SENATE—*Wednesday, May 1, 1996*

The Senate met at 9 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:

Gracious God, whose dwelling place is the heart that longs for Your presence and the mind that humbly seeks Your truth, we eagerly ask for Your guidance for the work of this day. We confess anything that would hinder the flow of Your spirit in and through us. In our personal lives, heal any broken or strained relationships that would drain off creative energies. Lift our burdens and resolve our worries. Then give us a fresh experience of Your amazing grace that will set us free to live with freedom and joy.

Now, Lord, we are ready to work with great confidence fortified by the steady supply of Your strength. Give us the courage to do what we already know of Your will, so that we may know more of it for the specific challenges of this day. Our dominate desire is for Your best in the contemporary unfolding of the American dream. Lead on, O King Eternal, Sovereign of this land. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator LOTT of Mississippi, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, today there will be a period for morning business. Senator LUGAR of Indiana has 45 minutes under his control. Following his remarks, the Senate will resume consideration of S. 1664, the immigration bill. Senators can expect rollcall votes on amendments throughout the day. A cloture vote is expected on the bill following the disposition of the Simpson amendment. It is the hope of the majority leader to complete action on the immigration bill during today's session.

I believe that Senator LUGAR is prepared to proceed. I thank the Chair and I yield the floor, Mr. President.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. KYL). There will now be a period for morning business.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana, Senator LUGAR, is recognized.

Mr. LUGAR. I thank the Chair.

INDIANA SENATE HISTORY

Mr. LUGAR. Mr. President, during my campaign for reelection in 1994, a number of Indiana papers published articles describing the fourth-term jinx that had afflicted Indiana Senators and speculating whether I would be fortunate enough to overcome that jinx. Although five of my predecessors had each won three Senate elections, all of them had been defeated in their fourth race. Some of the most prominent and accomplished names in Indiana politics, including James Watson, Homer Capehart, Vance Hartke, and Birch Bayh had fallen victim to the fourth-term jinx.

The independent-minded voters of Indiana have never been shy about expressing their dissatisfaction with an incumbent. In fact, the average length of service among all Indiana Senators is just a little more than 8 years. Five Hoosier Senators held office less than a year. The shortest Senate service was that of Charles William Cathcart, who served less than 2 months of an unexpired term. Only 10 of the 43 Hoosier Senators served more than 2 terms.

One reporter—Mary Dieter, who covers Indiana politics for the Louisville Courier-Journal—added a twist to the fourth-term jinx story. She noted that even if I broke the jinx, I would not become the longest serving Indiana Senator upon being sworn in. That distinction would still belong to Daniel Wolsey Voorhees, who had served more than a year of an unexpired term before winning three of his own. He served in this body from November 1877 until March 1897.

As a consequence of Voorhees' long tenure, not until today has this Senator passed the previous record for length of service by a Senator from Indiana. This day marks my 7,059th in office, passing the 7,058-day record set by Voorhees.

I am enormously grateful to the people of Indiana for granting me the opportunity to serve them; to my family for supporting my endeavors in public service; and to all my past and present colleagues in the Senate who have made my service here so rewarding and enjoyable.

I would like to commemorate this occasion by paying homage to the important record of Hoosier service to the U.S. Senate. I regret that legislative history is a topic that rarely receives adequate attention, either in our schools or during deliberations in this body. So often our work in the Senate would improve with a greater understanding of the history that lies behind us and of our role as stewards of an institution that will survive long after all of us are gone.

I have attempted in a small way to resist the erosion of Hoosier Senate history by asking my summer interns during the last few years to research Indiana Senators. Invariably my interns are surprised and bemused by the parallels between our present legislative labors and the actions of long forgotten Senators. One wrote after researching the life of the venerable Oliver P. Morton: "One of the greatest Hoosiers of all time has been forgotten. Let us recall him and learn from his experiences."

FRONTIER YEARS

Mr. President, although few Hoosiers have had long Senate careers, many of my predecessors made indelible contributions to the Nation. Curiously, only 16 of the 43 Indiana Senators—37 percent—were born within the State: 10 were born in neighboring Ohio; 4 were born in New York; 2 each were born in Pennsylvania and Virginia; 2 were born in foreign lands; and the remaining 8 came from assorted Eastern States.

No Indiana Senator has ever been born west of the Mississippi River. For my Indiana Senate predecessors, the trek westward stopped at the Wabash River. In Indiana they found land that brought abundance, the confluence of great waterways, and a brand of frontier politics that proved irresistible to many young lawyers, farmers, and businessmen seeking to make names for themselves.

JAMES NOBLE

Ironically, one of Indiana's original Senators, James Noble, might have set an insurmountable record of service had he not died at the young age of 45. Elected by the Indiana Legislature in 1816 as a Democratic-Republican, he took office 5 days before his 31st birthday. He died during his third term on February 26, 1831. Noble's 14 years of service in the Senate would stand as a Hoosier record for three decades.

Noble was a prominent lawyer who had played a central role in Indiana's constitutional convention and was a natural choice for appointment to the Senate by the Indiana Legislature. In the Senate he was a leading advocate for using Federal funds to improve the Nation's roads and waterways, and he was instrumental in securing appropriations to extend the Cumberland Road westward from the town of Wheeling, in Virginia at that time. He argued against the view held by some of his contemporaries that Federal

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

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spending on infrastructure improvements was unconstitutional. For Noble, building roads and waterways to bind the States together was a vital activity of the Federal Government.

Noble and other early Hoosier Senators had been settlers of the Indiana Territory and had weathered the rigors of frontier life. Befitting a frontier Senator, Noble always insisted on traveling to and from Washington on horseback, rather than by stagecoach.

Several Hoosier Senators participated in military campaigns against Tecumsah's Shawnees and other Indian tribes. Noble served as a colonel in the Indiana militia. Senator Waller Taylor, who was Indiana's other original Senator, served as Gen. William Henry Harrison's aide-de-camp during the War of 1812. Senator Robert Hanna, who replaced Noble, was a general in the Indiana militia.

JOHN TIPTON

But the Hoosier Senator who epitomized the rugged life in a frontier State was John Tipton, an unschooled Tennessee native, who served in the Senate from 1832 to 1839. Tipton's father was killed by Indians when the boy was just 7 years old. By the time he crossed the Ohio River into Indiana at the age of 21, Tipton was already the breadwinner of his household. He settled his mother and siblings in Harrison County, where he earned a living as a gunsmith and farmhand.

Tipton served under General Harrison during the Tippecanoe campaign, rising to the rank of brigadier general. After his military service, Tipton would become a justice of the peace, sheriff of Harrison County, Indian agent, and State legislator. He helped select the site for a new State capital that would become Indianapolis. He also did an official survey of the Indiana border with Illinois. Tipton strenuously but unsuccessfully maintained that a port on Lake Michigan called Chicago rightfully belonged within Indiana's borders.

As Senator, Tipton continued to focus on frontier issues. He served on the Military Affairs and Indian Affairs Committees. Later in his term, he became chairman of the Committee on Roads and Canals, taking over from fellow-Hoosier William Hendricks. Like his predecessors in the Senate, Tipton fought for appropriations to build roads connecting Indiana with the East.

As these roads were built and the Ohio River and Great Lakes were developed, the frontier pushed westward. By the 1840's, Indiana had developed from a frontier State into a burgeoning crossroads of commerce and travel. With this transformation, the men representing Indiana in the Senate tended to be better educated and more motivated by national political ambitions than their pioneer predecessors.

EDWARD HANNEGAN

Senator Edward Hannegan, who served in this body from 1843 to 1849 provides a good example. He was a renowned orator who sought unsuccessfully the Democratic nomination for President in 1852. The legendary Daniel Webster said of him: "Had Hannegan entered Congress before I entered it I fear I never should have been known for my eloquence."

Hannegan's mix of rhetorical fire and elegance was demonstrated on one occasion when he took to the Senate floor to denounce President Polk for his offer to Great Britain to set the northern border of the Oregon Territory at the 49th parallel. Hannegan was a leading proponent of the expansionist view that was represented by the battlecry: "54, 40, or fight." Said Hannegan of Polk:

> So long as one human eye remains to linger on the page of history, the story of his abasement will be read, sending him and his name together to an infamy so profound, a damnation so deep, that the hand of resurrection will never drag him forth. . . . James K. Polk has spoken words of falsehood with the tongue of a serpent.

POLITICAL TURBULENCE

In any event, Mr. President, Indiana's position as a crossroads of the Nation was not limited to commerce and travel. Up to the present day it also has been a crossroads for American subcultures, economic forces, and political ideas. In his 1981 bestseller "The Nine Nations of North America", Joel Garreau conceptually divided the North American Continent into nine subregions according to their economic, social, and cultural identity. It is not surprising that Garreau placed Indianapolis at the very intersection of three of these regions: the industrial Midwest centered on the Great Lakes, the broad grain growing region of the plains, and the South.

As a result, through much of its history, the cauldron of Indiana politics has been characterized by its swirling unpredictability. Viewed from a broad historical perspective, political parties in Indiana have never been able to dominate the landscape for long before they were toppled by their rivals. For example, only one time since 1863 has the seat that I hold been passed between members of the same party. In the entire history of Indiana, the two Hoosier Senate seats have never been occupied by members of the same party for longer than 16 consecutive years.

The most turbulent time in Indiana politics was the Civil War era. In many counties, residents had considerable sympathy for the southern cause, while other Hoosiers were ardent abolitionists. Democrats who opposed the war and supported the South were known as "Copperheads." Another group of Democrats opposed abolition, but wished to hold the Union together. Before the war, these Constitutional-Union Democrats backed political concessions to the South in the hope of preserving the Union without war. When war began, however, many Constitutional-Union Democrats reluctantly supported the northern war effort.

JESSE BRIGHT

Throughout the era of the Civil War and Reconstruction, at least one of the two Hoosier seats was occupied by a Democratic Senator with sympathies for the southern point of view. In 1862, one of these Senators, Jesse Bright of Madison, became the only Senator from a nonslave State to be expelled by the Senate for supporting the rebellion. The expulsion was all the more notable because Bright had served as President pro tempore from 1854 to 1856 and again in 1860. The catalyst for the expulsion was a letter from Bright to his friend Jefferson Davis written on March 1, 1861—more than a month before the attack on Fort Sumter. The letter introduced another friend, Mr. Thomas Lincoln, formerly of Madison, IN, to Davis. It read:

> MY DEAR SIR: Allow me to introduce to your acquaintance my friend, Thomas B. Lincoln, of Texas. He visits your capital mainly to dispose of what he regards [as] a great improvement in fire-arms. I recommend him to your favorable consideration as a gentleman of the first respectability, and reliable in every respect.
>
> Very truly yours,
>
> JESSE BRIGHT.

