (20 U.S.C. 1211-1).

(10) Section 304 of the National Literacy Act of 1991 (20 U.S.C. 1213c note).

(b) IMMEDIATE REPEAL OF HIGHER EDUCATION ACT OF 1965 PROVISIONS.—The following provisions of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) are repealed:

(1) Part B of title I (20 U.S.C. 1011 et seq.), relating to articulation agreements.

(2) Part C of title I (20 U.S.C. 1015 et seq.), relating to access and equity to education for all Americans through telecommunications.

(3) Title II (20 U.S.C. 1021 et seq.), relating to academic libraries and information services.

(4) Chapter 3 of subpart 2 of part A of title IV (20 U.S.C. 1070a-31 et seq.), relating to presidential access scholarships.

(5) Chapter 4 of subpart 2 of part A of title IV (20 U.S.C. 1070a-41 et seq.), relating to model program community partnerships and counseling grants.

(6) Section 409B (20 U.S.C. 1070a-52), relating to an early awareness information program.

(7) Chapter 8 of subpart 2 of part A of title IV (20 U.S.C. 1070a-81), relating to technical assistance for teachers and counselors.

(8) Subpart 8 of part A of title IV (20 U.S.C. 1070f), relating to special child care services for disadvantaged college students.

(9) Section 428J (20 U.S.C. 1078-10), relating to loan forgiveness for teachers, individuals performing national community service and nurses.

(10) Section 486 (20 U.S.C. 1093), relating to training in financial aid services.

(11) Subpart 1 of part H of title IV (20 U.S.C. 1099a et seq.) relating to State postsecondary review programs.

(12) Part A of title V (20 U.S.C. 1102 et seq.), relating to State and local programs for teacher excellence.

(13) Part B of title V (20 U.S.C. 1103 et seq.), relating to national teacher academies.

(14) Subpart 1 of part C of title V (20 U.S.C. 1104 et seq.), relating to Paul Douglas teacher scholarships.

(15) Subpart 3 of part C of title V (20 U.S.C. 1106 et seq.), relating to the teacher corps.

(16) Subpart 3 of part D of title V (20 U.S.C. 1109 et seq.), relating to class size demonstration grants.

(17) Subpart 4 of part D of title V (20 U.S.C. 1110 et seq.), relating to middle school teaching demonstration programs.

(18) Subpart 1 of part E of title V (20 U.S.C. 1111 et seq.), relating to new teaching careers.

(19) Subpart 1 of part F of title V (20 U.S.C. 1113), relating to the national mini corps programs.

(20) Section 586 (20 U.S.C. 1114), relating to demonstration grants for critical language and area studies.

(21) Section 587 (20 U.S.C. 1114a), relating to development of foreign languages and cultures instructional materials.

(22) Subpart 3 of part F of title V (20 U.S.C. 1115), relating to small State teaching initiatives.

(23) Subpart 4 of part F of title V (20 U.S.C. 1116), relating to faculty development grants.

(24) Section 597 and subsection (b) of section 599 (20 U.S.C. 1117a and 1117c), relating to early childhood staff training and professional enhancement.

(25) Section 605 (20 U.S.C. 1124a), relating to intensive summer language institutes.

(26) Section 607 (20 U.S.C. 1125a), relating to periodicals and other research material published outside the United States.

(27) Part A of title VII (20 U.S.C. 1132b et seq.), relating to improvement of academic and library facilities.

(28) Title VIII (20 U.S.C. 1133 et seq.), relating to cooperative education programs.

(29) Part A of title IX (20 U.S.C. 1134a et seq.), relating to grants to institutions and consortia to encourage women and minority participation in graduate education.

(30) Part B of title IX (20 U.S.C. 1134d et seq.), relating to the Patricia Roberts Harris fellowship program.

(31) Part E of title IX (20 U.S.C. 1134r et seq.), relating to the faculty development fellowship program.

(32) Part F of title IX (20 U.S.C. 1134s et seq.), relating to assistance for training in the legal profession.

(33) Subpart 2 of part B of title X (20 U.S.C. 1135c et seq.), relating to science and engineering access programs.

(34) Part C of title X (20 U.S.C. 1135e et seq.), relating to women and minorities science and engineering outreach demonstration programs.

(35) Part D of title X (20 U.S.C. 1135f), relating to the Dwight D. Eisenhower leadership program.

(c) IMMEDIATE REPEAL OF EDUCATION AMENDMENTS OF 1986 PROVISIONS.—The following provisions of the Higher Education Amendments of 1986 are repealed:

(1) Part D of title XIII (20 U.S.C. 1029 note), relating to library resources.

(2) Part E of title XIII (20 U.S.C. 1221–1 note), relating to a National Academy of Science study.

(3) Part B of title XV (20 U.S.C. 4441 et seq.), relating to Native Hawaiian and Alaska Native culture and art development.

(d) IMMEDIATE REPEAL OF EDUCATION AMENDMENTS OF 1974 PROVISION.—Section 519 of the Education Amendments of 1974 (20 U.S.C. 1221i) is repealed.

(e) IMMEDIATE REPEAL OF EDUCATION AMENDMENTS OF 1992 PROVISIONS.—The following provisions of the Higher Education Amendments of 1992 are repealed:

(1) Part F of title XIII (25 U.S.C. 3351 et seq.), relating to American Indian postsecondary economic development scholarships.

(2) Part G of title XIII (25 U.S.C. 3371), relating to American Indian teacher training.

(3) Section 1406 (20 U.S.C. 1221e–1 note), relating to a national survey of factors associated with participation.

(4) Section 1409 (20 U.S.C. 1132a note), relating to a study of environmental hazards in institutions of higher education.

(5) Section 1412 (20 U.S.C. 1101 note), relating to a national job bank for teacher recruitment.

(6) Part B of title XV (20 U.S.C. 1452 note), relating to a national clearinghouse for postsecondary education materials.

(7) Part C of title XV (20 U.S.C. 1101 note), relating to a school-based decisionmakers demonstration program.

(8) Part D of title XV (20 U.S.C. 1145h note), relating to grants for sexual offenses education.

(9) Part E of title XV (20 U.S.C. 1070 note), relating to Olympic scholarships.

(10) Part G of title XV (20 U.S.C. 1070a–11 note), relating to advanced placement fee payment programs.

(f) SUBSEQUENT REPEALS.—The following provisions are repealed:

(1) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(2) The Adult Education Act (20 U.S.C. 1201 et seq.).

(3) The School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.).

(4) The Job Training Partnership Act (29 U.S.C. 1501 et seq.).

SEC. ___502. CONFORMING AMENDMENTS.

(a) REFERENCES TO SECTION 204 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.—The table of contents for the Immigration Reform and Control Act of 1986 is amended by striking the item relating to section 204 of such Act.

(b) REFERENCES TO TITLE II OF PUBLIC LAW 95–250.—Section 103 of Public Law 95–250 (16 U.S.C. 791) is amended—

(1) by striking the second sentence of subsection (a); and

(2) by striking the second sentence of subsection (b).

(c) REFERENCES TO LIBRARY SERVICES AND CONSTRUCTION ACT.—

(1) TECHNOLOGY FOR EDUCATION ACT OF 1994.—The Technology for Education Act of 1994 (20 U.S.C. 6801 et seq.) is amended in section 3113(10) by striking "section 3 of the Library Services and Construction Act;" and inserting "section ___004 of the Workforce and Career Development Act of 1996;".

(2) OMNIBUS EDUCATION RECONCILIATION ACT OF 1981.—Section 528 of the Omnibus Education Reconciliation Act of 1981 (20 U.S.C. 3489) is amended—

(A) by striking paragraph (12); and

(B) by redesignating paragraphs (13) through (15) as paragraphs (12) through (14), respectively.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 3113(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6813(10)) is amended by striking "section 3 of the Library Services and Construction Act" and inserting "section 213 of the Library Services and Technology Act".

(4) COMMUNITY IMPROVEMENT VOLUNTEER ACT OF 1994.—Section 7305 of the Community Improvement Volunteer Act of 1994 (40 U.S.C. 276d–3) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (6) as paragraphs (1) through (5), respectively.

(5) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) is amended by striking "Library Services and Construction Act;".

(6) DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966.—Section 208(2) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3338(2)) is amended by striking "title II of the Library Services and Construction Act;".

(7) PUBLIC LAW 87–688.—Subsection (c) of the first section of the Act entitled "An Act to extend the application of certain laws to American Samoa", approved September 25, 1962 (48 U.S.C. 1666(c)) is amended by striking "the Library Services Act (70 Stat. 293; 20 U.S.C. 351 et seq.),".

(8) COMMUNICATIONS ACT OF 1934.—Paragraph (4) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)(4)) is amended by striking "library not eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 335c et seq.)" and inserting "library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act".

(d) REFERENCE TO SCHOOL DROPOUT ASSISTANCE ACT.—Section 441 of the General Education Provisions Act (42 U.S.C. 1232d), as amended by section 261(f) of the Improving America's Schools Act of 1994, is further amended by striking "(subject to the provisions of part C of title V of the Elementary and Secondary Education Act of 1965)".

(e) REFERENCES TO TITLE VII OF THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—

(1) TABLE OF CONTENTS.—The table of contents of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 1142 et seq.) is amended by striking the items relating to title VII of such Act, except subtitle B and section 738 of such title.

(2) TITLE 31, UNITED STATES CODE.—Section 6703(a) of title 31, United States Code, is amended—

(A) by striking paragraph (15); and

(B) by redesignating paragraphs (16) through (19) as paragraphs (15) through (18), respectively.

(f) REFERENCES TO INSTITUTE OF MUSEUM SERVICES.—

(1) TITLE 5, UNITED STATES CODE.—Section 5315 of title 5, United States Code, is amended by striking the following:

"Director of the Institute of Museum Services." and inserting the following:

"Director of the Institute of Museum and Library Services.".

(2) DEPARTMENT OF EDUCATION ORGANIZATION ACT.—Section 301 of the Department of Education Organization Act (20 U.S.C. 3441) is amended—

(A) in subsection (a)—

(i) by striking paragraph (5); and

(ii) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(B) in subsection (b)—

(i) by striking paragraph (4); and

(ii) by redesignating paragraphs (5) through (7) as paragraphs (4) through (6), respectively.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(A) Sections 2101(b), 2205(c)(1)(D), 2208(d)(1)(H)(v), and 2209(b)(1)(C)(vi), and subsections (d)(6) and (e)(2) of section 10401 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6621(b), 6645(c)(1)(D), 6648(d)(1)(H)(v), 6649(b)(1)(C)(vi), and 8091 (d)(6) and (e)(2)) are amended by striking "the Institute of Museum Services" and inserting "the Institute of Museum and Library Services".

(B) Section 10412(b) of such Act (20 U.S.C. 8102(b)) is amended—

(i) in paragraph (2), by striking "the Director of the Institute of Museum Services," and inserting "the Director of the Institute of Museum and Library Services,"; and

(ii) in paragraph (7), by striking "the Director of the Institute of Museum Services," and inserting "the Director of the Institute of Museum and Library Services,".

(C) Section 10414(a)(2)(B) of such Act (20 U.S.C. 8104(a)(2)(B)) is amended by striking clause (iii) and inserting the following new clause:

"(iii) the Institute of Museum and Library Services.".

(g) REFERENCES TO OFFICE OF LIBRARIES AND LEARNING RESOURCES.—Section 413(b)(1) of the Department of Education Organization Act (20 U.S.C. 3473(b)(1)) is amended—

(1) by striking subparagraph (H); and

(2) by redesignating subparagraphs (I) through (M) as subparagraphs (H) through (L), respectively.

(h) REFERENCES TO STATE POSTSECONDARY REVIEW ENTITY PROGRAMS.—The Higher Education Act of 1965 is amended—

(1) in section 356(b)(2) (20 U.S.C. 10696(b)), by striking "II,";

(2) in section 453(c)(2) (20 U.S.C. 1087c(c)(2))—

(A) by striking subparagraph (E); and

(B) by redesignating subparagraphs (F) through (H) as subparagraphs (E) through (G), respectively;

(3) in section 487(a)(3) (20 U.S.C. 1094(a)(3)), by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(4) in section 487(a)(15) (20 U.S.C. 1094(a)(15)), by striking "the Secretary of Veterans Affairs, and State review entities under subpart 1 of part H" and inserting "and the Secretary of Veterans Affairs";

(5) in section 487(a)(21) (20 U.S.C. 1094(a)(21)), by striking ", State postsecondary review entities,";

(6) in section 487(c)(1)(A)(i) (20 U.S.C. 1094(c)(1)(A)(i)), by striking "State agencies, and the State review entities referred to in subpart 1 of part H" and inserting "and State agencies";

(7) in section 487(c)(4) (20 U.S.C. 1094(c)(4)), by striking ", after consultation with each State review entity designated under subpart 1 of part H,";

(8) in section 487(c)(5) (20 U.S.C. 1094(c)(5)), by striking "State review entities designated under subpart 1 of part H,";

(9) in section 496(a)(7) (20 U.S.C. 1099b(a)(7)), by striking "and the appropriate State postsecondary review entity";

(10) in section 496(a)(8) (20 U.S.C. 1099b(a)(8)), by striking "and the State postsecondary review entity of the State in which the institution of higher education is located";

(11) in section 498(g)(2) (20 U.S.C. 1099c(g)(2)), by striking everything after the first sentence;

(12) in section 498A(a)(2)(D) (20 U.S.C. 1099c-1(a)(2)(D)), by striking "by the appropriate State postsecondary review entity designated under subpart 1 of this part or";

(13) in section 498A(a)(2) (20 U.S.C. 1099c-1(a)(2))—

(A) by inserting "and" after the semicolon at the end of subparagraph (E);

(B) by striking subparagraph (F); and

(C) by redesignating subparagraph (G) as subparagraph (F); and

(14) in section 498A(a)(3) (20 U.S.C. 1099c-1(a)(3))—

(A) by inserting "and" after the semicolon at the end of subparagraph (C);

(B) by striking "; and" at the end of subparagraph (D) and inserting a period; and

(C) by striking subparagraph (E).

(i) REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.—

(1) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking "Vocational Education Act of 1963" and inserting "Workforce and Career Development Act of 1996".

(2) NATIONAL DEFENSE AUTHORIZATION ACT.—Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(3) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Section 626(g) of the Individuals with Disabilities Education Act (20 U.S.C. 1425(g)) is amended—

(A) by striking "1973," and inserting "1973 and"; and

(B) by striking ", and the Carl D. Perkins Vocational and Applied Technology Education Act".

(4) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(A) in section 1114(b)(2)(C)(v) (20 U.S.C. 6314(b)(2)(C)(v)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act," and inserting "Workforce and Career Development Act of 1996";

(B) in section 9115(b)(5) (20 U.S.C. 7815(b)(5)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act" and inserting "Workforce and Career Development Act of 1996";

(C) in section 14302(a)(2) (20 U.S.C. 8852(a)(2))—

(i) by striking subparagraph (C); and

(ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(D) in the matter preceding subparagraph (A) of section 14307(a)(1) (20 U.S.C. 8857(a)(1)), by striking "Carl D. Perkins Vocational and Applied Technology Education Act" and inserting "Workforce and Career Development Act of 1996".

(5) EQUITY IN EDUCATIONAL LAND-GRANT STATUS ACT OF 1994.—Section 533(c)(4)(A) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) is amended by striking "(20 U.S.C. 2397h(3)" and inserting ", as such section was in effect on the day preceding the date of enactment of the Workforce and Career Development Act of 1996".

(6) IMPROVING AMERICA'S SCHOOLS ACT OF 1994.—Section 563 of the Improving America's Schools Act of 1994 (20 U.S.C. 6301 note) is amended by striking "the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)" and inserting "July 1, 1998".

(7) INTERNAL REVENUE CODE OF 1986.—Section 135(c)(3)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 135(c)(3)(B)) is amended—

(A) by striking "subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act" and inserting "subparagraph (C) or (D) of section ___004(4) of the Workforce and Career Development Act of 1996"; and

(B) by striking "any State (as defined in section 521(27) of such Act)" and inserting "any State or outlying area (as the terms 'State' and 'outlying area' are defined in section ___004 of such Act)".

(8) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) (as amended by subsection (c)(5)) is further amended by striking "Carl D. Perkins Vocational Education Act" and inserting "Workforce and Career Development Act of 1996".

(9) VOCATIONAL EDUCATION AMENDMENTS OF 1968.—Section 104 of the Vocational Education Amendments of 1968 (82 Stat. 1091) is amended by striking "section 3 of the Carl D. Perkins Vocational Education Act" and inserting "the Workforce and Career Development Act of 1996".

(10) OLDER AMERICANS ACT OF 1965.—The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(A) in section 502(b)(1)(N)(i) (42 U.S.C. 3056(b)(1)(N)(i)), by striking "or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)"; and

(B) in section 505(d)(2) (42 U.S.C. 3056c(d)(2))—

(i) by striking "the Secretary of Education" and inserting "the Secretaries (as defined in section ___004 of the Workforce and Career Development Act of 1996)";

(ii) by striking "employment and training programs" and inserting "workforce and career development activities"; and

(iii) by striking "the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)" and inserting "the Workforce and Career Development Act of 1996".

(j) REFERENCES TO ADULT EDUCATION ACT.—

(1) REFUGEE EDUCATION ASSISTANCE ACT.—Subsection (b) of section 402 of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is repealed.

(2) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(A) SECTION 1202 OF ESEA.—Section 1202(c)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6362(c)(1)) is amended by striking "Adult Education Act" and inserting "Workforce and Career Development Act of 1996".

(B) SECTION 1205 OF ESEA.—Section 1205(8)(B) of such Act (20 U.S.C. 6365(8)(B)) is amended by striking "Adult Education Act" and inserting "Workforce and Career Development Act of 1996".

(C) SECTION 1206 OF ESEA.—Section 1206(a)(1)(A) of such Act (20 U.S.C. 6366(a)(1)(A)) is amended by striking "an adult basic education program under the Adult Education Act" and inserting "adult education and literacy activities under the Workforce and Career Development Act of 1996".

(D) SECTION 3113 OF ESEA.—Section 3113(1) of such Act (20 U.S.C. 6813(1)) is amended by striking "section 312 of the Adult Education Act" and inserting "section ___004 of the Workforce and Career Development Act of 1996".

(E) SECTION 9161 OF ESEA.—Section 9161(2) of such Act (20 U.S.C. 7881(2)) is amended by striking "section 312(2) of the Adult Education Act" and inserting "section ___004 of the Workforce and Career Development Act of 1996".

(3) OLDER AMERICANS ACT OF 1965.—Section 203(b)(8) of the Older Americans Act of 1965 (42 U.S.C. 3013(b)(8)) is amended by striking "Adult Education Act" and inserting "Workforce and Career Development Act of 1996".

(k) REFERENCES TO SCHOOL-TO-WORK OPPORTUNITIES ACT OF 1994.—

(1) SECTION 1114 OF ESEA.—Section 1114(b)(2)(C)(v) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6314(b)(2)(C)(v)) (as amended in subsection (i)(4)(A)) is further amended by striking "the School-to-Work Opportunities Act of 1994,".

(2) SECTION 5204 OF ESEA.—Section 5204 of such Act (20 U.S.C. 7234) is amended—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5) through (7) as paragraphs (4) through (6), respectively.

(3) SECTION 9115 OF ESEA.—Section 9115(b)(5) of such Act (20 U.S.C. 7815(b)(5)) (as amended in subsection (i)(4)(B)) is further amended by striking "the School-to-Work Opportunities Act of 1994 and".

(4) SECTION 14302 OF ESEA.—Section 14302(a)(2) of such Act (20 U.S.C. 8852(a)(2)) (as amended in subsection (i)(4)(C)) is further amended—

(A) in subparagraph (C) (as redesignated in such subsection), by striking the semicolon and inserting "; and";

(B) by striking subparagraph (D) (as redesignated in such subsection); and

(C) by redesignating subparagraph (E) (as redesignated in such subsection) as subparagraph (D).

(5) SECTION 14307 OF ESEA.—Section 14307(a)(1) of such Act (20 U.S.C. 8857(a)(1)) (as amended in subsection (i)(4)(D)) is further amended by striking ", the School-to-Work Opportunities Act of 1994,".

(6) SECTION 14701 OF ESEA.—Section 14701(b)(1) of such Act (20 U.S.C. 8941(b)(1)) is amended—

(A) in subparagraph (B)(ii), by striking ", and the School-to-Work Opportunities Act of 1994, and be coordinated with evaluations of such Acts" and inserting "and be coordinated with evaluations of such Act"; and

(B) in subparagraph (C)(ii), by striking ", the School-to-Work Opportunities Act of 1994,".

(l) REFERENCES TO JOB TRAINING PARTNERSHIP ACT.—

(1) TITLE 5, UNITED STATES CODE.—Section 3502(d) of title 5, United States Code, is amended—

(A) in paragraph (3)—

(i) in subparagraph (A), by striking clause (i) and inserting the following:

"(i) the Governor of the appropriate State; and"; and

(ii) in subparagraph (B)(iii), by striking "other services under the Job Training Partnership Act" and inserting "other workforce and career development activities under the Workforce and Career Development Act of 1996"; and

(B) in paragraph (4), in the second sentence, by striking "Secretary of Labor on matters relating to the Job Training Partnership Act" and inserting "the Secretaries (as defined in section ___004 of the Workforce and Career Development Act of 1996) on matters relating to such Act".

(2) FOOD STAMP ACT OF 1977.—

(A) SECTION 5.—Section 5(l) of the Food Stamp Act of 1977 (7 U.S.C. 2014(l)) is amended by striking "Notwithstanding section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)), earnings to individuals participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Job Training Partnership Act" and inserting "Earnings to individuals participating in on-the-job training under the Workforce and Career Development Act of 1996".

(B) SECTION 6.—Section 6 of the Food Stamp Act of 1977 (7 U.S.C. 2015) is amended—

(i) in subsection (d)(4)(N), by striking "the State public employment offices and agencies operating programs under the Job Training Partnership Act" and inserting "the State public employment offices and other State agencies and providers providing employment and training activities under the Workforce and Career Development Act of 1996"; and

(ii) in subsection (e)(3), by striking subparagraph (A) and inserting the following:

"(A) a program relating to employment and training activities carried out under the Workforce and Career Development Act of 1996;".

(C) SECTION 17.—The second sentence of section 17(b)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2026(b)(2)) is amended—

(i) by striking "to accept an offer of employment from a political subdivision or a prime sponsor pursuant to the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 812)," and inserting "to accept an offer of employment from a service provider carrying out employment and training activities through a program carried out under the Workforce and Career Development Act of 1996,"; and

(ii) by striking ": *Provided*, That all of the political subdivision's" and all that follows and inserting ", if all of the jobs supported under the program have been made available to participants in the program before the service provider providing the jobs extends an offer of employment under this paragraph, and if the service provider, in employing the person, complies with the requirements of Federal law that relate to the program.".

(3) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(F) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(F)) is amended by striking "The Job Training Partnership Act." and inserting "The Workforce and Career Development Act of 1996.".

(4) REFUGEE EDUCATION ASSISTANCE ACT OF 1980.—Section 402(a)(4) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) is amended by striking "the Comprehensive Employment and Training Act of 1973" and inserting "the Workforce and Career Development Act of 1996".

(5) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993.—

(A) SECTION 3161.—Section 3161(c)(6) of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h(c)(6)) is amended by striking subparagraph (A) and inserting the following:

"(A) programs carried out by the Secretaries (as defined in section ___004 of the Workforce and Career Development Act of 1996) under such Act;".

(B) SECTION 4461.—Section 4461(1) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended by striking "The Job Training Partnership Act (29 U.S.C. 1501 et seq.)." and inserting "The Workforce and Career Development Act of 1996.".

(C) SECTION 4471.—Section 4471 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 2501 note) is amended—

(i) in subsection (d)(2), by striking "the State dislocated" and all that follows through "and the chief" and inserting "the Governor of the appropriate State and the chief";

(ii) in subsection (e)—

(I) in the first sentence, by striking "for training, adjustment assistance, and employment services" and all that follows through "except where" and inserting "to participate in employment and training activities carried out under the Workforce and Career Development Act of 1996, except in a case in which"; and

(II) by striking the second sentence; and

(iii) in subsection (f)—

(I) in paragraph (3)—

(aa) in subparagraph (B), by striking "the State dislocated" and all that follows through "and the chief" and inserting "the Governor of the appropriate State and the chief"; and

(bb) in subparagraph (C), by striking "grantee under section 325(a) or 325A(a)" and all that follows through "employment services" and inserting "recipient of assistance under the Workforce and Career Development Act of 1996 providing employment and training activities"; and

(II) in paragraph (4), by striking "for training," and all that follows through "beginning" and inserting "to participate in employment and training activities under the Workforce and Career Development Act of 1996 beginning".

(D) SECTION 4492.—Section 4492(b) of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended by striking "the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(6) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991.—Section 4003(5)(C) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2391 note) is amended by inserting before the period the following: ", as in effect on the day before the date of the enactment of the Workforce and Career Development Act of 1996".

(7) NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994.—Section 1333(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2701 note) is amended by striking "Private industry councils (as described in section 102 of the Job Training Partnership Act (29 U.S.C. 1512))." and inserting "Local workforce development boards established under section ___108 of the Workforce and Career Development Act of 1996.".

(8) SMALL BUSINESS ACT.—The fourth sentence of section 7(j)(13)(E) of the Small Business Act (15 U.S.C. 636(j)(13)(E)) is amended by striking "the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "the Workforce and Career Development Act of 1996".

(9) EMPLOYMENT ACT OF 1946.—Section 4(f)(2)(B) of the Employment Act of 1946 (15 U.S.C. 1022a(f)(2)(B)) is amended by striking "and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this Act referred to as 'CETA')" and inserting "and prepare and submit to the President an annual report containing the recommendations".

(10) FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978.—

(A) SECTION 206.—Section 206 of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 3116) is amended—

(i) in subsection (b)—

(I) in the matter preceding paragraph (1), by striking "CETA" and inserting "the Workforce and Career Development Act of 1996"; and

(II) in paragraph (1), by striking "(including use of section 110 of CETA when necessary)"; and

(ii) in subsection (c)(1), by striking "CETA" and inserting "activities carried out under the Workforce and Career Development Act of 1996".

(B) SECTION 401.—Section 401(d) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 3151(d)) is amended by striking "include, in the annual Employment and Training Report of the President provided under section 705(a) of CETA," and inserting "include, in the annual report referred to in section 4(f)(2)(B) of the Employment Act of 1946 (15 U.S.C. 1022a(f)(2)(B)),".

(11) TITLE 18, UNITED STATES CODE.—Subsections (a), (b), and (c) of section 665 of title 18, United States Code are amended by striking "the Comprehensive Employment and Training Act or the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(12) TRADE ACT OF 1974.—Section 239(e) of the Trade Act of 1974 (19 U.S.C. 2311(e)) is

amended by striking "under title III of the Job Training Partnership Act" and inserting "made available under the Workforce and Career Development Act of 1996".

(13) HIGHER EDUCATION ACT.—Section 480(b)(14) of the Higher Education Act of 1965 (20 U.S.C. 1087vv(b)(14)) is amended by striking "Job Training Partnership Act noneducational benefits" and inserting "benefits received through participation in employment and training activities under the Workforce and Career Development Act of 1996".

(14) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Section 626 of the Individuals with Disabilities Education Act (20 U.S.C. 1425) is amended—

(A) in the first sentence of subsection (a), by striking "(including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act)" and inserting "(including the individuals and entities participating in the State collaborative process under subsection (a) or (b) of section ___105 of the Workforce and Career Development Act of 1996 and local workforce development boards established under section ___108 of such Act)";

(B) in subsection (e)—

(i) in paragraphs (3)(C) and (4)(A)(iii), by striking "local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA)," and inserting "local workforce development boards established under section ___108 of the Workforce and Career Development Act of 1996,"; and

(ii) in clauses (iii), (iv), (v), and (vii) of paragraph (4)(B), by striking "PICS authorized by the JTPA" and inserting "local workforce development boards established under section ___108 of the Workforce and Career Development Act of 1996"; and

(C) in subsection (g) (as amended by subsection (i)(3)), by striking "the Job Training Partnership Act (JTPA)" and inserting "the Workforce and Career Development Act of 1996".

(15) DEPARTMENT OF EDUCATION ORGANIZATION ACT.—Subsection (a) of section 302 of the Department of Education Organization Act (20 U.S.C. 3443(a)) (as redesignated in section 271(a)(2) of the Improving America's Schools Act of 1994) is amended by striking "under section 303(c)(2) of the Comprehensive Employment and Training Act" and inserting "relating to such education".

(16) NATIONAL SKILL STANDARDS ACT OF 1994.—

(A) SECTION 504.—Section 504(c)(3) of the National Skill Standards Act of 1994 (20 U.S.C. 5934(c)(3)) is amended by striking "the Capacity Building and Information and Dissemination Network established under section 453(b) of the Job Training Partnership Act (29 U.S.C. 1733(b)) and".

(B) SECTION 508.—Section 508(1) of the National Skill Standards Act of 1994 (20 U.S.C. 5938(1)) is amended to read as follows:

"(1) COMMUNITY-BASED ORGANIZATION.—The term 'community-based organization' means a private nonprofit organization of demonstrated effectiveness that is representative of a community or a significant segment of a community and that provides workforce and career development activities, as defined in section ___004 of the Workforce and Career Development Act of 1996.".

(17) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(A) SECTION 1205.—Section 1205(8)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6365(8)(B)) (as amended by subsection (j)(2)(B)) is further amended by striking ", the Individuals with Disabilities Education Act, and the Job Training Partnership Act" and inserting "and the Individuals with Disabilities Education Act".

(B) SECTION 1414.—Section 1414(c)(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6434(c)(8)) is amended by striking "programs under the Job Training Partnership Act," and inserting "activities under the Workforce and Career Development Act of 1996,".

(C) SECTION 1423.—Section 1423(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6453(9)) is amended by striking "programs under the Job Training and Partnership Act" and inserting "activities under the Workforce and Career Development Act of 1996".

(D) SECTION 1425.—Section 1425(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6455(9)) is amended by striking ", such as funds under the Job Training Partnership Act," and inserting ", such as funds made available under the Workforce and Career Development Act of 1996,".

(18) FREEDOM SUPPORT ACT.—The last sentence of section 505 of the FREEDOM Support Act (22 U.S.C. 5855) is amended by striking ", through the Defense Conversion" and all that follows through "or through" and inserting "or through".

(19) INTERNAL REVENUE CODE OF 1986.—

(A) SECTION 42.—Section 42(i)(3)(D)(i)(II) of the Internal Revenue Code of 1986 is amended by striking "assistance under" and all that follows through "or under" and inserting "assistance under the Workforce and Career Development Act of 1996 or under".

(B) SECTION 51.—Section 51(d) of the Internal Revenue Code of 1986 is amended by striking paragraph (10).

(C) SECTION 6334.—Section 6334(d)(12) of the Internal Revenue Code of 1986 is amended to read as follows:

"(12) ASSISTANCE UNDER THE WORKFORCE AND CAREER DEVELOPMENT ACT OF 1996.—Any amount payable to a participant in workforce and career development activities carried out under the Workforce and Career Development Act of 1996 from funds appropriated under such Act.".

(20) EMERGENCY JOBS AND UNEMPLOYMENT ASSISTANCE ACT OF 1974.—

(A) SECTION 204.—Section 204(b) of the Emergency Jobs and Unemployment Assistance Act of 1974 (26 U.S.C. 3304 note) is amended by striking "designate as an area" and all that follows and inserting "designate as an area under this section an area that is a local workforce development area under the Workforce and Career Development Act of 1996.".

(B) SECTION 223.—Section 223 of the Emergency Jobs and Unemployment Assistance Act of 1974 (26 U.S.C. 3304 note) is amended—

(i) in paragraph (3), by striking "assistance provided" and all that follows and inserting "assistance provided under the Workforce and Career Development Act of 1996;"; and

(ii) in paragraph (4), by striking "funds provided" and all that follows and inserting "funds provided under the Workforce and Career Development Act of 1996;".

(21) REHABILITATION ACT.—Section 612(b) of the Rehabilitation Act of 1973 (29 U.S.C. 795a(b)) is amended by striking "the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(22) JOB TRAINING REFORM AMENDMENTS OF 1992.—Section 701 of the Job Training Reform Amendments of 1992 (29 U.S.C. 1501 note) is repealed.

(23) PUBLIC LAW 98-524.—Section 7 of Public Law 98-524 (29 U.S.C. 1551 note) is repealed.

(24) VETERANS' BENEFITS AND PROGRAMS IMPROVEMENT ACT OF 1988.—Section 402 of the Veterans' Benefits and Programs Improvement Act of 1988 (29 U.S.C. 1721 note) is amended—

(A) in subsection (a), by striking "title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.)" and inserting "the Workforce and Career Development Act of 1996";

(B) in subsection (c), by striking "Training, in consultation with the office designated or created under section 322(b) of the Job Training Partnership Act," and inserting "Training"; and

(C) in subsection (d)—

(i) in paragraph (1), by striking "under—" and all that follows through "the Veterans'" and inserting "under the Veterans'"; and

(ii) in paragraph (2), by striking "Employment and training" and all that follows and inserting "Employment and training activities under the Workforce and Career Development Act of 1996.".

(25) VETERANS' JOB TRAINING ACT.—

(A) SECTION 13.—Section 13(b) of the Veterans' Job Training Act (29 U.S.C. 1721 note) is amended by striking "assistance under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "assistance under the Workforce and Career Development Act of 1996".

(B) SECTION 14.—Section 14(b)(3)(B)(i)(II) of the Veterans' Job Training Act (29 U.S.C. 1721 note) is amended by striking "under part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "under the Workforce and Career Development Act of 1996".

(C) SECTION 15.—Section 15(c)(2) of the Veterans' Job Training Act (29 U.S.C. 1721 note) is amended—

(i) in the second sentence, by striking "part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "the Workforce and Career Development Act of 1996"; and

(ii) in the third sentence, by striking "title III of".

(26) WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.—Section 3(a)(2) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102(a)(2)) is amended by striking "to the State" and all that follows through "and the chief" and inserting "to the Governor of the appropriate State and the chief".

(27) TITLE 31, UNITED STATES CODE.—Section 6703(a) of title 31, United States Code, is amended by striking paragraph (4) and inserting the following:

"(4) Activities under the Workforce and Career Development Act of 1996.".

(28) VETERANS' REHABILITATION AND EDUCATION AMENDMENTS OF 1980.—Section 512 of the Veterans' Rehabilitation and Education Amendments of 1980 (38 U.S.C. 4101 note) is amended by striking "the Comprehensive Employment and Training Act (29 U.S.C. et seq.)," and inserting "the Workforce and Career Development Act of 1996,".

(29) TITLE 38, UNITED STATES CODE.—

(A) SECTION 4102A.—Section 4102A(d) of title 38, United States Code, is amended by striking "the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(B) SECTION 4103A.—Section 4103A(c)(4) of title 38, United States Code, is amended by striking "(including part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.))".

(C) SECTION 4213.—Section 4213 of title 38, United States Code, is amended by striking

"any employment or training program assisted under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)," and inserting "any employment and training activity carried out under the Workforce and Career Development Act of 1996,".

(30) UNITED STATES HOUSING ACT.—Section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u) is amended—

(A) in subsection (b)(2)(A), by striking "the Job Training" and all that follows through "or the" and inserting "the Workforce and Career Development Act of 1996 or the";

(B) in the first sentence of subsection (f)(2), by striking "programs under the" and all that follows through "and the" and inserting "activities under the Workforce and Career Development Act of 1996 and the"; and

(C) in subsection (g)—

(i) in paragraph (2), by striking "programs under the" and all that follows through "and the" and inserting "activities under the Workforce and Career Development Act of 1996 and the"; and

(ii) in paragraph (3)(H), by striking "program under" and all that follows through "and any other" and inserting "activity under the Workforce and Career Development Act of 1996 and any other".

(31) HOUSING ACT OF 1949.—Section 504(c)(3) of the Housing Act of 1949 (42 U.S.C. 1474(c)(3)) is amended by striking "pursuant to" and all that follows through "or the" and inserting "pursuant to the Workforce and Career Development Act of 1996 or the".

(32) OLDER AMERICANS ACT OF 1965.—

(A) SECTION 203.—Section 203 of the Older Americans Act of 1965 (42 U.S.C. 3013) is amended—

(i) in subsection (a)(2), by striking the last sentence and inserting the following: "In particular, the Secretary of Labor and the Secretary of Education shall consult and cooperate with the Assistant Secretary in carrying out the Workforce and Career Development Act of 1996."; and

(ii) in subsection (b), by striking paragraph (1) and inserting the following:

"(1) the Workforce and Career Development Act of 1996,".

(B) SECTION 502.—Section 502 of the Older Americans Act of 1965 (42 U.S.C. 3056) is amended—

(i) in subsection (b)(1)(N)(i) (as amended by subsection (i)(10)(A)), by striking "the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "the Workforce and Career Development Act of 1996"; and

(ii) in subsection (e)(2)(C), by striking "programs carried out under section 124 of the Job Training Partnership Act (29 U.S.C. 1534)" and inserting "employment and training activities carried out under the Workforce and Career Development Act of 1996".

(C) SECTION 503.—Section 503(b)(1) of the Older Americans Act of 1965 (42 U.S.C. 3056a(b)(1)) is amended by striking "the Job Training Partnership Act," each place it appears and inserting "the Workforce and Career Development Act of 1996,".

(D) SECTION 510.—Section 510 of the Older Americans Act of 1965 (42 U.S.C. 3056h) is amended by striking "the Job Training Partnership Act, eligible individuals shall be deemed to satisfy the requirements of sections 203 and 204(d)(5)(A) of such Act (29 U.S.C. 1603, 1604(d)(5)(A))" and inserting "the Workforce and Career Development Act of 1996, eligible individuals shall be deemed to satisfy the requirements of such Act".

(33) OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—Section 1801(b)(3) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ee(b)(3)) is amended by striking "activities carried out under part B of title IV of the Job Training Partnership Act (relating to Job Corps) (29 U.S.C. 1691 et seq.)" and inserting "activities carried out under subtitle C of title II of the Workforce and Career Development Act of 1996".

(34) ENVIRONMENTAL PROGRAMS ASSISTANCE ACT OF 1984.—The second sentence of section 2(a) of the Environmental Programs Assistance Act of 1984 (42 U.S.C. 4368a(a)) is amended by striking "and title IV of the Job Training Partnership Act" and inserting "and the Workforce and Career Development Act of 1996".

(35) DOMESTIC VOLUNTEER SERVICE ACT OF 1973.—

(A) SECTION 103.—The second sentence of section 103(d) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4953(d)) is amended to read as follows: "Whenever feasible, such efforts shall be coordinated with a local workforce development board established under section ___108 of the Workforce and Career Development Act of 1996.".

(B) SECTION 109.—Subsections (c)(2) and (d)(2) of section 109 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4959) is amended by striking "administrative entities designated to administer job training plans under the Job Training Partnership Act" and inserting "eligible providers of training services, as defined in section ___004 of the Workforce and Career Development Act of 1996".

(36) AGE DISCRIMINATION ACT OF 1975.—Section 304(c)(1) of the Age Discrimination Act of 1975 (42 U.S.C. 6103(c)(1)) is amended by striking "the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801, et seq.), as amended," and inserting "the Workforce and Career Development Act of 1996".

(37) ENERGY CONSERVATION AND PRODUCTION ACT.—Section 414(b)(3) of the Energy Conservation and Production Act (42 U.S.C. 6864(b)(3)) is amended by striking "the Comprehensive Employment and Training Act of 1973" and inserting "the Workforce and Career Development Act of 1996".

(38) NATIONAL ENERGY CONSERVATION POLICY ACT.—Section 233 of the National Energy Conservation Policy Act (42 U.S.C. 6873) is amended, in the matter preceding paragraph (1), by striking "the Comprehensive Employment and Training Act of 1973" and inserting "the Workforce and Career Development Act of 1996".

(39) COMMUNITY ECONOMIC DEVELOPMENT ACT OF 1981.—Section 617(a)(3) of the Community Economic Development Act of 1981 (42 U.S.C. 9806(a)(3)) is amended by striking "activities such as those described in the Comprehensive Employment and Training Act" and inserting "employment and training activities described in the Workforce and Career Development Act of 1996".

(40) STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—Section 103(b)(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302(b)(2)) is amended by striking "the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(41) NATIONAL AND COMMUNITY SERVICE ACT OF 1990.—

(A) SECTION 177.—Section 177(d) of the National and Community Service Act of 1990 (42 U.S.C. 12637(d)) is amended to read as follows:

"(d) TREATMENT OF BENEFITS.—Allowances, earnings, and payments to individuals participating in programs that receive assistance under this title shall not be considered to be income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).".

(B) SECTION 198C.—Section 198C of the National and Community Service Act of 1990 (42 U.S.C. 12653c) is amended—

(i) in subsection (b)(1), by striking "a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1))." and inserting "a military installation being closed or realigned under—

"(A) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

"(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).'"; and

(ii) in subsection (e)(1)(B), by striking clause (iii) and inserting the following:

"(iii) an at-risk youth (as defined in section ___004 of the Workforce and Career Development Act of 1996).".

(C) SECTION 199L.—Section 199L(a) of the National and Community Service Act of 1990 (42 U.S.C. 12655m(a)) is amended by striking "the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "the Workforce and Career Development Act of 1996".

(42) CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT.—

(A) SECTION 454.—Subparagraphs (H) and (M) of subsection (c)(2), and subsection (d)(7), of section 454 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899c) are amended by striking "the Job Training Partnership Act" and inserting "the Workforce and Career Development Act of 1996".

(B) SECTION 456.—The first sentence of section 456(e) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899e(e)) is amended by inserting "(as in effect on the day before the date of the enactment of the Workforce and Career Development Act of 1996)" after "the Job Training Partnership Act" each place it appears.

(43) VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994.—Section 31113(a)(4)(C) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13823(a)(4)(C)) is amended by striking "authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.)" and inserting "or employment and training activities authorized under the Workforce and Career Development Act of 1996".

SEC. ___503. EFFECTIVE DATES.

(a) REPEALS.—

(1) IMMEDIATE REPEALS.—The repeals made by subsections (a) through (e) of section ___501 shall take effect on the date of the enactment of this Act.

(2) SUBSEQUENT REPEALS.—The repeals made by section ___501(f) shall take effect on July 1, 1998.

(b) CONFORMING AMENDMENTS.—

(1) IMMEDIATELY EFFECTIVE AMENDMENTS.—The amendments made by subsections (a) through (h) of section ___502 shall take effect on the date of the enactment of this Act.

(2) SUBSEQUENTLY EFFECTIVE AMENDMENTS.—The amendments made by subsections (i) through (l) of section ___502 shall take effect on July 1, 1998.

DASCHLE AMENDMENT NO. 5270

(Ordered to lie on the table.)

Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place insert the following:

ESTABLISHING A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

SEC. . NATIONAL REPOSITORY FOR INFORMATION ON EXPLOSIVE INCIDENTS AND ARSON.

(a) Section 846 of Title 18, United States Code, is amended by—

(1) designating the existing section as subsection (a); and

(2) by adding the following new subsection (b) to read as follows:

"(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also contain information on incidents voluntarily reported to the Secretary by State and local authorities."

(b) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

BINGAMAN (AND JEFFORDS) AMENDMENT NO. 5271

Mr. SHELBY (for Mr. BINGAMAN, for himself and Mr. JEFFORDS) proposed an amendment to the bill, H.R. 3756, supra; as follows:

Insert at the appropriate place in the bill:

(a) REDUCTION IN FACILITIES ENERGY COSTS.—

(1) IN GENERAL.—The head of each agency for which funds are made available under this Act shall—

(A) take all actions necessary to achieve during fiscal year 1998 a 5-percent reduction, from fiscal year 1996 levels, in the energy costs of the facilities used by the agency; or

(B) enter into a sufficient number of energy savings performance contracts with private sector energy service companies under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.) to achieve during fiscal year 1998 at least a 5-percent reduction, from fiscal year 1996 levels, in the energy use of the facilities used by the agency.

(2) GOAL.—The activities described in paragraph (1) should be a key component of agency programs that will by the year 2000 result in a 20-percent reduction, from fiscal year 1985 levels, in the energy use of the facilities used by the agency, as required by section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253).

DASCHLE AMENDMENT NO. 5272

Mr. SHELBY (for Mr. DASCHLE) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

ESTABLISHING A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

SEC. . NATIONAL REPOSITORY FOR INFORMATION ON EXPLOSIVES INCIDENTS AND ARSON.

(a) Section 846 of title 18, United States Code, is amended by—

(1) designated the existing section as subsection (a); and

(2) by adding the following new subsection (b) to read as follows:

"(b) The Secretary is authorized to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. All Federal agencies having information concerning such incidents shall report the information to the Secretary pursuant to such regulations as deemed necessary to carry out the provisions of this subsection. The repository shall also certain information on incidents voluntarily reported to the Secretary by State and local authorities."

(b) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.

D'AMATO AMENDMENT NO. 5273

Mr. SHELBY (for Mr. D'AMATO) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page ____, strike lines ____ and ____, and insert the following:

"(1) MINT FACILITY FOR GOLD AND PLATINUM COINS.—Notwithstanding any other provision of law,".

At the end of title V of the bill, insert the following new sections:

SEC. 5___. COMMEMORATIVE COIN PROGRAM REFORM.

(a) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—Section 5112 of title 31, United States Code, as amended by sections 524 and 530 of this Act, is amended by adding at the end the following new subsection:

"(m) COMMEMORATIVE COIN PROGRAM RESTRICTIONS.—

"(1) MAXIMUM NUMBER.—Beginning January 1, 1999, the Secretary may mint and issue commemorative coins under this section during any calendar year with respect to not more than 2 commemorative coin programs.

"(2) MINTAGE LEVELS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in carrying out any commemorative coin program, the Secretary shall mint—

"(i) not more than 750,000 clad half-dollar coins;

"(ii) not more than 500,000 silver one-dollar coins; and

"(iii) not more than 100,000 gold five-dollar or ten-dollar coins.

"(B) EXCEPTION.—If the Secretary determines, based on independent, market-based research conducted by a designated recipient organization of a commemorative coin program, that the mintage levels described in subparagraph (A) are not adequate to meet public demand for that commemorative coin, the Secretary may waive one or more of the requirements of subparagraph (A) with respect to that commemorative coin program.

"(C) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this paragraph, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(b) RECOVERY OF MINT EXPENSES REQUIRED BEFORE PAYMENT OF SURCHARGES TO ANY RECIPIENT ORGANIZATION.—

(1) CLARIFICATION OF LAW RELATING TO DEPOSIT OF SURCHARGES IN THE NUMISMATIC PUBLIC ENTERPRISE FUND.—Section 5134(c)(2) of title 31, United States Code, is amended by inserting ", including amounts attributable to any surcharge imposed with respect to the sale of any numismatic item" before the period.

(2) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(f) CONDITIONS ON PAYMENT OF SURCHARGES TO RECIPIENT ORGANIZATIONS.—

"(1) PAYMENT OF SURCHARGES.—Notwithstanding any other provision of law, no amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall be paid from the fund to any designated recipient organization unless—

"(A) all numismatic operation and program costs allocable to the program under which such numismatic item is produced and sold have been recovered; and

"(B) the designated recipient organization submits an audited financial statement that demonstrates to the satisfaction of the Secretary of the Treasury that, with respect to all projects or purposes for which the proceeds of such surcharge may be used, the organization has raised funds from private sources for such projects and purposes in an amount that is equal to or greater than the maximum amount the organization may receive from the proceeds of such surcharge.

"(2) ANNUAL AUDITS.—

"(A) ANNUAL AUDITS OF RECIPIENTS REQUIRED.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such amount, for an annual audit, in accordance with generally accepted government auditing standards by an independent public accountant selected by the organization, of all such payments to the organization beginning in the first fiscal year of the organization in which any such amount is received and continuing until all amounts received by such organization from the fund with respect to such surcharges are fully expended or placed in trust.

"(B) MINIMUM REQUIREMENTS FOR ANNUAL AUDITS.—At a minimum, each audit of a designated recipient organization pursuant to subparagraph (A) shall report—

"(i) the amount of payments received by the designated recipient organization from the fund during the fiscal year of the organization for which the audit is conducted that are derived from the proceeds of any surcharge imposed on the sale of any numismatic item;

"(ii) the amount expended by the designated recipient organization from the proceeds of such surcharges during the fiscal year of the organization for which the audit is conducted; and

"(iii) whether all expenditures by the designated recipient organization during the fiscal year of the organization for which the audit is conducted from the proceeds of such surcharges were for authorized purposes.

"(C) RESPONSIBILITY OF ORGANIZATION TO ACCOUNT FOR EXPENDITURES OF SURCHARGES.—Each designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall take appropriate steps, as a condition for receiving any such payment, to ensure that the receipt of the payment and the expenditure of the proceeds of such surcharge by the organization in each fiscal year of the organization can be accounted for separately from all other revenues and expenditures of the organization.

"(D) SUBMISSION OF AUDIT REPORT.—Not later than 90 days after the end of any fiscal year of a designated recipient organization for which an audit is required under subparagraph (A), the organization shall—

"(i) submit a copy of the report to the Secretary of the Treasury; and

"(ii) make a copy of the report available to the public.

"(E) USE OF SURCHARGES FOR AUDITS.—Any designated recipient organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may use the amount received to pay the cost of an audit required under subparagraph (A).

"(F) WAIVER OF PARAGRAPH.—The Secretary of the Treasury may waive the application of any subparagraph of this paragraph to any designated recipient organization for any fiscal year after taking into account the amount of surcharges that such organization received or expended during such year.

"(G) NONAPPLICABILITY TO FEDERAL ENTITIES.—This paragraph shall not apply to any Federal agency or department or any independent establishment in the executive branch that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item.

"(H) AVAILABILITY OF BOOKS AND RECORDS.—An organization that receives any payment from the fund of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall provide, as a condition for receiving any such payment, to the Inspector General of the Department of the Treasury or the Comptroller General of the United States, upon the request of such Inspector General or the Comptroller General, all books, records, and work papers belonging to or used by the organization, or by any independent public accountant who audited the organization in accordance with subparagraph (A), which may relate to the receipt or expenditure of any such amount by the organization.

"(3) USE OF AGENTS OR ATTORNEYS TO INFLUENCE COMMEMORATIVE COIN LEGISLATION.—No portion of any payment from the fund to any designated recipient organization of any amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item may be used, directly or indirectly, by the organization to compensate any agent or attorney for services rendered to support or influence in any way legislative action of the Congress relating to such numismatic item.

"(4) DESIGNATED RECIPIENT ORGANIZATION DEFINED.—For purposes of this subsection, the term 'designated recipient organization' means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.".

(3) SCOPE OF APPLICATION.—The amendments made by this section shall apply with respect to the proceeds of any surcharge imposed on the sale of any numismatic item that are deposited in the Numismatic Public Enterprise Fund after the date of the enactment of this Act.

(4) REPEAL OF EXISTING RECIPIENT REPORT REQUIREMENT.—Section 302 of Public Law 103-186 (31 U.S.C. 5112 note) is repealed.

(c) QUARTERLY FINANCIAL REPORTS.—Section 5134 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g) QUARTERLY FINANCIAL REPORTS.—

"(1) IN GENERAL.—Not later than the 30th day of each month following each calendar quarter through and including the final period of sales with respect to any commemorative coin program authorized on or after the date of enactment of the Treasury, Postal Service, and General Government Appropriations Act, 1997, the Mint shall submit to the Congress a quarterly financial report in accordance with this subsection.

"(2) REQUIREMENTS.—Each report submitted under paragraph (1) shall include, with respect to the calendar quarter at issue—

"(A) a detailed financial statement, prepared in accordance with generally accepted accounting principles, that includes financial information specific to that quarter, as well as cumulative financial information relating to the entire program;

"(B) a detailed accounting of—

"(i) all costs relating to marketing efforts;

"(ii) all funds projected for marketing use;

"(iii) all costs for employee travel relating to the promotion of commemorative coin programs;

"(iv) all numismatic items minted, sold, not sold, and rejected during the production process; and

"(v) the costs of melting down all rejected and unsold products;

"(C) adequate market-based research for all commemorative coin programs; and

"(D) a description of the efforts of the Mint in keeping the sale price of numismatic items as low as practicable.".

(d) CITIZENS COMMEMORATIVE COIN ADVISORY COMMITTEE.—

(1) FIXED TERMS FOR MEMBERS.—Section 5135(a)(4) of title 31, United States Code, is amended to read as follows:

"(4) TERMS.—Each member appointed under clause (i) or (iii) of paragraph (3)(A) shall be appointed for a term of 4 years.".

(2) CHAIRPERSON.—Section 5135(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(7) CHAIRPERSON.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Chairperson of the Advisory Committee shall be elected by the members of the Advisory Committee from among such members.

"(B) EXCEPTION.—The member appointed pursuant to paragraph (3)(A)(ii) (or the alternate to that member) may not serve as the Chairperson of the Advisory Committee, beginning on June 1, 1999.".

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 5___. MINT MANAGERIAL STAFFING REFORM.

Section 5131 of title 31, United States Code, is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

McCAIN AMENDMENT NO. 5274

Mr. SHELBY (for McCAIN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . Section 5(c)(1) of Public Law 102-259 (20 U.S.C. 5603(c)(1)) is amended—

(1) in subparagraph (A)(iii), by striking "and" after the semicolon;

(2) in subparagraph (B), by striking the period and inserting "; and"; and

(3) by adding after subparagraph (B) the following:

"(C) a Trustee may serve after the expiration of the Trustee's term until a successor has been chosen.".

DORGAN AMENDMENT NO. 5275

Mr. SHELBY (for Mr. DORGAN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, add the following:

Notwithstanding any other provision of law, the Secretary of the Interior, through the Bureau of Indian Affairs, may directly transfer to Indian tribes in North and South Dakota portable housing units at the Grand Forks Air Force base in North Dakota which have been declared excess by the Department of Defense and requested for transfer by the Department of the Interior.

BYRD AMENDMENT NO. 5276

Mr. SHELBY (for Mr. BYRD) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 49, line 18, insert before the colon ": *Provided*, That of such amount provided for non-prospectus construction projects $250,000 may be available until expended for the acquisition, lease, construction, and equipping of flexiplace work telecommuting centers in the State of West Virginia".

HATFIELD AMENDMENT NO. 5277

Mr. SHELBY (for Mr. HATFIELD) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 55, line 11 after "Missouri" insert: ": *Provided further*, That $1,450,000 may be available for the renovation of the Pioneer Courthouse located at 520 SW Morrison in Portland, Oregon".

GRAMM AMENDMENT NO. 5278

Mr. SHELBY (for Mr. GRAMM) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . SENSE OF THE SENATE IN SUPPORT OF NEW BORDER STATION CONSTRUCTION IN LAREDO, TEXAS.

(a) The Senate finds that:

(1) In 1995, over one-third (35%) of all U.S. exports to Mexico were processed through the Port of Laredo;

(2) Nearly two-thirds of all U.S. exports to Mexico that went through a south Texas port of entry went through the Port of Laredo in 1995;

(3) The value of imports processed through the Port of Laredo in 1995 exceeded $15 billion, and the value of all exports was $14.7 billion for that year;

(4) The number of loaded, cross-border shipments, both northbound and southbound, through the Port of Laredo is projected to double from 1995 to the year 2000, from 851,745 shipments to 1,703,490;

(5) The City of Laredo received on October 3, 1994 a Presidential Permit from the U.S. State Department to construct a third bridge in the city, and in February 1996 the U.S. Coast Guard issued a permit for the bridge's construction;

(6) Financing of the new bridge has been secured from both sponsors, the cities of Laredo and Nuevo Laredo, and in February 1997 the City of Nuevo Laredo is scheduled to begin construction of an access road connecting the bridge with the loop around Nuevo Laredo;

(7) U.S. Customs revenue generated at the Port of Laredo totaled $216 million in 1995,

an increase of $13 million from the previous year, while the U.S. Government's estimated cost for operating border station facilities in Laredo is $10 million, so that the Port generated over $200 million for the U.S. Treasury in 1995; and

(8) The new bridge will greatly enhance safety in the downtown area because it will allow the diversion of commercial traffic from the two existing downtown bridges to the new bridge, since the two downtown bridges will be strictly passenger bridges, with the new bridge and the Colombia Bridge (22 miles from Laredo) devoted to commercial traffic.

(b) It is the sense of the Senate that:

(1) The construction of a third bridge in Laredo is vitally needed to accommodate increased trade with Mexico and to relieve traffic congestion, road damage, and pollution in downtown Laredo caused by commercial traffic; and

(2) The Administrator of the General Services Administration should accelerate the timetable for design and construction of a border station for the new Laredo bridge to ensure that the bridge can be opened to international traffic as soon as possible.

KERRY (AND OTHERS) AMENDMENT NO. 5279

Mr. KERRY (for himself, Mrs. FEINSTEIN, Mr. KENNEDY, and Mr. HARKIN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 14, line 6, strike "$395,597,000" and insert "$416,897,000, of which $21,300,000, to remain available until expended, shall be available to conduct the study under section 732(a) of Public Law 104–132 (relating to marking, rendering inert, and licensing of explosive materials) and to conduct a study of threats to law enforcement officers from the criminal use of firearms and ammunition; and".

On page 22, line 14, strike "$4,085,355,000" and insert "$4,064,055,000".

On page 25, between lines 21 and 22, insert:

SEC. . (a) Section 732(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is hereby repealed.

(b) It is the sense of the Senate that the $21,300,000 reduction in funds available for tax law enforcement to fund the explosive materials and law enforcement officers safety study be achieved as follows:

(1) $9,700,000 from the delay required by this Act in implementing field restructuring of the Internal Revenue Service.

(2) $11,600,000 from administrative and other savings in tax law enforcement activities.

DOMENICI AMENDMENT NO. 5280

(Ordered to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place insert the following:

SEC. . TRANSITION FROM AFDC ENTITLEMENT PROGRAM TO TANF BLOCK GRANT.

Section 116(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended—

(1) by striking "Effective" and inserting:

"(1) IN GENERAL.—Except as provided in paragraph (2), effective"; and

(2) by adding at the end the following:

"(2) TRANSITION RULE.—

"(A) IN GENERAL.—In the case of any State not opting to accelerate the effective date of this title under subsection (b)(1), paragraph (1) shall be applied to such State by substituting "July 1, 1997" for "October 1, 1996".

"(B) PAYMENTS TO STATES.—

"(i) IN GENERAL.—Notwithstanding subsection (b)(1)(B)(ii)(II), the total obligation of the Federal Government for fiscal year 1997 to any State described in subparagraph (A) shall be increased by ¼ of the State family assistance grant for such State for such fiscal year.

"(ii) TIMING OF PAYMENT.—Any State eligible for the ¼ increase in the Federal obligation to such State under clause (i), shall receive an outlay representing such increase at the beginning of the 4th quarter of fiscal year 1997.".

D'AMATO AMENDMENT NO. 5281

(Ordered to lie on the table.)

Mr. D'AMATO (for himself and Mr. MOYNIHAN) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill insert the following new section:

Sec. . For all reasonable costs associated with the recovery effort of TWA Flight 800, there shall be made available no more than $10 million to the Department of the Treasury, "Departmental Offices" account, which shall remain available until expended. The State of New York, counties, and local governments that provided assistance to this effort shall be eligible for reimbursement of expenses incurred during this effort. If the value of total claims exceeds the appropriated sum, the funds shall be allocated on a pro-rated basis. All claims by New York State, counties, and municipalities shall be forwarded to the appropriate department of the State of New York, who in turn will forward a claim to the Department of the Treasury.

On page 2, line 18 strike "$111,348,000 and insert "$121,348,000".

On page 53, line 14 strike "$360,000,000" and insert "$355,000,000".

On page 55, line 15 strike "$2,343,795,000" and insert "$2,343,790,000.

COVERDELL AMENDMENT NO. 5282

(Ordered to lie on the table.)

Mr. COVERDELL submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new section:

Sec. . No part of any appropriation contained in this Act shall be available for the payment of the salary of any officer or employee of the Executive Office of the President who—

(1) in the course of employment has access to information, documents, or, records that are—

(A) subject to the exemption under section 552(b)(7) of title 5, United States Code; or

(B) determined to be national security information in accordance with Executive Order No. 12356; and

(2) is determined as a result of a pre-employment background check, or is determined after such employment begins, to have illegally used any controlled substance during—

(A) the 5-year period before the date of the beginning of such employment; or

(B) the period of any employment in the Executive Office of the President.

JOHNSTON AMENDMENT NO. 5283

(Ordered to lie on the table.)

Mr. JOHNSTON submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

"SEC. . AMENDMENT TO THE NUCLEAR WASTE POLICY ACT.

"The Nuclear Waste Policy Act of 1982 is amended to read as follows:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Nuclear Waste Policy Act of 1996'.

"(b) TABLE OF CONTENTS.—

"Sec. 1. Short title and table of contents.
"Sec. 2. Definitions.

"TITLE I—OBLIGATIONS

"Sec. 101. Obligations of the Secretary of Energy.

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

"Sec. 201 Intermodal Transfer.
"Sec. 202. Transportation planning.
"Sec. 203. Transportation requirements.
"Sec. 204. Interim storage.
"Sec. 205. Permanent repository.
"Sec. 206. Land withdrawal.

"TITLE III—LOCAL RELATIONS

"Sec. 301. Financial Assistance.
"Sec. 302. On-Site Representative.
"Sec. 303. Acceptance of Benefits.
"Sec. 304. Restrictions on Use of Funds.
"Sec. 305. Land Conveyances.

"TITLE IV—FUNDING AND ORGANIZATION

"Sec. 401. Program Funding.
"Sec. 402. Office of Civilian Radioactive Waste Management.
"Sec. 403. Federal contribution.

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

"Sec. 501. Compliance with other laws.
"Sec. 502. Judicial review of agency actions.
"Sec. 503. Licensing of facility expansions and transshipments.
"Sec. 504. Siting a second repository.
"Sec. 505. Financial arrangements for low-level radioactive waste site closure.
"Sec. 506. Nuclear Regulatory Commission training authority.
"Sec. 507. Emplacement schedule.
"Sec. 508. Transfer of Title.
"Sec. 509. Decommissioning Pilot Program.
"Sec. 510. Water Rights.

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"Sec. 601. Definitions.
"Sec. 602. Nuclear Waste Technical Review Board.
"Sec. 603. Functions.
"Sec. 604. Investigatory powers.
"Sec. 605. Compensation of members.
"Sec. 606. Staff.
"Sec. 607. Support services.
"Sec. 608. Report.
"Sec. 609. Authorization of appropriations.
"Sec. 610. Termination of the board.

"TITLE VII—MANAGEMENT REFORM

"Sec. 701. Management reform initiatives.
"Sec. 702. Reporting.
"Sec. 703. Effective date.

"SECTION 2. DEFINITIONS.

"For purposes of this Act:

"(1) ACCEPT, ACCEPTANCE.—The terms 'accept' and 'acceptance' mean the Secretary's act of taking possession of spent nuclear fuel or high-level radioactive waste.

"(2) AFFECTED INDIAN TRIBE.—The term "affected Indian tribe" means any Indian tribe—

"(A) whose reservation is surrounded by or borders an affected unit of local government, or

"(B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of an interim storage facility or a repository if the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

"(3) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term 'affected unit of local government' means the unit of local government with jurisdiction over the site of a repository or interim storage facility. Such term may, at the discretion of the Secretary, include other units of local government that are contiguous with such unit.

"(4) ATOMIC ENERGY DEFENSE ACTIVITY.—The term 'atomic energy defense activity means any activity' of the Secretary performed in whole or in part in carrying out any of the following functions:

"(A) Naval reactors development.

"(B) Weapons activities including defense inertial confinement fusion.

"(C) Verification and control technology.

"(D) Defense nuclear materials production.

"(E) Defense nuclear waste and materials byproducts management.

"(F) Defense nuclear materials security and safeguards and security investigations.

"(G) Defense research and development.

"(5) CIVILIAN NUCLEAR POWER REACTOR.—The term 'civilian nuclear power reactor' means a civilian nuclear power plant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

"(6) COMMISSION.—The term 'Commission' means the Nuclear Regulatory Commission.

"(7) CONTRACTS.—The term 'contracts' means the contracts, executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, under section 302(a) of the Nuclear Waste Policy Act of 1982, by the Secretary and any person who generates or holds title to spent nuclear fuel or high-level radioactive waste of domestic origin for acceptance of such waste or fuel by the Secretary and the payment of fees to offset the Secretary's expenditures, and any subsequent contracts executed by the Secretary pursuant to section 401(a) of this Act."

"(8) CONTRACT HOLDERS.—The term 'contract holders' means parties (other than the Secretary) to contracts.

"(9) DEPARTMENT.—The term 'Department' means the Department of Energy.

"(10) DISPOSAL.—The term 'disposal' means the emplacement in a repository of spent nuclear fuel, high-level radioactive waste, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits recovery of such material for any future purpose.

"(11) DISPOSAL SYSTEM.—The term 'disposal system' means all natural barriers and engineered barriers, and engineered systems and components, that prevent the release of radionuclides from the repository.

"(12) EMPLACEMENT SCHEDULE.—The term 'emplacement schedule' means the schedule established by the Secretary in accordance with section 507(a) for emplacement of spent nuclear fuel and high-level radioactive waste at the interim storage facility.

"(13) ENGINEERED BARRIERS AND ENGINEERED SYSTEMS AND COMPONENTS.—The terms 'engineered barriers' and 'engineered systems and components,' mean man-made components of a disposal system. These terms include the spent nuclear fuel or high-level radioactive waste form, spent nuclear fuel package or high-level radioactive waste package, and other materials placed over and around such packages.

"(14) HIGH-LEVEL RADIOACTIVE WASTE.—The term 'high-level radioactive waste' means—

"(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

"(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation, which includes any low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of title 10, Code of Federal Regulations, as in effect on January 26, 1983.

"(15) FEDERAL AGENCY.—The term 'Federal agency' means any Executive agency, as defined in section 105 of title 5, United States Code.

"(16) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

"(17) INTEGRATED MANAGEMENT SYSTEM.—The term 'integrated management system' means the system developed by the Secretary for the acceptance, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste under title II of this Act.