The discovery of the letter late in 1861 provided an opening to Republican Senators seeking to expel Bright for his southern leanings. The Senator not only voted against many wartime provisions, he owned slaves and a plantation in Kentucky.

On December 16, 1861, Senator Morton Wilkinson of Minnesota introduced a resolution to expel Bright. Wilkinson contended that the letter and Bright's addressing of Davis as "His Excellency Jefferson Davis, President of the Confederation of States" amounted to a recognition of the legitimacy of the secession of Southern States. Bright responded that in the days before the war began, many leaders in the North continued friendly correspondence with acquaintances in the South and that his method of addressing Davis was nothing more than the polite use of a title.

Although the Judiciary Committee recommended against expulsion, the Senate debate ran strongly against Bright. He was harshly denounced by Indiana's Republican Senator Henry S. Lane and by future President, Andrew Johnson of Tennessee. On February 5, with the Senate Gallery filled with onlookers, the Senate expelled Bright by a vote of 32 to 14. His Senate career came to an end 1 month short of 17 years. Since the Indiana Legislature was under the control of the Democratic Party in 1862 when Bright would have been up for reelection, his expulsion denied him an almost certain fourth term.

OLIVER P. MORTON

During the Civil War, Indiana was administered by Gov. Oliver P. Morton, the spiritual leader of the Indiana Republican Party. Morton went on to become one of the most important Senators of the era of Reconstruction and a national spokesman for the Republican Party. His likeness can be viewed today a few hundred feet away in Statuary Hall.

Originally a Democrat, Morton broke with his party in 1854 over the Kansas-Nebraska Act. His views on the slavery question developed in much the same manner as those of Abraham Lincoln. Beginning in the late 1850's, he was an outspoken critic of slavery. In one 1860 speech he denounced it as "a moral, social, and political evil * * * a curse to any people, a foe to progress, the enemy of education and intelligence, and an element of social and political weakness." Like Lincoln, however, Morton carefully avoided advocating outright abolition, instead focusing on stopping the extension of slavery. But after the South seceded and the fighting began, Morton was a key ally of Lincoln in prosecuting the war and supporting the Emancipation Proclamation.

Within a week of Lincoln's call for troops on April 15, 1861, Morton had organized 12,000 Hoosier recruits—a number three times Indiana's quota. Over the course of the war, Governor Morton continued to be one of the most effective troop organizers for the Union. Indiana contributed more than 200,000 soldiers to the Union war effort; all but 17,000 of these were volunteers. Morton was revered by Hoosier troops because he used State funds to ensure that Indiana's soldiers were well clothed and equipped and to care for the widows and orphans of fallen Hoosiers. Like Lincoln, Morton was not timid about using the power at his disposal. He declared martial law in parts of southern Indiana to quell subversive activities by Copperhead groups. When the State ran low on funds, Morton bypassed the Democratic legislature, financing the war effort by borrowing from private bankers and soliciting contributions from citizens and businesses.

In 1867 Morton began 10 years of service in the Senate. In 1865 he had suffered an apparent stroke that left him partially paralyzed. Despite his infirmity, he was a vigorous debater and party organizer who reveled in the political combat of the Senate. He became chairman of the Manufactures Committee and the Privileges and Elections Committee. He also served on the Foreign Affairs and Military Affairs Committees.

But the central issue during Morton's time in the Senate was, of course, Reconstruction. Though he had supported Lincoln's magnanimous gestures toward the South immediately after the war, Morton gradually became convinced that an uncompromising and complete reconstruction of the South was necessary. He led the fight for passage and ratification of the 15th amendment which granted blacks the right to vote. To gain ratification by the necessary three-fourths of the States, he proposed a floor amendment requiring several Southern States to ratify the 15th amendment as a condition for reclaiming their seats in Congress. His hardball tactics ultimately prevailed, but they brought accusations that he was overly vindictive toward the South. To these charges, he replied: "I want peace in the South. I want it as earnestly as any man can, but I want peace in the South on correct principles. I am not willing to purchase peace by conceding that they were right and we were wrong."

Morton died in 1877 before the end of his second term. With his passing, his seat fell into Democratic hands for almost 20 years. For it was the long-serving Daniel Voorhees who was appointed by the Democratic-controlled legislature to replace Morton.

DANIEL VOORHEES

Voorhees, who was known as the Tall Sycamore of the Wabash was a prominent Terre Haute lawyer who shared Jesse Bright's sympathy for the South and Edward Hannegan's passionate speaking style. During the entirety of the Civil War, Voorhees served in the House of Representatives where he frequently criticized President Lincoln. As a fervent believer in States rights, he saw the North's prosecution of the war as unconstitutional. After Lincoln issued the Emancipation Proclamation Voorhees declared:

> Ten days before he issued it he said that he had not the power to promulgate such a document and that it would do no good if he did. In that he was right for once. But I suppose he gave way to pressure. Yes, pressure. He was pressed. By whom? By Horace Greeley, that political harlot, who appeared in a praying attitude in behalf of 20 millions of people.

Lincoln's reelection in 1864 was a great disappointment to Voorhees, who hoped that the President's defeat would allow for a compromise that would reestablish both the Union and the rights of States to make their own decisions on slavery. After the war, Voorhees adopted a softer view of Lincoln because of the President's intentions to implement a magnanimous reconstruction program.

As a Senator, Voorhees was a prominent forefather of the populist movement headed by William Jennings Bryan at the end of the century. Voorhees devoted much energy to defending the agrarian interests of the Midwest and South. He opposed protectionist tariffs designed to benefit eastern manufacturers, and he advocated a liberal monetary policy that would expand currency to benefit farmers. He denounced the U.S. financial system as "an organized crime against the laboring, tax-paying men and women of the United States."

In 1893, Voorhees became chairman of the powerful Finance Committee. That year, a major financial panic caused President Cleveland to call a special session of Congress to consider the repeal of the mildly inflationary Sherman Silver Purchase Act. To pass the repeal, he needed the support of Voorhees. The issue divided Democrats, many of whom, like Voorhees, strongly supported silver purchases. But Voorhees set aside his natural inclinations to help the President from his party respond to the financial panic. Voorhees considered passage of the repeal of the Silver Purchase Act his greatest legislative accomplishment, although the measure actually did little to remedy the country's financial crisis.

HOOSIERS IN NATIONAL OFFICE

Mr. President, Senator Vorhees had the distinction of defeating a future President—Benjamin Harrison—in his first Senate election and being unseated by a future Vice President—Charles Fairbanks—in his last. In fact, the late 18th and early 19th centuries saw Indiana become a frequent supplier of candidates for national office. Circumstances had positioned Indiana to play a leading role in national politics. Indiana had grown to become the seventh largest State in the Union by the 1870's, and it had become a swing State where party control changed from election to election. Both parties, therefore, had strong incentives to put Hoosiers on their national tickets.

Of the 20 individuals who served as either President or Vice President between 1870 and 1920, five were Hoosiers. Only New York, with six, placed more individuals in Executive Offices during this period. Each of these Hoosiers was connected to the Senate, either as a former Member or in performing their Vice Presidential duties as presiding officer.

SCHUYLER COLFAX

This succession of Hoosiers was begun by the unfortunate Schuyler Colfax, who was President Grant's first Vice President from 1869 to 1873. Colfax, whom Lincoln described as a "friendly rascal," never held a seat in the Senate. His political career was brought to a close by revelations that he had participated in a financial scandal that occurred during his earlier tenure as Speaker of the House. He avoided impeachment proceedings largely because the scandal was not revealed until his Vice Presidential term was about to expire.

THOMAS HENDRICKS

Thomas Hendricks, a Democrat and lawyer from Shelbyville, IN, became the second Hoosier Vice President, and the first to serve a previous term in the Senate. He was elected by the Indiana Legislature in 1863 to the term that

could have been the expelled Jesse Bright's fourth. In the Senate, Hendricks was a sharp critic of President Lincoln. He voted for appropriations to pay for troops, weapons, and supplies, but he opposed the Emancipation Proclamation, the draft, and the 13th, 14th, and 15th amendments. Hendricks lost his seat after just one term when the Indiana Legislature fell into GOP hands in 1869.

In 1876, after a term as Governor, Hendricks got his first shot at the Vice Presidency when he ran on the Democratic ticket with ill-fated Presidential candidate Samuel J. Tilden. In the most controversial Presidential election in American history, Tilden and Hendricks seemingly had won the election by a 203 to 166 count in the electoral college and by 260,000 popular votes. The Democrats were denied victory, however, when Republicans disputed the results of voting in several Southern States. An election commission that favored the Republicans ruled in favor of the GOP Presidential candidate Rutherford B. Hayes.

Hendricks again was the Democratic Vice Presidential nominee in 1884. This time he was successful, as the Democratic ticket headed by Grover Cleveland came out on top for the first time since before the Civil War. As Vice President, Hendricks would preside over only a 1-month session of the Senate before his death in November 1885.

Hendricks' untimely death left the country without a Vice President, President pro tempore, or Speaker of the House for the second time in the decade. Under the 1792 Succession Act, this was the line of succession in the event of the President's death. No other official was mentioned. Had Cleveland died before Congress convened later in the year, the country would have been left temporarily without a President.

Hendricks' death prompted Congress to pass a revision of the Succession Act in 1886. It removed the President pro tempore and the Speaker of the House from the line of succession and substituted the President's Cabinet officers in the order the departments were created beginning with the Secretary of State. In 1947 at President Truman's urging, Congress again revised the succession order, returning the Speaker and the President pro tempore to the line, but reversing their order so the Speaker ranked second behind the Vice President and the President pro tempore ranked third, followed by the Cabinet Secretaries.

BENJAMIN HARRISON

Indianapolis Republican Benjamin Harrison, who would become our 23d President, also had the good fortune to gain experience in the Senate. He served in this body from 1881 until 1887. During that time he chaired the Committee on Territories and was a strong advocate for protecting and expanding the pensions of Civil War veterans. Harrison was turned out of his Senate seat after only one term by a newly elected Democratic State legislature.

Nevertheless, Harrison retained his national prominence and defeated President Cleveland in the 1888 Presidential election, despite losing the popular vote. Harrison's narrow victory in New York brought him that State's 36 electoral votes and a 233 to 168 triumph in the electoral college.

As President, Harrison implemented much of his economic program, including a high tariff. He signed the Sherman Silver Purchase Act, while resisting the far more inflationary proposal for free coinage of silver that was supported by Daniel Voorhees. In a rematch of the 1888 election, Grover Cleveland easily defeated Harrison, who would return to his law practice in Indianapolis.

CHARLES FAIRBANKS

Another Indianapolis Republican, Charles Fairbanks, served in the Senate before attaining the vice presidency. A close friend and staunch ally of President McKinley, Fairbanks' Senate tenure ran from 1897 until 1905. Fairbanks was under consideration for the 1900 GOP Vice Presidential nomination, but he took his name out of contention. He planned to run for President in 1904 when McKinley's second term expired, and he believed that the Senate offered a better position from which to seek the GOP Presidential nomination. After all, no Vice President since Martin Van Buren had been elected to succeed his President.