"(18) INTERIM STORAGE FACILITY.—The term 'interim storage facility' means a facility designed and constructed for the receipt, handling, possession, safeguarding, and storage of spent nuclear fuel and high-level radioactive waste in accordance with title II of this Act.

"(19) INTERIM STORAGE FACILITY SITE.—The term 'interim storage facility site' means the specific site within Area 25 of the Nevada Test Site that is designated by the Secretary and withdrawn and reserved in accordance with this Act for the location of the interim storage facility.

"(20) LOW-LEVEL RADIOACTIVE WASTE.—The term 'low-level radioactive waste' means radioactive material that—

"(A) is not spent nuclear fuel, high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

"(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

"(21) METRIC TONS URANIUM.—The terms 'metric tons uranium' and 'MTU' means the amount of uranium in the original unirradiated fuel element whether or not the spent nuclear fuel has been reprocessed.

"(22) NUCLEAR WASTE FUND.—The terms 'Nuclear Waste Fund' and 'waste fund' mean the nuclear waste fund established in the United States Treasury prior to the date of enactment of this Act under section 302(c) of the Nuclear Waste Policy Act of 1982.

"(23) OFFICE.—The term 'Office' means the Office of Civilian Radioactive Waste Management established within the Department prior to the date of enactment of this Act under the provisions of the Nuclear Waste Policy Act of 1982.

"(24) PROGRAM APPROACH.—The term 'program approach' means the Civilian Radioactive Waste Management Program Plan, dated May 6, 1996, as modified by this Act, and as amended from time to time by the Secretary in accordance with this Act.

"(25) REPOSITORY.—The term 'repository' means a system designed and constructed under title II of this Act for the geologic disposal of spend nuclear fuel and high-level radioactive waste, including both surface and subsurface areas at which spent nuclear fuel and high-level radioactive waste receipt, handling, possession, safeguarding, and storage are conducted.

"(26) SECRETARY.—The term 'Secretary' means the Secretary of Energy.

"(27) SITE CHARACTERIZATION.—The term 'site characterization' means activities, whether in a laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory facilities, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the licensability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to asses whether site characterization should be undertaken.

"(28) SPENT NUCLEAR FUEL.—The term 'spend nuclear fuel' means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

"(29) STORAGE.—The term 'storage' means retention of spent nuclear fuel or high-level radioactive waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

"(30) WITHDRAWAL.—The term 'withdrawal' has the same definition as that set forth in section 103(j) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(j)).

"(31) YUCCA MOUNTAIN SITE.—The term "Yucca Mountain site" means the area in the State of Nevada that is withdrawn and reserved in accordance with this Act for the location of a repository.

"TITLE I—OBLIGATIONS

"SEC. 101. OBLIGATIONS OF THE SECRETARY OF ENERGY.

"(a) DISPOSAL.—The Secretary shall develop and operate an integrated management system for the storage and permanent disposal of spent nuclear fuel and high-level radioactive waste.

"(b) INTERIM STORAGE.—The Secretary shall store spent nuclear fuel and high-level radioactive waste from facilities designated by contract holders at an interim storage facility pursuant to section 204 in accordance with the emplacement schedule, beginning not later than November 30, 1999.

"(c) TRANSPORTATION.—The Secretary shall provide for the transportation of spent nuclear fuel and high-level radioactive waste accepted by the Secretary. The Secretary shall procure all systems and components necessary to transport spent nuclear fuel and high-level radioactive waste from facilities

designated by contract holders to and among facilities comprising the Integrated Management System. Consistent with the Buy American Act (41 U.S.C. 10a–10c), unless the Secretary shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, all such systems and components procured by the Secretary shall be manufactured in the United States, with the exception of any transportable storage systems purchased by contract holders prior to the effective date of the Nuclear Waste Policy Act of 1996 and procured by the Secretary from such contract holders for use in the integrated management system.

"(d) INTEGRATED MANAGEMENT SYSTEM.—The Secretary shall expeditiously pursue the development of each component of the integrated management system, and in so doing shall seek to utilize effective private sector management and contracting practices.

"(e) PRIVATE SECTOR PARTICIPATION.—In administering the Integrated Management System, the Secretary shall, to the maximum extent possible, utilize, employ, procure and contract with, the private sector to fulfill the Secretary's obligations and requirements under this Act.

"(f) PRE-EXISTING RIGHTS.—Nothing in this Act is intended to or shall be construed to modify—

"(1) any right of a contract holder under section 302(a) of the Nuclear Waste Policy Act of 1982, or under a contract executed prior to the date of enactment of this Act under that section; or

"(2) obligations imposed upon the federal government by the U.S. District Court of Idaho in an order entered on October 17, 1995 in *United States* v. *Batt* (No. 91–0054–S–EJL).

"(g) LIABILITY.—Subject to subsection (f), nothing in this Act shall be construed to subject the United States to financial liability for the Secretary's failure to meet any deadline for the acceptance or emplacement of spent nuclear fuel or high-level radioactive waste for storage or disposal under this Act.

"TITLE II—INTEGRATED MANAGEMENT SYSTEM

SEC. 201. INTERMODAL TRANSFER.—

"(a) ACCESS.—The Secretary shall utilize heavy-haul truck transport to move spent nuclear fuel and high-level radioactive waste from the mainline rail line at Caliente, Nevada, to the interim storage facility site.

"(b) CAPABILITY DATE.—The Secretary shall develop the capability to commence rail to truck intermodal transfer at Caliente, Nevada, no later than November 30, 1999. Intermodal transfer and related activities are incidental to the interstate transportation of spent nuclear fuel and high-level radioactive waste.

"(c) ACQUISITIONS.—The Secretary shall acquire lands and rights-of-way necessary to commence intermodal transfer at Caliente, Nevada.

"(d) REPLACEMENTS.—The Secretary shall acquire and develop on behalf of, and dedicate to, the City of Caliente, Nevada, parcels of land and right-of-way within Lincoln County, Nevada, as required to facilitate replacement of land and city wastewater disposal facilities necessary to commence intermodal transfer pursuant to this Act. Replacement of land and city wastewater disposal activities shall occur no later than November 30, 1999.

"(e) NOTICE AND MAP.—Within 6 months of the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

"(1) publish in the Federal Register a notice containing a legal description of the sites and rights-of-way to be acquired under this subsection; and

"(2) file copies of a map of such sites and rights-of-way with the Congress, the Secretary of the Interior, the State of Nevada, the Archivist of the United States, the Board of Lincoln County Commissioners, the Board of Nye County Commissioners, and the Caliente City Council.

Such map and legal description shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors and legal descriptions and make minor adjustments in the boundaries.

"(f) IMPROVEMENTS.—The Secretary shall make improvements to existing roadways selected for heavy-haul truck transport between Caliente, Nevada, and the interim storage facility site as necessary to facilitate year-round safe transport of spent nuclear fuel and high-level radioactive waste.

"(g) LOCAL GOVERNMENT INVOLVEMENT.—The Commission shall enter into a Memorandum of Understanding with the City of Caliente and Lincoln County, Nevada, to provide advice to the Commission regarding intermodal transfer and to facilitate on-site representation. Reasonable expenses of such representation shall be paid by the Secretary.

"(h) BENEFITS AGREEMENT.—

"(1) IN GENERAL.—The Secretary shall offer to enter into an agreement with the City of Caliente and Lincoln County, Nevada concerning the integrated management system.

"(2) AGREEMENT CONTENT.—Any agreement shall contain such terms and conditions, including such financial and institutional arrangements, as the Secretary and agreement entity determine to be reasonable and appropriate and shall contain such provisions as are necessary to preserve any right to participation or compensation of the City of Caliente and Lincoln County, Nevada.

"(3) AMENDMENT.—An agreement entered into under this subsection may be amended only with the mutual consent of the parties to the amendment and terminated only in accordance with paragraph (4).

"(4) TERMINATION.—The Secretary shall terminate the agreement under this subsection if any major element of the integrated management system may not be completed.

"(5) LIMITATION.—Only 1 agreement may be in effect at any one time.

"(6) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

"(i) CONTENT OF AGREEMENT.

"(1) SCHEDULE.—In addition to the benefits to which the City of Caliente and Lincoln County is entitled to under this title, the Secretary shall make payments under the benefits agreement in accordance with the following schedule:

BENEFITS SCHEDULE

[Amounts in millions]

Event	*Payment*
(A) Annual Payments prior to first receipt of spent fuel	$2.5
(B) Annual payments beginning upon first spent fuel receipt	5.0
(C) Payment upon closure of the intermodal transfer facility	5.0

"(2) DEFINITIONS.—For purposes of this section, the term—

"(A) 'spent fuel' means high-level radioactive waste or spent nuclear fuel; and

"(B) 'first spent fuel receipt' does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

"(3) ANNUAL PAYMENTS.—Annual payments prior to first spent fuel receipt under paragraph (1)(A) and shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

"(4) REDUCTION.—If the first spent fuel payment under paragraph (1)(B) is made within 6 months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to 1/12 of such annual payment under paragraph (1)(A) for each full month less than 6 that has not elapsed since the last annual payment under paragraph (1)(A).

"(5) RESTRICTIONS.—The Secretary may not restrict the purposes for which the payments under this section may be used.

"(6) DISPUTE.—In the event of a dispute concerning such agreement, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

"(7) CONSTRUCTION.—The signature of the Secretary on a valid benefits agreement under this section shall constitute a commitment by the United States to make payments in accordance with such agreement under section 401(c)(2).

"(j) INITIAL LAND CONVEYANCES.

"(1) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after enactment of this Act, all right, title and interest of the United States in the property described in paragraph (2), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Lincoln, Nevada, unless the county notifies the Secretary of Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Lincoln under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Lincoln County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

"(2) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, shall be conveyed under paragraph (1) to the County of Lincoln, Nevada:

Map 10: Lincoln County, Parcel M, Industrial Park Site

Map 11: Lincoln County, Parcel F, Mixed Use Industrial Site

Map 13: Lincoln County, Parcel J, Mixed Use, Alamo Community Expansion Area

Map 14: Lincoln County, Parcel E, Mixed Use, Pioche Community Expansion Area

Map 15: Lincoln County, Parcel B, Landfill Expansion Site.

"(3) CONSTRUCTION.—The maps and legal descriptions of special conveyances referred to in paragraph (2) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal

descriptions and make minor adjustments in the boundaries of the sites.

"(4) EVIDENCE OF TITLE TRANSFER.—Upon request of the County of Lincoln, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

"SEC. 202. TRANSPORTATION PLANNING.

"(a) TRANSPORTATION READINESS.—The Secretary shall take those actions that are necessary and appropriate to ensure that the Secretary is able to transport safely spent nuclear fuel and high-level radioactive waste from sites designated by the contract holders to mainline transportation facilities, using routes that minimize, to the maximum practicable extent consistent with Federal requirements governing transportation of hazardous materials, transportation of spent nuclear fuel and high-level radioactive waste through populated areas, beginning not later than November 30, 1999, and, by that date, shall, in consultation with the Secretary of Transportation, develop and implement a comprehensive management plan that ensures that safe transportation of spent nuclear fuel and high-level radioactive waste from the sites designated by the contract holders to the interim storage facility site beginning not later than November 30, 1999.

"(b) TRANSPORTATION PLANNING.—In conjunction with the development of the logistical plan in accordance with subsection (a), the Secretary shall update and modify, as necessary, the Secretary's transportation institutional plans to ensure that institutional issues are addressed and resolved on a schedule to support the commencement of transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility no later than November 30, 1999. Among other things, such planning shall provide a schedule and process for addressing and implementing, as necessary, transportation routing plans, transportation contracting plans, transportation training in accordance with Section 203, and public education regarding transportation of spent nuclear fuel and high level radioactive waste; and transportation tracking programs.

"SEC. 203. TRANSPORTATION REQUIREMENTS.

"(a) PACKAGE CERTIFICATION.—No spent nuclear fuel and high level radioactive waste may be transported by or for the Secretary under this Act except in packages that have been certified for such purposes by the Commission.

"(b) STATE NOTIFICATION.—The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under this Act.

"(c) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance and funds to States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste for training for public safety officials of appropriate units of local government. The Secretary shall also provide technical assistance and funds for training directly to national nonprofit employee organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be directly engaged in the transportation of spent nuclear fuel and high-level radioactive waste, or emergency response or post-emergency response with respect to such transportation. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations, and shall be consistent with any training standards established by the Secretary of Transportation in accordance with subsection (g). The Secretary's duty to provide technical and financial assistance under this subsection shall be limited to amounts specified in annual appropriations.

"(d) PUBLIC EDUCATION.—The Secretary shall conduct a program to educate the public regarding the transportation of spent nuclear fuel and high-level radioactive waste, with an emphasis upon those States, units of local government, and Indian tribes through whose jurisdiction the Secretary plans to transport substantial amounts of spent nuclear fuel or high-level radioactive waste.

"(e) COMPLIANCE WITH TRANSPORTATION REGULATIONS.—Any person that transports spent nuclear fuel or high-level radioactive waste under the Nuclear Waste Policy Act of 1986, pursuant to a contract with the Secretary, shall comply with all requirements governing such transportation issued by the federal, state and local governments, and Indian tribes, in the same way and to the same extent that any person engaging in that transportation that is in or affects interstate commerce must comply with such requirements, as required by 49 U.S.C. sec. 5126.

"(f) EMPLOYEE PROTECTION.—Any person engaged in the interstate commerce of spent nuclear fuel or high-level radioactive waste under contract to the Secretary pursuant to this Act shall be subject to and comply fully with the employee protection provisions of 49 U.S.C. 20109 and 49 U.S.C. 31105.

"(g) TRAINING STANDARD.—(1) No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary of Transportation, pursuant to authority under other provisions of law, in consultation with the Secretary of Labor and the Commission, shall promulgate a regulation establishing training standards applicable to workers directly involved in the removal and transportation of spent nuclear fuel and high-level radioactive waste. The regulation shall specify minimum training standards applicable to workers, including managerial personnel. The regulation shall require that the employer possess evidence of satisfaction of the applicable training standard before any individual may be employed in the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(2) If the Secretary of Transportation determines, in promulgating the regulation required by subparagraph (1), that regulations promulgated by the Commission establish adequate training standards for workers, then the Secretary of Transportation can refrain from promulgating additional regulations with respect to worker training in such activities. The Secretary of Transportation and the Commission shall work through their Memorandum of Understanding to ensure coordination of worker training standards and to avoid duplicative regulation.

"(3) The training standards required to be promulgated under subparagraph (1) shall, among other things deemed necessary and appropriate by the Secretary of Transportation, include the following provisions—

"(A) a specified minimum number of hours of initial off site instruction and actual field experience under the direct supervision of a trained, experienced supervisor;

"(B) a requirement that onsite managerial personnel receive the same training as workers, and a minimum number of additional hours of specialized training pertinent to their managerial responsibilities; and

"(C) a training program applicable to persons responsible for responding to and cleaning up emergency situations occurring during the removal and transportation of spent nuclear fuel and high-level radioactive waste.

"(4) There is authorized to be appropriated to the Secretary of Transportation, from general revenues, such sums as may be necessary to perform his duties under this subsection.

"SEC. 204. INTERIM STORAGE.

"(a) AUTHORIZATION.—The Secretary shall design, construct, and operate a facility for the interim storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility site. The interim storage facility shall be subject to licensing pursuant to the Atomic Energy Act of 1954 in accordance with the Commission's regulations governing the licensing of independent spent fuel storage installations, which regulations shall be amended by the Commission as necessary to implement the provisions of this Act. The interim storage facility shall commence operation in phases in accordance with subsection (b).

"(b) SCHEDULE.—(1) The Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at the interim storage facility at the interim storage facility site by November 30, 1999, except that:

"(A) The Secretary shall not begin any construction activities at the interim storage facility site before December 31, 1998.

"(B) The Secretary shall cease all activities (except necessary termination activities) at the Yucca Mountain site if the President determines, in his discretion, on or before December 31, 1998, based on a preponderance of the information available at such time, that the Yucca Mountain site is unsuitable for development as a repository, including geologic and engineered barriers, because of a substantial likelihood that a repository of useful size cannot be designed, licensed, and constructed at the Yucca Mountain site.

"(C) No later than June 30, 1998, the Secretary shall provide to the President and to the Congress a viability assessment of the Yucca Mountain site. The viability assessment shall include—

"(i) the preliminary design concept for the critical elements of the repository and waste package,

"(ii) a total system performance assessment, based upon the design concept and the scientific data and analysis available by June 30, 1998, describing the probable behavior of the repository in the Yucca Mountain geologic setting relative to the overall system performance standard set forth in section 205(d) of this Act,

"(iii) a plan and cost estimate for the remaining work required to complete a license application, and

"(iv) an estimate of the costs to construct and operate the repository in accordance with the design concept.

"(D) Within 18 months of a determination by the President that the Yucca Mountain site is unsuitable for development as a repository under paragraph (B), the President shall designate a site for the construction of an interim storage facility. If the President does not designate a site for the construction of an interim storage facility, or the construction of an interim storage facility at the designated site is not approved by law

within 24 months of the President's determination that the Yucca Mountain site is not suitable for development as a repository, the Secretary shall begin construction of an interim storage facility at the interim storage facility site as defined in section 2(19) of this Act. The interim storage facility site as defined in section 2(19) of this Act shall be deemed to be approved by law for purposes of this section.

"(2) Upon the designation of an interim storage facility site by the President under paragraph (1)(D), the Secretary shall proceed forthwith and without further delay with all activities necessary to begin storing spent nuclear fuel and high-level radioactive waste at an interim storage facility at the designated site, except that the Secretary shall not begin any construction activities at the designated interim storage facility site before the designated interim storage facility site is approved by law.

"(c) DESIGN.—

"(1) The interim storage facility shall be designed in two phases in order to commence operations no later than November 30, 1999. The design of the interim storage facility shall provide for the use of storage technologies, licensed, approved, or certified by the Commission for use at the interim storage facility as necessary to ensure compatibility between the interim storage facility and contract holders' spent nuclear fuel and facilities, and to facilitate the Secretary's ability to meet the Secretary's obligations under this Act.

"(2) The Secretary shall consent to an amendment to the contracts to provide for reimbursement to contract holders for transportable storage systems purchased by contract holders if the Secretary determines that it is cost effective to use such transportable storage systems as part of the integrated management system, provided that the Secretary shall not be required to expend any funds to modify contract holders's storage or transport systems or to seek additional regulatory approvals in order to use such systems.

"(d) LICENSING.—

"(1) PHASES.—The interim storage facility shall be licensed by the Commission in two phases in order to commence operations no later than November 30, 1999.

"(2) FIRST PHASE.—No later than 12 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the first phase of the interim storage facility. The Environmental Report and Safety Analysis Report submitted in support of such license application shall be consistent with the scope of authority requested in the license application. The license issued for the first phase of the interim storage facility shall have a term of 20 years. The interim storage facility licensed in the first phase shall have a capacity of not more than 15,000 MTU. The Commission shall issue a final decision granting or denying the application for the first phase license no later than 16 months from the date of the submittal of the application for such license.

"(3) SECOND PHASE.—No later than 30 months after the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall submit to the Commission an application for a license for the second phase interim storage facility. The license for the second phase facility shall authorize a storage capacity of 40,000 MTU. If the Secretary does not submit the license application for construction of a respository by February 1, 2002, or does not begin full spent nuclear fuel receipt operations at a repository by January 17, 2010, the license shall authorize a storage capacity of 60,000 MTU. The license application shall be submitted such that the license can be issued to permit the second phase facility to begin full spent nuclear fuel receipt operations no later than December 31, 2002. The license for the second phase shall have an initial term of up to 100 years, and shall be renewable for additional terms upon application of the Secretary.

"(e) ADDITIONAL AUTHORITY.—

"(1) CONSTRUCTION.—For purposes of complying with this section, the Secretary may commence site preparation for the interim storage facility as soon as practicable after the date of enactment of the Nuclear Waste Policy Act of 1996 and shall commence construction of each phase of the interim storage facility subsequent to submittal of the license application for such phase except that the Commission shall issue an order suspending such construction at any time if the Commission determines that such construction poses an unreasonable risk to public health and safety or the environment. The Commission shall terminate all or part of such order upon a determination that the Secretary has taken appropriate action to eliminate such risk.

"(2) FACILITY USE.—Notwithstanding any otherwise applicable licensing requirement, the Secretary may utilize any facility owned by the Federal Government on the date of enactment of the Nuclear Waste Policy Act of 1996 within the boundaries of the interim storage facility site, in connection with an imminent and substantial endangerment to public health and safety at the interim storage facility prior to commencement of operations during the second phase.

"(3) EMPLACEMENT OF FUEL AND WASTE.—Subject to paragraph (i), once the Secretary has achieved the annual acceptance rate for spent nuclear fuel from civilian nuclear power reactors established pursuant to the contracts executed prior to the date of enactment of the Nuclear Waste Policy Act of 1996, as set forth in the Secretary's annual capacity report dated March, 1995 (DOE/RW-0457), the Secretary shall accept, in an amount not less than 25% of the difference between the contractual acceptance rate and the annual emplacement rate for spent nuclear fuel from civilian nuclear power reactors established under section 507(a), the following radioactive materials:

"(A) spent nuclear fuel or high-level radioactive waste of domestic origin from civilian nuclear power reactors that have permanently ceased operation on or before the date of enactment of the Nuclear Waste Policy Act of 1996;

"(B) spent nuclear fuel from foreign research reactors, as necessary to promote non-proliferation objectives; and

"(C) spent nuclear fuel, including spent nuclear fuel from naval reactors, and high-level radioactive waste from atomic energy defense activities.

"(f) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—

"(1) PRELIMINARY DECISIONMAKING ACTIVITIES.—The Secretary's and President's activities under this section, including, but not limited to, the selection of a site for the interim storage facility, assessments, determinations and designations made under section 204(b), the preparation and submittal of a license application and supporting documentation, the construction of a facility under paragraph (e)(1) of this section, and facility use pursuant to paragraph (e)(2) of this section shall be considered preliminary decisionmaking activities for purposes of judicial review. The Secretary shall not prepare an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any environmental review under subparagraph (E) or (F) of such Act before conducting these activities.

"(2) ENVIRONMENTAL IMPACT STATEMENT.—

"(A) FINAL DECISION.—A final decision by the Commission to grant or deny a license application for the first or second phase of the interim storage facility shall be accompanied by an Environmental Impact Statement prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). In preparing such Environmental Impact Statement, the Commission—

"(i) shall ensure that the scope of the Environmental Impact Statement is consistent with the scope of the licensing action; and

"(ii) shall analyze the impacts of the transportation of spent nuclear fuel and high-level radioactive waste to the interim storage facility in a generic manner.

"(B) CONSIDERATIONS.—Such Environmental Impact Statement shall not consider—

"(i) the need for the interim storage facility, including any individual component thereof;

"(ii) the time of the initial availability of the interim storage facility;

"(iii) any alternatives to the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility;

"(iv) any alternatives to the site of the facility as designated by the Secretary in accordance with subsection (a);

"(v) any alternatives to the design criteria for such facility or any individual component thereof, as specified by the Secretary in the license application; or

"(vi) the environmental impacts of the storage of spent nuclear fuel and high-level radioactive waste at the interim storage facility beyond the initial term of the license or the term of the renewal period for which a license renewal application is made.

"(g) JUDICIAL REVIEW.—Judicial review of the Commission's environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be consolidated with judicial review of the Commission's licensing decision. No court shall have jurisdiction to enjoin the construction or operation of the interim storage facility prior to its final decision on review of the Commission's licensing action.

"(h) WASTE CONFIDENCE.—The Secretary's obligation to construct and operate the interim storage facility in accordance with this section and the Secretary's obligation to develop an integrated management system in accordance with the provisions of this Act, shall provide sufficient and independent grounds for any further findings by the Commission of reasonable assurance that spent nuclear fuel and high-level radioactive waste will be disposed of safely and on a timely basis for purposes of the Commission's decision to grant or amend any license to operate any civilian nuclear power reactor under the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.).

"(i) STORAGE OF OTHER SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.—No later than 18 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Commission shall, by rule, establish criteria for the storage in the interim storage facility of fuel and waste listed in paragraph (e)(3)(A) through (C), to the

extent such criteria are not included in regulations issued by the Commission and existing on the date of enactment of the Nuclear Waste Policy Act of 1996. Following establishment of such criteria, the Secretary shall seek authority, as necessary, to store fuel and waste listed in paragraph (e)(3)(A) through (C) at the interim storage facility. None of the activities carried out pursuant to this paragraph shall delay, or otherwise affect, the development, construction, licensing, or operation of the interim storage facility.

"(j) SAVINGS CLAUSE.—The Commission shall, by rule, establish procedures for the licensing of any technology for the dry storage of spent nuclear fuel by rule and without, to the maximum extent possible, the need for site-specific approvals by the Commission. Nothing in this Act shall affect any such procedures, or any licenses or approvals issued pursuant to such procedures in effect on the date of enactment.

"SEC. 205. PERMANENT REPOSITORY.

"(a) REPOSITORY CHARACTERIZATION.—

"(1) GUIDELINES.—The guidelines promulgated by the Secretary and published at 10 CFR part 960 are annulled and revoked and the Secretary shall make no assumptions or conclusions about the licensability of the Yucca Mountain site as a repository by reference to such guidelines.

"(2) SITE CHARACTERIZATION ACTIVITIES.—The Secretary shall carry out appropriate site characterization activities at the Yucca Mountain site in accordance with the Secretary's program approach to site characterization. The Secretary shall modify or eliminate those site characterization activities designed only to demonstrate the suitability of the site under the guidelines referenced in paragraph (1).

"(3) SCHEDULE DATE.—Consistent with the schedule set forth in the program approach, as modified to be consistent with the Nuclear Waste Policy Act of 1996, no later than February 1, 2002, the Secretary shall apply to the Commission for authorization to construct a repository. If, at any time prior to the filing of such application, the Secretary determines that the Yucca Mountain site cannot satisfy the Commission's regulations applicable to the licensing of a geologic repository, the Secretary shall terminate site characterization activities at the site, notify Congress and the State of Nevada of the Secretary's determination and the reasons therefor, and recommend to Congress not later than 6 months after such determination further actions, including the enactment of legislation, that may be needed to manage the Nation's spent nuclear fuel and high-level radioactive waste.

"(4) MAXIMIZING CAPACITY.—In developing an application for authorization to construct the repository, the Secretary shall seek to maximize the capacity of the repository, in the most cost-effective manner, consistent with the need for disposal capacity.

"(b) REPOSITORY LICENSING.—Upon the completion of any licensing proceeding for the first phase of the interim storage facility, the Commission shall amend its regulations governing the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories to the extent necessary to comply with this Act. Subject to subsection (c), such regulations shall provide for the licensing of the repository according to the following procedures:

"(1) CONSTRUCTION AUTHORIZATION.—The Commission shall grant the Secretary a construction authorization for the repository upon determining that there is reasonable assurance that spent nuclear fuel and high-level radioactive waste can be disposed of in the respository—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(2) LICENSE.—Following substantial completion of construction and the filing of any additional information needed to complete the license application, the Commission shall issue a license to dispose of spent nuclear fuel and high-level radioactive waste in the repository if the Commission determines that the repository has been constructed and will operate—

"(A) in conformity with the Secretary's application, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(3) CLOSURE.—After emplacing spent nuclear fuel and high-level radioactive waste in the repository and collecting sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with the Commission's regulations applicable to the licensing of a repository, as modified in accordance with this Act, the Secretary shall apply to the Commission to amend the license to permit permanent closure of the repository. The Commission shall grant such license amendment upon finding that there is reasonable assurance that the repository can permanently closed—

"(A) in conformity with the Secretary's application to amend the license, the provisions of this Act, and the regulations of the Commission;

"(B) without unreasonable risk to the health and safety of the public; and

"(C) consistent with the common defense and security.

"(4) POST-CLOSURE.—The Secretary shall take those action necessary and appropriate at the Yucca Mountain site to prevent any activity at the site subsequent to repository closure that poses an unreasonable risk of—

"(A) breaching the repository's engineered or geologic barriers; or

"(B) increasing the exposure of individual members of the public to radiation beyond the release standard established in subsection (d)(1).

"(c) MODIFICATION OF REPOSITORY LICENSING PROCEDURE.—The Commission's regulations shall provide for the modification of the repository licensing procedure, as appropriate, in the event that the Secretary seeks a license to permit the emplacement in the repository, on a retrievable basis, of spent nuclear fuel or high-level radioactive waste as is necessary to provide the Secretary with sufficient confirmatory data on repository performance to reasonably confirm the basis for repository closure consistent with applicable regulations.

"(d) REPOSITORY LICENSING STANDARDS.—The Administrator of the Environmental Protection Agency shall, pursuant to authority under other provisions of law, issue generally applicable standards for the protection of the public from releases of radioactive materials or radioactivity from the repository. Such standards shall be consistent with the overall system performance standard established by this subsection unless the Administrator determines by rule that the overall system performance standard would constitute an unreasonable risk to health and safety. The Commission's repository licensing determinations for the protection of the public shall be based solely on a finding whether the repository can be operated in conformance with the overall system performance standard established in paragraph (1), applied in accordance with the provisions of paragraph (2), and the Administrator's radiation protection standards. The Commission shall amend its regulations in accordance with subsection (b) to incorporate each of the following licensing standards;

"(1) ESTABLISHMENT OF OVERALL SYSTEM PERFORMANCE STANDARD.—The standard for protection of the public from release of radioactive material or radioactivity from the repository shall prohibit releases that would expose an average member of the general population in the vicinity of the Yucca Mountain site to an annual dose in excess of 100 millirens unless the Commission determines by the rule that such standard would constitute an unreasonable risk to health and safety and establishes by rule another standard which will protect health and safety. Such standard shall constitute an overall system performance standard.

"(2) APPLICATION OF OVERALL SYSTEM PERFORMANCE STANDARD.—The Commission shall issue the license if finds reasonable assurance that for the first 1,000 years following the commencement of repository operations, the overall system performance standard will be met based on probabilistic evaluation, as appropriate, of compliance with the overall system performance standard in paragraph (1).

"(3) FACTORS.—For purposes of making the finding in paragraph (2)—

"(A) the Commission shall not consider catastrophic events where the health consequences of individual events themselves can be reasonably assumed to exceed the health consequences due to the impact of the events on repository performance;

"(B) for the purpose of this section, an average member of the general population in the vicinity of the Yucca Mountain site means a person whose physiology, age, general health, agricultural practice, eating habits, and social behavior represent the average for persons living in the vicinity of the site. Extremes in social behavior, eating habits, or other relevant practices or characteristics shall not be considered; and

"(C) the Commission shall assume that, following repository closure, the inclusion of engineered barriers and the Secretary's post-closure actions at the Yucca Mountain site, in accordance with subsection (b)(4), shall be sufficient to—

"(i) prevent any human activity at the site that poses an unreasonable risk of breaching the repository's engineered or geologic barriers; and

"(ii) prevent any increase in the exposure of individual members of the public to radiation beyond the allowable limits specified in paragraph (1).

"(4) ADDITIONAL ANALYSIS.—The Commission shall analyze the overall system performance through the use of probabilistic evaluations that use best estimate assumptions, data, and methods for the period commencing after the first 1,000 years of operation of the repository and terminating at 10,000 years after the commencement of operation of the repository.

"(e) NATIONAL ENVIRONMENTAL POLICY ACT.—

"(1) SUBMISSION OF STATEMENT.—Construction and operation of the repository shall be

considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall submit an environmental impact statement on the construction and operation of the repository to the Commission with the license application and shall supplement such environmental impact statement as appropriate.

"(2) CONSIDERATIONS.—For purposes of complying with the requirements of the National Environmental Policy Act of 1969 and this section, the Secretary shall not consider in the environmental impact statement the need for the repository, or alternative sites or designs for the repository.

"(3) ADOPTION BY COMMISSION.—The Secretary's environmental impact statement and any supplements thereto shall, to the extent practicable, be adopted to the Commission in connection with the issuance by the Commission of a construction authorization under subsection (b)(1), a license under subsection (b)(2), or a license amendment under subsection (b)(3). To the extent such statement or supplement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969, and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954. In any such statement or supplement prepared with respect to the repository, the Commission shall not consider the need for a repository, or alternate sites or designs for the repository.

"(f) JUDICIAL REVIEW.—No court shall have jurisdiction to enjoin issuance of the Commission repository licensing regulations prior to its final decision on review of such regulations.

"SEC. 206. LAND WITHDRAWAL.

"(a) WITHDRAWAL AND RESERVATION.—

"(1) WITHDRAWAL.—Subject to valid existing rights, the interim storage facility site and the Yucca Mountain site, as described in subsection (b), are withdrawn from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, the material sale laws, and the mining laws.

"(2) JURISDICTION.—Jurisdiction of any land within the interim storage facility site and the Yucca Mountain site managed by the Secretary of the Interior or any other Federal officer is transferred to the Secretary.

"(3) RESERVATION.—The interim storage facility site and the Yucca Mountain site are reserved for the use of the Secretary for the construction and operation, respectively, of the interim storage facility and the repository and activities associated with the purposes of this title.