This turned out to be a colossal miscalculation. In September 1901, Fairbanks was cut off from a possible Presidential run by the tragedy of President McKinley's assassination. Vice President Theodore Roosevelt was elevated to the Presidency, ensuring that he would be the Republican nominee in 1904. Fairbanks had to settle for the Republican Vice Presidential nomination on the ticket with Roosevelt. This time he did not pass up the opportunity, and he became Vice President in 1905 after the GOP ticket swept to victory.

Fairbanks attempted to gather support for the GOP Presidential nomination in 1908, but Roosevelt's endorsement of William Howard Taft again blocked the Hoosier's path to the White House. Once more in 1916, Fairbanks was a candidate for Vice President on the ticket with Charles Evans Hughes. But they were defeated by incumbents Woodrow Wilson and Hoosier Thomas Marshall.

THOMAS MARSHALL

Marshall never served in the Senate, but he presided over this body for 8 years as Vice President from 1913 until 1921. He was the first Vice President to serve two full terms since Daniel Tompkins had done so under James Monroe.

During his time of presiding over the Senate, Marshall gained a reputation for his dry Hoosier wit. After listening to a long speech by Senator Joseph Bristow of Kansas on the needs of the country, Marshall remarked in a voice audible to many in the Chamber: "What this country needs is a really good five-cent cigar." This line was widely reported in newspapers and became his most famous utterance. Marshall would frequently poke fun at his own role as Vice President. He told a story of two brothers: "One ran away to sea; the other was elected Vice President. And nothing was ever heard of either of them again."

Ironically, though Marshall was considered a good Vice President, his most notable action perhaps was something that he did not do. After President Wilson suffered a stroke in October 1919, many leaders advised him to assume the Presidency while Wilson was incapacitated. At the time, however, there was no provision in the Constitution governing this situation. Marshall refused to replace the President, fearing that it would divide the country and create a precedent that could be used mischievously against future presidents. With the ratification of the 25th amendment in 1967, which was sponsored by Senator Birch Bayh of Indiana, the Constitution provided a legal procedure for dealing with the difficult situation of an incapacitated President.

THE NEW CENTURY

Mr. President, just as Marshall's decision affected the future of the Vice Presidency, several Hoosier Senators deeply affected the operations and customs of the Senate during the early 20th century.

ALBERT BEVERIDGE

One such Senator was Albert J. Beveridge of Indianapolis. Beveridge began his service in March 1899 at the age of 36. He had never held a political office prior to his election to the Senate. He served two terms, gaining a reputation for his energy and intelligence, as well as his ambition.

Beveridge is the patron saint of freshman Senators seeking to resist the constraints of the Senate's seniority system. In his excellent collection of addresses on the history of the Senate, Senator ROBERT BYRD of West Virginia offers an enlightening account of Beveridge's vigorous, but largely unsuccessful efforts to secure desired committee assignments as a freshman.

Beveridge ventured across the sea for a 6-month trip to the Philippines, China, and Japan after his election by the Indiana Legislature in January 1899. Upon returning to Indiana in September of that year, he was praised in the press for investigating an important issue firsthand. Up to this point, Senators had rarely ventured overseas on factfinding trips. When he traveled to Washington, DC, later in the year

for the opening of the congressional session, he was summoned to the White House to brief President McKinley on his observations.

Believing that his experience in the Philippines had made him the preeminent expert on the newly acquired islands, Beveridge campaigned to be appointed chairman of the Senate Committee on the Philippines. He also sought a seat on Henry Cabot Lodge's powerful Foreign Relations Committee. Among other steps, Beveridge visited Gov. Theodore Roosevelt in New York, who recommended him to Lodge. But Beveridge would be granted neither the Philippines chairmanship nor a seat on Foreign Relations. Lodge wrote back to Roosevelt explaining: "Beveridge is a very bright fellow, well informed and sound in his views. I like him very much, but he arrived here with a very imperfect idea of the rights of seniority in the Senate, and with a large idea of what he ought to have." Beveridge had to settle for an ordinary seat on the Philippines Committee.

In March 1900, freshman Beveridge again scandalized the Senate by delivering his second major floor speech just 3 months into his first session. For many of his senior colleagues, Beveridge was flouting the unwritten Senate rules governing the behavior of new members. In response to this transgression against his elders, Beveridge was the recipient the next day of a subtle but stinging parody of his speech by Senator Edmund W. Pettus of Mississippi. According to a report in the New York Times the performance caused Senators to roar in laughter at the expense of Beveridge.

Beveridge survived and learned from his hazing. Though still boisterous and aggressive for a freshman, he focused his attention on committee work, eventually becoming chairman of the Committee on Territories and a member of the Foreign Relations Committee.

During his time in the Senate, Beveridge's political philosophy transformed from the standard conservatism of his party to progressivism. Beveridge became a leader of the nationwide progressive movement and worked to construct a foundation for progressive legislation such as the first National Child Labor Law, the Meat Inspection Act, and the Pure Food and Drug Act. This shift toward progressivism, however, weakened his support among Republicans and contributed to his defeat for re-election to a third term in 1910.

On April 8, 1913, the 17th amendment was ratified, forever transforming the nature of Senate elections. The amendment transferred the power to choose Senators from the State legislatures to popular elections.

BENJAMIN SHIVELY

In Indiana, Senator Benjamin Shively's election was at the heart of the debate over the amendment. In 1908 as Democrat State legislators met to choose their nominee, Shively was matched against John W. Kern. Kern was the favorite among the people of Indiana, but Shively prevailed by two votes in a secret ballot. Since the Democrats controlled the State legislature, Shively was elected Senator.

Given the closeness of the balloting, State legislators were asked by reporters and constituents to reveal their votes. When informal tallies of the legislators' announced votes had Kern winning by as many as eight votes, it was clear that many State legislators were lying about how they had voted. This fueled public cynicism in Indiana with the method of electing Senators and helped build support in the State for ratification of the 17th amendment.

In 1914, after the amendment had been ratified, Shively demonstrated that he did have popular support. He became the first Indiana Senator to be elected by popular vote, a distinction of which he was enormously proud. Shively also became chairman of the important Pensions Committee. Unfortunately, he did not survive his second term, dying in 1916 after serving only a year.

JOHN KERN

Shively's rival in 1908, John Kern, went on to place his own extraordinary mark on the Senate. He defeated Albert Beveridge in the 1910 Senate election, the last Senate race held before ratification of the 17th amendment. But it was the 1912 election that brought Kern to Senate prominence.

That election resulted in a sweeping victory for the Democratic Party. With Teddy Roosevelt's Bull Moose candidacy splitting Republicans, Woodrow Wilson rolled to victory. Democrats strengthened an already huge majority in the House, and seized control of the Senate for the first time in 18 years.

The majority party's prospects for enacting its legislative program rested, as they so often do, on the Senate. Democrats held just a 51 to 44 seat majority. Up to that time Senate party caucuses had chosen their leader largely on the basis of seniority. In 1913, however, Democrats broke with this practice in an effort to make the most of their legislative opportunities. They decided that their caucus leader should be the Senator who would be the most effective legislative leader.

The man they chose by unanimous vote was John Kern, who had been elected to the Senate 2 years before in 1910. Thus a freshman, with just 2 years of Senate experience, was entrusted with shepherding one of the most ambitious legislative plans in American history through the Senate. Kern was no political neophyte. He was a respected politician who had been the Democratic Vice Presidential nominee in 1908 on the ticket with William Jennings Bryan.

Historians often regard Kern as the first modern majority leader, although he did not formally have that title. Kern established numerous precedents during his 4 years as the head of the Democratic caucus. He conferred closely with the administration on its program, frequently visiting Wilson at the White House to discuss strategy. He demanded party unity and employed threats, compromises, and personal entreaties to achieve it. He established the post of Democratic whip to assist him in maintaining discipline. He also used the prerogative to grant committee assignments as an enforcement mechanism. In his 4 years as caucus leader, Kern's energy and organization failed only once to deliver Senate passage of a major Presidential legislative initiative. This was Wilson's ship purchase bill, that was blocked by a 1915 filibuster.

Despite Kern's power in the Senate and his close relationship with President Wilson, he was defeated by Republican Harry S. New in the 1916 election. New garnered 51 percent of the vote to Kern's 49 percent. Wilson won his reelection bid but lost Indiana by an even narrower margin to Charles Evans Hughes.

JAMES WATSON

In 1929, another Hoosier was chosen to be majority leader. That year Senate Republicans elected, James Eli Watson, who served as majority leader during the 4 years of Herbert Hoover's Presidency. Watson began his Senate career when he was elected to complete the unexpired term of Senator Benjamin Shively in 1916. He was reelected in 1920 and 1926.

Watson had been one of President Hoover's major rivals for the GOP Presidential nomination in 1928. As a result, they did not develop the close working relationship that had existed between Wilson and Kern. As Republican leader, Watson's primary tactic was to build majorities through careful compromises. Like Kern, Watson's status in the Senate did not insulate him from electoral defeat back home. He lost his quest for a fourth Senate election victory when he was turned out of office by the national Democratic landslide of 1932.

SHERMAN MINTON

Like John Kern, Sherman Minton played a prominent role in the Senate, despite serving only one term. Elected as a Democrat in 1934, Minton was an ardent New Dealer and loyal Senate ally of President Franklin Roosevelt. In January 1937 Majority Leader Joseph T. Robinson named Minton to the new position of assistant Democratic whip. Minton, who was an aggressive legislator, relished this responsibility. Two years later, Minton was promoted to majority whip.

Minton had the bad luck of running for reelection in 1940. That year his Republican opponent, Raymond Willis of

Angola, IN, got a big boost from the presence of Hoosier favorite son Wendell Willkie at the top of the ticket. Minton's support for the 1940 Selective Service Act and other defense preparations also cost him votes. Willis defeated Minton by a narrow 25,000-vote margin.

During his career in public service, Minton had the distinction of serving in all three branches of the Federal Government. After Minton's Senate defeat, Roosevelt brought him to the White House as an administrative assistant to the President. Roosevelt used him primarily as his liaison with Congress.

In May 1941, however, Roosevelt appointed Minton to the Seventh Circuit U.S. Court of Appeals. He served there until President Harry Truman appointed him to the Supreme Court in 1949. Minton spent 7 years on the High Court until illness forced his retirement in 1956. A number of former Senators have served on the Supreme Court during its history, including James Francis Byrnes and Hugo Black. Since Minton's appointment in 1949, however, no former Senator has been appointed to the High Court.