"(b) LAND DESCRIPTION.—

"(1) BOUNDARIES.—The boundaries depicted on the map entitled "Interim Storage Facility Site Withdrawal Map," dated March 13, 1996, and on file with the Secretary, are established as the boundaries of the Interim Storage Facility site.

"(2) BOUNDARIES.—The boundaries depicted on the map entitled 'Yucca Mountain Site Withdrawal Map,' dated July 9, 1996, and on file with the Secretary, are established as the boundaries of the Yucca Mountain site.

"(3) NOTICE AND MAPS.—Within 6 months of the date of the enactment of the Nuclear Waste Policy Act of 1996, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the interim storage facility site; and

"(B) file copies of the maps described in paragraph (1), and the legal description of the interim storage facility site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(4) NOTICE AND MAPS.—Concurrent with the Secretary's application to the Commission for authority to construct the repository, the Secretary shall—

"(A) publish in the Federal Register a notice containing a legal description of the Yucca Mountain site; and

"(B) file copies of the maps described in paragraph (2), and the legal description of the Yucca Mountain site with the Congress, the Secretary of the Interior, the Governor of Nevada, and the Archivist of the United States.

"(5) CONSTRUCTION.—The maps and legal descriptions of the interim storage facility site and the Yucca Mountain site referred to in this subsection shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

"TITLE III—LOCAL RELATIONS

"SEC 301. FINANCIAL ASSISTANCE.

"(a) GRANTS.—The Secretary is authorized to make grants to any affected Indian tribe or affected unit of local government for purposes of enabling the affected Indian tribe or affected unit of local government—

"(1) to review activities taken with respect to the Yucca Mountain site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of the integrated management system on the affected Indian tribe or the affected unit of local government and its residents;

"(2) to develop a request for impact assistance under subsection (c);

"(3) to engage in any monitoring, testing, or evaluation activities with regard to such site;

"(4) to provide information to residents regarding any activities of the Secretary, or the Commission with respect to such site; and

'(5) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken with respect to such site.

"(b) SALARY AND TRAVEL EXPENSES.—Any salary or travel expense that would ordinarily be incurred by any affected Indian tribe or affected unit of local government may not be considered eligible for funding under this section.

"(c) FINANCIAL AND TECHNICAL ASSISTANCE.—

"(1) ASSISTANCE REQUESTS.—The Secretary is authorized to offer to provide financial and technical assistance to any affected Indian tribe or affected unit of local government requesting such assistance. Such assistance shall be designed to mitigate the impact on the affected Indian tribe or affected unit of local government of the development of the integrated management system.

"(2) REPORT.—Any affected Indian tribe or affected unit of local government may request assistance under this section by preparing and submitting to the Secretary a report on the economic, social, public health and safety, and environmental impacts that are likely to result from activities of the integrated management system.

"(d) OTHER ASSISTANCE.—

"(1) TAXABLE AMOUNTS.—In addition to financial assistance provided under this subsection, the Secretary is authorized to grants to any affected Indian tribe or affected unit of local government an amount each fiscal year equal to the amounts such affected Indian tribe or affected unit of local government, respectively, would receive if authorized to tax integrated management system activities, as such affected Indian tribe or affected unit of local government taxes the non-Federal real property and industrial activities occurring within such affected unit of local government.

"(2) TERMINATION.—Such grants shall continue until such time as all such activities, development, and operations are terminated at such site.

"(3) ASSISTANCE TO INDIAN TRIBES AND UNITS OF LOCAL GOVERNMENT.—

"(A) PERIOD.—Any affected Indian tribe or affected unit of local government may not receive any grant under paragraph (1) after the expiration of the 1-year period following the date on which the Secretary notifies the affected Indian tribe or affected unit of local government of the termination of the operation of the integrated management system.

"(B) ACTIVITIES.—Any affected Indian tribe or affected unit of local government may not receive any further assistance under this section if the integrated management system activities at such site are terminated by the Secretary or if such activities are permanently enjoined by any court.

SEC. 302. ON-SITE REPRESENTATIVE

"The Secretary shall offer to the unit of local government within whose jurisdiction a site for an interim storage facility or repository is located under this Act an opportunity to designate a representative to conduct on-site oversight activities at such site. The Secretary is authorized to pay the reasonable expenses of such representative.

SEC. 303. ACCEPTANCE OF BENEFITS.

"(a) CONSENT.—The acceptance or use of any of the benefits provided under this title by any affected Indian tribe or affected unit of local government shall not be deemed to be an expression of consent, express, or implied, either under the Constitution of the State or any law thereof, to the siting of an interim storage facility or repository in the State of Nevada, any provision of such Constitution or laws to the contrary notwithstanding.

"(b) ARGUMENTS.—Neither the United States nor any other entity may assert any argument based on legal or equitable estoppel, or acquiescence, or waiver, or consensual involvement, in response to any decision by the State to oppose the siting in Nevada of an interim storage facility or repository premised upon or related to the acceptance or use of benefits under this title.

"(c) LIABILITY.—No liability of any nature shall accrue to be asserted against any official of any governmental unit of Nevada premised solely upon the acceptance or use of benefits under this title.

SEC. 304. RESTRICTIONS ON USE OF FUNDS.

"None of the funding provided under this title may be used—

"(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

"(2) for litigation purposes; and

"(3) to support multistate efforts or other coalition-building activities inconsistent with the purposes of this Act.

SEC. 305. LAND CONVEYANCES.

"(a) CONVEYANCES OF PUBLIC LANDS.—One hundred and twenty days after enactment of

this Act, all right, title and interest of the United States in the property described in subsection (b), and improvements thereon, together with all necessary easements for utilities and ingress and egress to such property, including, but not limited to, the right to improve those easements, are conveyed by operation of law to the County of Nye, Nevada, unless the county notifies the Secretary of Interior or the head of such other appropriate agency in writing within 60 days of such date of enactment that it elects not to take title to all or any part of the property, except that any lands conveyed to the County of Nye under this subsection that are subject to a Federal grazing permit or lease or a similar federally granted permit or lease shall be conveyed between 60 and 120 days of the earliest time the Federal agency administering or granting the permit or lease would be able to legally terminate such right under the statutes and regulations existing at the date of enactment of this Act, unless Nye County and the affected holder of the permit or lease negotiate an agreement that allows for an earlier conveyance.

"(b) SPECIAL CONVEYANCES.—Notwithstanding any other law, the following public lands depicted on the maps and legal descriptions dated October 11, 1995, and on file with the Secretary shall be conveyed under subsection (a) to the County of Nye, Nevada:

Map 1: Proposed Pahrump Industrial Park Site

Map 2: Proposed Lathrop Wells (Gate 510) Industrial Park Site

Map 3: Pahrump Landfill Sites

Map 4: Amargosa Valley Regional Landfill Site

Map 5: Amargosa Valley Municipal Landfill Site

Map 6: Beatty Landfill/Transfer Station Site

Map 7: Round Mountain Landfill Site

Map 8: Tonopah Landfill Site

Map 9: Gabbs Landfill Site.

"(3) CONSTRUCTION.—The maps and legal descriptions of special conveyances referred to in subsection (b) shall have the same force and effect as if they were included in this Act. The Secretary may correct clerical and typographical errors in the maps and legal descriptions and make minor adjustments in the boundaries of the sites.

"(4) EVIDENCE OF TITLE TRANSFER.—Upon the request of the County of Nye, Nevada, the Secretary of the Interior shall provide evidence of title transfer.

"TITLE IV—FUNDING AND ORGANIZATION

"SEC. 401. PROGRAM FUNDING.

"(a) CONTRACTS.—

"(1) AUTHORITY OF SECRETARY.—In the performance of the Secretary's functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to spent nuclear fuel or high level radioactive waste of domestic origin for the acceptance of title and possession, transportation, interim storage, and disposal of such waste or spent fuel. Such contracts shall provide for payment of annual fees to the Secretary in the amounts set by the Secretary pursuant to paragraphs (2) and (3). Except as provided in paragraph (3), fees assessed pursuant to this paragraph shall be paid to the Treasury of the United States and shall be available for use by the Secretary pursuant to this section until expended. Subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996, the contracts executed under section 302(a) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act, provided that the Secretary shall consent to an amendment to such contracts as necessary to implement the provisions of this Act.

"(2) ANNUAL FEES.—

"(A) For electricity generated by civilian nuclear power reactors and sold between January 7, 1983, and September 30, 2002, the fee under paragraph (1) shall be equal to 1.0 mill per kilowatt hour generated and sold. For electricity generated by civilian nuclear power reactors and sold on or after October 1, 2002, the aggregate amount of fees collected during each fiscal year shall be no greater than the annual level of appropriations for expenditures on those activities consistent with subsection (d) for that fiscal year, minus—

"(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

"(ii) the percentage of such appropriation required to be funded by the Federal Government pursuant to section 403.

The Secretary shall determine the level of the annual fee for each civilian nuclear power reactor based on the amount of electricity generated and sold, except that the annual fee collected under this subparagraph shall not exceed 1.0 mill per kilowatt-hour generated and sold.

"(B) EXPENDITURES IF SHORTFALL.—If, during any fiscal year on or after October 1, 2002, the aggregate amount of fees assessed pursuant to subparagraph (A) is less than the annual level of appropriations for expenditures on those activities specified in subsection (d) for that fiscal year, minus—

"(i) any unobligated balance collected pursuant to this section during the previous fiscal year; and

"(ii) the percentage of such appropriations required to be funded by the Federal Government pursuant to section 403,

the Secretary may make expenditures from the Nuclear Waste Fund up to the level of the fees assessed.

"(C) RULES.—The Secretary shall, by rule, establish procedures necessary to implement this paragraph.

"(3) ONE-TIME FEE.—For spent nuclear fuel or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to January 7, 1983, the fee shall be in an amount equivalent to an average charge of 1.0 mill per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom. Payment of such one-time fee prior to the date of enactment of the Nuclear Waste Policy Act of 1996 shall satisfy the obligation imposed under this paragraph. Any one-time fee paid and collected subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996 pursuant to the contracts, including any interest due pursuant to such contracts, shall be paid to the Nuclear Waste Fund no later than September 30, 2002. The Commission shall suspend the license of any licensee who fails or refuses to pay the full amount of the fee referred to in this paragraph on or before September 30, 2002, and the license shall remain suspended until the full amount of the fee referred to in this paragraph is paid. The person paying the fee under this paragraph to the Secretary shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of spent fuel or high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian power reactor prior to January 7, 1983.

"(4) ADJUSTMENTS TO FEE.—The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3), together with the existing balance of the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996, to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (c)(2). In the event the Secretary determines that the revenues being collected are either insufficient or excessive to recover the costs incurred by the Federal Government that are specified in subsection (c)(2), the Secretary shall propose an adjustment to the fee in subsection (c)(2) to ensure full costs recovery. The Secretary shall immediately transmit the proposal for such an adjustment to both houses of Congress.

"(b) ADVANCE CONTRACTING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) LICENSE ISSUANCE AND RENEWAL.—The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

"(i) such person has entered into a contract under subsection (a) with the Secretary; or

"(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

"(B) PRECONDITION.—The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of spent nuclear fuel and high-level radioactive waste that may result from the use of such license.

"(2) DISPOSAL IN REPOSITORY.—Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in the repository unless the generator or owner of such spent fuel or waste has entered into a contract under subsection (a) with the Secretary by not later than the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste.

"(3) ASSIGNMENT.—The rights and duties of contract holders are assignable.

"(c) NUCLEAR WASTE FUND.—

"(1) IN GENERAL.—The Nuclear Waste Fund established in the Treasury of the United States under section 302(c) of the Nuclear Waste Policy Act of 1982 shall continue in effect under this Act and shall consist of—

"(A) the existing balance in the Nuclear Waste Fund on the date of enactment of the Nuclear Waste Policy Act of 1996; and

"(B) all receipts, proceeds, and recoveries realized under subsections (a), and (c)(3) subsequent to the date of enactment of the Nuclear Waste Policy of 1996, which shall be deposited in the Nuclear Waste Fund immediately upon their realization.

"(2) USE.—The Secretary may make expenditures from the Nuclear Waste Fund, subject to subsections (d) and (e), only for purposes of the integrated management system.

"(3) ADMINISTRATION OF NUCLEAR WASTE FUND.—

(A) IN GENERAL.—The Secretary of the Treasury shall hold the Nuclear Waste Fund and, after consultation with the Secretary,

annually report to the Congress on the financial condition and operations of the Nuclear Waste Fund during the preceding fiscal year.

"(B) AMOUNTS IN EXCESS OF CURRENT NEEDS.—If the Secretary determines that the Nuclear Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

"(i) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Nuclear Waste Fund; and

"(ii) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investment shall not exceed the average interest rate applicable to existing borrowings.

"(C) EXEMPTION.—Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Nuclear Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

"(d) BUDGET.—The Secretary shall submit the budget for implementation of the Secretary's responsibilities under this Act to the Office of Management and Budget annually along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget shall consist of the estimates made by the Secretary of expenditures under this Act and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the budget of the United States Government.

"(e) APPROPRIATIONS.—The Secretary may make expenditures from the Nuclear Waste Fund, subject to appropriations, which shall remain available until expended.

"SEC. 402. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

"(a) ESTABLISHMENT.—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, 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 payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

"SEC. 403. FEDERAL CONTRIBUTION.

"(a) ALLOCATION.—No later than one year from the date of enactment of the Nuclear Waste Policy Act of 1996, acting pursuant to section 553 of title 5, United States Code, the Secretary shall issue a final rule establishing the appropriate portion of the costs of managing spent nuclear fuel and high-level radioactive waste under this Act allocable to the interim storage or permanent disposal of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors. The share of costs allocable to the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors shall include,

"(1) an appropriate portion of the costs associated with research and development activities with respect to development of an interim storage facility and repository; and

"(2) as appropriate, interest on the principal amounts due calculated by reference to the appropriate Treasury bill rate as if the payments were made at a point in time consistent with the payment dates for spent nuclear fuel and high-level radioactive waste under the contracts.

"(b) APPROPRIATION REQUEST.—In addition to any request for an appropriation from the Nuclear Waste Fund, the Secretary shall request annual appropriations from general revenues in amounts sufficient to pay the costs of the management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, as established under subsection (a).

"(c) REPORT.—In conjunction with the annual report submitted to Congress under Section 702, the Secretary shall advise the Congress annually of the amount of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research reactors, requiring management in the integrated management system.

"(d) AUTHORIZATION.—There is authorized to be appropriated to the Secretary, from general revenues, for carrying out the purposes of this Act, such sums as may be necessary to pay the costs of management of spent nuclear fuel and high-level radioactive waste from atomic energy defense activities and spent nuclear fuel from foreign research rectors, as established under subsection (a).

"TITLE V—GENERAL AND MISCELLANEOUS PROVISIONS

"SEC. 501. COMPLIANCE WITH OTHER LAWS.

"If the requirements of any Federal, State, or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act (42 U.S.C. 2011 et seq.) or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act and this Act in implementing the integrated management system.

"SEC. 502. JUDICIAL REVIEW OF AGENCY ACTIONS.

"(a) JURISDICTION OF THE UNITED STATES COURTS OF APPEALS.—

"(1) ORIGINAL AND EXCLUSIVE JURISDICTION.—Except for review in the Supreme Court of the United States, and except as otherwise provided in this Act, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action—

"(A) for review of any final decision or action of the Secretary, the President, or the Commission under this Act;

"(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this Act;

"(C) challenging the constitutionality of any decision made, or action taken, under any provision of this Act; or

"(D) for review of any environmental impact statement prepared or environmental assessment pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to any action under this Act or alleging a failure to prepare such statement with respect to any such action.

"(2) VENUE.—The venue of any proceeding under this section shall be in the judicial circuit in which the petitioner involved resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

"(b) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a)(1) may be brought no later than 180 days after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action no later than 180 days after the date such party acquired actual or constructive knowledge or such decision, action, or failure to act.

"(c) APPLICATION OF OTHER LAW.—The provisions of this section relating to any matter shall apply in lieu of the provisions of any other Act relating to the same matter.

"SEC. 503. LICENSING OF FACILITY EXPANSIONS AND TRANSSHIPMENTS.

"(a) ORAL ARGUMENT.—In any Commission hearing under section 189 of the Atomic Energy Act of 1954 (42 U.S.C. 2239) on an application for a license, or for an amendment to an existing license, filed after January 7, 1983, to expand the spent nuclear storage capacity at the site of a civilian nuclear power reactor, through the use of high-density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means, the Commission shall, at the request of any party, provide an opportunity for oral argument with respect to any matter which the Commission determines to be in controversy among the parties. The oral argument shall be preceded by such discovery procedures as the rules of the Commission shall provide. The Commission shall require each party, including the Commission staff, to submit in written form, at the time of the oral argument, a summary of the facts, data, and arguments upon which such party proposes to rely that are known at such time to such party. Only facts and data in the form of sworn testimony or written submission may be relied upon by the parties during oral argument. Of the materials that may be submitted by the parties during oral argument, the Commission shall only consider those facts and data that are submitted in the form of sworn testimony or written submission.

"(b) ADJUDICATORY HEARING.—

"(1) DESIGNATION.—At the conclusion of any oral argument under subsection (a), the Commission shall designate any disputed question of fact, together with any remaining questions of law, for resolution in an adjudicatory hearing only if it determines that—

"(A) there is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

"(B) the decision of the Commission is likely to depend in whole or in part on the resolution of such dispute.

"(2) DETERMINATION.—In making a determination under this subsection, the Commission—

"(A) shall designate in writing the specific facts that are in genuine and substantial dispute, the reason why the decision of the agency is likely to depend on the resolution of such facts, and the reason why an adjudicatory hearing is likely to resolve the dispute; and

"(B) shall not consider—

"(i) any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at such site, or any civilian nuclear power reactor to which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

"(ii) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at such site, unless

"(I) such issue results from any revision of siting or design criteria by the Commission following such decision; and

"(II) the Commission determines that such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered.

"(3) APPLICATION.—The provisions of paragraph (2)(B) shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

"(4) CONSTRUCTION.—The provisions of this section shall not apply to the first application for a license or license amendment received by the Commission to expand onsite spent fuel storage capacity by the use of a new technology not previously approved for use at any nuclear power plant by the Commission.

"(c) JUDICIAL REVIEW.—No court shall hold unlawful or set aside a decision of the Commission in any proceeding described in subsection (a) because of a failure by the Commission to use a particular procedure pursuant to this section unless—

"(1) an objection to the procedure used was presented to the Commission in a timely fashion or there are extraordinary circumstances that excuse the failure to present a timely objection; and

"(2) the count finds that such failure has precluded a fair consideration and informed resolution of a significant issue of the proceeding taken as a whole.

"SEC. 504. SITING A SECOND REPOSITORY.

"(a) CONGRESSIONAL ACTION REQUIRED.—The Secretary may not conduct site-specific activities with respect to a second repository unless Congress has specifically authorized and appropriated funds for such activities.

"(b) REPORT.—The Secretary shall report to the President and to Congress on or after January 1, 2007, but not later than January 1, 2010, on the need for a second repository.

"SEC. 505. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RADIOACTIVE WASTE SITE CLOSURE.

"(a) FINANCIAL ARRANGEMENTS.—

"(1) STANDARDS AND INSTRUCTIONS.—The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure, and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission, or, in the case of sites within the boundaries of any agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), by the appropriate State or State entity, prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect on January 7, 1983, prior to termination of such licenses.

"(2) BONDING, SURETY, OR OTHER FINANCIAL ARRANGEMENTS.—If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site described in paragraph (1), the Commission shall ensure before termination of the license involved that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

"(b) TITLE AND CUSTODY.—

"(1) AUTHORITY OF SECRETARY.—The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land and following termination of the license issued by the Commission for such disposal, if the Commission determines that—

"(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with the provisions of subsection (a);

"(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

"(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

"(2) PROTECTION.—If the Secretary assumes title and custody of any such waste and land under this subsection, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

"(c) SPECIAL SITES.—If the low-level radioactive waste involved is the result of a licensed activity to recover zirconium, hafnium, and rare earths from source material, the Secretary, upon request of the owner of the site involved, shall assume title and custody of such waste and the land on which it is disposed when such site has been decontaminated and stabilized in accordance with the requirements established by the Commission and when such owner has made adequate financial arrangements approved by the Commission for the long-term maintenance and monitoring of such site.

"SEC. 506. NUCLEAR REGULATORY COMMISSION TRAINING AUTHORIZATION.

"The Commission is authorized and directed to promulgate regulations, or other appropriate regulatory guidance, for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians, and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power plant operator licenses and for operator requalification programs; requirements governing Commission administration of requalification examinations; requirements for operating tests at civilian nuclear power plant simulators, and instructional requirements for civilian nuclear power plant licensee personnel training programs.

"SEC. 507. EMPLACEMENT SCHEDULE.

"(a) The emplacement schedule shall be implemented in accordance with the following:

"(1) Emplacement priority ranking shall be determined by the Department's annual 'Acceptance Priority Ranking' report.

"(2) The Secretary's spent fuel emplacement rate shall be no less than the following: 1,200 MTU in fiscal year 2000 and 1,200 MTU in fiscal year 2001; 2,000 MTU in fiscal year 2002 and 2000 MTU in fiscal year 2003; 2,700 MTU in fiscal year 2004; and 3,000 MTU annually thereafter.

"(b) If the Secretary is unable to begin emplacement by November 30, 1999 at the rates specified in subsection (a), or if the cumulative amount emplaced in any year thereafter is less than that which would have been accepted under the emplacement rate specified in subsection (a), the Secretary shall, as a mitigation measure, adjust the emplacement schedule upward such that within 5 years of the start of emplacement by the Secretary,

"(1) the total quantity accepted by the Secretary is consistent with the total quantity that the Secretary would have accepted if the Secretary had began emplacement in fiscal year 2000, and

"(2) thereafter the emplacement rate is equivalent to the rate that would be in place pursuant to paragraph (a) above if the Secretary had commenced emplacement in fiscal year 2000.

"SEC. 508. TRANSFER OF TITLE.

"(a) Acceptance by the Secretary of any spent nuclear fuel or high-level radioactive waste shall constitute a transfer of title to the Secretary.

"(b) No later than 6 months following the date of enactment of the Nuclear Waste Policy Act of 1996, the Secretary is authorized to accept all spent nuclear fuel withdrawn from Dairyland Power Cooperative's La Crosse Reactor and, upon acceptance, shall provide Dairyland Power Cooperative with evidence of the title transfer. Immediately upon the Secretary's acceptance of such spent nuclear fuel, the Secretary shall assume all responsibility and liability for the interim storage and permanent disposal thereof and is authorized to compensate Dairyland Power Cooperative for any costs related to operating and maintaining facilities necessary for such storage from the date of acceptance until the Secretary removes the spent nuclear fuel from the La Crosse Reactor site.

"SEC. 509. DECOMMISSIONING PILOT PROGRAM.

"(a) AUTHORIZATION.—The Secretary is authorized to establish a Decommissioning Pilot Program to decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas.

"(b) FUNDING.—No funds from the Nuclear Waste Fund may be used for the Decommissioning Pilot Program.

"SEC. 510. WATER RIGHTS.

"(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed either an express or implied Federal reservation of water or water rights for any purpose arising under this Act.

"(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER NEVADA LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to

the substantive and procedural requirements of the State of Nevada. Nothing in this Act shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands.

"(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER NEVADA LAWS.—Nothing in this Act shall be construed to limit the exercise of water rights as provided under Nevada State laws.

"TITLE VI—NUCLEAR WASTE TECHNICAL REVIEW BOARD

"SEC. 601. DEFINITIONS.

"For purposes of this title—

"(1) CHAIRMAN.—The term "Chairman" means the Chairman of the Nuclear Waste Technical Review Board

"(2) BOARD.—The term "Board" means the Nuclear Waste Technical Review Board continued under section 602.

"SEC. 602. NUCLEAR WASTE TECHNICAL REVIEW BOARD.

"(a) CONTINUATION OF THE NUCLEAR WASTE TECHNICAL REVIEW BOARD.—The Nuclear Waste Technical Review Board, established under section 502(a) of the Nuclear Waste Policy Act of 1982 as constituted prior to the date of enactment of the Nuclear Waste Policy Act of 1996, shall continue in effect subsequent to the date of enactment of the Nuclear Waste Policy Act of 1996.

"(b) MEMBERS.—

"(1) NUMBER.—The Board shall consist of 11 members who shall be appointed by the President not later than 90 days after December 22, 1987, from among persons nominated by the National Academy of Sciences in accordance with paragraph (3).

"(2) CHAIR.—The President shall designate a member of the Board to serve as Chairman.

"(3) NATIONAL ACADEMY OF SCIENCES.—

"(A) NOMINATIONS.—The National Academy of Sciences shall, not later than 90 days after December 22, 1987, nominate no less than 22 persons for appointment to the Board from among persons who meet the qualifications described in subparagraph (C).

"(B) VACANCIES.—The National Academy of Sciences shall nominate not less than 2 persons to fill any vacancy on the Board from among persons who meet the qualifications described in subparagraph (C).

"(C) NOMINEES.—

"(i) Each person nominated for appointment to the Board shall be—

"(I) eminent in a field of science or engineering, including environmental sciences; and

"(II) selected solely on the basis of established records of distinguished service.

"(ii) The membership of the Board shall be representatives of the broad range of scientific and engineering disciplines related to activities under this title.

"(iii) No person shall be nominated for appointment to the Board who is an employee of—

"(I) the Department of Energy;

"(II) a national laboratory under contract with the Department of Energy; or

"(III) an entity performing spent nuclear fuel or high-level radioactive waste activities under contract with the Department of Energy.

"(4) VACANCIES.—Any vacancy on the Board shall be filled by the nomination and appointment process described in paragraphs (1) and (3).

"(5) TERMS.—Members of the Board shall be appointed for terms of 4 years, each such term to commence 120 days after December 22, 1987, except that of the 11 members first appointed to the Board, 5 shall serve for 2 years and 6 shall serve for 4 years, to be designated by the President at the time of appointment, except that a member of the Board whose term has expired may continue to serve as a member of the Board until such member's successor has taken office.

"SEC. 603. FUNCTIONS.

"The Board shall limit its evaluations to the technical and scientific validity solely of the following activities undertaken directly by the Secretary after December 22, 1987—

"(1) site characterization activities; and

"(2) activities of the Secretary relating to the packaging or transportation of spent nuclear fuel or high-level radioactive waste.

"SEC. 604. INVESTIGATORY POWERS

"(a) HEARINGS.—Upon request of the Chairman or a majority of the members of the Board, the Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board. The Secretary or the Secretary's designee or designees shall not be required to appear before the Board or any element of the Board for more than twelve working days per calendar year.

"(b) PRODUCTION OF DOCUMENTS.—

"(1) RESPONSE TO INQUIRIES.—Upon the request of the Chairman or a majority of the members of the Board, and subject to existing law, the Secretary (or any contractor of the Secretary) shall provide the Board with such records, files, papers, data, or information that is generally available to the public as may be necessary to respond to any inquiry of the board under this title.

"(2) EXTENT.—Subject to existing law, information obtainable under paragraph (1) may include drafts of products and documentation of work in progress.

"SEC. 605. COMPENSATION OF MEMBERS.

"(a) IN GENERAL.—Each member of the Board shall be paid at the rate of pay payable for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the Board.

"(b) TRAVEL EXPENSES.—Each member of the Board may receive travel expenses, including per diem in lieu of subsidence, in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

"SEC. 606. STAFF.

"(a) CLERICAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraph (2), the Chairman may appoint and fix the compensation of such clerical staff as may be necessary to discharge the responsibilities of the Board.

"(2) PROVISIONS OF TITLE 5.—Clerical staff shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 3 of such title relating to classification and General Schedule pay rates.

"(b) PROFESSIONAL STAFF.—

"(1) AUTHORITY OF CHAIRMAN.—Subject to paragraphs (2) and (3), the Chairman may appoint and fix the compensation of such professional staff as may be necessary to discharge the responsibilities of the Board.

"(2) NUMBER.—Not more than 10 professional staff members may be appointed under this subsection.

"(3) TITLE 5.—Professional staff members may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

"SEC. 607. SUPPORT SERVICES.

"(a) GENERAL SERVICES.—To the extent permitted by law and requested by the Chairman, the Administrator of General Services shall provide the Board with necessary administrative services, facilities, and support on a reimbursable basis.

"(b) ACCOUNTING, RESEARCH, AND TECHNOLOGY ASSESSMENT SERVICES.—The Comptroller General and the Librarian of Congress shall, to the extent permitted by law and subject to the availability of funds, provide the Board with such facilities, support, funds and services including staff, as may be necessary for the effective performance of the functions of the Board.

"(c) ADDITIONAL SUPPORT.—Upon the request of the Chairman, the Board may secure directly from the head of any department or agency of the United States information necessary to enable it to carry out this title.

"(d) MAILS.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Board, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS–18 of the General Schedule.

"SEC. 608. REPORT.

"The Board shall report not less than 2 times per year to Congress and the Secretary its findings, conclusions, and recommendations.

"SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for expenditures such sums as may be necessary to carry out the provisions of this title.

"SEC. 610. TERMINATION OF THE BOARD.

"The Board shall cease to exist not later than one year after the date on which the Secretary begins disposal of spent nuclear fuel or high-level radioactive waste in the repository.

"TITLE VII—MANAGEMENT REFORM

"SEC. 701. MANAGEMENT REFORM INITIATIVES.

"(a) IN GENERAL.—The Secretary is directed to take actions as necessary to improve the management of the civilian radioactive waste management program to ensure that the program is operated, to the maximum extent practicable, in like manner as a private business.

"(b) AUDITS.—

"(1) STANDARD.—The Office of Civilian Radioactive Waste Management, its contractors, and subcontractors at all tiers, shall conduct, or have conducted, audits and examinations of their operations in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects consistent with its role in the program.

"(2) TIME.—The management practices and performances of the Office of Civilian Radioactive Waste Management shall be audited every 5 years by an independent management consulting firm with significant experience in similar audits of private corporations engaged in large nuclear construction projects. The first such audit shall be conducted 5 years after the enactment of the Nuclear Waste Policy Act of 1996.

"(3) COMPTROLLER GENERAL.—The Comptroller General of the United States shall annually make an audit of the Office, in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office of the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

"(4) TIME.—No audit contemplated by this subsection shall take longer than 30 days to conduct. An audit report shall be issued in final form no longer than 60 days after the audit is commenced.

"(5) PUBLIC DOCUMENTS.—All audit reports shall be public documents and available to any individual upon request.

"(d) VALUE ENGINEERING.—The Secretary shall create a value engineering function within the Office of Civilian Radioactive Waste Management that reports directly to the Director, which shall carry out value engineering functions in accordance with the usual and customary practices of private corporations engaged in large nuclear construction projects.

"(e) SITE CHARACTERIZATION.—The Secretary shall employ, on an on-going basis, integrated performance modeling to identify appropriate parameters for the remaining site characterization effort and to eliminate studies of parameters that are shown not to affect long-term repository performance.

"SEC. 702. REPORTING.

"(a) INITIAL REPORT.—Within 180 days of enactment of this section, the Secretary shall report to Congress on its planned actions for implementing the provisions of this Act, including the development of the Integrated Waste Management System. Such report shall include—

"(1) an analysis of the Secretary's progress in meeting its statutory and contractual obligation to accept title to, possession of, and delivery of spent nuclear fuel and high-level radioactive waste beginning no later than November 30, 1999, and in accordance with the acceptance schedule;

"(2) a detailed schedule and timeline showing each action that the Secretary intends to take to meet the Secretary's obligations under this Act and the contracts;

"(3) a detailed description of the Secretary's contingency plans in the event that the Secretary is unable to meet the planned schedule and timeline; and

"(4) an analysis by the Secretary of its funding needs for fiscal years 1997 through 2001.

"(b) ANNUAL REPORTS.—On each anniversary of the submittal of the report required by subsection (a), the Secretary shall make annual reports to the Congress for the purpose of updating the information contained in such report. The annual reports shall be brief and shall notify the Congress of:

"(1) any modifications to the Secretary's schedule and timeline for meeting its obligations under this Act;

"(2) the reasons for such modifications, and the status of the implementation of any of the Secretary's contingency plans; and

"(3) the Secretary's analysis of its funding needs for the ensuing 5 fiscal years."

"SEC. 703. EFFECTIVE DATE.

This Act shall become effective one day after enactment.".

STEVENS AMENDMENT NO. 5284

(Ordered to lie on the table.)

Mr. STEVENS submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the end of the bill, add the following new title:

TITLE VIII—FEDERAL EMPLOYEES THRIFT SAVINGS PLAN

Subtitle A—Additional Investment Funds for the Thrift Savings Plan

SEC. 801. SHORT TITLE.

This subtitle may be cited as the "Thrift Savings Investment Funds Act of 1996".

SEC. 802. ADDITIONAL INVESTMENT FUNDS FOR THE THRIFT SAVINGS PLAN.

Section 8438 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively;

(B) by inserting after paragraph (4) the following new paragraph:

"(5) the term 'International Stock Index Investment Fund' means the International Stock Index Investment Fund established under subsection (b)(1)(E);";

(C) in paragraph (8) (as redesignated by subparagraph (A) of this paragraph) by striking out "and" at the end thereof;

(D) in paragraph (9) (as redesignated by subparagraph (A) of this paragraph)—

(i) by striking out "paragraph (7)(D)" in each place it appears and inserting in each such place "paragraph (8)(D)"; and

(ii) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(E) by adding at the end thereof the following new paragraph:

"(10) the term 'Small Capitalization Stock Index Investment Fund' means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).'"; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B) by striking out "and" at the end thereof;

(ii) in subparagraph (C) by striking out the period and inserting in lieu thereof a semicolon; and

(iii) by adding at the end thereof the following new subparagraphs:

"(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and

"(E) an International Stock Index Investment Fund as provided in paragraph (4).";

and

(B) by adding at the end thereof the following new paragraphs:

"(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.

"(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

"(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

"(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.".

SEC. 803. ACKNOWLEDGEMENT OF INVESTMENT RISK.

Section 8439(d) of title 5, United States Code, is amended by striking out "Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3)," and inserting in lieu thereof "Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),".

SEC. 804. EFFECTIVE DATE.

This subtitle shall take effect on the date of enactment of this Act, and the Funds established under this subtitle shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.

Subtitle B—Thrift Savings Accounts Liquidity

SEC. 821. SHORT TITLE.

This subtitle may be cited as the "Thrift Savings Plan Act of 1996".

SEC. 822. NOTICE TO SPOUSES FOR IN-SERVICE WITHDRAWALS; DE MINIMUS ACCOUNTS; CIVIL SERVICE RETIREMENT SYSTEM PARTICIPANTS.

Section 8351(b) of title 5, United States Code, is amended—

(1) in paragraph (5)—

(A) in subparagraph (B)—

(i) by striking out "An election, change of election, or modification (relating to the commencement date of a deferred annuity)" and inserting in lieu thereof "An election or change of election";

(ii) by inserting "or withdrawal" after "and a loan";

(iii) by inserting "and (h)" after "8433(g)";

(iv) by striking out "the election, change of election, or modification" and inserting in lieu thereof "the election or change of election"; and

(v) by inserting "or withdrawal" after "for such loan"; and

(B) in subparagraph (D)—

(i) by inserting "or withdrawals" after "of loans"; and

(ii) by inserting "or (h)" after "8433(g)"; and

(2) in paragraph (6)—

(A) by striking out "$3,500 or less" and inserting in lieu thereof "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking out "unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)".

SEC. 823. IN-SERVICE WITHDRAWALS; WITHDRAWAL ELECTIONS, FEDERAL EMPLOYEES RETIREMENT SYSTEM PARTICIPANTS.

(a) IN GENERAL.—Section 8433 of title 5, United States Code, is amended—

(1) by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect to withdraw from the Thrift Savings Fund the balance of the employee's or Member's account as—

"(1) an annuity;

"(2) a single payment;

"(3) 2 or more substantially equal payments to be made not less frequently than annually; or

"(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

"(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

"(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsection (b)(2) be transferred to an eligible retirement plan.

"(3) The Executive Director shall make each transfer elected under paragraph (2) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

"(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.";

(2) in subsection (d)—

(A) in paragraph (1) by striking out "Subject to paragraph (3)(A)" and inserting in lieu thereof "Subject to paragraph (3)";

(B) by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2) (as redesignated under subparagraph (B) of this paragraph)—

(i) in subparagraph (A) by striking out "(A)"; and

(ii) by striking out subparagraph (B);

(3) in subsection (f)(1)—

(A) by striking out "$3,500 or less" and inserting in lieu thereof "less than an amount that the Executive Director prescribes by regulation; and

(B) by striking out "unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or" and inserting a comma;

(4) in subsection (f)(2)—

(A) by striking out "February 1" and inserting in lieu thereof "April 1";

(B) in subparagraph (A)—

(i) by striking out "65" and inserting in lieu thereof "70½"; and

(ii) by inserting "or" after the semicolon;

(C) by striking out subparagraph (B); and

(D) by redesignating subparagraph (C) as subparagraph (B);

(5) in subsection (g)(1) by striking out "after December 31, 1987, and"; and

(6) by adding after subsection (g) the following new subsection:

"(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon the employee or Member having attained age 59½.

"(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

"(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

"(4) Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

"(5) A withdrawal may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.".

(b) INVALIDITY OF CERTAIN PRIOR ELECTIONS.—Any election made under section 8433(b)(2) of title 5, United States Code (as in effect before the effective date of this subtitle), with respect to an annuity which has not commenced before the implementation date of this subtitle as provided by regulation by the Executive Director in accordance with section 827 of this subtitle, shall be invalid.

SEC. 824. SURVIVOR ANNUITIES FOR FORMER SPOUSES; NOTICE TO FEDERAL EMPLOYEES RETIREMENT SYSTEM SPOUSES FOR IN-SERVICE WITHDRAWALS.

Section 8435 of title 5, United States Code, is amended—

(1) in subsection (a)(1)(A)—

(A) by striking out "may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section" and inserting in lien thereof "may withdraw all or part of a Thrift Savings Fund account under subsection (b) (2), (3), or (4) of section 8433 of this title or change a withdrawal election"; and

(B) by adding at the end thereof "A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).";

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking out "An election, change of election, or modification of the commencement date of a deferred annuity" and inserting in lieu thereof "An election or change of election"; and

(ii) by striking out "modification, or transfer" and inserting in lien thereof "or transfer"; and

(B) in paragraph (2) in the matter following subparagraph (B)(ii) by striking out "modification,";

(3) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by inserting "or withdrawal" after "A loan";

(II) by inserting "and (h)" after "8433(g)"; and

(III) by inserting "or withdrawal" after "such loan";

(ii) in subparagraph (B) by inserting "or withdrawal" after "loan"; and

(iii) in subparagraph (C)—

(I) by inserting "or withdrawal" after "to a loan"; and

(II) by inserting "or withdrawal" after "for such loan"; and

(B) in paragraph (2)—

(i) by inserting "or withdrawal" after "loan"; and

(ii) by inserting "and (h)" after "8344(g)"; and

(4) in subsection (g)—

(A) by inserting "or withdrawals" after "loans"; and

(B) by inserting "and (h)" after "8344(g)".

SEC. 825. DE MINIMUS ACCOUNTS RELATING TO THE JUDICIARY.

(a) JUSTICES AND JUDGES.—Section 8440a(b)(7) of title 5, United States Code, is amended—

(1) by striking out "$3,500 or less" and inserting in lieu thereof "less than an amount that the Executive Director prescribes by regulation"; and

(2) by striking out "unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)".

(b) BANKRUPTCY JUDGES AND MAGISTRATES.—Section 8440b(b) of title 5, United States Code, is amended—

(1) in paragraph (7) in the first sentence by inserting "of the distribution" after "equal to the amount"; and

(2) in paragraph (8)—

(A) by striking out "$3,500 or less" and inserting in lieu thereof "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking out "unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b)".

(c) FEDERAL CLAIMS JUDGES.—Section 8440c(b) of title 5, United States Code, is amended—

(1) in paragraph (7) in the first sentence by inserting "of the distribution" after "equal to the amount"; and

(2) in paragraph (8)—

(A) by striking out "$3,500 or less" and inserting in lieu thereof "less than an amount that the Executive Director prescribes by regulation"; and

(B) by striking out "unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)".

SEC. 826. DEFINITION OF BASIC PAY.

(a) IN GENERAL.—(1) Section 8401(4) of title 5, United States Code, is amended by striking out "except as provided in subchapter III of this chapter,".

(2) Section 8431 of title 5, United States Code, is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 84 of title 5, United States Code, is amended by striking out the item relating to section 8431.

(2) Section 5545a(h)(2)(A) of title 5, United States Code, is amended by striking out "8431,".

(3) Section 615(f) of the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52; 109 Stat. 500; 5 U.S.C. 5343 note) is amended by striking out "section 8431 of title 5, United States Code,".

SEC. 827. EFFECTIVE DATE.

This subtitle shall take effect on the date of the enactment of this Act and withdrawals and elections as provided under the amendments made by this subtitle shall be made at the earliest practicable date as determined by the Executive Director in regulations.

KERRY AMENDMENT NO. 5285

(Ordered to lie on the table.)

Mr. KERRY submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, add the following new section:

SEC. . WORKPLACE RELIGIOUS FREEDOM.—(a) SHORT TITLE.—This section may be cited as the "Workplace Religious Freedom Act of 1996".

(b) AMENDMENTS.—

(1) DEFINITIONS.—Section 701(j) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(j)) is amended—

(A) by inserting "(1)" after "(j)";

(B) by inserting ", after initiating and engaging in an affirmative and bona fide effort," after "unable"; and

(C) by adding at the end the following:

"(2) As used in this subsection, the term 'undue hardship' means an accommodation requiring significant difficulty or expense. For purposes of determining whether an accommodation requires significant difficulty or expenses, the factors to be considered shall include—

"(A) the identifiable cost of the accommodation in relation to the size and operating cost of the employer; and

"(B) the number of individuals who will need a particular accommodation to a religious observance or practice.".

(2) EMPLOYMENT PRACTICES.—Section 703 of such Act (42 U.S.C. 2000e-2) is amended by adding at the end the following:

"(o)(1) For purposes of determining whether an employer has committed an unlawful employment practice under this title by failing to provide a reasonable accommodation to the religious observance or practice of an employee or prospective employee, an accommodation by the employer shall not be deemed to be reasonable if—

"(A) such accommodation does not remove the conflict between employment requirements and the religious observance or practice of the employee or prospective employee; or

"(B)(i) the employee or prospective employee demonstrates to the employer the availability of an alternative accommodation less onerous to the employee or prospective employee that may be made by the employer without undue hardship on the conduct of the employer's business; and

"(ii) the employer refuses to make such accommodation.

"(2) It shall not be a defense to a claim of unlawful employment practices for failure to provide a reasonable accommodation that such accommodation would be in violation of a bona fide seniority system if, in order for the employer to reasonably accommodate to such observance or practice—

"(A) an adjustment would be made in the employee's work hours (including an adjustment that requires the employee to work overtime in order to avoid working at a time that abstention from work is necessary to satisfy religious requirements), shift, or job assignment, that would not be available to any employee but for such accommodation; or

"(B) the employee and any other employee would voluntarily exchange shifts or job assignments, or voluntarily make some other arrangement between the employees.

"(3)(A) An employer shall not be required to pay premium wages for work performed during hours to which such premium wages would ordinarily be applicable, if work is performed during such hours only to accommodate religious requirements of an employee.

"(B) As used in this paragraph, the term 'premium wages' includes premium overtime pay, pay for night, weekend, or holiday work, and pay for standby or irregular duty."

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

(1) EFFECTIVE DATE.—Except as provided in subsection (b), this section and the amendments made by subsection (b) shall take effect on the date of enactment of this Act.

(2) APPLICATION OF AMENDMENTS.—The amendments made by subsection (b) shall not apply with respect to conduct occurring before the date of enactment of this Act.

HATFIELD AMENDMENT NO. 5286

(Ordered to lie on the table.)

Mr. HATFIELD submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new title:

TITLE —LOCAL EMPOWERMENT AND FLEXIBILITY PILOT ACT OF 1996

SECTION 01. SHORT TITLE.

This Act may be cited as the "Local Empowerment and Flexibility Pilot Act of 1996."

SEC. 02. FINDINGS.

The Congress finds that—

(1) historically, Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of services;

(3) the Nation's State, local, and tribal governments and private, nonprofit organizations are dealing with increasingly complex problems which require the delivery of many kinds of services;

(4) our nation's communities are diverse and many have innovative planning and community involvement strategies to comprehensively meet their particular service needs for providing services, but Federal, State, and local grant and other requirements often hamper effective implementation of such strategies.

(5) it is more important than ever to provide programs that—

(A) promote more effective and efficient delivery of services at all levels of government to meet the full range of needs of individuals, families, and society;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede the State, local, and tribal government's ability to effectively delivery services; and

(D) empower State, local, and tribal governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of their communities while continuing to address national policy goals; and

SEC. 03. PURPOSES.

The purposes of this Act are to—

(1) improve the delivery of services to the public;

(2) promote State, local, and tribal governments and private, non-profit organizations and consortiums to identify goals to improve their communities and the lives of their citizens;

(3) enable eligible applicants to adapt programs of Federal financial assistance to the particular needs of their communities by integrating programs and program funds across existing Federal financial assistance programs that have similar goals and purposes;

(4) more effectively meet the goals and purposes of Federal, State and local financial assistance programs;

(5) empower eligible applicants to work together to build stronger cooperative, intergovernmental and private partnerships to address critical service problems;

(6) place less emphasis in Federal financial assistance programs on complying with procedures and more emphasis on achieving Federal, State, local and tribal policy goals.

(7) facilitate State, local, and tribal government efforts to develop regional or metropolitan solutions to shared problems;

(8) improve intergovernmental efficiency;

SEC. 04. DEFINITIONS.

For purposes of this Act:

(1) AFFECTED FEDERAL AGENCY.—The term "affected Federal agency" means the Federal agency with principal authority for the administration of an eligible Federal financial assistance program included in a plan.

(2) AFFECTED STATE AGENCY.—The term "affected State agency" means—

(A) any State agency with authority for the administration of any State program or eligible Federal financial assistance program; and

(B) with respect to education programs, the term shall include the State Education Agency as defined by the Elementary and Secondary Education Act and the Higher Education Act.

(3) APPROVED FLEXIBILITY PLAN.—The term "approved flexibility plan" means a flexibility plan or that part of a flexibility plan, that is approved by the Community Empowerment Board under section 8.

(4) BOARD.—The term "Board" means the Community Empowerment Board established under section 5.

(5) DIRECTOR.—The term "Director" means the Director of the Office of Management and Budget.

(6) ELIGIBLE APPLICANT.—The term "eligible applicant" means a State, local, or tribal government, qualified organization, or qualified consortium that is eligible to receive financial assistance under 1 or more eligible Federal financial assistance program.

(7) ELIGIBLE FEDERAL FINANCIAL ASSISTANCE PROGRAM.—The term "eligible Federal financial assistance program"—

(A) except as provided in subparagraph (B), means a domestic assistance program (as defined under section 6101(4) of title 31, United States Code) under which financial assistance is available, directly or indirectly, to a State, local, or tribal government or a qualified organization to carry out activities consistent with national policy goals; and

(B) does not include—

(i) a Federal program under which direct financial assistance is provided by the Federal Government directly to an individual beneficiary of that financial assistance, or to a State to provide direct financial assistance, or to a State to provide direct financial or food voucher assistance directly to an individual beneficiary;

(ii) a program carried out with direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)); or

(iii) a program of assistance referred to in section 6101(4)(A)(ix) of title 31, United States Code or Section 3(10) of the Congressional Budget Act of 1974.

(10) FLEXIBILITY PLAN.—The term "flexibility plan" means a comprehensive plan or part of such plan for the coordination or integration and the administration by an eligible applicant of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs that includes funds from Federal, State, local, or tribal government or private sources to address the service needs of a community.

(11) GOALS AND PURPOSES.—The term "goals and purposes" means the "goals and purposes" embodied in an eligible Federal financial assistance program, including the targeted population embodied in that program.

(12) LOCAL GOVERNMENT.—The term "local government" means—

(A) a political subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(B) any combination of political subdivisions described in subparagraph (A) that submits an application to the Board; or

(C) a local educational agency as defined under section 14101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18)).

(13) QUALIFIED CONSORTIUM.—The term "qualified consortium" means a group that is composed of 2 or more qualified organizations, State, local, or tribal agencies that receive federally appropriated funds.

(14) QUALIFIED ORGANIZATION.—The term "qualified organization" means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)).

(15) SMALL GOVERNMENT.—The term "small government" means any small governmental jurisdiction defined in section 601(5) of title 5, United States Code, and a tribal government.

(16) STATE.—The term "State" means each of the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands.

(17) STATE LEGISLATIVE OFFICIAL.—The term "State legislative official" means—

(A) the presiding officer of a chamber of a State legislature; and

(B) the minority leader of a chamber of a State legislature.

(18) TRIBAL GOVERNMENT.—The term "tribal government" means the governing entity of an Indian tribe, as that term is defined in the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 05. ESTABLISHMENT OF COMMUNITY EMPOWERMENT BOARD.

(a) IN GENERAL.—There is established a Community Empowerment Board, which shall consist of—

(1) the Secretary of Housing and Urban Development;

(2) the Secretary of Health and Human Services;

(3) the Secretary of Agriculture;

(4) the Secretary of Transportation;

(5) the Secretary of Education;

(6) the Secretary of Commerce;

(7) the Secretary of Labor;

(8) the Secretary of the Treasury;

(9) the Attorney General;

(10) the Secretary of the Interior;

(11) the Secretary of Energy;

(12) the Secretary of Veterans Affairs;

(13) the Secretary of Defense;

(14) the Director of the Federal Emergency Management Agency;

(15) the Administrator of the Environmental Protection Agency;

(16) the Director of the National Drug Control Policy;

(17) the Administrator of the Small Business Administration;

(18) the Director of the Office of Management and Budget;

(19) the Administrator of General Services; and

(20) other officials of the Executive Branch as directed by the President.

(b) CHAIR.—The President shall designate the Chair of the Board from among its members.

(c) FUNCTIONS.—

(1) IN GENERAL.—The Board shall—

(A) no later than 180 days after implementation of this Act, select 6 states to participate in this Act;

(B) receive, review, and approve or disapprove flexibility plans in according with section 7;

(C) consider all requests for technical assistance from eligible applicants and, when appropriate, provide or direct that an affected Federal argency provide the head of an agency that administers an eligible Federal financial assistance program under which substantial Federal financial assistance would be provided under the plan to provide technical assistance to the eligible applicant, and to the extent permitted by law, special assistance to interested small governments to support the development and implementation of a flexibility plan, which may include expedited processing;

(D) in consultation with the Director, monitor the progress of development and implementation of flexibility plans;

(E) in consultation with the Director, coordinate and assist Federal agencies in identifying regulations of eligible Federal financial assistance programs for revision, repeal and coordination;

(F) evaluate performance standards and evaluation criteria for eligible Federal financial assistance programs, and make specific recommendations to agencies regarding how to revise such standards and criteria in order to establish specific performance and outcome measures upon which the success of such programs and the success of the plan may be compared and evaluated; and

(G) designate a Federal agency to be primarily responsible for the oversight, monitoring, and evaluation of the implementation of a plan.

(2) QUALIFICATIONS FOR STATES.—Of the 6 States selected for participation under paragraph 1—

(A) 3 States shall each have a population of 3,500,000 or more as determined under the most recent decennial census; and

(B) 3 States shall each have a population of 3,500,000 or less as determined under the most recent decennial census.

(d) COORDINATION AND ASSISTANCE.—The Director, in consultation with the Board, shall coordinate and assist Federal agencies in creating—

(1) a uniform application to be used to apply for assistance from eligible Federal financial assistance programs;

(2) a release form to be used by grantees to facilitate, where appropriate and otherwise lawful, the sharing for information across eligible Federal financial assistance programs; and

(3) a system wherein an organization or consortium of organizations may use one proposal to apply for funding from multiple eligible Federal financial assistance programs.

(e) DETAILS AND ASSIGNMENTS TO BOARD.—At the request of the Board and with the approval of the appropriate Federal agency, staff of the agency may be detailed or assigned to the Board on a nonreimbursable basis.

(f) INTERAGENCY FINANCING.—Notwithstanding any other law, interagency financing is authorized to carry out the purposes of this Act.

(g) JUDICIAL REVIEW.—The actions of the Board shall not be subject to judicial review.

SEC. —06. APPLICATION FOR APPROVAL OF FLEXIBILITY PLAN.

(a) IN GENERAL.—An eligible applicant may submit to the Board in accordance with this section an application for approval of a flexibility plan.

(b) CONTENTS OF APPLICATION.—An application submitted under this section shall include—

(1) a proposed flexibility plan that complies with subsection (c);

(2) written certification by the chief executive of the applicant, and such additional assurances as may be required by the Board, that—

(A) the applicant has the ability, authority, and resources to implement the proposed plan, throughout the geographic area in which the proposed plan is intended to apply; and

(B) amounts are available from non-Federal sources to pay the non-Federal share of all eligible Federal financial assistance programs included in the proposed plan;

(C) the flexibility plan prohibits the integration or combination of program funds across existing Federal financial assistance programs which do not have similar goals and purposes.

(3) all comments on the proposed plan submitted under subsection (d) by a Governor, affected State agency, State legislative official, or a chief executive of a local or tribal government that would be directly affected by implementation of the proposed plan, and the applicant's responses to those comments;

(4) written documentation that the eligible applicant informed the affected community of the contents of the plan and gave the public and the affected population the opportunity to comment upon the plan, including at least one public hearing involving agencies, qualified organizations, eligible intended beneficiaries of the plan, and others directly affected by the plan;

(5) the public comments, which shall include the comments of the affected population, received on the plan and the applicant's responses to the significant comments;

(6) other relevant information the Board may require to review or approve the proposed plan.

(c) CONTENTS OF PLAN.—A flexibility plan submitted by an eligible applicant under this section shall include—

(1) the geographic area and timeframe to which the plan applies and the rationale for selecting the area and timeframe;

(2) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who currently receive services and benefits under the eligible Federal financial assistance programs included in the plan and the particular groups of individuals, by service needs, economic circumstances, or other defining factors who would receive services and benefits under the plan;

(3) the specific goals and measurable performance criteria that demonstrate how the plan is expected to improve the delivery and

effectiveness of services to the affected population, including—

(A) a description of how performance shall be measured under the plan when compared to the current performance of the eligible Federal financial assistance programs included in the plan; and

(B) a system for the comprehensive evaluation of the impact of the plan on individuals who receive services and benefits in the community affected by the plan, that shall include—

(i) a list of goals to improve the community and the lives of its citizens in the geographic area covered by the plan;

(ii) a list of goals identified by the State in which the plan is to be implemented, if such goals have been established by the State; and

(iii) a description of how the plan will—

(I) attain the goals listed in clauses (i) and (ii);

(II) measure performance; and

(III) collect and maintain data;

(4) the eligible Federal financial assistance programs included in the plan and the specific services and benefits to be provided under the plan under such programs, including—

(A) criteria for determining eligibility for services and benefits under the plan;

(B) the services and benefits available under the plan;

(C) the amounts and form (such as cash, in-kind contributions, or financial instruments) of non-service benefits; and

(D) any other descriptive information the Board considers necessary to approve the plan;

(5) a description of the goals and purposes of each Federal financial assistance program included in the plan and how the goals and purposes of such programs shall more effectively be met at the State, local, and tribal level;

(6) a general description of how the plan appropriately addresses any effect that administration of each eligible Federal financial assistance program included in the plan would have on the administration of programs not included in the plan;

(7) a description of how the flexibility plan will adequately achieve the purposes of this Act;

(8) except for the requirements described under section 7(f)(3), any Federal statutory or regulatory requirement of an eligible Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan, and the detailed justification for the waiver request;

(9) any State, local, or tribal statutory, regulatory, or other requirement, the waiver of which is necessary to implement the plan, and an indication of commitment of the appropriate State, local, or tribal governments to grant such waivers;

(9) a description of the Federal fiscal control and related accountability procedures to be followed under the flexibility plan and, as necessary, an explanation of how such procedures will not diminish existing Federal requirements;

(10) a description of the sources and amounts of all non-Federal funds that are required to carry out eligible Federal financial assistance programs included in the plan;

(11) verification that Federal funds made available under the plan will not supplant non-Federal funds for existing services and activities that promote the goals of the plan;

(12) verification that none of the Federal funds under the plan would be used to—

(A) meet maintenance of effort requirements of such an activity; or

(B) meet State, local, or tribal matching shares; and

(13) any other relevant information the Board may require to approve the plan;

(d) PROCEDURE FOR APPLYING.—

(1) SUBMISSION TO AFFECTED STATE AND LOCAL GOVERNMENTS.—An eligible applicant shall submit an application for approval of a proposed flexibility plan to each State government and each local government that the applicant deems to be directly affected by the plan, at least 60 days before submitting the application to the Board.

(2) REVIEW BY AFFECTED GOVERNMENT.—The Governor, affected State agency head, State legislative official, and the chief executive officer of a local government that receives an application submitted under paragraph (1) may each, by no later than 60 days after the date of that receipt—

(A) prepare comments on the proposed flexibility plan included in the application;

(B) describe and make commitments to waive any State or local laws or other requirements which are necessary for successful implementation of the proposed plan; and

(C) submit the comments and commitments to the eligible applicant.

(3) SUBMITTAL TO BOARD.—Applications for approval of a flexibility plan shall only be submitted to the Board between—

(A) October 1, 1997 and March 31, 1998; or

(B) October 1, 1998 and March 31, 1999.

(4) ACTION BY AFFECTED GOVERNMENT.—If the Governor, affected State agency head, State legislative official or the chief executive officer of a local government—

(A) fails to act on or otherwise endorse a plan application within 60 days after receiving an application under paragraph (1);

(B) does not make and submit to the eligible applicant the commitments described in paragraph (2)(A) and (B); or

(C) disagrees with all or part of the proposed flexibility plan;

the eligible applicant may submit the application to the Board if the application is amended as necessary for the successful implementation of the proposed plan without the commitment made under paragraph (2)(B), including by adding an updated description of the ability of the proposed flexibility plan to meet plan goals and satisfy performance criteria in the absence of statutory and regulatory waivers and financial and technical support from the State or local government.

(e) TRIBAL SOVEREIGNTY.—Nothing under this Act shall be construed to affect, or otherwise alter, the sovereign relationship between tribal governments and the Federal Government.

(f) ELIGIBILITY FOR OTHER ASSISTANCE.—Disapproval by the Board of a flexibility plan submitted by an eligible applicant under this Act shall not affect the eligibility of the applicant for assistance under any Federal program.

(g) STATE, LOCAL, OR TRIBAL AUTHORITY.—Nothing in this Act shall be construed to grant the Board, Federal agency, or any eligible applicant to waive or otherwise preempt—

(1) any State, local, or tribal law or regulation including the legal authority under State law of any affected State agency, State entity, or public official over programs that are under the jurisdiction of the agency, entity, or official; or

(2) the existing authority of a State, local, or tribal government or qualified organization or consortium with respect to an eligible Federal financial assistance program included in the plan unless such entity has consented to the terms of the plan.

SEC. 07. REVIEW AND APPROVAL OF FLEXIBILITY PLANS AND WAIVER REQUESTS.

(a) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a proposed flexibility plan, the Board shall notify the eligible applicant as to whether or not the plan is complete. If the Board determines a plan is complete, the Board shall—

(1) establish procedures for consultation with the applicant during the review process;

(2) publish notice of the application for approval in the Federal Register and make available the contents to any interested party upon written request;

(3) if appropriate, coordinate public hearings on the plan by either the Board or the appropriate Federal agency;

(4) approve or disapprove plans submitted under—

(i) section 6(d)(3)(A) no later than July 31, 1998; or

(ii) section 6(d)(3)(B) no later than July 31, 1999;

(5) in the case of any disapproval of a plan, include written justification of the reasons for disapproval in the notice of disapproval sent to the applicant;

(6) publicly announce and forward to Congress on July 31, 1998 and July 31, 1999, the list of approved flexibility plans, including an identification of approved plans that request statutory or regulatory waivers and the identification of such requested waivers.

(b) APPROVAL.—

(1) IN GENERAL.—The Board may approve a flexibility plan for which an application is submitted by an eligible applicant under this Act, if the Board determines that—

(A) the contents of the application for approval of the plan comply with the requirements of this Act; and

(B) the contents of the flexibility plan indicate that the plan will effectively achieve the purposes of this Act described in section 3 by adhering to the conditions described in sections 6 and 7;

(2) RESTRICTION.—(A) The Board may approve no more than 30 plans; and

(B) only three approved plans may be submitted by state applicants.

(3) REQUIREMENT TO DISAPPROVE PLAN.—The Board must disapprove a flexibility plan if the Board determines that—

(A) implementation of the plan would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under Federal financial assistance programs, over the amounts of such obligations and outlays that would occur under those programs without implementation of the plan; or

(B) the flexibility plan fails to comply with paragraph (1).

(4) SPECIFICATION OF PERIOD OF EFFECTIVENESS.—In approving any flexibility plan, the Board shall specify the period during which the plan is effective, which in no case shall be greater than 5 years from the date of approval.

(d) MEMORANDA OF UNDERSTANDING REQUIRED.—

(1) IN GENERAL.—An approved flexibility plan may not take effect until the Board receives a signed memorandum of understanding agreed to by the eligible applicant that would receive Federal financial assistance administered under the flexibility plan and by each affected Federal agency.

(2) CONTENTS.—A memorandum of understanding under this subsection shall specify all understandings that have been reached by the affected Federal agencies and the eligible applicant. The memorandum shall include understandings with respect to—

(A) the conditions described in sections 6 and 7;

(B) the effective dates of all State, local or tribal government waivers;

(C) technical or special assistance being provided to the eligible applicant; and

(D) the effective date and timeframe of the plan and each Federal waiver approved in the plan;

(E)(i) the total amount of Federal funds that will be provided as services and benefits under or used to administer eligible Federal financial assistance programs included in the plan; or

(ii) a mechanism for determining that amount, including specification of the total amount of Federal funds that will be provided or used under each eligible Federal financial assistance program included in the plan.

(e) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Board may not, as a condition of approval of a flexibility plan or with respect to the implementation of an approved flexibility plan, establish any confidentiality requirement that would—

(1) impede the exchange of information needed for the design or provision of services and benefits under the plans; or

(2) conflict with law.

(f) LIMITATION ON THE USE OF FUNDS.—The Board may not approve any plan that includes funds under an eligible federal financial assistance program to—

(1) support tuition vouchers for children attending private elementary or secondary schools, including before and after school programs; or

(2) otherwise pay their cost of attending such schools.

(g) WAIVERS OF FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—Notwithstnding any other law and subject to the provisions of this Act, including paragraphs (2) and (3), affected Federal agencies may waive, for a period of time not to exceed 5 years from the date the Board receives a signed memorandum of understanding, any statutory or regulatory requirement of an eligible Federal assistance program included in an approved flexibility plan of an eligible applicant if that waiver is—

(A) necessary for implementation of the flexibility plan;

(B) not disapproved by the Board; and

(C) necessary to effectively achieve the purposes of this Act described in section 3 by adhering to the conditions described in section 6 and 7.

(2) EFFECTIVE PERIOD OF WAIVER.—A waiver granted under this section shall terminate on the earlier of—

(A) the expiration of a period specified by the affected Federal agency not to exceed five years from the date the Board receives the signed memorandum of understanding; or

(B) any date on which the flexibility plan for which the waiver is granted ceases to be effective.

(3) RESTRICTION ON WAIVER AUTHORITY.—An affected Federal agency may not grant a waiver for a statutory or regulatory requirement of an eligible Federal financial assistance program requested under this section that—

(A) may be waived under another provision of law except in accordance with the requirements and limitations imposed by that other provision of law;

(B) enforces statutory or constitutional rights of individuals including the right to equal access and opportunity in housing and education, including any requirement under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq);

(C) enforces any civil rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(D) protects public health and safety, the environment, labor standards, worker rights, health and pension benefits and worker health safety;

(E) provides for a maintenance of effort, matching share or prohibition on supplanting; or

(F) grants any person a cause of action.

SEC. 08. IMPLEMENTATION, AMENDING AND TERMINATION OF APPROVED FLEXIBILITY PLANS.

(a) IMPLEMENTATION.—

(1) The Board, in consultation with the Director, shall issue guidance to implement this Act within 180 days after the date of enactment of this Act.

(2) Notwithstanding any other law, any service or benefit that is provided under an eligible Federal financial assistance program included in an approved flexibility plan shall be paid and administered in the manner specified in the approved flexibility plan.

(3) The authority provided under this Act to waive provisions of grant agreements may be exercised only as long as the funds provided for the grant program in question are available for obligation by the Federal Government.

(b) AMENDING OF FLEXIBILITY PLAN.—

(1) In the event that an eligible applicant—

(A) desires an amendment to an approved flexibility plan in order to better meet the purposes of this Act; or

(B) requires an amendment to ensure continued implementation of an approved flexibility plan, the applicant shall—

(i) submit the proposed amendment to the Board for review and approval; and

(ii) upon approval, enter into a revised memorandum of understanding with the affected Federal agency.

(2) Approval by the Board and, when appropriate, affected Federal agency, shall be based upon the same conditions required for approval of a flexibility plan.

(v) TERMINATION OF PLAN BY BOARD.—

(A) IN GENERAL.—The Board shall terminate an approved flexibility plan, if, after consultation with the affected Federal agencies, the Board determines that—

(i) the applicant of the approved flexibility plan is unable to meet the commitments under this Act; or

(ii) audit or oversight activities determine there has been fraud or abuse involving Federal funds under the plan.

(B) TRANSITION PERIOD.—In terminating an approved flexibility plan under this paragraph, the Board shall allow a reasonable period of time for appropriate Federal agencies and eligible applicants to resume administration of Federal programs that are eligible Federal financial assistance programs included in the plan.

(2) REVOCATION OF WAIVER.—

(A) The Board may recommend that an effected Federal agency, and an affected Federal agency may, revoke a waiver under section 7(f) if the applicant of the approved flexibility plan fails to—

(i) comply with the requirements of the plan;

(ii) make acceptable progress towards achieving the goals and performance criteria set forth in the plan; or

(iii) use funds in accordance with the plan.