MODERN ERA

Since the end of World War II, seven individuals have been elected to the Senate by the people of Indiana. Several of my colleagues served in Congress with William Jenner and Homer Capehart, two Republicans whose careers significantly impacted my early political development in Indiana. And, of course, many of my colleagues had close and productive associations with the three distinguished former Hoosier Senators who often visit with us: Birch Bayh, Vance Hartke, and Dan Quayle.

Hopefully, those of us who have served Indiana in the Senate during recent years have upheld the tradition of achievement established by our Hoosier predecessors. It may be premature to make historical judgments on the most recent seven Hoosier Senators, and I will resist the temptation to do so.

Our Nation and our world have changed profoundly since James Noble and Waller Taylor came to the Senate in 1816. Noble's horseback journeys to Washington, DC, are said to have taken him about 17 days. Today we can travel to Indiana in less than 2 hours. Indiana's population has grown from about 150,000 in 1820 to almost 6 million people today.

As our world has become more complex, so has our job here in the Senate. We have more constituents, more Members, more issues, more bills, more staff, and more floor votes than our early predecessors could likely have imagined. The 7 most recent Hoosier Senators have cast more floor votes than the previous 36 Hoosier Senators combined. The second session of the 14th Congress—the 1st in which Indiana was represented —lasted just 92 days. Today the Senate is in session almost year round.

But even as this body has grown and developed, the fundamentals of being a good legislator have always remained the same. Down through history, this has been an institution that has depended on honesty, civility, hard work, thoughtfulness, an understanding of the people we represent, and a willingness to stand on conviction. When these elements have been present, the Senate has succeeded.

Mr. President, I would encourage each of my colleagues, if they have not done so, to explore the service of their Senatorial ancestors from their own States. Inevitably they will find both triumphs and tragedies; heroic acts and embarrassing mistakes. But as I have surveyed the unbroken line that stretches from Waller Taylor and James Noble to Senator DAN COATS and myself, I have gained an even stronger appreciation of the character of my State and the performance of the U.S. Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD two tables relating to Indiana Senators.

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

INDIANA SENATORS: DATES OF SERVICE

James Noble—Dec. 11, 1816–Feb. 26, 1831.
Waller Taylor—Dec. 11, 1816–Mar. 3, 1825.
William Hendricks—Mar. 4, 1825–Mar. 3, 1837.
Robert Hanna—Aug. 19, 1831–Jan. 3, 1832.
John Tipton—Jan. 4, 1832–Mar. 3, 1839.
Oliver Smith—Mar. 4, 1837–Mar. 3, 1843.
Albert White—Mar. 4, 1839–Mar. 3, 1845.
Edward Hannegan—Mar. 4, 1843–Mar. 3, 1849.
Jesse Bright—Mar. 4, 1845–Feb. 5, 1862.
James Whitcomb—Mar. 4, 1849–Oct. 4, 1852.
Charles Cathcart—Nov. 23, 1852–Jan. 11, 1853.
John Pettit—Jan. 11, 1853–Mar. 3, 1855.
Graham Fitch—Feb. 4, 1857–Mar. 3, 1861.
Henry Lane—Mar. 4, 1861–Mar. 3, 1867.
Joseph Wright—Feb. 24, 1862–Jan. 14, 1863.
David Turpie—Jan. 14, 1863–Mar. 3, 1863.
Thomas Hendricks—Mar. 4, 1863–Mar. 3, 1869.
Oliver Morton—Mar. 4, 1867–Nov. 1, 1877.
Daniel Pratt—Mar. 4, 1869–Mar. 3, 1875.
Joseph McDonald—Mar. 4, 1875–Mar. 3, 1881.
Daniel Voorhees—Nov. 6, 1877–Mar. 3, 1897.
Benjamin Harrison—Mar. 4, 1881–Mar. 3, 1887.
David Turpie—Mar. 4, 1887–Mar. 3, 1899.
Charles Fairbanks—Mar. 4, 1897–Mar. 3, 1905.
Albert Beveridge—Mar. 4, 1899–Mar. 3, 1911.
James Hemenway—Mar. 4, 1905–Mar. 3, 1909.
Benjamin Shively—Mar. 4, 1909–Mar. 14, 1916.
John Kern—Mar. 4, 1911–Mar. 3, 1917.
Thomas Taggart—Mar. 20, 1916–Nov. 7, 1916.
James Watson—Nov. 8, 1916–Mar. 3, 1933.
Harry New—Mar. 4, 1917–Mar. 3, 1923.
Samuel Ralston—Mar. 4, 1923–Oct. 14, 1925.
Arthur Robinson—Oct. 20, 1925–Jan. 2, 1935.
Fredrick Van Nuys—Mar. 4, 1933–Jan. 25, 1944.
Sherman Minton—Jan. 3, 1935–Jan. 2, 1941.
Raymond Willis—Jan. 3, 1941–Jan. 2, 1947.
Samuel Jackson—Jan. 28, 1944–Nov. 13, 1944.
William Jenner—Nov. 14, 1944–Jan. 2, 1945.
Homer Capehart—Jan. 3, 1945–Jan. 2, 1963.
William Jenner—Jan. 3, 1947–Jan. 2, 1959.
Vance Hartke—Jan. 3, 1959–Jan. 2, 1977.
Birch Bayh—Jan. 3, 1963–Jan. 2, 1981.
Richard Lugar—Jan. 3, 1977–
Dan Quayle—Jan. 3, 1981–Jan. 2, 1989.
Daniel Coats—Jan. 3, 1989–

Indiana Senators: Length of Service

1. Richard Lugar—19 Years 4 Months—(1977–)
2. Daniel Voorhees—19 Years 4 Months—(1877–1897)
3–5. Homer Capehart—18 Years—(1945–1963)
3–5. Vance Hartke—18 Years—(1959–1977)
3–5. Birch Bayh—18 Years—(1963–1981)
6. Jesse Bright—16 Years 11 Months—(1845–1862)
7. James Watson—16 Years 4 Months—(1916–1933)
8. James Noble—14 Years 2 Months—(1816–1831)
9. William Jenner—12 Years 2 Months—(1944–45; 1947–59)
10. David Turpie—12 Years 2 Months—(1863; 1887–99)
11–12. William Hendricks—12 Years—(1825–1837)
11–12. Albert Beveridge—12 Years—(1899–1911)
13. Fredrick Van Nuys—10 Years 11 Months—(1933–1944)
14. Oliver Morton—10 Years 8 Months—(1867–1877)
15. Arthur Robinson—9 Years 2 Months—(1925–1935)
16. Waller Taylor—8 Years 3 Months—(1816–1825)
17–18. Charles Fairbanks—8 Years—(1897–1905)
17–18. Dan Quayle—8 Years—(1981–1989)
19. Daniel Coats—7 Years 4 Months—(1989–1997)
20. John Tipton—7 Years 2 Months—(1832–1839)
21. Benjamin Shively—7 Years—(1909–1916)
22–23. Oliver Smith—6 Years—(1837–1843)
22–33. Albert White—6 Years—(1839–1845)
22–33. Edward Hannegan—6 Years—(1843–1849)
22–33. Henry Lane—6 Years—(1861–1867)
22–33. Thomas Hendricks—6 Years—(1863–1869)
22–33. Daniel Pratt—6 Years—(1869–1875)
22–33. Joseph McDonald—6 Years—(1875–1881)
22–33. Benjamin Harrison—6 Years—(1881–1887)
22–33. John Kern—6 Years—(1911–1917)
22–33. Harry New—6 Years—(1917–1923)
22–33. Sherman Minton—6 Years—(1935–1941)
22–33. Raymond Willis—6 Years—(1941–1947)
34. Graham Fitch—4 Years 1 Month—(1857–1861)
35. James Hemenway—4 Years—(1905–1909)
36. James Whitcomb—3 Years 7 Months—(1849–1852)
37. Samuel Ralston—2 Years 7 Months—(1923–1925)
38. John Pettit—2 Years 2 Months—(1853–1855)
39. Joseph Wright—11 Months—(1862–1863)
40. Samuel Jackson—10 Months—(1944)
41. Thomas Taggart—7 Months—(1916)
42. Robert Hanna—4 Months—(1831–1832)
43. Charles Cathcart—2 Months—(1852–1853)

SENATOR RICHARD LUGAR—A MAN OF CHARACTER

Mr. DOLE. Mr. President, Henry Clay, one of the most eloquent men to

serve in the U.S. Senate, once said, "Of all the properties which belong to honorable men, not one is so highly prized as character."

I know I speak for my colleagues on both sides of the aisle in saying that Senator RICHARD LUGAR is truly a man of character. And I join today in saluting Senator LUGAR as he becomes the longest serving Senator in Indiana history.

Today marks Senator LUGAR's 7,059th day in this Chamber. They have been days spent making a difference in nearly every issue that has come before this body, including agriculture, trade, the budget, foreign policy, and nuclear security.

As chairman of the Foreign Relations Committee, Senator LUGAR played a key role in bringing freedom to the Philippines. And as chairman of the Agriculture Committee, he produced legislation which will bring freedom to America's farmers.

DICK LUGAR's service to his State and his country are not limited to the time he has served in the Senate.

It was Naval Officer LUGAR who prepared intelligence briefings for the Chief of Naval Operations and President Eisenhower.

It was Mayor LUGAR who led the city of Indianapolis for 8 years, earning a reputation as one of the Nation's most innovative and successful mayors.

And it is husband and father DICK LUGAR who stands as a role model for countless young Americans.

Mr. President, over the last few years, Senator LUGAR has asked summer interns in his Washington office to research an Indiana Senator of their choice.

I am confident that in decades yet to come, when young Indiana students research those who have served their State, they will conclude that not only did RICHARD LUGAR set a standard in terms of longevity, he also set a standard in terms of integrity.

COMMENDING SENATOR RICHARD LUGAR

Mr. COATS. Mr. President, I rise to congratulate my friend and colleague, Senator RICHARD LUGAR, on his remarkable achievement and extraordinary service to the people of Indiana. He has had the privilege of representing Hoosiers in the U.S. Senate longer than any other Senator in Indiana history. His tenure has been distinguished and well deserved.

In Indiana, we are proud of DICK LUGAR and his leadership. Both in the Senate and on the campaign trail, he has consistently raised issues our Nation cannot afford to ignore. His thoughtful and skillful approach to policy has made our Nation safer and America's influence in the world more secure.

We are proud of his long record of accomplishments: fighting for freedom in the Philippines, enhancing the world's nuclear security, working for American farmers.

But DICK LUGAR brings more to the Senate than his skills as a legislator. His politics are informed by character. DICK LUGAR understands that values count and that principle is worth defending. He represents the bet of Hoosier values—honesty, integrity, determination.

On behalf of the people of Indiana, I thank RICHARD LUGAR for his service to our State and to our Nation. It is my privilege to serve with them in the U.S. Senate.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1664, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1664) to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole (for Simpson) amendment No. 3743, of a perfecting nature.