(B) Affected Federal agencies shall revoke all waiver issued under section 7(f) for a flexibility plan if the Board terminates the plan.

(C) EXPLANATION REQUIRED.—In the case of termination of a plan or revocation of a waiver, as appropriate, the Board or affected Federal agencies shall provide for the former eligible applicant a written justification of the reasons for termination or revocation.

SEC. 09 EVALUATIONS AND REPORTS.

(a) Approved Applicants.

(1) IN GENERAL.—An applicant of an approved flexibility plan, in accordance with guidance issued by the Board, shall—

(A) submit any reports on and cooperate in any audits of the implementation of its approved flexibility plan; and

(B) monitor the effect implementation of the plan has had on—

(i) individuals who receive services and benefits under the plan;

(ii) communities in which those individuals live;

(iii) costs of administering and providing assistance under eligible Federal financial assistance programs included in the plan; and

(iv) performance of the eligible Federal financial assistance programs included in the plan compared to the performance of such programs prior to implementation of the plan.

(2) INITIAL 1-YEAR REPORT.—No later than 90 days after the end of the 1-year period beginning on the date the plan takes effect, and annually thereafter, the approved applicant, respectively, shall submit to the Board a report on the principal activities, achievements, and shortcomings under the plan during the period covered by the report, comparing those achievements and shortcomings to the goals and performance criteria included in the plan under section 6(c)(3).

(3) FINAL REPORT.—No later than 120 days after the end of the effective period of an approved flexibility plan, the approved applicant shall submit to the Board a final report on implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under the eligible Federal financial assistance programs under the plan.

(b) BOARD.—No later than two years after the date of the enactment of this Act, and annually thereafter, the Board shall submit a report to the President and the Congress on the Federal statutory and regulatory requirements of eligible Federal financial assistance programs that are most frequently waived under section 7(f) with respect to approved flexibility plans. The President shall review the report and identify those statutory and regulatory requirements that the President determines should be amended or repealed.

(c) DIRECTOR.—Two years after this Act goes into effect, and no less than 60 days after repeal of this Act, the Director shall report on its progress in achieving the functions outlined in section 5(d).

(c) GENERAL ACCOUNTING OFFICE.—

(1) Beginning on the date of enactment of this Act, the General Accounting Office shall—

(A) evaluate the effectiveness of eligible Federal financial assistance programs included in flexibility plans approved pursuant to this Act compared with such programs not included in a flexibility plan;

(B) establish and maintain, through the effective date of this statute, a program for the ongoing collection of data and analysis of each eligible Federal financial assistance program included in an approved flexibility plan.

(2) No later than January 1, 2005, the General Accounting Office shall submit a report

to Congress and the President that describes and evaluates the results of the evaluations conducted pursuant to paragraphs (1) and any recommendations on how to improve flexibility in the administration of eligible Federal financial assistance programs.

(d) ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.—No later than January 1, 2005, the Advisory Commission on Intergovernmental Relations shall submit a report to the Congress and President that—

(1) describes the extent to which this Act has improved the ability of State, local and tribal governments, particularly smaller units of government, to make more effective use of two or more Federal financial assistance programs included in a flexibility plan;

(2) evaluates if or how the flexibility provided by this Act has improved the system of Federal financial assistance to State, local and tribal governments, and enabled governments and community organizations to work together more effectively; and

(3) includes recommendations with respect to flexibility for State, local and tribal governments.

SEC. 010. REPEAL.

This Act is repealed on January 1, 2005.

SEC. 011. DELIVERY DATE OF FEDERAL CONTRACT, GRANT, AND ASSISTANCE APPLICATIONS.

(a) GENERAL RULE.—

(1) DATE OF DELIVERY.—The Director of the Office of Management and Budget shall direct all Federal agencies to develop a consistent policy relating to Federal contract, grant, and other assistance applications which stipulates that if any bid, grant application, or other document required to be filled within a prescribed period or on or before a prescribed date is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such bid, grant application, or other document is required to be made, the date of the United States postmark stamped on the cover in which such bid, grant application, or other document is mailed shall be deemed to be the date of delivery, as the case may be.

(2) MAILING REQUIREMENTS.—This subsection applies only if—

(A) the postmark date falls within the prescribed period or on or before the prescribed date for the filing (including any extension granted for such filing) of the bid, grant application, or other document; and

(B) the bid, grant application, or other document was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the bid, grant application, or other document is required to be made.

(b) POSTMARKS.—This section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by the regulations prescribed by Federal agencies.

(c) REGISTERED AND CERTIFIED MAILING.—

(1) REGISTERED MAIL.—For purposes of this section, if any such bid, grant application, or other document is sent by United States registered mail—

(A) such registration shall be prima facie evidence that the bid, grant application, or other document was delivered to the agency, officer, or office to which addressed; and

(B) the date of registration shall be deemed the postmark date.

(2) CERTIFIED MAIL.—Federal agencies are authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act and shall remain in effect notwithstanding section 10 of this Act.

HUTCHISON AMENDMENT NO. 5287

(Ordered to lie on the table.)

Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill, H.R. 3756, supra; as follows:

On page 64, strike lines 14 through 18 and add in lieu thereof:

SEC. . FUNDING TO MEET TREATY OBLIGATIONS.

(1) BUDGET AUTHORITY TO FUND BORDER STATIONS.—

(a) New budget authority for leasing agreements with State and local governments and private sponsors for construction by the General Services Administration of border facilities on the borders of the United States with Canada or Mexico, constructed pursuant to increased cross-border trade arising from treaties signed by the United States and ratified by the U.S. Senate, shall be treated as budget authority in the fiscal year in which the budget authority is obligated for construction, without regard to section 3328(a)(1)(B) of title 31, United States Code;

(c) an agreement entered into under such provisions shall provide for the title to the property and facilities to vest in the United States on or before the expiration of the contract term, on fulfillment of the terms and conditions of the agreement.

(2) GRANTS.—

(a) The General Services Administration shall make grants with respect to any State and local governments and private sponsors for initiation of construction by the General Services Administration of new border facilities on the borders of the United States with Canada or Mexico, pursuant to (1)(a), the total cost of which in fiscal year 1997 shall not exceed $2,150,000. The Administrator of G.S.A. shall submit to the Congress a prioritized list of border projects consistent with this section.

(b) LIMITATION ON PERCENT OF COST.—Federal funding provided under (2)(a) may not exceed 50% of the total cost of the activity with respect to which such a grant is provided.

(c) funds not granted by the GSA during fiscal year 1997 pursuant to (2) shall be transferred to the General Fund of the Treasury for deficit reduction.

BOXER AMENDMENT NO. 5288

(Ordered to lie on the table.)

Mrs. BOXER submitted an amendment intended to be proposed by her to the bill, H.R. 3756, supra; as follows:

On page 59, line 23, after "$5,600,000" insert ": *Provided*, That—

(1) the Congress finds that—

(A) the Gun Control Act of 1968 prohibited the importation of handguns that were easily concealable, poorly constructed, and lacking important safety features;

(B) the ban on the importation of such handguns (commonly termed "junk guns") did not prohibit the domestic manufacture of junk guns; and

(C) available data are insufficient to determine which handgun models currently manufactured in America are junk guns that fail to meet the safety and performance standards required of imported handguns;

(2) the Bureau of Alcohol, Tobacco and Firearms shall conduct a study listing the firearms legally manufactured in the United States that could not legally be imported under the restrictions of section 925(d)(3) of title 18, United States Code, and prepare a report on the study that shall be transmitted to the Congress no later than 1 year after the date of enactment of this Act;

(3) notwithstanding the provisions of section 102(3)(f) of title 3, United States Code, if funds are not required for Presidential transition, $2,000,000 of the amount appropriated under this heading shall be made available to the Bureau of Alcohol, Tobacco and Firearms to conduct the study and report described in paragraph (2); and

(4)(A) if funds are required for Presidential transition, the study described in paragraph (2) shall not be required unless the Congress provides funding for that purpose; and

(B) it is the sense of the Senate that if funds are required for Presidential transition, alternate means of funding the study described in paragraph (2) should be provided.

NICKLES AMENDMENT NO. 5289

(Ordered to lie on the table.)

Mr. NICKLES submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . REQUIREMENT FOR THE DISTRICT OF COLUMBIA TO COMPLY WITH 5-YEAR TIME LIMIT FOR WELFARE ASSISTANCE.

(a) IN GENERAL.—Not later than 10 days after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall rescind approval of the waiver described in subsection (b). Upon such rescission, the Secretary shall immediately approve such waiver in accordance with subsection (c).

(b) WAIVER DESCRIBED.—The waiver described in this subsection is the approval by the Secretary on August 19, 1996, of the District of Columbia's Welfare Reform Demonstration Special Application for waivers, which was submitted under section 1115 of the Social Security Act, and entitled the District of Columbia's Project on Work, Employment, and Responsibility (POWER).

(c) CONDITION FOR WAIVER APPROVAL.—The Secretary shall not approve any part of the waiver described in subsection (b) that relates to a waiver of the requirement under section 408(a)(7) of the Social Security Act to not use any part of the grant made under section 403 of such Act to provide assistance to a family that includes an adult who has received assistance under any State program funded under part A of title IV of such Act attributable to funds provided by the Federal Government for 60 months (whether or not consecutive).

SEC. . NO WAIVER OF 5-YEAR TIME LIMIT FOR WELFARE ASSISTANCE.

Beginning on and after the date of the enactment of this Act, the Secretary of Health and Human Services shall not approve any application submitted under section 1115 of the Social Security Act, or under any other provision of law, for a waiver of the requirement under section 408(a)(7) of such Act to not use any part of the grant made under section 403 of such Act to provide assistance to a family that includes an adult who has received assistance under any State program funded under part A of title IV of such Act

attributable to funds provided by the Federal Government for 60 months (whether or not consecutive).

KERRY AMENDMENT NO. 5290

(Ordered to lie on the table.)

Mr. KERREY submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

Insert at the appropriate place: "*Provided further*, That from funds made available for Basic Repairs and Alterations, $2,000,000 shall be transferred to the Policy and Operations appropriation".

NICKLES AMENDMENT NO. 5291

(Ordered to lie on the table.)

Mr. NICKLES submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new sections:

SEC. . SHORT TITLE.

This Act may be cited as the "Workers Political Freedom Act of 1996".

SEC. . WORKERS' POLITICAL RIGHTS.

(a) UNFAIR LABOR PRACTICES BY EMPLOYERS PROHIBITED.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by—

(1) striking the period at the end of paragraph (5) and inserting in lieu thereof "; or"; and

(2) adding after paragraph (5) the following new paragraph;

"(6) to receive from an employee dues, initiation fees, assessments, or other payments as a condition of employment for use for political activities in which the employer is engaged unless with the prior written voluntary authorization of the employee."

(b) UNFAIR LABOR PRACTICES BY LABOR ORGANIZATIONS PROHIBITED.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended by—

(1) striking "and" at the end of paragraph (6);

(2) striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(3) adding after paragraph (7) the following new paragraph;

"(8) to receive from a member or nonmember dues, initiation fees, assessments, or other payments as a condition of membership in the labor organization or as a condition of employment for use for political activities in which the labor organization is engaged unless with the prior written voluntary authorization of the member or nonmember: *Provided*, That nothing in this paragraph shall be construed to deprive the courts of their concurrent jurisdiction over claims that a labor organization's use of the monies specified in this paragraph, or over the procedures for objecting to such spending, breaches the duty of fair representation."

SEC. . EFFECTIVE DATE.

The amendments made by this Act shall apply the date of enactment of this Act.

ASHCROFT AMENDMENT NO. 5292

(Ordered to lie on the table.)

Mr. ASHCROFT submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place add the following new title:

TITLE ___—WORKING FAMILIES FLEXIBILITY

SEC. ___01. SHORT TITLE.

This title may be cited as the "Working Families Flexibility Act of 1996".

SEC. ___02. COMPENSATORY TIME.

Subsection (o) of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (8) and (9), respectively; and

(2) by striking paragraphs (1) through (5) and inserting the following:

"(1) An employee may receive, in accordance with this subsection and in lieu of monetary overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

"(2) An employer may provide compensatory time under paragraph (1) only—

"(A) pursuant to—

"(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representatives of such employees; or

"(ii) in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee, an agreement or understanding arrived at between the employer and employee before the performance of the work involved if such agreement or understanding was entered into knowingly and voluntarily by such employee;

"(B) in the case of an employee who is not an employee of a public agency, if such employee has affirmed, in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 11(c), that the employee has chosen to receive compensatory time in lieu of monetary overtime compensation; and

"(C) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (4) or (5).

In the case of employees described in subparagraph (A)(ii) who are employees of a public agency and who were hired before April 15, 1986, the regular practice in effect on such date with respect to compensatory time off for such employees in lieu of the receipt of monetary overtime compensation, shall constitute an agreement or understanding described in such subparagraph. Except as provided in the preceding sentence, the provision of compensatory time off to employees of a public agency for hours worked after April 14, 1986, shall be in accordance with this subsection. An employer may provide compensatory time under paragraph (1) to an employee who is not an employee of a public agency only if an agreement or understanding described in subparagraph (A)(ii) was not a condition of employment.

"(3) An employer that is not a public agency and that provides compensatory time under paragraph (1) to employees shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any employee for the purpose of—

"(A) interfering with such employee's rights under this subsection to request or not request compensatory time off in lieu of payment of monetary overtime compensation;

"(B) requiring any employee to accept such compensatory time in lieu of monetary overtime compensation; or

"(C) requiring any employee to use such compensatory time on or by a date determined by such employer.

"(4)(A) An employee who is not an employee of a public agency may accrue not more than 240 hours of compensatory time.

"(B)(i) Not later than January 31 of each calendar year, the employer of an employee described in subparagraph (A) shall provide monetary compensation, for any compensatory time off accrued during the preceding calendar year that was not used prior to December 31 of the preceding calendar year at the rate prescribed by paragraph (6). The employer of an employee described in subparagraph (A) may designate and communicate to the employee a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period.

"(ii) The employer of an employee described in subparagraph (A) may provide monetary compensation for the employee's unused compensatory time in excess of 80 hours at any time after giving the employee at least 30 days' notice. Such compensation shall be provided at the rate prescribed by paragraph (6).

"(iii) An employer that is not a public agency and that has adopted a policy offering compensatory time to employees of the employer may discontinue such policy upon giving employees 30 days' notice.

"(iv) An employee who is not an employee of a public agency may withdraw an agreement or understanding described in paragraph (2)(A)(ii) at any time.

"(C) An employee who is not an employee of a public agency may request in writing that monetary compensation be provided, at any time, for all compensatory time accrued that has not yet been used. Within 30 days after receiving the written request, the employer of the employee shall provide the employee the monetary compensation due in accordance with paragraph (6).

"(5)(A) If the work of an employee of a public agency for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked by such employee after April 15, 1986. If the work of an employee of a public agency for which compensatory time may be provided does not include a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any employee of a public agency who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid monetary overtime compensation.

"(B) If monetary compensation is paid to an employee described in subparagraph (A) for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

"(6)(A) An employee of an employer that is not a public agency who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

"(i) the average regular rate received by such employee during the period during which the compensatory time was accrued; or

"(ii) the final regular rate received by such employee;

whichever is higher.

"(B) An employee of an employer that is a public agency who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

"(i) the average regular rate received by such employee during the last 3 years of the employee's employment; or

"(ii) the final regular rate received by such employee;

whichever is higher.

"(C) Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

"(7) An employee—

"(A) who has accrued compensatory time off authorized to be provided under paragraph (1); and

"(B) who has requested the use of such compensatory time;

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the employer.".

SEC. ___03. REMEDIES.

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(1) in subsection (b), by striking "(b) Any employer" and inserting "(b) Except as provided in subsection (f), any employer"; and

(2) by adding at the end the following:

"(f) An employer that is not a public agency and that violates section 7(o)(3) shall be liable to the employee affected in an amount equal to—

"(1) the product of the rate of compensation (determined in accordance with section 7(o)(6)(A)) and the number of hours of compensatory time involved in the violation that was initially accrued by the employee; and

"(2) as liquidated damages—

"(A) an additional amount equal to such product; minus

"(B) the product of such rate of compensation and the number of hours of compensatory time involved in the violation that was used by the employee.".

SEC. ___04. NOTICE TO EMPLOYEES.

Not later than 30 days after the date of the enactment of this Act, the Secretary of Labor shall revise the materials the Secretary provides, under regulations published at section 516.4 of title 29, Code of Federal Regulations (as in effect on August 1, 1996), to employers concerning a notice explaining the Fair Labor Standards Act of 1938 to employees so that such notice reflects the amendments made to such Act by this title.

DASCHLE (AND BREAUX) AMENDMENT NO. 5293

(Ordered to lie on the table.)

Mr. DASCHLE (for himself and Mr. BREAUX) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

In the amendment, strike all after the first word and insert:

The Senate finds that over 40 states have received welfare waivers from the Department of Human Services to promote work and personal responsibility leading to self-sufficiency;

It is the sense of the Senate that either all of the waivers or none of the waivers should remain in place until their expiration date.

COVERDELL AMENDMENT NO. 5294

(Ordered to lie on the table.)

Mr. COVERDELL submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . PROVISIONS RELATED TO THE USE OF A CONTROLLED SUBSTANCE IN FURTHERANCE OF THE COMMISSION OR ATTEMPTED COMMISSION OF A FELONY.

(a) IN GENERAL.—Section 401 (b) of the Controlled Substance Act is amended by adding at the end the following new section.

"SEC. . USE OF A CONTROLLED SUBSTANCE TO COMMIT A FELONY.

"Any person who, in furtherance of the commission or attempted commission of a felony under Federal or State law, administers or causes to be administered to any person, without the consent of that person, an imported controlled substance (including flunitrazepam) shall, in addition to any punishment provided for that felony, be imprisoned not more than 20 years, fined under title 18, United States Code, or both.".

(b) FEDERAL AND STATE COORDINATION.—The United States Attorney shall coordinate the prosecution of any defendant charged with an offense under this section with State and local law enforcement agencies in order to ensure swift and appropriate punishment.

BIDEN AMENDMENT NO. 5295

Mr. BIDEN proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . RESCHEDULING OF FLUNITRAZEPAM INTO SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT.

Notwithstanding sections 201 and 202 (a) and (b) of the Controlled Substances Act (21 U.S.C. 811, 812 (a), (b)), respecting the scheduling of controlled substances, the Attorney General shall, by order—

(1) transfer flunitrazepam from schedule IV of such Act to schedule I of such Act; and

(2) add ketamine hydrochloride to schedule II of such Act.

SEC. . PENALTY FOR ADMINISTERING A CONTROLLED SUBSTANCE TO FACILITATE A FELONY.

(a) IN GENERAL.—The Controlled Substances Act (21 U.S.C. 100 et. seq.) is amended by adding at the end of part D the following new section:

"PENALTY FOR ADMINISTERING A CONTROLLED SUBSTANCE TO FACILITATE A FELONY

"SEC. 423. Whoever administers a controlled substance to a person without that person's knowledge for the purpose of facilitating the commission or attempted commission of a felony under Federal or State law shall, in addition to any other penalty imposed, be imprisoned for up to 10 years, fined as provided under title 18, United States Code, or both.".

(b) FEDERAL AND STATE COORDINATION.—The United States Attorney shall coordinate the prosecution of any defendant charged with an offense under section 423 of the Controlled Substances Act with State and local law enforcement agencies.

(c) CONFORMING AMENDMENT.—The table of sections for part D of the Controlled Substances Act is amended by inserting after the item relating to section 422 the following new item:

"Sec. 423. Penalty for administering a controlled substance to facilitate a felony."

KENNEDY AMENDMENTS NOS. 5296–5308

(Ordered to lie on the table.)

Mr. KENNEDY submitted 13 amendments intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

AMENDMENT NO. 5296

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"The Senate recedes with an amendment inserting

"(a) FUNCTIONS.—The functions of the local workforce development board shall include—

"(1) LOCAL WORKFORCE DEVELOPMENT PLAN.—Each local workforce development board shall develop a comprehensive multiyear strategic plan that is consistent with the goals the plan established by the State under section . Such plan shall include the following information—

"(A) an identification of the workforce development needs of local industries, job seekers, and workers;

"(B) a description of workforce development activities to be carried out in the local area as required under section (reference to employment and training section) and section (reference to at-risk youth section), that with programs established under Wagner-Peyser Act, contribute to a coherent workforce development system;

"(C) a description of the local benchmarks applicable to the local area as a whole negotiated with the State consistent with the State plan pursuant to section , and the benchmarks to be used by the local board for measuring the performance of local service providers and the performance of the one-stop career center system;

"(D) a description of the process negotiated with the Governor by the local board in coordination with local elected officials that the local board will use to establish or certify one-stop career centers and service providers in the local workforce development area;

"(E) a description of the process that the local board will use to—

"(i) ensure that the most effective and efficient service providers are chosen;

"(ii) ensure that local providers continue to meet the labor market needs of local employers and program participants; and

"(iii) fully utilize activities authorized under the Wagner-Peyser Act.

"(F) a description of how the local board will obtain the continued input of the chief elected official or officials in the local area in carrying out its duties;

"(G) a description of how the local workforce development board will obtain the active and continuous participation of business and industry, representatives of employees, local educational agencies, postsecondary education institutions, adult education and literacy providers, local service providers, community-based organizations, parents and consumers (including individuals with disabilities, older workers, and veterans) in the workforce development area;

"(H) a description of the steps the local board will take to work with local educational agencies, postsecondary educational institutions, adult education and literacy providers, and others to address the local employment, education, and training needs;

"(I) a description of the process used to fully involve business, labor organizations,

the local education community (including teachers), parents and community-based organizations in the development and implementation of at-risk youth activities, including a description of the process used to ensure that the most effective and efficient providers of services are chosen; and

"(J) such other information as the Governor may require.

"(2) IDENTIFICAITON OF QUALIFIED TRAINING PROVIDERS.—Consistent with the requirements established under section , the local board is authorized to work with the State in the identification of qualified providers of training in the workforce development area, for participation in employment and training activities established under section ."

Note 192a (on local board developing budget, with approval by local elected officials):

Strike the staff recommendation (which proposes that the House recede from its provision) and insert in lieu thereof the following: "The Senate recedes with technical corrections to cross-references."

Note 192b (on local board oversight responsibilities, in partnership with local elected officials):

Strike the staff recommendation (which proposes that the House recede from its provision) and insert in lieu thereof the following: "The Senate recedes".

Note 193 (relating to the role of local elected officials):

Strike the staff recommendation (which proposes that the House recede with an amendment modifying the language) and insert in lieu thereof the following: "The House recedes with an amendment, as follows:

"COORDINATION WITH LOCAL ELECTED OFFICIALS.—The local board shall—

"(A) develop the local workforce development plan, in coordination with the appropriate chief elected officials of units of general local government in the workforce development area;

"(B) submit the local workforce development plan to such appropriate chief elected officials for approval or modifications, allowing not less than 30 days for such consideration; and

"(C) include acceptable modifications and transmit any additional recommendations by any such chief elected official, as part of the submission of the local workforce development plan to the Governor."

Note 194 (on local board receiving and disbursing training funds or designating fiscal agent):

Strike the staff recommendation (which proposes that the House recede from its provision) and insert in lieu thereof the following: "The Senate recedes."

Note 194a (relating to employment of staff for the local board):

Strike the staff recommendation (which proposes that the House recede from its provision) and insert in lieu thereof the following: "The Senate recedes."

Note 195 (relating to prohibition of the local board operating programs itself):

Strike the staff recommendation (which proposes that the Senate recede with an amendment containing new language) and insert in lieu thereof the following: "The Senate recedes with amendments to insert the word 'directly' before the word 'operate' in the first sentence of the House provision, and to strike the second sentence of the House provision."

AMENDMENT NO. 5297

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"The Senate recedes with an amendment as follows."

"SPECIAL RULE.—With respect to adult education activities, the State shall ensure the expenditure for adult education and literacy of an amount at least equal to the amount the State received under section 313 of the Adult Education Act for adult education activities in FY 1995. For any fiscal year in which funding for adult and literacy activities under section is less than the amount received by the State in FY 1995, the state shall use sufficient funds under the flex account under section to satisfy the requirements of this provision.

AMENDMENT NO. 5298

Insert at the appropriate place in the Kassebaum amendment the following amendments:

Note 210 (relating to summer jobs program):

Strike the staff recommendation (which proposes that the Senate recede from its position) and insert in lieu thereof the following: "The House recedes with an amendment as follows:

"Subsection . SUMMER JOBS PROGRAM.—Each State shall use a portion of the funds provided for at-risk youth activities under this section to conduct a summer youth employment program. Such program shall provide worksite learning opportunities for at-risk youth and be linked to year-round education and training activities provided to such youth."

"(A) For purposes of paragraph (1)(A), the term "youth living in poverty" means an individual who—

"(i) is not less than age 15 or more than age 21; and

"(ii) is a member of a family (having one or more members) with an income below the poverty line (as annually determined by the Office of Management and Budget).

"(B) For purposes of paragraph (1)(B), the term "youth" means an individual who is not less than age 15 or more than age 21.

"(C) For purposes of paragraph (2) the term "allocation percentage" means—

"(i) with respect to the program year preceding program year 1998, the percentage that the workforce development area receives of financial assistance allotted to all local areas in the State under subtitle B and C of title II of the Job Training Partnership Act for program year 1997; and

"(ii) with respect to program year 1998 and each subsequent program year, the percentage that a workforce development area receives under this subsection for the program year."

AMENDMENT NO. 5299

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"Subsection AT-RISK YOUTH SUBSTATE ALLOCATION.—

"(1) IN GENERAL.—Subject to the adjustments required by paragraph (2), of the amounts to be allocated within the State to local workforce development boards to carry out at-risk youth activities—

"(A) two-thirds shall be allocated on the basis of the relative number of youth living in poverty within each workforce development area as compared to the total number of youth living in poverty in the State; and

"(B) one-third shall be allocated on the basis of the relative number of youth within each workforce development area as compared to the total number of youth living in the State.

"(2) LIMITATION.—No workforce development area shall be allocated for any program year under paragraph (1) an amount which is less than 98 percent or more than 102 percent of the allocation percentage for such area for the preceding program year.

"(3) DEFINITIONS.—".

AMENDMENT NO. 5300

Insert at the appropriate place in the Kassebaum amendment the following amendments:

( ) LIMITATIONS ON PARTICIPANTS.—

(1) FINDING.—Congress finds that—

(A) the possession, distribution, and use of drugs by participants in workforce employment activities should not be tolerated, and that such use prevents participants from making full use of the benefits extended through such activities at the expense of taxpayers; and

(B) drug testing, when conducted in accordance with rigorous scientific standards and adequate safeguards, is a fair and effective means of deterring drug use.

(2) DETERMINATION.—Each Governor of a State receiving an allotment under section ___ shall determine whether to require local entities carrying out workforce employment activities described in section ___ in the State to administer drug tests. A Governor who elects to require such testing shall require that the testing be administered in accordance with this subsection and the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 53 Fed. Reg. 11970 (1988) (or a successor to such guidelines).

(3) DRUG TESTS.—Each local entity carrying out such workforce employment activities in a State in which the Governor has elected to require such testing (referred to in this subsection as a "covered State") shall administer a drug test—

(A) on a random basis, to individuals who apply to participate in such activities; and

(B) to a participant in such activities, on reasonable suspicion of drug use by the participant.

(4) ELIGIBILITY OF APPLICANTS.—Each local entity carrying out such workforce employment activities in a covered State shall provide notice to each applicant, on application, that the applicant may be required to submit to a drug test administered as described in paragraph (3). In order for such an applicant to be eligible to participate in such workforce employment activities, the applicant shall agree to submit to the drug test and, if the test is administered to the applicant, shall pass the test.

(5) ELIGIBILITY OF PARTICIPANTS.—Each local entity carrying out such workforce employment activities in a covered State shall provide notice to each participant, on selection, that the participant may be required to submit to a drug test administered as described in paragraph (3). In order for such a participant to be eligible to participate in such workforce employment activities, the participant shall agree to submit to the drug test and, if the test is administered to the participant, shall pass the test. If a participant refuses to submit to the drug test, or fails the drug test, the local entity shall dismiss the participant from participation in the activities.

(6) REAPPLICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an individual who is an applicant and is disqualified from eligibility under paragraph (4), or who is a participant and is dismissed under paragraph (5), may reapply, not earlier than 6 months after the date of the disqualification or dismissal, to

participate in such workforce employment activities. If the individual demonstrates that the individual has completed a drug treatment program and passed a drug test within the past 30 days, the individual may participate in such activities, under the same terms and conditions as apply to other applicants and participants, including submission to drug tests administered as described in paragraph (3).

(B) SECOND DISQUALIFICATION OR DISMISSAL.—If the individual reapplies to participate in the activities and fails a drug test administered under paragraph (3) by the local entity, while the individual is an applicant or a participant, the local entity shall disqualify the individual from eligibility for, or dismiss the individual from participation in, the workforce employment activities. The individual shall not be eligible to reapply for participation in the activities for 2 years after such disqualification or dismissal.

(7) APPEAL.—A decision by a local entity to disqualify an individual from eligibility for participation in workforce employment activities under paragraph (4) or (6), or to dismiss a participant as described in paragraph (5) or (6), shall be subject to expeditious appeal in accordance with procedures established by the State in which the local entity is located.

(8) DEFINITIONS.—As used in this section:

(A) DRUG.—The term "drug" means a controlled substance, as defined in section 102(6) of the Controlled Substance Act (21 U.S.C. 802(6)).

(B) DRUG TEST.—The term "drug test" means a biochemical drug test carried out by a facility that is certified in accordance with the mandatory guidelines (or successor) described in paragraph (2).

AMENDMENT NO. 5301

Insert at the appropriate place in the Kassebaum amendment the following amendments:

(b) RECIPIENTS.—Subject to subsection (c) in making an allotment under section ___ *[the fed to State formula]* to a State, the Secretaries shall make a payment.—

(1) to the Governor of the state for the portion described in paragraphs (1) *[employment and training]* and (4) *[at-risk youth]* of subsection (a), and such part of the flex account as the Governor may be eligible to receive, as determined under the State plan of the State submitted under subsection ___; and

(2) to the eligible agencies in the State for the portion described in paragraphs (2) *[vocational education]* and (3) *[adult education]* of subsection (a), and such part of the flex account as the eligible agencies may be eligible to receive, as determined under the State plan of the State submitted under subsection ___.

2. Note.—Relating to eligible agency, will be inserted in the General Definitions:

( ) the term "eligible agency" means—

(A) the State educational agency and each of the State agencies responsible for higher education (including community colleges) that the State chooses. If no such agency is so designated for vocational education activities, the eligible agency for vocational education shall be the individual, entity or agency in a State responsible for administering or setting policies for vocational education on the date of enactment of this Act.

(B) in the case of adult education activities or requirements under this title, the individual, entity, or agency in a State responsible for administering or setting policies for adult education activities in such State pursuant to State law. If no such agency is so designated for adult education activities, the eligible agency for adult education shall be the individual, entity or agency in a State responsible for administering or setting the policies for adult education on the date of enactment of the Act.

3. Note.—Special Rules:

(1) Nothing in this Act shall be construed to negate or supersede the legal authority under State law of any State agency, State entity, or State public official over programs that are under the jurisdiction of the agency, entity, or official. Nothing in this Act shall be construed to interfere with the authority of such agency, entity, or official to enter into a contract under any provision of law.

(2) Nothing in the [subtitle] shall be construed to prohibit any individual, entity or agency in a State (other than the State educational agency) that is administering vocational education activities or adult education and literacy activities or setting education policies consistent with State law for vocational education activities or adult education and literacy activities, on the day preceding the date of enactment of this Act from continuing to administer or set education policies consistent with authority under State law for such activities under this [subtitle].

4. Note 221b.—(formula for within-state distribution of vocational education funds)

The House recedes with an amendment as follows:

(1) EIGHTY PERCENT.—From 80 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 80 percent as the number of children aged 5–17 living in poor families. For the purposes of this section, the Secretary shall determine the number of children aged 5–17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce."

(2) TWENTY PERCENT.—From 20 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 20 percent as the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of all local educational agencies in the State for such year.

(b) LIMITATIONS.—No entity shall receive an allotment under this section for a program year an amount that would make the entity's percentage for the program year—

(1) less than the product obtained by multiplying—

(a) 0.98 and

(b) the entity's percentage of the total State allotment for the preceding program year; or

(2) greater than the product obtained by multiplying—

(a) 1.02 and

(b) the entity's percentage of the total State allotment for the preceding program year."

(b) CONTENTS.—The State plan shall include—

(1)(A) a description of the collaborative process described in section 105 used in developing the plan, including a description of the manner in which the individuals and agencies involved in the process collaborated in the development of the plan: and

(B)(i)(I) information demonstrating the agreement of the individuals and agencies participating in the collaborative process on the State plan: or

(II) in as case in which the Governor is unable to obtain the agreement of such individuals and agencies as provided in subclause (J), the comments referred to in section 105(c)(2)(C): and

(2) a statement of the State goals and State benchmarks for the statewide system, that includes—

(A) information identifying the State goals and State benchmarks and how the goals and benchmarks will make the statewide system relevant and responsive to labor market and education needs at the local level: and

(B) information describing how the State will coordinate workforce and career development activities to meet the State goals and reach the State benchmarks:

(3) information describing—

(A) the needs of the State with regard to current and projected demands for workers by occupation:

(B) the skills and economic development needs of the State: and

(C) the type and availability of workforce and career development activities in the State;

SEC. 105. COLLABORATIVE PROCESS.

(a) IN GENERAL.—A State shall use a collaborative process to develop the State plan described in section 104 through which individuals and agencies including at a minimum—

(1) the Governor;

(2) representatives appointed by the Governor, of—

(A) business and industry;

(B) local chief elected officials (representing both cities and counties, where appropriate);

(C) local educational agencies (including vocational educators);

(D) postsecondary institutions (including community and technical colleges);

(E) parents; and

(F) employees and labor organizations:

(3) the lead State agency official for—

(A) the State educational agency;

(B) the eligible agency responsible for vocational education;

(C) the eligible agency responsible for adult education;

(D) the State agency responsible for postsecondary education; and

(E) the State agency responsible for vocational rehabilitation, and where applicable, the State agency providing vocational rehabilitation program activities for the blind;

(4) such other State agency officials, including officials responsible for economic development and employment, as the Governor may designate:

(5) representatives of the State legislature; and

(6) the representative of the Veterans' Employment and Training Service assigned to the State under section 4103 of title 38, United States Code shall collaborate in the development of the plan.

(b) ALTERNATIVE PROCESSES.—Subject to concurrence of the eligible agencies and the approval of the Secretaries for alternative collaborative processes to be used for the purposes of complying with subsection (a) and with the review and the approval of the Secretaries—

(1) a State may use any State collaborative process (including collaboration by any council or similar entity) in existence on the date of enactment of this Act that substantially meets the objectives of such subsection, as determined by the governor and the eligible agencies, or

(2) if, prior to the date of enactment of this Act, a State has developed a one-stop career

center system or a school-to-work system through a collaborative process that the Governor and the eligible agencies determine is substantially similar to the process described in subsection (a), the State may use such collaborative process.

(c) SPECIAL RULES.—

(1) GOVERNOR.—The Governor of a State shall have final authority for determining the content of the portion of the State plan described in paragraphs ___ through ___ of subsection ( ) regarding employment and training activities and related requirements and at-risk youth activities and related requirements;

(2) ELIGIBLE AGENCIES.—The eligible agencies in a State shall have final authority for determining the content of the portion of the State plan described in paragraphs ___ through ___ of subsection ( ) regarding vocational education activities and related requirements and adult education and literacy activities and related requirements.

(d) AUTHORITY OF GOVERNOR.—

(1) FINAL AUTHORITY.—If, after a reasonable effort, the Governor is unable to obtain the agreement of the individuals and agencies participating in the collaborative process described in subsection (a) or (b) on the State plan, the Governor shall have final authority to submit the State plan as described in section 104, except as provided in paragraph (3).

(2) DISAGREEMENT.—The Governor shall—

(A) provide such individuals and agencies with copies of the State plan:

(B) allow such individuals and agencies to submit to the Governor, not later than the end of the 30-day period beginning on the date on which the governor provides such individuals and agencies with copies of such plan under subparagraph (A), comments on such plan; and

(C) accept and include with the State plan any such comments that—

(i) are submitted by an eligible agency and represent disagreement with such plan, with respect to vocational education or adult education; or

(ii) are submitted by another individual or agency participation in the collaborative process.

(3) ELIGIBLE AGENCY COMMENTS.—An eligible agency, in submitting comments under paragraph (2)(C)(i), may submit provisions for any portion of the State plan described in paragraphs ( ) through ( ) of subsection (b) (regarding vocational education activities and related requirements), as appropriate. The Governor shall include the provisions in the plan submitted by the governor under section 104. *Such provisions shall be considered to be such portion of the State plan.*

SEC. 106. ACCOUNTABILITY.

To be supplied.

SEC. 107. IDENTIFICATION OF PROVIDERS.

What is the relationship between local entities as defined in section 4 and eligible providers under this section?

(a) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—To be eligible to receive funds made available to a State under this title for employment and training activities, a provider of training services shall meet the requirements of this section. Are these requirements only for providers seeking to conduct training, or any employment

AMENDMENT NO. 5302

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"The Senate recedes with an amendment as follows."

"SEC. . SUBMISSION AND APPROVAL OF STATE PLAN.

(a) IN GENERAL.—For a State to be eligible to receive an allotment under section ___, the Governor of a State shall submit to the Secretaries every third year a single, comprehensive State plan (referred to in this section as a "State plan") for the development and implementation of the Statewide system and obtain the approval of such plan by the Secretaries in accordance with subsection (b).

(b) STATE PLAN APPROVAL.—The Secretaries of Labor and Education shall jointly approve a State plan if—

(1) the Secretaries determine that the plan contains the information described in subsection ( );

(2) the Secretaries determine that the State has prepared the plan in accordance with the requirements of this Act;

(3) the Secretaries are satisfied that the steps described in the plan will achieve the purposes of the Act and are substantively adequate to achieve an integrated workforce development system within three years of approval of the plan; and

(4) the Secretaries have negotiated and agreed to State performance indicators with the State in accordance with section ( )."

AMENDMENT NO. 5303

Insert at the appropriate place in the Kassebaum amendment the following amendments:

SEC. . PERFORMANCE ACCOUNTABILITY SYSTEM.

(a) IN GENERAL.—In order to promote high levels of performance and to ensure an appropriate return on the Nation's investment in the workforce development system, each State receiving funds under this Act shall implement a statewide performance accountability system that meets the requirements of this section.

(b) INDICATORS OF PERFORMANCE.—

(1) IN GENERAL.—Each State receiving funds under this Act shall identify indicators [Note: Senate uses "benchmarks" in lieu of "indicators" throughout section] of performance for each of the programs established under this Act that are consistent with State goals as described in the State plan in accordance with section ___. Such indicators shall, at a minimum, include the core indicators described in subsection (f), and be expressed in an objective, quantifiable, and measurable form. Such indicators may also include post-program surveys measuring the satisfaction of both employers and program participants.

(2) TECHNICAL DEFINITIONS OF CORE INDICATORS.—In order to ensure nationwide comparability of performance data, the Secretary of Labor and the Secretary of Education, in collaboration with the States and with representatives of business and industry, employees, educational agencies, service providers, and other interested parties, shall promulgate definitions of each of the core indicators described in subsection (f), to be used under this Act in measuring performance.

(c) LEVELS OF PERFORMANCE.—

(1) EXPECTED LEVELS.—

(A) NEGOTIATION.—Prior to approval of the State plan, the appropriate Secretary shall negotiate with each State the levels of performance expected to be achieved by such State with respect to the core indicators described in subsection (f), taking into account—

(i) whether the levels will enable each State to attain the State goals;

(ii) how the levels compare with the levels established by other States;

(iii) how the levels compare with the model levels identified pursuant to paragraph (2)(A); and

(iv) such other factors as may ensure an appropriate return on the investment of Federal funds.

(B) APPLICATION TO LOCAL AREAS AND ENTITIES.—Based on the expected levels of performance established pursuant to subparagraph (A), each State shall identify the level of performance that is expected for local workforce development areas and for other local administrative entities under this Act. In determining such levels, the Governor or eligible entity as defined in section ( ), in collaboration with local agencies, may adjust the expected levels of performance with respect to each local area or entity taking into account specific economic, demographic, and geographic factors, and the characteristics of the population to be served.

(2) CHALLENGING LEVELS OF PERFORMANCE.—

(A) MODEL LEVELS.—In order to encourage high levels of performance and advance the Nation's competitiveness in the global economy, the Secretary of Labor and the Secretary of Education, in collaboration with the States and with representatives of business and industry, employees, educational agencies, service providers, and other interested parties, shall identify model challenging levels of performance with respect to the core indicators described in subsection (f).

(B) NEGOTIATION.—Prior to approval of the State plan, the appropriate Secretary shall negotiate with each State challenging levels of performance which, if achieved, would qualify such States for incentive grants under section ___. Such levels shall take into account—

(i) how the levels compare with the model levels established pursuant to subparagraph (A);

(ii) the extent to which such levels would demonstrate continuous improvement in performance by such State and exceed the expected levels established in paragraph (1);

(iii) the extent to which such State successfully serves the special populations identified in subsection (f)(3); and

(iv) such other factors as may demonstrate exceptional performance by the State.

(d) REPORT ON PERFORMANCE.—

(1) IN GENERAL.—The State shall report, as required by the Secretaries, the levels of performance achieved by the State and by each local workforce development area and each other local administrative entity with respect to the indicators identified pursuant to subsection (b)(1) for each program year, beginning with the second program year. The Secretaries shall make such information available to the general public through publication and other appropriate methods, and shall disseminate State-by-State comparisons, and comparisons with other industrialized nations (where appropriate).

(2) JOB PLACEMENT VERIFICATION SYSTEM.—

(A) IN GENERAL.—In order to verify data relating to the employment indicators described in subsection (f), and the performance-based information submitted by providers of training pursuant to section ___, each State shall establish a job placement verification system. Such system shall match relevant participant information with quarterly wage records available through the unemployment insurance system to verify employment and earnings information.

(B) PROVISIONS OF INFORMATION.—Each local entity that carries out employment and training activities or education activities and that receives funds under this title shall provide such information as the State may require to carry out the verification described in subparagraph (A).

(C) CONFIDENTIALITY.—Information obtained through the job placement verification system shall be protected by the State from unlawful access and be made available for use solely by public officials or their agents in the administration of this Act. Personal identifiers produced pursuant to subparagraph (B) shall be used solely for the purpose of computer matching under this section and shall not be used for any other purpose or redisclosed for other purposes.

(e) CONSEQUENCES FOR POOR PERFORMANCE.—

(1) STATE CONSEQUENCES.—If a State fails to meet expected levels of performance for a program for any program year as established pursuant to subsection (c)(1)(A), the appropriate Secretary shall provide technical assistance, which may include assistance in the development of a performance improvement plan. If such failure continues for a second consecutive year, the appropriate Secretary may reduce, by not more than 5 percent, the amount of the grant that would (in the absence of the paragraph) be payable to the State under such program for the immediately succeeding program year. The Secretaries may use funds withheld under this paragraph to provide, through alternative arrangements, services and activities within the State that meet the purpose of the Act.

(2) LOCAL CONSEQUENCES.—(A) If a local workforce development area or other local administrative entity fails to meet expected levels of performance for a program for any program year established pursuant to subsection (c)(1)(B), the Governor or the eligible as defined by section ( ), shall provide technical assistance, which may include the development of a performance improvement plan.

(B) If such failure continues for a second consecutive year, the Governor or the eligible entity as defined by section ___ may take corrective actions, such as the withholding of funds, the redesignation of a local administrative entity, or such other actions as the Governor or such eligible entity determines are appropriate, consistent with State law, and the requirements of this Act.

(f) CORE INDICATORS OF PERFORMANCE.—

(1) CORE INDICATORS FOR EMPLOYMENT AND TRAINING.—The core indicators of performance for employment and training programs conducted under this Act shall include:

(A) placement in unsubsidized employment;

(B) retention in unsubsidized employment for not less than 6 months and for not less than 12 months, respectively;

(C) increases in earnings, or in earnings in combination with employer-assisted benefits;

(D) attainment of industry-recognized occupational skills, including basic workplace competencies and industry-recognized skill standards, which may include the acquisition of a skill certificate in the occupation for which the individual has been prepared;

(E) attainment of a high school diploma or general equivalency diploma; and

(F) such other measures of performance that the State may wish to collect.

(2) CORE INDICATORS FOR EDUCATION.—The core indicators of performance for education programs conducted under this Act shall include:

(A) Student mastery of academic knowledge;

(B) Student mastery of work readiness, occupational, and industry-recognized skills for students in career preparation programs;

(C) Placement in, retention in, and completion of secondary education (as determined under State law) and postsecondary education, and placement and retention in employment and in military service; and

(D) Mastery of the literacy, knowledge, and skills, including English acquisition, adults need to be productive and responsible citizens and for parents to become more actively involved in the education of their children.

(3) ADDITIONAL CORE INDICATORS FOR SPECIAL POPULATIONS.—In addition to the core indicators described in paragraphs (1) and (2), the core indicators of performance for programs conducted under this Act shall include measures of the success in achieving State goals for special populations, including dislocated workers, low income individuals, at-risk youth, individuals with disabilities, displaced homemakers, welfare recipients, and individuals who are basic skills deficient.

SEC. . MANAGEMENT INFORMATION SYSTEMS.

Each State shall use a portion of the funds in receives for administration under this Act to operate a management information system in accordance with guidelines established jointly by the Secretaries in consultation with the Governors and eligible entities as defined in section ( ). Such guidelines shall include elements that promote the efficient collection and use of management information for reporting and monitoring the use of funds and the performance of programs conducted under this Act, including information relating to demographic characteristics of participants, and ensure appropriate privacy protections.

In all Appropriate notes: Strike the phrase "representatives of employees" and "employees and representatives of labor organizations" wherever such phrases appear, and substitute in lieu thereof "representatives of labor organizations and employees".

Note 364.—(relating to definition of public employment offices): Modify the staff-recommended amendment by striking all of paragraph (6), and redesignating paragraph (7) as paragraph (6).

Note 365.—(relating to duties of Secretary of Labor): Modify the staff-recommended amendment by striking out, "pursuant to title II of this Act" in subsection (a).

AMENDMENT NO. 5304

Insert at the appropriate place in the Kassebaum amendment the following amendments:

Strike the repeal of the School-to-Work Opportunities Act;

Amend Section 802 of the School-to-Work Opportunities Act of 1993 (20 USC 6251) by striking "2001" and inserting "2000."

AMENDMENT NO. 5305

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"The Senate recedes with an amendment as follows:"

"Subsection ___. DISLOCATED WORKER ASSISTANCE.—

(a) IN GENERAL.—From the amounts allocated to the States in any program year that are available to carry out adult employment and training and the flex account, the States, in accordance with requirements of paragraph (2), shall expend an amount to provide employment and training services to dislocated workers that, when combined with amounts allocated for such workers in the national reserve account, is not less than $1.3 billion.

(2) STATE SHARES.—In order to meet the requirements of paragraph (1), the Secretaries shall determine, based on the relative share of each State of the funds allocated under this Act pursuant to the formula provided in section ___, an amount equal to the relative share for each State of $1.3 billion minus the amount allocated to the national reserve for emergency grants for dislocated workers. Each State shall expend, from funds available to such State for adult employment and training, and if such funds are insufficient, from the flex account, not less than the amount determined for such State pursuant to the preceding sentence to provide employment and training services to dislocated workers."

AMENDMENT NO. 5306

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"(a) ACTIVITIES.—(1)(A) Of the funds allotted to a State under section 102 for each fiscal year, a State shall use an amount that equals the total of the funds appropriated to it for fiscal year 1996 for the programs consolidated under this Act for workforce employment and training, adult education and literacy, vocational education, and at-risk youth program activities.

"(B) From such amount—

"(i) a portion equal to 45 percent of such amount shall be used for workforce employment and training activities;

"(ii) a portion equal to 7 percent of such amount shall be used for adult education and literacy activities;

"(iii) a portion equal to 28 percent of such amount shall be used for vocational education activities; and

"(iv) a portion equal to 20 percent of such amount shall be used for at-risk youth program activities.

"(2)(A) If, for any fiscal year, a State's allotment under section 102 is equal to or less than the total amount of the funds appropriated to it for fiscal year 1996 for Federal grants for the programs consolidated under this Act, the State shall use that lesser amount in accordance with paragraph (1)(B).

"(B) If, for any fiscal year, a State's allotment under section 102 exceeds the total amount of the funds appropriated to it for fiscal year 1996 Federal grants for the programs consolidated under this Act, the State shall, subject to subparagraph (C), use such excess for flexible workforce activities (referred to in section ___ as the 'flex account'.)

"(C) If, for any fiscal year, a State's allotment under section 102 exceeds 125 percent of its total amount of the funds appropriated to it for fiscal year 1996 for Federal grants for programs consolidated under this Act, the State shall use the amount in excess of 125% in the following manner:

"(i) a portion equal to 35 percent to such amount shall be used for workforce employment and training activities;

"(ii) a portion equal to 5 percent of such amount shall be used for adult education and literacy activities;

"(iii) a portion equal to 20 percent of such amount shall be used for vocational education activities;

"(iv) a portion equal to 15 percent of such amount shall be used for at-risk youth.

"(v) a portion equal to 25 percent of such amount shall be used for flexible workforce activities (referred to as the 'flex account').

AMENDMENT NO. 5307

Insert at the appropriate place in the Kassebaum amendment the following amendments:

"The Senate recedes with an amendment as follows."

"Paragraph . USE OF CAREER GRANTS

"(i) DISLOCATED WORKERS.—Except as provided in clause (ii), training under this Act shall be provided through the use of skill grants to dislocated workers who are 18 years or older, who are unable to obtain Pell Grants under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and who are unable to obtain the training or employment they desire through the core services.

Note 337(a).—(relating to exceptions to use of skill grants): Senate recedes.

Note 337(b).—(relating to transition for skill grants): Senate recedes with amendment striking "three years" and inserting "five years."

Note 159.—(relating to incentives): Modify the proposed staff amendment by adding at the end the following new paragraph:

"(5) ACCELERATED IMPLEMENTATION OF CAREER GRANTS.—In order to encourage early implementation of the career grant system, the Secretaries may, from funds reserved under section ___, award incentive grants to States that implement the career grant system described in section ___, prior to the date required for such implementation under section ___."

AMENDMENT NO. 5308

Insert in the Kassebaum amendment the following:

Note 219.—(relating to the allocation of workforce education funds): "The House recedes with an amendment as follows:"

"(A) Secondary school vocational education, or postsecondary and adult vocational education, or both; and

"(B) 1 or more State corrections agencies to administer vocational education programs for juvenile and adult criminal offenders in correctional institutions in the State, including correctional institutions operated by local authorities."

Note 227.—(relating to distribution of adult vocational funds): "The House recedes with an amendment as follows:"

"Strike (A) on line 35."

Note 233.—(relating to reservation of funds for corrections agencies): "The Senate recedes."

HATCH AMENDMENT NO. 5309

(Ordered to lie on the table.)

Mr. HATCH submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

On page 9, line 2, strike "or facilitate to manufacture" and insert "or to facilitate the manufacture of".

On page 10, line 8, strike "IMPORTATION REQUIREMENTS" and insert "IMPORTATION AND EXPORTATION REQUIREMENTS".

On page 11, line 9, strike the comma after "item".

On page 11, line 12, strike beginning with "For purposes" through line 21 and insert "For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer.'.".

On page 14, line 24, strike "Iso safrole" and insert "Isosafrole".

On page 15, between lines 5 and 6, add the following:

SEC. 210. WITHDRAWAL OF REGULATIONS.

The final rule concerning removal of exemption for certain pseudoephedrine products marketed under the Federal Food, Drug, and Cosmetic Act published in the Federal Register of August 7, 1996 (61 FR 40981–40993) is null and void and of no force or effect.

On page 21, line 23, strike beginning with ", except that" through beginning with ", except that" through "transaction" on page 22, line 6, and insert ", except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamidistributors required to submit reports by section 310(b)(3) of this title shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction".

On page 22, line 8, strike "abuse" and insert "offense".

On page 23, strike lines 1 through 14 and insert the following:

"(46)(A) The term 'retail distributor' means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

On page 24, line 12, strike "The" and insert the following: "Pursuant to subsection (d)(1), the".

On page 25, line 17, strike "effective date of this section" and insert "date of enactment of this Act".

On page 26, line 1, after "being" insert "widely".

On page 26, line 4, strike "in bulk" and insert "for distribution or sale".

On page 27, line 15, strike "effective date of this section" and insert "date of enactment of this Act".

On page 28, between lines 19 and 20, insert the following and redesignate the following paragraphs accordingly:

(3) SIGNIFICANT NUMBER OF INSTANCES.—

(A) IN GENERAL.—For purposes of this subsection, isolated or infrequent use, or use in insubstantial quantities, of ordinary over-the-counter pseudoephedrine or phenylpropanolamine, as defined in section 102(45) of the Controlled Substances Act, as added by section 401(b) of this Act, and sold at the retail level for the illicit manufacture of methamphetamine or amphetamine may not be used by the Attorney General as the basis for establishing the conditions under paragraph (1)(A)(ii) of this subsection, with respect to pseudoephedrine, and paragraph (2)(A)(ii) of this subsection, with respect to phenylpropanolamine.

(B) CONSIDERATIONS AND REPORT.—The Attorney General shall—

(i) in establishing a finding under paragraph (1)(A)(ii) or (2)(A)(ii) of this subsection, consult with the Secretary of Health and Human Services in order to consider the effects on public health that would occur from the establishment of new single transaction limits as provided in such paragraph; and

(ii) upon establishing a finding, transmit a report to the Committees on the Judiciary in both, respectively, the House of Representatives and the Senate in which the Attorney General will provide the factual basis for establishing the new single transaction limits.

On page 29, between lines 14 and 15, insert the following:

(f) COMBINATION EPHEDRINE PRODUCTS.—

(1) IN GENERAL.—For the purposes of this section, combination ephedrine products shall be treated the same as pseudoephedrine products, except that—

(A) a single transaction limit of 24 grams shall be effective as of the date of enactment of this Act and shall apply to sales of all combination ephedrine products, notwithstanding the form in which those products are packaged, made by retail distributors or distributors required to submit a report under section 310(b)(3) of the Controlled Substances Act (as added by section 402 of this Act);

(B) for regulated transactions for combination ephedrine products other than sales described in subparagraph (A), the transaction limit shall be—

(i) 1 kilogram of ephedrine base, effective on the date of enactment of this Act; or

(ii) a threshold other than the threshold described in clause (i), if established by the Attorney General not earlier than 1 year after the date of enactment of this Act; and

(C) the penalties provided in subsection (d)(1)(B) of this section shall take effect on the date of enactment of this Act for any individual or business that violates the single transaction limit of 24 grams for combination ephedrine products.

(2) DEFINITION.—For the purposes of this section, the term "combination ephedrine product" means a drug product containing ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically significant quantities of another active medicinal ingredient.

On page 29, line 15, strike "(f)" and insert "(g)".

On page 29, line 17, strike all beginning with "over-the-counter" through line 20 and insert "pseudoephedrine or phenylpropanolamine product prior to 12 months after the date of enactment of this Act, except that, on application of a manufacturer of a particular pseudoephedrine or phenylpropanolamine drug product, the Attorney General may, in her sole discretion, extend such effective date up to an additional six months. Notwithstanding any other provision of law, the decision of the Attorney General on such an application shall not be subject to judicial review."

On page 35, line 5, after "funds" insert "or appropriations".

KENNEDY (AND SIMON) AMENDMENT NO. 5310

(Ordered to lie on the table.)

Mr. KENNEDY (for himself and Mr. SIMON) proposed an amendment to the bill, H.R. 3756, supra; as follows:

Strike sections 301 and 302 and insert the following:

SEC. 301. PENALTY INCREASES FOR TRAFFICKING IN METHAMPHETAMINE.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to provide for increased penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine, and other similar offenses, including unlawful possession with intent to commit any of those offenses, and attempt and conspiracy to commit any of those offenses. The Commission shall submit to Congress explanations therefor and any additional policy recommendations for combating methamphetamine offenses.

(b) IN GENERAL.—In carrying out this section, the Commission shall ensure that the

sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a) and any recommendations submitted under such subsection reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine, including—

(1) the rapidly growing incidence of methamphetamine abuse and the threat to public safety such abuse poses;

(2) the high risk of methamphetamine addiction;

(3) the increased risk of violence associated with methamphetamine trafficking and abuse; and

(4) the recent increase in the illegal importation of methamphetamine and precursor chemicals.

SEC. 302. ENHANCED PENALTIES FOR OFFENSES INVOLVING CERTAIN LISTED CHEMICALS.

(a) CONTROLLED SUBSTANCES ACT.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by striking "not more than 10 years," and inserting "not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical,".

(b) CONTROLLED SUBSTANCE IMPORT AND EXPORT ACT.—Section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)) is amended by striking "not more than 10 years," and inserting "not more than 20 years in the case of a violation of paragraph (1) or (3) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (3) involving a list I chemical,".

(c) SENTENCING GUIDELINES.—

(1) IN GENERAL.—The United States Sentencing Commission shall, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority of that section had not expired, amend the sentencing guidelines to increase by at least two levels the offense level for offenses involving list I chemicals under—

(A) section 401(d) (1) and (2) of the Controlled Substances Act (21 U.S.C 841(d) (1) and (2)); and

(B) section 1010(d) (1) and (3) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d) (1) and (3)).

(2) REQUIREMENT.—In carrying out this subsection, the Commission shall ensure that the offense levels for offenses referred to in paragraph (1) are calculated proportionally on the basis of the quantity of controlled substance that reasonably could have been manufactured in a clandestine setting using the quantity of the list I chemical possessed, distributed, imported, or exported.

On page 2, strike out the items relating to sections 301 and 302 and insert the following:

Sec. 301. Penalty increases for trafficking in methamphetamine.
Sec. 302. Enhanced penalties for offenses involving certain listed chemicals.

BIDEN AMENDMENT NO. 5311

(Ordered to lie on the table.)

Mr. BIDEN submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

Add at the appropriate place:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Methamphetamine Control Act of 1996".

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

Sec. 1. Short title and table of contents.
Sec. 2. Findings.
TITLE I—IMPORTATION OF METHAMPHETAMINE AND PRECURSOR CHEMICALS
Sec. 101. Support for international efforts to control drugs.
Sec. 102. Penalties for manufacture of listed chemicals outside the United States with intent to import them into the United States.
TITLE II—PROVISIONS TO CONTROL THE MANUFACTURE OF METHAMPHETAMINE
Sec. 201. Seizure and forfeiture of regulated chemicals.
Sec. 202. Study and report on measures to prevent sales of agents used in methamphetamine production.
Sec. 203. Increased penalties for manufacture and possession of equipment used to make controlled substances.
Sec. 204. Addition of iodine and hydrochloric gas to list II.
Sec. 205. Civil penalties for firms that supply precursor chemicals.
Sec. 206. Injunctive relief.
Sec. 207. Restitution for cleanup of clandestine laboratory sites.
Sec. 208. Record retention.
Sec. 209. Technical amendments.
TITLE III—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS
Sec. 301. Trafficking in methamphetamine penalty increases.
Sec. 302. Penalty increases for trafficking in listed chemicals.
Sec. 303. Enhanced penalty for dangerous handling of controlled substances: amendment of sentencing guidelines.
TITLE IV—LEGAL MANUFACTURE, DISTRIBUTION, AND SALE OF PRECURSOR CHEMICALS
Sec. 401. Diversion of certain precursor chemicals.
Sec. 402. Mail order restrictions.
TITLE V—EDUCATION AND RESEARCH
Sec. 501. Interagency methamphetamine task force.
Sec. 502. Public health monitoring.
Sec. 503. Public-private education program.
Sec. 504. Suspicious orders task force.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Methamphetamine is a very dangerous and harmful drug. It is highly addictive and is associated with permanent brain damage in long-term users.

(2) The abuse of methamphetamine has increased dramatically since 1990. This increased use has led to devastating effects on individuals and the community, including—

(A) a dramatic increase in deaths associated with methamphetamine ingestion;

(B) an increase in the number of violent crimes associated with methamphetamine ingestion; and

(C) an increase in criminal activity associated with the illegal importation of methamphetamine and precursor compounds to support the growing appetite for this drug in the United States.

(3) Illegal methamphetamine manufacture and abuse presents an imminent public health threat that warrants aggressive law enforcement action, increased research on methamphetamine and other substance abuse, increased coordinated efforts to prevent methamphetamine abuse, and increased monitoring of the public health threat methamphetamine presents to the communities of the United States.

TITLE I—IMPORTATION OF METHAMPHETAMINE AND PRECURSOR CHEMICALS

SEC. 101. SUPPORT FOR INTERNATIONAL EFFORTS TO CONTROL DRUGS.

The Attorney General, in consultation with the Secretary of State, shall coordinate international drug enforcement efforts to decrease the movement of methamphetamine and methamphetamine precursors into the United States.

SEC. 102. PENALTIES FOR MANUFACTURE OF LISTED CHEMICALS OUTSIDE THE UNITED STATES WITH INTENT TO IMPORT THEM INTO THE UNITED STATES.

(a) UNLAWFUL IMPORTATION.—Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended—

(1) in the matter before paragraph (1), by inserting "or listed chemical" after "schedule I or II"; and

(2) in paragraphs (1) and (2), by inserting "or chemical" after "substance".

(b) UNLAWFUL MANUFACTURE OR DISTRIBUTION.—Paragraphs (1) and (2) of section 1009(b) of the Controlled Substances Import and Export Act (21 U.S.C. 959(b)) are amended by inserting "or listed chemical" after "controlled substance".

(c) PENALTIES.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended—

(1) in paragraph (5), by striking "or" at the end;

(2) in paragraph (6), by striking the comma at the end and inserting "; or"; and

(3) by adding at the end the following:

"(7) manufactures, possesses with intent to distribute, or distributes a listed chemical in violation of section 959 of this title.".

TITLE II—PROVISIONS TO CONTROL THE MANUFACTURE OF METHAMPHETAMINE

SEC. 201. SEIZURE AND FORFEITURE OF REGULATED CHEMICALS.

(a) PENALTIES FOR SIMPLE POSSESSION.—Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended—

(1) in subsection (a)—

(A) by adding after the first sentence the following: "It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 303 of this title or section 1008 of title III if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration."; and

(B) by striking "drug or narcotic" and inserting "drug, narcotic, or chemical" each place it appears; and

(2) in subsection (c), by striking "drug or narcotic" and inserting "drug, narcotic, or chemical".

(b) FORFEITURES.—Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraphs (2) and (6), by inserting "or listed chemical" after "controlled substance" each place it appears; and

(2) in paragraph (9), by—

(A) inserting "dispensed, acquired," after "distributed," both places it appears; and

(B) striking "a felony provision of".

(c) SEIZURE.—Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended—

(1) in subsection (a)(3), by inserting "or listed chemical" after "controlled substance"; and

(2) by amending subsection (b) to read as follows:

"(b) As used in this section, the terms 'controlled substance' and 'listed chemical' have the meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

SEC. 202. STUDY AND REPORT ON MEASURES TO PREVENT SALES OF AGENTS USED IN METHAMPHETAMINE PRODUCTION.

(a) STUDY.—The Attorney General of the United States shall conduct a study on possible measures to effectively prevent the diversion of red phosphorous, iodine, hydrochloric gas, and other agents for use in the production of methamphetamine. Nothing in this section shall preclude the Attorney General from taking any action the Attorney General already is authorized to take with regard to the regulation of listed chemicals under current law.

(b) REPORT.—Not later than January 1, 1998, the Attorney General shall submit a report to the Congress of its findings pursuant to the study conducted under subsection (a) on the need for and advisability of preventive measures.

(c) CONSIDERATIONS.—In developing recommendations under subsection (b), the Attorney General shall consider—

(1) the use of red phosphorous, iodine, hydrochloric gas, and other agents in the illegal manufacture of methamphetamine;

(2) the use of red phosphorous, iodine, hydrochloric gas, and other agents for legitimate, legal purposes, and the impact any regulations may have on these legitimate purposes; and

(3) comments and recommendations from law enforcement, manufacturers of such chemicals, and the consumers of such chemicals for legitimate, legal purposes.

SEC. 203. INCREASED PENALTIES FOR MANUFACTURE AND POSSESSION OF EQUIPMENT USED TO MAKE CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—

(1) by striking "(d) Any person" and inserting "(d)(1) Except as provided in paragraph (2), any person"; and

(2) by adding at the end the following:

"(2) Any person who, with the intent to manufacture or facilitate to manufacture methamphetamine, violates paragraph (6) or (7) of subsection (a), shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of that person—

"(A) for a violation of paragraph (6) or (7) of subsection (a);

"(B) for a felony under any other provision of this subchapter or subchapter II of this chapter; or

"(C) under any other law of the United States or any State relating to controlled substances or listed chemicals,

has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $60,000, or both.".

(b) SENTENCING COMMISSION.—The United States Sentencing Commission shall amend the sentencing guidelines to ensure that the manufacture of methamphetamine in violation of section 403(d)(2) of the Controlled Substances Act, as added by subsection (a), is treated as a significant violation.

SEC. 204. ADDITION OF IODINE AND HYDROCHLORIC GAS TO LIST II.

(a) IN GENERAL.—Section 102(35) of the Controlled Substances Act (21 U.S.C. 802(35)) is amended by adding at the end the following:

"(I) Iodine.

"(J) Hydrochloric gas.".

(b) IMPORTATION REQUIREMENTS.—(1) Iodine shall not be subject to the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).

(2) EFFECT OF EXCEPTION.—The exception made by paragraph (1) shall not limit the authority of the Attorney General to impose the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).

SEC. 205. CIVIL PENALTIES FOR FIRMS THAT SUPPLY PRECURSOR CHEMICALS.