Simpson amendment No. 3853 (to amendment No. 3743), relating to pilot projects on systems to verify eligibility for employment in the United States and to verify immigration status for purposes of eligibility for public assistance or certain other government benefits.

Simpson amendment No. 3854 (to amendment No. 3743), to define "regional project" to mean a project conducted in an area which includes more than a single locality but which is smaller than an entire State.

Simon amendment No. 3810 (to amendment No. 3743), to exempt from deeming requirements immigrants who are disabled after entering the United States.

Feinstein/Boxer amendment No. 3777 (to amendment No. 3743, to provide funds for the construction and expansion of physical barriers and improvements to roads in the border area near San Diego, California.

Reid amendment No. 3865 (to amendment No. 3743), to authorize asylum or refugee status, or the withholding of deportation, for individuals who have been threatened with an act of female genital mutilation.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank my colleagues. I thank the ranking member, Senator KENNEDY. I think we are in a position, now, to perhaps conclude this measure, at least on the so-called Simpson amendment, today.

We had some 156 amendments proposed a day ago. We are down to about 30 today. Some are known in the trade as place holders—pot holders or whatever might be appropriate, some of them. Nevertheless we will proceed today. The debate will take its most important turn, and that is the issue of verification; that is the issue of the birth certificate and the driver's license, changes that were made yesterday and adopted unanimously by voice vote in this Chamber. We will deal with that issue.

But one thing has to be clearly said because I am absolutely startled at some of the misinformation that one hears in the well from the proponents and opponents of various aspects of immigration reform. It was said yesterday, by a colleague unnamed because I have the greatest respect for this person, that tomorrow to be prepared to be sure that we do not put any burden on employers by making employers ask an employee for documents.

That has been on the books since 1986. I could not believe my ears. Someone else was listening to it with great attention. I hope we at least are beyond that point. Today the American employer has to ask their employee, the person seeking a job, new hire, for documentation. There are 29 documents to establish either worker authorization or identification. And then, also, an I-9 form which has been required since that date, too. In other words, yes, you do have to furnish a document to an employer, a one-page form indicating that you are a citizen of the United States of America or authorized to work. That has been on the books, now, for nearly 10 years. If we cannot get any further in the debate than that, then someone is seriously distorting a national issue. Not only that, but someone is feeding them enough to see that it remains distorted.

So when we are going to hear the argument the employer should not be the watchdog of the world, what this bill does is take the heat off of the employer. Instead of digging around through 29 documents they are going to have to look at 6. If the pilot program works, and we find it is doing well, and is authentic and accurate, then the I-9 form is not going to be required. That is part of this.

Then yesterday you took the real burden off of the employer, and I think it was a very apt move. We said, now, that if the employers are in good faith in asking for documents and so on, and have no intention to discriminate, that they are not going to be heavily fined, or receive other penalties. That was a great advantage to the employer.

So I hope the staffs, if there are any watching this procedure, do not simply load the cannon for their principal, as we are called by our staff—and other things we are called by our staff—principals, that they load the cannon not to come over here and tell us what is going to happen to employers having to ask for identity, having to prove the person in front of them is a citizen or authorized to work, unless you want to get rid of employer sanctions and get rid of the I-9. Those things have been on the books for almost 10 years.

With that, I hope that is a starting point we take judicial notice thereof.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, my friend and colleague has stated absolutely accurately what the current state of the law is. For those who have questions about it, all they have to do is look at the Immigration and Nationality Act, section 274, that spells out the requirements of employment in the United States. I will not take the time to go through that at this particular moment, but for those who doubt or question any of the points the Senator has made, it is spelled out very clearly in section 274(a).

That is why we have the I-9 list, which is the list, A, B, and C. This is the part of the problem which we hope will be remedied with the Simpson proposal, and that is there will be just the six cards. You have list A, you can show one of these items, because under the law you have to have identity and employment eligibility. You can have one of the 10 items on A. Or you can have an item listed on B and an item listed on C, in order to conform with the current law. As has been pointed out both in the hearings as well as in the consideration and the presentation of this legislation, and the consideration of the Judiciary Committee, the result is that there is so much mischief that is created with the reproduction and counterfeit of these particular cards that they have become almost meaningless as a standard by which an employer is able to make a judgment as to the legitimacy of the applicant in order to ensure that Americans are going to get the jobs. Also it makes complex the problems of discrimination, which we talked about yesterday.

It is to address this issue that other provisions in the Simpson proposal—the six cards have been developed as have other procedures which have been outlined. But if there is any question in the minds of any of our colleagues, there is the requirement at the present time, specified in law, to show various documents as a condition of employment. That exists, as the Senator said, today. And any representation that we are somehow, or this bill somehow is altering that or changing that or doing anything else but improving that process in the system is really a distortion of what is in the bill and a distortion of what is intended by the proposal before the Senate. So I will welcome the opportunity to join with my colleague on this issue.

It has been mentioned, as we are awaiting our friend and colleague from Vermont, who is going to present an amendment, that what we have now is really the first important and significant effort to try to deal with these breeder documents, moving through the birth certificate, hopefully on tamper-proof paper. Hopefully that will begin a long process of helping and assisting develop a system that will move us as much as we possibly can toward a counterfeit-free system, not only in terms of the cards but also in terms of the information that is going to be put on those cards.

We hear many of our colleagues talk about: Let us just get the cards out there. But unless you are going to be serious about looking at the backup, you are not really going to be serious about developing a system. That is what this legislation does. It goes back to the roots, to try to develop the authoritative and definitive birth certificate and to ensure the paper and other possible opportunities for counterfeiting will be effectively eliminated, or reduced dramatically. Then the development of these tamperproof cards; then the other provisions which are included in here, and that is the pilot programs to try to find out how we can move toward greater truth in verification that the person who is presenting it is really the person it has been issued to, and other matters. But that is really the heart of this program.

Frankly, if we cut away at any of those, then I think we seriously undermine an important opportunity to make meaningful progress on the whole issue of limiting the illegal immigration flow. As we all know, the magnet is jobs. As long as that magnet is out there, there is going to be a very substantial flow, in spite of what I think are the beefed-up efforts of the border patrol and other steps which have been taken.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I understand the distinguished Senator from Wisconsin has asked for time in morning business. I will yield for that purpose.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

Mr. FEINGOLD. Thank you, Mr. President.

CAMPAIGN FINANCE REFORM

Mr. FEINGOLD. Mr. President, just briefly, before we go back on to the important business at hand, the immigration bill, I just want to call to the attention of the body an article today in the Washington Post entitled "Campaign Finance Proposal Drawing Opposition From Diverse Group." Mr. President, I ask unanimous consent that that article be printed in the RECORD.

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

[From the Washington Post, May 1, 1996]

CAMPAIGN FINANCE PROPOSAL DRAWING OPPOSITION FROM DIVERSE GROUP

(By Ruth Marcus)

An unusual alliance of unions, businesses, and liberal and conservative groups is trying to defeat campaign finance legislation that would abolish political action committees and impose other restrictions on election spending.

The informal coalition, which met for the second time yesterday, includes groups that usually find themselves on opposite sides of legislative and ideological battles: unions including the AFL-CIO, National Education Association and National Association of Letter Carriers, and the National Association of Business Political Action Committees (NABPAC), which represents 120 business and trade association PACs.

Also among the 30 organizations at the meeting were conservative groups such as the Cato Institute, Conservative Caucus and Americans for Tax Reform; liberal groups such as EMILY's List, the women's political action committee; and others, including U.S. Term Limits, the National Women's Political Caucus, the National Association of Broadcasters and the American Dental Association.

Yesterday's meeting, at AFL-CIO headquarters here, was organized by Curtis Gans of the Committee for the Study of the American Electorate, a nonpartisan organization that studies voter turnout. Gans opposes the campaign finance proposal pending in Congress.

"The unifying principle is essentially that the approaches that have been pushed by Common Cause and Public Citizen are wrong . . . and their answers to the problems are wrong," Gans said, referring to two of the leading groups pushing the campaign finance legislation.

He said the groups that met yesterday were "unanimous" about the need to do "public education" activities to counter a debate that Gans said "has essentially been dominated by the Common Cause position." But the diverse assemblage was unable even to agree to Gans's draft joint statement about the issue.

Common Cause president Ann McBride said the meeting showed "labor and business . . . coming together and agreeing on the one thing that they can agree on, which is maintaining the status quo and their ability to use money to buy outcomes on Capitol Hill."

The meeting reflects a stepped-up effort by foes of the proposal. NABPAC has launched a print and radio advertising campaign here and in districts of members who support the bill. The ads target individual lawmakers by name.

"Legislation sponsored by Rep. David Minge . . . will make it harder for average Americans to contribute to campaigns and to run for office," said a newspaper ad that ran in the Minnesota Democrat's district. "The next time you see Rep. David Minge ask him this simple question: Why do you want more millionaires in Congress?"

NABPAC also is encouraging its members to cut off contributions to lawmakers who support the bill, and last month sent a memorandum to members of Congress enclosing copies of its ads. "The plans are to aggressively market this in other appropriate areas of the country," NABPAC executive vice president Steven F. Stockmeyer said in the memo.

Three sponsors of the campaign finance bill in the House, Reps. Christopher Shays (R-Conn.), Martin T. Meehan (D-Mass.) and Linda A. Smith (R-Wash.), fired back at NABPAC in a letter to its members last week, calling the memorandum a "thinly veiled threat to keep members from co-sponsoring" the legislation.

"[I]ntimidating members into staying off of the bill by either subtly or blatantly threatening to withhold campaign contributions is disgraceful and justifies why our legislation is needed," they wrote. "Frankly, these efforts simply inspire us further to try to end the system of checkbook lobbying in Washington."

But Shays said yesterday that "some members are [scared] because they don't want to be the enemy of these groups." A Common Cause study released last week found that NABPAC members gave $106 million to current members of Congress from 1985 to 1995.

In addition to abolishing PACs, the campaign finance bill, sponsored in the Senate by Sens. John McCain (R-Ariz.), Russell Feingold (D-Wis.) and Fred D. Thompson (R-Tenn.), would set voluntary state-by-state spending limits and, for those who agree to the limits, require television stations to offer 30 minutes of free time in evening hours and cut rates for other advertising before primary and general elections.

Critics contend that abolishing PACs would diminish the ability of average citizens to join together to have their voices head and would increase the influence of wealthy citizens.

Mr. FEINGOLD. Mr. President, what this article is about is a reaction to the effort that Senator MCCAIN and I and others have been preparing to try to change our Nation's campaign financing system. There are those who have indicated that the effort will go nowhere because it is already too late in the 104th Congress, and that it is just going to go the way of all other campaign finance reform efforts in the past.

Frankly, Mr. President, this article gives me heart. It is eloquent testimony to the reason why we have got to have campaign finance reform in this country and why we need it now. What happened yesterday was, according to the article, an unusual alliance of unions, businesses, and liberal-conservative groups trying to defeat campaign finance legislation that would abolish political action committees and other restrictions on election spending, got together, all together, to try to kill the McCain-Feingold bill. It included groups such as the AFL–CIO, the NEA, National Association of Letter Carriers, the National Association of Business Political Action Committees, Cato Institute, Conservative Caucus, Americans for Tax Reform, EMILY's List—you name it—National Association of Broadcasters, the American Dental Association. This was a gathering of all the special interests in Washington, even before we have had the bill come up, saying, "Let's kill it before it has a chance to live."

The reason it gives me heart, Mr. President, really, there are two reasons. First of all, if this bill is not going anywhere, what are they worried about? Why are they coming together, as they so infrequently do, to kill a piece of legislation that is the first bipartisan effort in 10 years in this body to try to do something about the outrageous amount of money that is spent on campaigns and the outrageous influence that this community, Washington, has on the entire political process in this country?

I recall when I ran for the U.S. Senate, I might talk to somebody from the labor community or to an independent banker, and they would say, "Gee, we think you are a pretty good candidate, but first I have to check with Washington to see if I can support you." That is how the current system works. You have to check in with Washington first. I think that gives way too much power to this town and way too much power to these special interests that want to kill campaign finance reform in this Congress.

It gives me heart that there is concern. It also gives me heart that they are drawing attention to the fact. In fact, this article is eloquent testimony to what is really going on in this country. There is too much money in this town; there is too much money in these elections. What they are trying to do, Ann McBride of Common Cause pointed out, is to preserve the status quo, the meeting of labor and business coming together and agreeing on the one thing they can agree on, which is maintaining the status quo and their ability to use money to buy outcomes on Capitol Hill.

What our bipartisan effort is about is returning the power back to the people in their own home States, to let them have more influence over elections than the special interests that run this town. We will join this issue on the floor, and we will fight these special interests head on, regardless of their new coalitions.

Mr. President, I simply indicate we are prepared, as I did a couple of days ago along with other Senators, we are prepared to offer this as an amendment to a bill in the near future, or if the leadership sees it this way, to bring this up as separate legislation. The time is drawing near for campaign finance reform.

I thank the Chair. I yield the floor.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The Senate continued with consideration of the bill.

AMENDMENT NO. 3780 TO AMENDMENT NO. 3743

(Purpose: To provide minimum safeguards in expedited exclusion procedure to prevent returning bona fide refugees to their persecutors)

Mr. LEAHY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. DEWINE, Mr. HATFIELD, and Mr. KERRY, proposes an amendment numbered 3780 to amendment No. 3743.

Mr. LEAHY. 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:

Strike sections 131 and 132.

Strike section 141 and insert the following:

SEC. 141. SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by adding after section 236 (8 U.S.C. 1226) the following new section:

"SPECIAL EXCLUSION IN EXTRAORDINARY MIGRATION SITUATIONS

"SEC. 236A. (a) IN GENERAL.—

"(1) Notwithstanding the provisions of sections 235(b) and 236, and subject to subsection (c), if the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the United States, by land, sea, or air, present an extraordinary migration situation, the Attorney General may, without referral to a special inquiry officer, order the exclusion and deportation of any alien who is found to be excludable under section 212(a) (6)(C) or (7).

"(2) As used in this section, the term 'extraordinary migration situation' means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity of the inspection and examination of such aliens.

"(3) Subject to paragraph (4), the determination whether there exists an extraordinary migration situation within the meaning of paragraphs (1) and (2) is committed to the sole and exclusive discretion of the Attorney General.

"(4) The provisions of this subsection may be invoked under paragraph (1) for a period not to exceed 90 days, unless within such 90-day period or extension thereof, the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in effect for an additional 90-day period.

"(5) No alien may be ordered specially excluded under paragraph (1) if—

"(A) such alien is eligible to seek asylum under section 208; and

"(B) the Attorney General determines, in the procedure described in subsection (b),

that such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided.

"(6) A special exclusion order entered in accordance with the provisions of this section is not subject to administrative review other than as provided in this section, except that the Attorney General shall provide by regulation for a prompt administrative review of such an order against an applicant who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been, and appears to have been, lawfully admitted for permanent residence.

"(7) A special exclusion order entered in accordance with the provisions of this section shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236.

"(8) Nothing in this subsection shall be construed as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

"(b) PROCEDURE FOR USING SPECIAL EXCLUSION.—(1) When the Attorney General has determined pursuant to this section that an extraordinary migration situation exists and an alien subject to special exclusion under such section has indicated a desire to apply for asylum or withholding of deportation under section 243(h) or has indicated a fear of persecution upon return, the immigration officer shall refer the matter to an asylum officer.

"(2) Such asylum officer shall interview the alien to determine whether the alien has a credible fear of persecution (or of return to persecution) in or from the country of such alien's nationality, or in the case of a person having no nationality, the country in which such alien last habitually resided.

"(3) The Attorney General shall provide information concerning the procedures described in this section to any alien who is subject to such provisions. The alien may consult with or be represented by a person or persons of the alien's choosing according to regulations prescribed by the Attorney General. Such consultation and representation shall be at no expense to the Government and shall not unreasonably delay the process.

"(4) The application for asylum or withholding of deportation of an alien who has been determined under the procedure described in paragraph (2) to have a credible fear of persecution shall be determined in due course by a special inquiry officer during a hearing on the exclusion of such alien.

"(5) If the officer determines that the alien does not have a credible fear of persecution in (or of return to persecution from) the country or countries referred to in paragraph (2), the alien may be specially excluded and deported in accordance with this section.

"(6) The Attorney General shall provide by regulation for a single level of administrative appellate review of a special exclusion order entered in accordance with the provisions of this section.

"(7) As used in this section, the term 'asylum officer' means an immigration officer who—

"(A) has had extensive professional training in country conditions, asylum law, and interview techniques;

"(B) has had at least one year of experience adjudicating affirmative asylum applications of aliens who are not in special exclusion proceedings; and

"(C) is supervised by an officer who meets the qualifications described in subparagraphs (A) and (B).

"(8) As used in this section, the term 'credible fear of persecution' means that, in light of statements and evidence produced by the alien in support of the alien's claim, and of such other facts as are known to the officer about country conditions, a claim by the alien that the alien is eligible for asylum under section 208 would not be manifestly unfounded.

"(c) ALIENS FLEEING ONGOING ARMED CONFLICT, TORTURE, SYSTEMATIC PERSECUTION, AND OTHER DEPRIVATIONS OF HUMAN RIGHTS.—Notwithstanding any other provision of this section, the Attorney General may, in the Attorney General's discretion, proceed in accordance with section 236 with regard to any alien fleeing from a country where—

"(1) the government (or a group within the country that the government is unable or unwilling to control) engages in—

"(A) torture or other cruel, inhuman, or degrading treatment or punishment;

"(B) prolonged arbitrary detention without charges or trial;

"(C) abduction, forced disappearance or clandestine detention; or

"(D) systematic persecution; or

"(2) an ongoing armed conflict or other extraordinary conditions would pose a serious threat to the alien's personal safety.".

(b) CONFORMING AMENDMENTS.—(1)(A) Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225b) is amended to read as follows:

"(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer.".

(B) Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227a) is amended—

(i) in the second sentence of paragraph (1), by striking "Subject to section 235(b)(1), deportation" and inserting "Deportation"; and

(ii) in the first sentence of paragraph (2), by striking "Subject to section (b)(1), if" and inserting "If".

(2)(A) Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(i) by striking subsection (e); and

(ii) by amending the section heading to read as follows: "JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION".

(B) Section 235(d) (8 U.S.C. 1225d) is repealed.

(C) The item relating to section 106 in the table of contents of the Immigration and Nationality Act is amended to read as follows:

"106. Judicial review of orders of deportation and exclusion.".

(3) Section 241(d) (8 U.S.C. 1251d) is repealed.

In section 142, strike the new section 106(f) of the Immigration and Nationality Act (8 U.S.C. 1105f).

Strike section 193.

On page 178, line 8, strike "and subject to subsection (b),".

Strike section 198(b).

Mr. LEAHY. Mr. President, this amendment is offered on behalf of myself, the distinguished Presiding Officer, the distinguished senior Senator from Oregon [Mr. HATFIELD], and the distinguished Senator from Massachusetts [Mr. KERRY].

I offer this amendment to the provisions in the bill that I believe gut our asylum law. This is not just my opinion but is the opinion of at editorial boards from newspapers that normally do not agree with each other.

Let me first refer to the editorial in The Washington Times yesterday. It says:

In their rush to pass an anti-terrorism bill, lawmakers perhaps unwillingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

Then the Washington Post, in another editorial today, speaks of the antiterrorism law being revisited and says, again, that this amendment should be supported.

I ask unanimous consent to have printed in the RECORD those two editorials.

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

[From the Washington Times, Apr. 30, 1996]

IMMIGRANTS AND OTHER ORDINARY PEOPLE

The story goes that Texas Sen. Phil Gramm was attending a National Republican Senatorial Committee meeting with political supporters a few years ago when a woman rose and asked an awkward question. "Sen. Gramm," she said, "why do all the people here talk funny?" As it happened, about 80 percent of those supporters were first-generation Americans—immigrants—and Mr. Gramm says you could hear the collective gulp from the room about 100 miles away. His answer? "Ma'am, 'cause this is America."

He elaborated on that answer in memorable remarks to the Senate last week. "If we ever get to the point where we do not have a few citizens who talk funny, if we ever get to the point where we do not have a new infusion of energy and a new spark to the American dream, then the American dream is going to start to die. It is not going to fade, and it is not going to die on my watch in the U.S. Senate."

No doubt in part because of his emotional speech, the Senate last week defeated legislation that would have effectively limited immigration. But the chamber is not done with this issue. If you want to see just how far some lawmakers would go to restrict people who, as Mr. Gramm puts it, talk funny, then consider some of the immigration legislation up for a vote as early as this week.

Perhaps the most controversial issue involves so-called demonstration projects intended to test the use of verification systems for workers in this country. The idea is that if the government could just figure out how to keep illegal immigrants from working then fewer would come here in the first place. Presto, no more illegal immigration.

This editorial page has said from the beginning of this debate that it sees nothing wrong with a person's coming here to work. As the quotable Mr. Gramm put the matter the other day, "We have room in America for people who come with their sleeves rolled up, ready to go to work. But we do not have room for people who come with their hand out." Exactly right.

Laying the groundwork for a national identification system, as the demonstration projects do, sets a terrible precedent. What has this country come to that it would require aspiring workers to get permission from the government before they can roll up their sleeves and get to work? Work is not an entitlement to be disbursed by the politically powerful for the benefit of the politically favored. Nor is it something to be trusted to some distant federal worker.

Even if one assumes the government can manage a national ID system, how is it going to match the ID with the worker? With fingerprints? With blood and tissue samples? That's the sort of treatment ordinarily reserved for criminals, not mere workers.