(a) OFFENSES.—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(1) in paragraph (9), by striking "or" after the semicolon;

(2) in paragraph (10), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this title or title III, with reckless disregard for the illegal uses to which such a laboratory supply will be put.

As used in paragraph (11), the term 'laboratory supply' means a listed chemical or any chemical, substance, or item, on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if a firm distributes or continues to distribute a laboratory supply to a customer where the Attorney General has previously notified, at least two weeks before the transaction(s), the firm that a laboratory supply sold by the firm, or any other person or firm, has been used by that customer, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals."

(b) CIVIL PENALTY.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by adding at the end the following:

"(C) In addition to the penalties set forth elsewhere in this title or title III, any business that violates paragraph (11) of subsection (a) shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater.".

SEC. 206. INJUNCTIVE RELIEF.

(a) TEN-YEAR INJUNCTION MAJOR OFFENSES.—Section 401(f) of the Controlled Substances Act (21 U.S.C. 841(f)) is amended by—

(1) inserting "manufacture, exportation," after "distribution,"; and

(2) striking "regulated".

(b) TEN-YEAR INJUNCTION OTHER OFFENSES.—Section 403 of the Controlled Substances Act (21 U.S.C. 843) is amended—

(1) in subsection (e), by—

(A) inserting "manufacture, exportation," after "distribution,"; and

(B) striking "regulated"; and

(2) by adding at the end the following:

"(f) INJUNCTIONS.—(1) In addition to any penalty provided in this section, the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to violations of this section or section 402.

"(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

"(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 402.

"(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

SEC. 207. RESTITUTION FOR CLEANUP OF CLANDESTINE LABORATORY SITES.

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

"(q) The court, when sentencing a defendant convicted of an offense under this title or title III involving the manufacture of methamphetamine, may—

"(1) order restitution as provided in sections 3612 and 3664 of title 18, United States Code;

"(2) order the defendant to reimburse the United States for the costs incurred by the United States for the cleanup associated with the manufacture of methamphetamine by the defendant; and

"(3) order restitution to any person injured as a result of the offense as provided in section 3663 of title 18, United States Code.".

SEC. 208. RECORD RETENTION.

Section 310(a)(1) of the Controlled Substances Act (21 U.S.C. 830(a)(1)) is amended by striking the dash after "transaction" and subparagraphs (A) and (B) and inserting "for two years after the date of the transaction.".

SEC. 209. TECHNICAL AMENDMENTS.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (34), by amending subparagraphs (P), (S), and (U) to read as follows:

"(P) Iso safrole.

"(S) N-Methylephedrine.

"(U) Hydriodic acid."; and

(2) in paragraph (35), by amending subparagraph (G) to read as follows:

"(G) 2-Butanone (or Methyl Ethyl Ketone).".

TITLE III—INCREASED PENALTIES FOR TRAFFICKING AND MANUFACTURE OF METHAMPHETAMINE AND PRECURSORS

SEC. 301. TRAFFICKING IN METHAMPHETAMINE PENALTY INCREASES.

(a) CONTROLLED SUBSTANCES ACT.—

(1) LARGE AMOUNTS.—Section 401(b)(1)(A)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)(viii)) is amended by—

(A) striking "100 grams or more of methamphetamine," and inserting "50 grams or more of methamphetamine,"; and

(B) striking "1 kilogram or more of a mixture or substance containing a detectable

amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(2) SMALLER AMOUNTS.—Section 401(b)(1)(B)(viii) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(B)(viii)) is amended by—

(A) striking "10 grams or more of methamphetamine," and inserting "5 grams or more of methamphetamine,"; and

(B) striking "100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(b) IMPORT AND EXPORT ACT.—

(1) LARGE AMOUNTS.—Section 1010(b)(1)(H) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(H)) is amended by—

(A) striking "100 grams or more of methamphetamine," and inserting "50 grams or more of methamphetamine,"; and

(B) striking "1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "500 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

(2) SMALLER AMOUNTS.—Section 1010(b)(2)(H) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(2)(H)) is amended by—

(A) striking "10 grams or more of methamphetamine," and inserting "5 grams or more of methamphetamine,"; and

(B) striking "100 grams or more of a mixture or substance containing a detectable amount of methamphetamine" and inserting "50 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

SEC. 302. PENALTY INCREASES FOR TRAFFICKING IN LISTED CHEMICALS.

(a) CONTROLLED SUBSTANCES ACT.—Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by striking the period and inserting the following: "or, with respect to a violation of paragraph (1) or (2) of this subsection involving a list I chemical, if the government proves the quantity of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals possessed or distributed, the penalty corresponding to the quantity of controlled substance that could have been produced under subsection (b).".

(b) CONTROLLED SUBSTANCE IMPORT AND EXPORT ACT.—Section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)) is amended by striking the period and inserting the following: ", or, with respect to an importation violation of paragraph (1) or (3) of this subsection involving a list I chemical, if the government proves the quantity of controlled substance that could reasonably have been manufactured in a clandestine setting using the quantity of list I chemicals imported, the penalty corresponding to the quantity of controlled substance that could have been produced under title II.".

(c) DETERMINATION OF QUANTITY.—

(1) IN GENERAL.—For the purposes of this section and the amendments made by this section, the quantity of controlled substance that could reasonably have been provided shall be determined by using a table of manufacturing conversion ratios for list I chemicals.

(2) TABLE.—The table shall be—

(A) established by the United States Sentencing Commission based on scientific, law enforcement, and other data the Sentencing Commission deems appropriate; and

(B) dispositive of this issue.

SEC. 303. ENHANCED PENALTY FOR DANGEROUS HANDLING OF CONTROLLED SUBSTANCES: AMENDMENT OF SENTENCING GUIDELINES.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall determine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.

(b) OFFENSE.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of The Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in which in the commission of the offense the defendant violated—

(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);

(2) section 103(b) of the Comprehensive Environmental Response, Compensation and Liability Act (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);

(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act (relating to the unlawful discharge of pollutants or hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or

(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material).

TITLE IV—LEGAL MANUFACTURE, DISTRIBUTION, AND SALE OF PRECURSOR CHEMICALS

SEC. 401. DIVERSION OF CERTAIN PRECURSOR CHEMICALS.

(a) IN GENERAL.—Section 102(39) of the Controlled Substances Act (21 U.S.C. 802(39)) is amended—

(1) in subparagraph (A)(iv)(I)(aa), by striking "as" through the semicolon and inserting

", pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued pursuant to section 204(e) of this title;"; and

(2) in subparagraph (A)(iv)(II), by inserting ", pseudoephedrine, phenylpropanolamine," after "ephedrine".

(b) LEGITIMATE RETAILERS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (39)(A)(iv)(I)(aa), by adding before the semicolon the following: ", except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction (except as provided in section 401(d) of the Comprehensive Methamphetamine Control Act of 1996)";

(2) in paragraph (39)(A)(iv)(II), by adding before the semicolon the following: ", except that any sale of products containing pseudoephedrine or phenylpropanolamine, other than ordinary over-the-counter pseudoephedrine or phenylpropanolamine products, by retail distributors shall not be a regulated transaction if the distributor's sales are limited to less than the threshold quantity of 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in each single transaction";

(3) by redesignating paragraph (43) relating to felony drug abuse as paragraph (44); and

(4) by adding at the end the following:

"(45) The term 'ordinary over-the-counter pseudoephedrine or phenylpropanolamine product' means any product containing pseudoephedrine or phenylpropanolamine that is—

"(A) regulated pursuant to this title; and

"(B)(i) except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; and

"(ii) for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.

"(46)(A) The term 'retail distributor' means—

"(i) with respect to an entity that is a grocery store, general merchandise store, or drug store, a distributor whose activities relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales, both in number of sales and volume of sales, directly to walk-in customers; and

"(ii) with respect to any other entity, a distributor whose activities relating to ordinary over-the-counter pseudoephedrine or phenylpropanolamine products are limited primarily to sales directly to walk-in customers for personal use.

"(B) For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.

"(C) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

"(i) A grocery store is an entity within SIC code 5411.

"(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

"(iii) A drug store is an entity within SIC code 5912.".

(c) REINSTATEMENT OF LEGAL DRUG EXEMPTION.—Section 204 of the Controlled Substances Act (21 U.S.C. 814) is amended by adding at the end the following new subsection:

"(e) REINSTATEMENT OF EXEMPTION WITH RESPECT TO EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE DRUG PRODUCTS.—The Attorney General shall by regulation reinstate the exemption with respect to a particular ephedrine, pseudoephedrine, or phenylpropanolamine drug product if the Attorney General determines that the drug product is manufactured and distributed in a manner that prevents diversion. In making this determination the Attorney General shall consider the factors listed in subsection (d)(2). Any regulation issued pursuant to this subsection may be amended or revoked based on the factors listed in subsection (d)(4).".

(d) REGULATION OF RETAIL SALES.—

(1) PSEUDOEPHEDRINE.—

(A) LIMIT.—

(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of pseudoephedrine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for pseudoephedrine-containing compounds may not be lowered beyond that established in this paragraph.

(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of pseudoephedrine base, the Attorney General shall establish, following notice, comment, and an informal hearing that since the effective date of this section there are a significant number of instances where ordinary over-the-counter pseudoephedrine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802 (45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance in bulk.

(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

(2) PHENYLPROPANOLAMINE.—

(A) LIMIT.—

(i) IN GENERAL.—Not sooner than the effective date of this section and subject to the requirements of clause (ii), the Attorney General may establish by regulation a single-transaction limit of 24 grams of phenylpropanolamine base for retail distributors. Notwithstanding any other provision of law, the single-transaction threshold quantity for phenylpropanolamine-containing compounds may not be lowered beyond that established in this paragraph.

(ii) CONDITIONS.—In order to establish a single-transaction limit of 24 grams of phenylpropanolamine base, the Attorney General shall establish, following notice, comment, and an informal hearing, that since the effective date of this section there are a significant number of instances where ordinary over-the-counter phenylpropanolamine products as established in paragraph (45) of section 102 of the Controlled Substances Act (21 U.S.C. 802(45)), as added by this Act, sold by retail distributors as established in paragraph (46) in section 102 of the Controlled Substances Act (21 U.S.C. 802(46)), are being used as a significant source of precursor chemicals for illegal manufacture of a controlled substance in bulk.

(B) VIOLATION.—Any individual or business that violates the thresholds established in this paragraph shall, with respect to the first such violation, receive a warning letter from the Attorney General and, if a business, the business shall be required to conduct mandatory education of the sales employees of the firm with regard to the legal sales of pseudoephedrine. For a second violation occurring within 2 years of the first violation, the business or individual shall be subject to a civil penalty of not more than $5,000. For any subsequent violation occurring within 2 years of the previous violation, the business or individual shall be subject to a civil penalty not to exceed the amount of the previous civil penalty plus $5,000.

(3) DEFINITION OF BUSINESS.—For purposes of this subsection, the term "business" means the entity that makes the direct sale and does not include the parent company of a business not involved in a direct sale regulated by this subsection.

(4) JUDICIAL REVIEW.—Any regulation promulgated by the Attorney General under this section shall be subject to judicial review pursuant to section 507 of the Controlled Substances Act (21 U.S.C. 877).

(e) EFFECT ON THRESHOLDS.—Nothing in the amendments made by subsection (b) or the provisions of subsection (d) shall affect the authority of the Attorney General to modify thresholds (including cumulative thresholds) for retail distributors for products other than ordinary over-the-counter pseudoephedrine or phenylpropanolamine products (as defined in section 102(45) of the Controlled Substances Act, as added by this section) or for non-retail distributors, importers, or exporters.

(f) EFFECTIVE DATE OF THIS SECTION.—Notwithstanding any other provision of this Act, this section shall not apply to the sale of any over-the-counter pseudoephedrine or phenylpropanolamine product initially introduced into interstate commerce prior to 9 months after the date of enactment of this Act.

SEC. 402. MAIL ORDER RESTRICTIONS.

Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) is amended by adding at the end the following:

"(3) MAIL ORDER REPORTING.—(A) Each regulated person who engages in a transaction with a nonregulated person which—

"(i) involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals); and

"(ii) uses or attempts to use the Postal Service or any private or commercial carrier;

shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General in such form, containing such data, and at such times as the Attorney General shall establish by regulation.

"(B) The data required for such reports shall include—

"(i) the name of the purchaser;

"(ii) the quantity and form of the ephedrine, pseudoephedrine, or phenylpropanolamine purchased; and

"(iii) the address to which such ephedrine, pseudoephedrine, or phenylpropanolamine was sent.".

TITLE V—EDUCATION AND RESEARCH

SEC. 501. INTERAGENCY METHAMPHETAMINE TASK FORCE.

(a) ESTABLISHMENT.—There is established a "Methamphetamine Interagency Task Force" (referred to as the "interagency task force") which shall consist of the following members:

(1) The Attorney General, or a designee, who shall serve as chair.

(2) 2 representatives selected by the Attorney General.

(3) The Secretary of Education or a designee.

(4) The Secretary of Health and Human Services or a designee.

(5) 2 representatives of State and local law enforcement and regulatory agencies, to be selected by the Attorney General.

(6) 2 representatives selected by the Secretary of Health and Human Services.

(7) 5 nongovernmental experts in drug abuse prevention and treatment to be selected by the Attorney General.

(b) RESPONSIBILITIES.—The interagency task force shall be responsible for designing, implementing, and evaluating the education and prevention and treatment practices and strategies of the Federal Government with respect to methamphetamine and other synthetic stimulants.

(c) MEETINGS.—The interagency task force shall meet at least once every 6 months.

(d) FUNDING.—The administrative expenses of the interagency task force shall be paid out of existing Department of Justice appropriations.

(e) FACA.—The Federal Advisory Committee Act (5 U.S.C. App. 2) shall apply to the interagency task force.

(f) TERMINATION.—The interagency task force shall terminate 4 years after the date of enactment of this Act.

SEC. 502. PUBLIC HEALTH MONITORING.

The Secretary of Health and Human Services shall develop a public health monitoring program to monitor methamphetamine abuse in the United States. The program shall include the collection and dissemination of data related to methamphetamine abuse which can be used by public health officials in policy development.

SEC. 503. PUBLIC-PRIVATE EDUCATION PROGRAM.

(a) ADVISORY PANEL.—The Attorney General shall establish an advisory panel consisting of an appropriate number of representatives from Federal, State, and local law enforcement and regulatory agencies with experience in investigating and prosecuting illegal transactions of precursor chemicals. The Attorney General shall convene the panel as often as necessary to develop and coordinate educational programs for wholesale and retail distributors of precursor chemicals and supplies.

(b) CONTINUATION OF CURRENT EFFORTS.—The Attorney General shall continue to—

(1) maintain an active program of seminars and training to educate wholesale and retail distributors of precursor chemicals and supplies regarding the identification of suspicious transactions and their responsibility to report such transactions; and

(2) provide assistance to State and local law enforcement and regulatory agencies to facilitate the establishment and maintenance of educational programs for distributors of precursor chemicals and supplies.

SEC. 504. SUSPICIOUS ORDERS TASK FORCE.

(a) IN GENERAL.—The Attorney General shall establish a "Suspicious Orders Task Force" (the "Task Force") which shall consist of—

(1) appropriate personnel from the Drug Enforcement Administration (the "DEA") and other Federal, State, and local law enforcement and regulatory agencies with the experience in investigating and prosecuting illegal transactions of listed chemicals and supplies; and

(2) representatives from the chemical and pharmaceutical industry.

(b) RESPONSIBILITIES.—The Task Force shall be responsible for developing proposals to define suspicious orders of listed chemicals, and particularly to develop quantifiable parameters which can be used by registrants in determining if an order is a suspicious order which must be reported to DEA. The

quantifiable parameters to be addressed will include frequency of orders, deviations from prior orders, and size of orders. The Task Force shall also recommend provisions as to what types of payment practices or unusual business practices shall constitute prima facie suspicious orders. In evaluating the proposals, the Task Force shall consider effectiveness, cost and feasibility for industry and government, an other relevant factors.

(c) MEETINGS.—The Task Force shall meet at least two times per year and at such other times as may be determined necessary by the Task Force.

(d) REPORT.—The Task Force shall present a report to the Attorney General on its proposals with regard to suspicious orders and the electronic reporting of suspicious orders within one year of the date of enactment of this Act. Copies of the report shall be forwarded to the Committees of the Senate and House of Representatives having jurisdiction over the regulation of listed chemical and controlled substances.

(e) FUNDING.—The administrative expenses of the Task Force shall be paid out of existing Department of Justice funds.

(f) FACA.—The Federal Advisory Committee Act (5 U.S.C. App. 2) shall apply to the Task Force.

(g) TERMINATION.—The Task Force shall terminate upon presentation of its report to the Attorney General, or two years after the date of enactment of this Act, whichever is sooner.

LAUTENBERG AMENDMENT NO. 5312

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . GUN BAN FOR INDIVIDUALS COMMITTING DOMESTIC VIOLENCE.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.".

(b) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.";

(2) in subsection (g)—

(A) by striking "or" at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel,"; and

(3) in subsection (s)(3)(B)(i), by inserting before the semicolon the following: "and has not been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel".

(c) RULES AND REGULATIONS.—Section 926(a) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.".

SHELBY AMENDMENT NO. 5313

Mr. SHELBY proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 19, line 2, before the period add the following new provision: "*:Provided further*, That of the funds appropriated $2,500,000 may be made available for the review of trade issues as authorized by Public Law 103–182".

KERREY AMENDMENT NO. 5314

Mr. SHELBY (for Mr. KERREY) proposed an amendment to the bill, H.R. 3756, supra; as follows:

Insert at the appropriate place: "*Provided further*, That from funds made available for Basic Repairs and Alterations, $2,000,000 may be transferred to the Policy and Operations appropriation".

HATCH (AND OTHERS) AMENDMENT NO. 5315

Mr. HATCH (for himself, Mr. COVERDELL, Mrs. HUTCHISON, and Mr. WARNER) proposed an amendment to amendment No. 5295 proposed by Mr. BIDEN to the bill, H.R. 3756, supra; as follows:

Strike all after the first word and insert the following:

PROVISIONS RELATING TO USE OF A CONTROLLED SUBSTANCE WITH INTENT TO COMMIT A CRIME OF VIOLENCE.

(a) PENALTIES FOR DISTRIBUTION.—Section 401(b) of the Controlled Substances Act is amended by adding at the end the following:

"(7)(A) Whoever, with intent to commit a crime of violence as defined in section 16, United States Code (including rape) against an individual, violates subsection (a) by distributing a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined as provided under title 18, United States Code.

"(B) As used in this paragraph, the term 'without that individual's knowledge' means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.".

"(b) ADDITIONAL PENALTIES RELATING TO FLUNITRAZEPAM.

(1) GENERAL PENALTIES.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(A) in subsection (b)(1)(C), by inserting "or 1 gram of flunitrazepam" after "I or II"; and

(B) in subsection (b)(1)D), by inserting "or 30 milligrams of flunitrazepam," after "schedule III,".

(2) IMPORT AND EXPORT PENALTIES.—

(A) Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended by inserting "or flunitrazepam" after "I or II".

(B) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended by inserting "or flunitrazepam" after "I or II,".

(C) Section 1010(b)(4) of the Controlled Substances Import and Export Act is amended by inserting "(except a violation involving flunitrazepam)" after "III, IV, or V,".

(3) SENTENCING GUIDELINES.—The United States Sentencing Commission shall amend the Sentencing Guidelines so that one dosage unit of flunitrazepam shall be equivalent to one gram of marijuana for determining the offense level under the Drug Quantity Table.

(d) INCREASED PENALTIES FOR UNLAWFUL SIMPLE POSSESSION OF FLUNITRAZEPAM.—Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the sentence ending with "exceeds 1 gram." the following new sentence: "Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years and shall be fined as otherwise provided in this section."

ASHCROFT AMENDMENT NO. 5316

Mr. ASHCROFT proposed an amendment to amendment No. 5234 proposed by Mr. DASCHLE to the bill, H.R. 3756, supra; as follows:

At the end of the matter proposed to be inserted, add the following:

SEC. . WORKFORCE FLEXIBILITY FOR EMPLOYEES OF FEDERAL CONTRACTORS.—Subchapter II of chapter 61 of title 5, United States Code, shall apply to contractors and employees specified in section 03(a)(1) and to contractors with an entity of the executive branch of the Federal Government, and employees of such contractors, in the same manner, and to the same extent, as such subchapter applies to agencies and employees, respectively, as defined in section 6121 of title 5, United States Code.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Forest and Public Land Management.

The hearing will take place Wednesday, September 25, 1996, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 987, a bill to provide for the full settlement of all

claims of Swain County, NC, against the United States under the agreement dated July 30, 1943, and for other purposes.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Judy Brown or Mark Rey at (202) 224-6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to met at 10 a.m. on Thursday, September 12, 1996, in open session, to receive testimony on the situation in Iraq.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. SHELBY. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, September 12, 1996, at 10 a.m., for a hearing on S. 1794, Congressional, Presidential, and Judiciary Pension Forfeiture Act.

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

COMMITTEE ON EAST ASIA/PACIFIC AFFAIRS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Subcommittee on East Asia/Pacific Affairs of the Committee on Foreign Relations to authorized to meet during the session of the Senate on Thursday, September 12, 1996, at 10 a.m. (agenda attached).

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

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. SHELBY. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, September 12, 1996, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to consider S. 1695, a bill to authorize the Secretary of the Interior to assess up to $2 per person visiting the Grand Canyon or other national parks to secure bonds for capital improvements to the park.

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

SUBCOMMITTEE ON PERSONNEL

Mr. SHELBY. Mr. President, I ask unanimous consent that the Subcommittee on Personnel of the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, September 12, 1996, in open session, to receive testimony regarding the practices and procedures of the investigative services of the Department of Defense and the military departments concerning investigations into the deaths of military personnel which may have resulted from self-inflicted causes.

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

ADDITIONAL STATEMENTS

TRIBUTE TO MARILYN S. PENNINGTON

• Mr. MCCONNELL. Mr. President, I rise today to recognize Marilyn S. Pennington who is retiring from the Social Security Administration after 29 years of Federal service.

Ms. Pennington began her Social Security career as a service representative in Louisville, KY, in August 1965. She was promoted to claims representative and reassigned to Paducah, KY, in October 1966 and then to Silver Spring, MD, in August 1967. She returned to Louisville in May 1969. Her performance as a claims representative was always outstanding and she served as a model and mentor to other employees. During the early 1970's, Ms. Pennington was assigned as an operations analyst for the Louisville District. She provided outstanding staff assistance to the Louisville management team. Her work as an analyst was instrumental in improving the overall efficiency of the Louisville District Office. On May 8, 1977, she was promoted to the operations supervisor position which she holds today.

During her career, Ms. Pennington won many performance-related awards based on her outstanding work in serving the public. Her service to the public has been a model of the best that Government can bring to the people.

Ms. Pennington has also helped implement major additions to Social Security programs. These include Medicare in July 1966 and the Supplemental Security Income program in January 1974. There have also been many other changes to Social Security programs during her career, such as the extension of coverage to include Federal employees and employees of non-profit organizations, taxation of benefits, and more.

Mr. President, I ask you and my colleagues to join me in recognizing Marilyn S. Pennington for 29 years of dedicated service to the Federal Government.•

THE EXTRAORDINARY LIFE OF CARDINAL BERNARDIN

• Mr. HOLLINGS. Mr. President, I rise today to pay tribute to the extraordinary life of Cardinal Joseph Bernardin.

Cardinal Bernardin is one of America's most beloved and most respected Catholics. He is the son of Italian immigrants and grew up in my home State of South Carolina. I am proud to claim him as a product of the Palmetto State. He has had a tremendous impact on my life and the lives of thousands of others.

Cardinal Bernardin was made a bishop in 1966, at 38, the youngest U.S. bishop of that time, and since then has held a wide range of leadership positions. As head of the archdiocese of Chicago, the Nation's second-largest, for 14 years, he has built a reputation for reaching out to non-Catholics and for trying to bridge gaps within the church.

On September 9, Cardinal Bernardin was presented with the Presidential Medal of Freedom, the highest civilian honor. In his remarks, President Clinton said, "As the Archbishop of Chicago, Cardinal Bernardin is one of our Nation's most beloved men and one of Catholicism's great leaders. When others have pulled people apart, Cardinal Bernardin has sought common ground. In a time of transition in his Church, his community, his Nation and the world, he has held fast to his mission to bring out the best in humanity and to bring people together. Throughout his career, he has fought tirelessly against social injustice, poverty, and ignorance. Without question, he is both a remarkable man of God and a man of the people."

In a column called "Cardinal Virtues" earlier this week, Washington Post columnist Mary McGrory also talked about the extraordinary life of Cardinal Joseph Bernardin. She told of the grace with which confronting his diagnosis of terminal cancer. He spoke of his diagnosis as a "gift," she said.

McGrory writes, "Why? Before he knew he was going to die, he said he had many fears." After the news, the Cardinal said, "God has given me the gift of peace and tranquility."

McGrory went on to say that Cardinal Bernardin hopes to write a book to help other cancer victims who are terrified by the diagnosis and lose heart. "I have spent 30 years as a bishop trying to teach people how to live," he said during an interview. "Now I will teach them how to die."

Cardinal Bernardin is a remarkable man and I am honored to call him a friend.

Mr. President, I ask that Mary McGrory's September 10 column be printed in the RECORD.

The column follows:

[From the Washington Post, Sept. 10, 1996]

CARDINAL VIRTUES

(By Mary McGrory)

Under some pressure on the matter of the company he keeps, President Clinton surrounded himself with some classy people at the White House and gave the 11 of them the Medal of Freedom, the highest civilian award. The star of the occasion was a small, frail cardinal from Chicago, Joseph

Bernardin, who accepted the medal in the East Room and then went out on the lawn to explain, gently, his differences with the donor.

His Eminence is totally pro-life: He is against abortion, against capital punishment—both of which are favored by Clinton. Some Catholics held that, given his fundamental differences as well as on welfare reform, he should have turned down the medal. But Bernardin explained that it comes from the nation.

His updating of Saint Thomas More's famous self-description, during a time of trouble with Henry VIII—"The King's good servant, and God's first"—came on a day of blazing heat and draining humidity. The cardinal, who was recently told by doctors that he has inoperable liver cancer and a limited time to live, went patiently from camera to camera. "I will take care of all of you," he promised pastorally, and he did.

Some thought he might be asked to perform an exorcism at the White House. As the scandal of the president's chosen familiar, Dick Morris, widens and deepens, fumigation might not be enough. Morris's sex life may be his own business, but his arrogance is not. The most popular Catholic cleric was the best possible counterpoint to the pond scum. After so much of the profane, the sacred was welcome.

The cardinal startled many people when, recently in Chicago, he announced that he is bound for the Promised Land. He is in the midst of a project called "Common Ground," which he had hoped to be a forum where American Catholics can discuss their differences on church matters. A mediator all his life, he is concerned with the rise of incivility and mean-spiritedness among the faithful. He was severely criticized by three of his brother cardinals, who feared the airing of unorthodoxy and possibly even heresy. He replied imperturbably that the dissent of Cardinals Bernard Law of Boston, James A. Hickey of Washington and Anthony Bevilacqua of Philadelphia just pointed up the need for discourse.

As for being stricken at a time of such plans, he called it "a special gift from God."

Why? Before he knew he was going to die, he said he had many fears, among them being unjustly accused—he was by a deranged young man who later recanted his story of sexual harassment—and cancer. "God has given me the gift of peace and tranquility," he explained. He hopes to write a book to help other cancer victims who are terrified by the diagnosis and lose heart. "I have spent 30 years as a bishop trying to teach people how to live," he said during an interview. "Now I will try to teach them how to die."

Conversations such as this rarely occur on the White House lawn, where hustle and push are the rule. Doubtless talks with the others who sat on the East Room stage would also have been edifying.

The recipients had been carefully chosen not just for their virtues and accomplishments but for their direct appeal to various causes and ethnics. Rosa Parks, the woman who started the Montgomery bus boycott by sitting down for her principles, didn't make it in from Michigan in time for the ceremony, but she is a black heroine. James Brady, the White House press secretary who took a bullet for Ronald Reagan, personifies the gun control legislation opposed by Republicans; Millard Fuller is founder of Habitat for Humanity, the universally admired organization that builds homes for the poor and had Clinton hammering nails on his birthday; David Hambur is a psychiatrist for children; John H. Johnson is a black success story—he publishes Ebony and Jet; Eugene Lang sends East Harlem children to college—Jack Kemp, eat your heart out, Jan Nowak-Jezioranski, agent of the Polish underground, speaks to Poles; Antonia Patoja to Puerto Ricans; Ginetta Sagan, valiant young Italian resistance courier who survived Fascist torture and devoted her life to helping political prisoners; Morris K. Udall (D-Ariz.), former House environmentalist and wit, shows an appreciation for House members.

Clinton needed to patch things up with Catholics. They grew accustomed to choice—they took other social issues into consideration—but were outraged by the president's failure to sign the congressional ban on a late-term abortion procedure. Honoring Bernardin, the most affecting U.S. prelate, is a nice gesture. But Bernardin, in his mild way, will continue to disagree on certain subjects in the most public way possible. He intends to join a large protest against later-term abortions on Thursday at the Capitol.●

TRIBUTE TO DAVID NOVAK

● Mr. McCONNELL. Mr. President, I rise today to congratulate a Louisville, KY native who has been recognized for outstanding performance and leadership. David Novak, president and chief executive of KFC Corp. will receive a Golden Chain award at the annual conference of the Multi-Unit Food Service Operators in October.

Editors of Nation's Restaurant News, a weekly magazine for the food service industry, nominated Novak for the award. The magazine cited Novak, 43, for rejuvenating the 6,000-outlet KFC chain. He was also responsible for settling a long-standing contract dispute with franchises as well as introducing popular new items to the KFC menu.

David Novak assumed responsibility of KFC Corp. in 1994. In 1995, the chain generated over $3.7 billion in retail sales. The company now claims more than a 40 percent share of the U.S. fried chicken market and an 82 percent share of the Canadian market.

Before attaining his current position, novak was chief operating officer for Pepsi-Cola North America. He also held positions as executive vice president of Pepsi-Cola Marketing/Sales and senior vice president of Marketing for Pizza Hut. He and his wife, Wendy, have a daughter, Ashley.

Mr. President, I ask you and my colleagues to join me in congratulating David Novak on receiving this distinguished award.●

TRIBUTE TO LINDA A. (SUSIE) CARTER

● Mr. McCONNELL. Mr. President, I rise today to recognize Linda A. (Susie) Carter who is retiring from the Social Security Administration after 29 years of Federal service.

Ms. Carter began her Social Security career as a clerk typist on August 29, 1965 in the Louisville Social Security office. She did not remain in this position long. Her excellent work earned her advancement to the claims typist position in March 1966, to claims development clerk in March 1967 and then to data review technician in October 1971. In December 1975 Ms. Carter was promoted to claims representative and in December 1980 she was reassigned to the operations analyst position where she assisted the Louisville District management staff and improved the overall quality of the work in the Louisville Social Security District.

In April 1984, Ms. Carter became an operations supervisor in the Louisville District office. Her performance has consistently been outstanding and she has won many performance-related awards during her Social Security career. Her service to the public, the citizens of Louisville, and especially Jefferson County has been a model of the best that government can bring to the people.

During her career, Ms. Carter helped implement major additions to Social Security programs. These include Medicare in July 1966 and the Supplemental Security Income Program in January 1974. There have also been many other changes during her career, such as the extension of coverage to include Federal employees and employees of nonprofit organizations, taxation of benefits, and more.

Mr. President, I ask you and my colleagues to join me in recognizing Linda A. Carter for 29 years of dedicated service to the Federal Government.●

ORDERS FOR FRIDAY, SEPTEMBER 13, 1996

Mr. LOTT. I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m. on Friday, September 13, 1996; further, that following the prayer, the Journal of proceedings be deemed approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day.

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

PROGRAM

Mr. LOTT. Tomorrow morning, at 9:30, it will be my intention to begin consideration of the Interior appropriations bill, as we announced. We may consider other bills if we can get an agreement. I hope that Members will not feel compelled to offer nongermane amendments on the Interior appropriations bill, as we have just gone through. Again, we are aware that Senators have their rights. But it makes it awfully hard on the leaders to try to get the work done. We spent 25½ hours on this last bill. Hopefully, we can do the Interior appropriations bill without

going through the same votes all over again.

Madam President, with regard to the earlier unanimous-consent request, we need to talk to the other Senator from Minnesota.

I want to make a commitment to the minority leader that we will not do this before Tuesday. I will work with the Senators that are involved. I would rather not do a unanimous consent until I talk directly to that Senator. I will keep good faith with the minority leader on that. I think it is a reasonable request.

Mr. DASCHLE. With that understanding, I will not have any objection. I hope we can work to resolve that relatively minor matter.

Mr. LOTT. I want to confirm that there will be no recorded votes tomorrow. We will take up Interior or the Magnuson fisheries, if we can get an agreement. On Monday, we will take up the FAA authorization if we can get an agreement on the time and amendments. Then we would go back to Interior. There will be no votes during the day on Monday. We will have stacked votes on Tuesday morning at 9:30.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. LOTT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:41 p.m., adjourned until Friday, September 13, 1996, at 9:30 a.m.