There's one other thing to keep in mind when senators take up immigration reform. In their rush to pass an anti-terrorism bill, lawmakers perhaps unwittingly and unnecessarily restricted the present rights of persons seeking asylum in this country to escape political or religious persecution in their own countries. Such persons used to get a hearing before an immigration judge. Now they can be sent home without a hearing or judicial review. Lawmakers should restore procedural protections for asylum-seekers.

There's room here for workers. There's room here for people who genuinely need asylum. "America is not a great and powerful country because the most brilliant and talented people in the world came to live here," said Mr. Gramm. "America is a great and powerful country because it was here that ordinary people like you and me have had more opportunity and more freedom than any other people who have ever lived on the face of the Earth. And with that opportunity and with that freedom, ordinary people like us have been able to do extraordinary things."

[From the Washington Post, May 1, 1996]

THE TERRORISM LAW REVISITED

Think back about 10 days to the celebratory pictures of the president signing the terrorism bill. That measure, deeply flawed by provisions restricting habeas corpus, allowing the use of secret evidence at deportation proceedings and providing for summary exclusion of asylum-seekers, was hailed as a vital bulwark protecting Americans against international terrorists. In the rush to pass that legislation by April 19, the first anniversary of the Oklahoma City bombing, scant attention was paid to Sen. Patrick Leahy, who pointed out some of these flaws. But this week, when the Vermont Democrat seeks to use the pending immigration bill to repeal one of them, the administration is on his side.

Every year, thousands of individuals arrive in this country seeking asylum from persecution. Until recently, this process was subject to a lot of abuse. Claimants were admitted, given a work permit and released with the understanding that they would show up some time in the distant future (there were terrible backlogs then) for a hearing. Most of them simply disappeared into the general population and were never heard from again. But the Immigration and Naturalization Service (INS) instituted reforms early in 1994—streamlining procedures, withholding work permits and keeping many claimants in custody until their hearings—which have reduced the problem substantially. The system now in place works well, and both the Justice Department and the INS say there is no need for change.

But in the rush "to combat terrorism" Congress passed, and the president signed, new restrictions that create a presumption that anyone seeking asylum who enters with false documents, or has traveled through other countries to get here, does not have a valid claim. In these cases, the claimant would have to make his case to an immigration officer on site, without any guarantee that he can be represented by a lawyer or even have an interpreter. If he does not persuade this official, he can be returned to his own country summarily without further hearing before an immigration judge or review by the Board of Immigration Appeals.

It is fair to suspect anyone who enters the country with a false passport, or who has left a place of safety in Western Europe, for example, to ask for asylum here. But suspicions need to be proved. It should surprise no one that persecuted people might not be able to apply for passports in their own countries, or might have to use a false name to get out. And a two-hour layover in Germany or France on a long flight to freedom shouldn't disqualify an applicant for asylum. Sen. Leahy's effort, which has the backing of the people charged with enforcing the immigration laws, should be supported.

Mr. LEAHY. Now, we should be clear what the provisions of the bill do and what they and our amendment do not concern. These are not provisions that cover alien terrorists. It is safe to say that there is not a single Member of this body who wants to allow alien terrorists into our midst. That is not a partisan issue; every single Member of this body is against terrorists. We can accept that as a point of fact.

There are a number of other provisions in the antiterrorism law that the President signed last week that cover the exclusion of those affiliated with foreign terrorist organizations. They forbid the grant of asylum to alien terrorists.

We are not seeking to defend alien smuggling or false documentation used for that purpose. That is already a crime. Senators DEWINE, HATFIELD, KERRY, and I totally agree on that.

But we know that there are some circumstances and there are some oppressive regimes in the world from which escape may well entail the use of false papers. We want to make sure that we do not create barriers to true refugees and those deserving asylum, and prevent them from making an application for asylum.

Let me give an example, using first a hypothetical and then go to some real examples. You are in a country with an oppressive regime. You are in a country where you are being persecuted for your religious beliefs or your political beliefs. In fact, you may even face death for your religious beliefs or your belief in democracy. You know that the arm of that government is out to get you. These are not cases of just paranoia; they may already have gone and killed members of your family for similar beliefs. You look at the one great beacon of freedom: the United States of America. You figure, "How do I get there?"

Now, you are facing the possibility of a death penalty for your religious beliefs. Do you think you could walk down to the government that is out to kill you for those religious beliefs and say, "Could I please have a passport? Here is my name and address. And, by the way, I want to book passage, I want a visa and I want to go directly to the United States."

We all know what would happen in a case like that. The realty of the situation is that people in those circumstances are probably going to get a forged or a false passport. They are not going to go on a flight that will go directly to the United States because that is something the government may be watching. They are going to go to another country—maybe a neighboring country, maybe two or three countries—and then make it to the United States.

Under the immigration law that is before us, once they got here, because they used false passports and went through other countries, they are probably going to be summarily sent back. Summarily being sent back is in an equal amount of time to the summary execution or imprisonment that they face when they arrive back in their home country.

Now, let us be realistic. The Justice Department does not want these provisions and has not requested them. They were not recommended by the Jordan Commission. The Department has told us that they want a type of standby authority in case of immigration emergency, similar to what I have proposed in this amendment.

Think of some of the history of this country. Fidel Castro's daughter came to this country and was granted asylum, for appropriate reasons, and, of course, with great political fanfare. But Fidel Castro's daughter did not fly directly to the United States with a passport bearing her name. She took a false passport, she went to Spain, and then came here. Under this new law, we would likely have said, "Sorry, you are out."

The most recent and famous example of why we must not adopt the summary exclusion provisions of this bill is, of course, the case of Fauziya Kasinga and her flight from Togo to avoid female genital mutilation. We first talked about that case here in the Senate a couple of weeks ago.

There have been two extremely positive developments since then. First, the INS filed a brief with the Board of Immigration Appeals, arguing—I believe for the first time—that the fear of female genital mutilation should

present a sufficient cause to seek asylum in the United States.

I do not think there should have been any question about this. If there is any doubt, we should amend this bill or law without hesitation to ensure that flight from such practices are covered by our asylum policies, as the Senator from Nevada [Mr. REID] has already suggested.

Second, last Thursday, April 25, after more than a year in detention under conditions that subjected her to unnecessary hardship, Ms. Kasinga was finally released by INS to await determination by the Board on her asylum application.

Her case was first reported on the front page of the April 15 New York Times by Celia Dugger. Both she and her newspaper deserve a great deal of credit for bringing this to our attention.

Ms. Kasinga has sought for 2 years to find sanctuary in this country, only to be detained, tear-gassed, beaten, isolated and abused.

Well, now we all realize how bad this is. It is something that should outrage men and women alike. I believe it does outrage men and women in this country.

Unfortunately, one thing has not changed yet, that is the provision I am seeking to amend in this bill. The provisions in the bill would still summarily exclude Ms. Kasinga, and others like her, from ever making an asylum claim. She traveled through Germany on a false British passport in order to escape mutilation in Togo. Under the bill before us, she would be subjected to summary exclusion at the border without judicial review.

In fact, does anybody in this body believe that an immigration officer at her point of entry would, as a matter of first impression, have agreed with her claim that fear of female genital mutilation was a proper ground to seek asylum?

We should, instead, restore protections in our laws to protect her ability to get a fair opportunity to be heard.

On April 19, Anthony Lewis wrote a column for the New York Times that captured the essence of this issue. In his column, he notes, "The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee." As Mr. Lewis puts it, "Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept?" Indeed.

This is what has always distinguished the United States in our 200 years of constitutional history—200 years as a Nation protecting democracy and individual freedoms and rights more than any other country in existence. No wonder people seek asylum in the United States. No wonder people facing religious persecution, or political persecution, or physical persecution, look to the United States, knowing that we are the symbol of freedom. But that symbol would be tarnished if we were to close our doors.

Mr. President, in Mr. Lewis' column, he wrote: "The Senate will in fact have another chance to consider the issue when it takes up the immigration bill."

I ask unanimous consent that a copy of Mr. Lewis' column be printed in the RECORD.

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

[From the New York Times, Apr. 19, 1996]

SLAMMING THE DOOR

(By Anthony Lewis)

BOSTON.—The case of 19-year-old Fauzlya Kasinga, who says she fled her native Togo to avoid the rite of female genital mutilation, has aroused much sympathy. She arrived at Newark Airport in 1994, told officials she was using someone else's passport, sought asylum, was turned down and has been held in prison ever since. The Board of Immigration Appeals will hear her appeal on May 2.

But in future we are not likely to know about desperate people like Ms. Kasinga. If their pleas for asylum are turned down by a low-level U.S. immigration officer, they will not be allowed to appeal—and review by the courts will be barred. They will be sent back at once to the land where they face persecution.

This extraordinary change in our law is part of the counter-terrorism bill awaiting President Clinton's signature. It is not directed at terrorists. It applies to anyone seeking asylum who arrives here with false documents or none—the situation of many people fleeing persecution.

The issue raised in Fauzlya Kasinga's case, female genital mutilation, is an important one: Does that cruel practice come within the grounds for asylum? But the new summary process of exclusion will affect many more people seeking asylum for traditional reasons: the man fleeing a Nigerian Government that executed his political colleagues, for example, or the Vietnamese who escaped from a re-education camp.

The asylum provisions effectively impose the absurd presumption that anyone who flees a country without proper papers is not a genuine refugee. By that test Fidel Castro's daughter was not a true refugee because she fled Cuba with a false passport. Nor were Jews who fled the Nazis without papers.

Political refugees are not the only losers. The bill trashes the American tradition of courts as the arbiters of law and guarantors of freedom. I have seen a good deal of nastiness in the work of Congress over the years, but I do not remember such detailed and gratuitous cruelty.

The bill gives virtually final authority to immigration officers at 300 ports of entry to this country. Each is directed to interview people seeking asylum and exclude them if he finds that they do not have "a credible fear of persection." That phrase is unknown to international law.

The officer's summary decision is subject only to "Immediate review by a supervisory office at the port." The bill prohibits further administrative review, and it says, "no court shall have jurisdiction" to review summary denials of asylum or to hear any challenge to the new process. (Our present system for handling asylum applications works efficiently, so there is no administrative need for change.)

Stripping away the protection of the courts may be the most alarming feature of the legislation. It is reminiscent of the period after the Civil War, when a Congress bent on punishing the South took away the jurisdiction of the Supreme Court to consider cases that radical Republicans thought the Court would decide against their desires.

Political asylum is one saving grace in a world of too much political brutality. Why should Americans want to undermine the asylum concept? And why should a bill supposedly aimed at terrorists be used as a vehicle to keep the victims of official terrorism from finding refuge?

Why should senators as decent as Orrin Hatch, chairman of the Judiciary Committee, stand still for such harshness? The asylum restrictions originated in the House and were kept in the bill by conferees, so the Senate was presented with a fait accompli. A motion by Senator Patrick Leahy to send the terrorism bill back to conference on that issue failed, 61 to 38.

President Clinton has been so eager for an anti-terrorism bill that he is not likely to veto this one, over the asylum sections any more than over the gutting of habeas corpus. But he could call on Congress to reconsider the attack on political asylum.

The Senate will in fact have another chance to consider the issue when it takes up the immigration bill, which has in it a similar provision for summary exclusion of asylum-seekers. On reflection, Senator Hatch and other's should see the threat to victims of persecution and to our tradition of law.

Mr. LEAHY. Mr. President, I have an editorial by the New York Times, entitled, "Not So Harsh on Refugees." I ask unanimous consent that it be printed in the RECORD.

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

[From the New York Times, Apr. 22, 1996]

NOT SO HARSH ON REFUGEES

The ordeal of a young woman from Togo who came to America to avoid the practice of female genital mutilation should give members of Congress pause before they approve any further limitations on the rights of refugees seeking sanctuary in the United States. As detailed last week by Celia Dugger of The Times, Fauziya Kasinga was detained for months before she obtained a hearing, and she was strip-searched and held with convicted criminals. Shamefully, the anti-terrorism bill just passed by Congress and immigration bills still pending could subject many more refugees to similar treatment.

Ms. Kasinga's case involves female genital mutilation, a common practice in some two dozen African nations that involves cutting off portions of a young woman's genitals, often without anesthesia.

Ms. Kasinga fled Togo in 1994 to avoid mutilation after losing her status as a member of a privileged family. Her determination to avoid the practice could have subjected her to harsh treatment had she stayed, or if she is forced to return home. She may have a reasonable claim for asylum on the basis of membership in a social group vulnerable to persecution in her homeland.

But when Ms. Kasinga landed at Newark Airport in December 1994, seeking asylum

with a phony passport, she was immediately detained. Under the law, people who have credible claims for asylum and family members already living in the United States can be released, pending a hearing. Ms. Kasinga has a cousin in the Washington area, but she was kept in custody anyway. After being held for months at a New Jersey detention center, Ms. Kasinga was transferred to a Pennsylvania prison and housed with convicted criminals.

Ms. Kasinga fared no better in court, where an immigration judge denied her claim. The Board of Immigration Appeals will hear her case in May.

If some members of Congress had their way, Ms. Kasinga would have been returned to Togo long ago. Under an immigration bill passed by the House, but now held up in the Senate, anyone attempting to enter the country without proper documents would only be entitled to a one-hour interview with an asylum officer. Denial of an asylum claim would be subject to review by a supervisor, but not by any other administrative or judicial body. These provisions, similar to ones in the anti-terrorism bill, would deny a fair hearing to many asylum seekers.

The House immigration bill also calls for detention of any asylum seeker who is awaiting a hearing, even when a credible claim has been presented. That could subject more would-be refugees to the harsh treatment suffered by Ms. Kasinga.

Senator Patrick Leahy of Vermont plans to offer an amendment that would not only override the harsh exclusion provisions in the immigration bill but also supersede the same provisions in the anti-terrorism bill. Congress should follow his lead.

Mr. LEAHY. It is hard to think of a time when you find the New York Times, the Washington Post, and the Washington Times all agreeing on an issue. But this is, as I said before, not an issue of political ideology, it is an issue of simple justice. It is an issue that reflect what is best in this country, what is the best in us as Americans.

In fact, it would be hard to think of a better example of how unworkable this provision is—the one in the bill that we seek to correct—than a woman who joined me at a press conference yesterday. Two years ago, she fled Peru. She had been horribly treated and threatened by rebel guerrillas there. She came to this country without proper documents. She was able to convince an immigration judge after an opportunity for a fair hearing that she would suffer persecution if she returned home.

Yesterday, I asked her to tell about her experience. Less than two sentences into her story, as the memories of what she had put up with 2 years ago played back, she broke down crying. Her case has been very well-documented. She was able to establish a basis for asylum. But now, 2 years later, the memories are so strong that, emotionally, she was unable to talk with us about it.

Can you imagine if the provisions in this bill had been the law and she got to the border, and an INS officer said, "Quick, tell me why you should stay here. What is going on? Why should you stay here?" This woman, who was unable to talk about it 2 years later after having been granted asylum, what would she have done, how would she have established her case? The answer would have been, "Well, obviously, you are not establishing the necessary criteria. You did not come here with a proper passport, so you are going back. Come back when you get a proper passport." What would she have gone back to?

Fortunately, instead of being sent back summarily to the hands of her abusers, she had a chance to be heard before a judge.

Mr. President, I am sure there are others who wish to speak. I will have more to say about this.

Mr. President, I withhold my time.

Mr. SIMPSON. Mr. President, there is no one I enjoy and regard more highly than my friend from Vermont. He and I have, fortunately, been on the same side of more issues than ever on opposite sides. I find him a fast and true friend whom I enjoy very, very much. When he speaks, he speaks with genuine clarity and authenticity about something in which he deeply believes.

Let me be so very clear here. We are, as the Senator from Vermont said, not talking about an antiterrorism bill. There was an amendment on the antiterrorism bill which passed the Senate by a vote of 61 to 38 which is, in many cases, quite similar to this measure. It had to do with exclusion and summary proceedings. We are not speaking of that. What we are talking about is the bill itself, and Senator LEAHY is intending to strike—we are not talking about female genital mutilation, we are not talking about terrorism; we are talking about the immigration laws of the United States. The bill as it stands before you has section 131, which is a new ground for exclusion of aliens, for aliens using documents fraudulently. That would be stricken by the Senator's amendment. There is a section 132 which is a limitation on withholding of deportation relief for aliens excludable for using documents fraudulently. There is a provision for summary exclusion. That would substitute a similar procedure for only situations which would be described as an extraordinary migration situation and not for other circumstances of the bill.

So, I speak against the amendment for these reasons. The committee's bill provision, which is in the version we are addressing now on the new ground of exclusion relating to document fraud, on summary exclusion, and on asylum applications, three things there—new ground, summary exclusion, and asylum application by those who have attempted to enter the U.S. with fraudulent documents—will greatly reduce the ability of aliens to unlawfully enter this country and then remain here for years through use, or misuse, of various administrative and judicial proceedings and appeals. It is almost what we would refer to as an overuse of due process.

These people in the past—this is what we are trying to correct—often receive more due process than a U.S. citizen receives. For example, the provisions relating to asylum and withholding of deportation will help the United States deal promptly and fairly with a very common scenario. Here is the scenario. For every example that touches our hearts—and this floor is filled with stories that touch our hearts; we will hear many of them today—for each one I get to tell another one. Here is a story that will not touch your heart.

A young person with no obligation to family, or anything else, who has decided to take off from his country to seek the promised land, and that is us—here is the common scenario used by those who would abuse the compassion of the American people. This is why the American people suffer compassion fatique. This is what gives rise to proposition 187's. This is what gives rise to the continual polls saying 70 to 80 percent of these people should be excluded and so on—not excluded, but indeed that we should do something with both illegal and legal immigration.

The scenario is this: The young person with no family, no spouse over there in the country they are leaving, no children, no parents perhaps, maybe an orphan, whatever—they board the plane with documents. Then they give them back to the smuggler on the plane who is with them, or else flush them down the toilet of the aircraft. Some have eaten them. Then they come to the United States, and at the U.S. port of entry they claim asylum.

Many of us saw this so dramatically in the "60 Minutes" presentation. We are going to talk about dramatic things, where the alien without the document said the magic words. The magic words in any language, or their own, is, "I want asylum. I want to claim asylum," just as the smuggler instructed him or her to say. You need to know only one word when you are there, "asylum." The program of "60 Minutes" ended with the alien going forward out of the door of JFK, suitcase in hand with a rolling cart to disappear into America probably never to be heard from again because he is certainly going to tear up any notice to appear at some future time.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. SIMPSON. If I could finish my remarks, I would—I yield for a question. Yes.

Mr. LEAHY. One question: Is it not under the new procedures, when they ask for asylum, would they not be held in detention until a preliminary determination has been made about false documents?

Mr. SIMPSON. Mr. President, much of this is being relieved by the simple procedure of detention facilities. When those detention facilities are available—and we have provided significantly more money for detention facilities—we find that these things are going to be glimmering in more cases. But I wanted to cite it indeed.

Mr. President, I want to emphasize that the bill provides very clearly an opportunity for every single person, every single person without documents, or with fraudulent documents—please hear this—fraudulent documents or proper documents allow every person to seek asylum. A specially trained asylum officer will hear his or her case. This is the key. I want my friend from Vermont to share with me in the debate as we do this, which he will in fairness. A specially trained asylum officer will hear his or her case, and if the alien is found to have a "credible fear of persecution," he or she will be provided a full—full—asylum hearing. However, if he or she does not have such a credible claim, he or she will be subject to the summary exclusion procedures as will all persons who enter without documents or with fraudulent documents.

There is discussion about persons not being permitted to apply for asylum if they do not travel directly from the country in which they allegedly have a fear of persecution. This is always a difficult situation because we find people who will leave the country where they are being persecuted legitimately, or, if they are just simply using an inappropriate way to get here, they will go to one, or two, or three other countries all of which might be democracies, all of which would be free countries, all of which would be giving the precious refuge of a refugee or an aslyee. The only difference between a refugee and an aslyee is a refugee is over in the home country and an aslyee is here. They are absolutely the same. But the term is used "aslyee" when they are here, and "refugee" when they are there.

So the United States cannot be expected to provide asylum. I am not talking about asylum. I am talking about people who are fleeing persecution or have a well-founded fear of persecution based on race, religion, national origin, or membership in a social or political organization. That is an aslyee. That is a refugee. That is the definition under the law of the United States of America and the United Nations. We will always provide asylum.

There are some great asylee-receiving countries in the world. Two of them have completely revised their asylum laws because of the absolute gimmickry that is taking place. One is my native land, my original native land, Holland, the most open country in the world, a country that gave solace and comfort to fleeing Jews 500 years ago and to those fleeing Nazi Germany. They have now changed their asylum laws the same as we are doing in order to avoid gimmickry. The other country is Germany. After the war, the horror of the war, and the imprint of the Nazis upon the German people, who were appalled—I believe this because I lived among them for 2 years—appalled at the Nazi regime, real Germans are appalled by that.

They realized that, because of what they had done during the war, they made the broadest, most extensive asylum laws in the world because they had to; people were watching them after the war. And being the most generous country, they have had now to simply shut down the process because of gimmickry.

So it is important to know that those who come from a safe country where they could have obtained asylum—normally someone who is fleeing, I mean fleeing in terror of their lives, with the dogs and the soldiers and the arms coming at them—they stop where it is safe to do so, not select or choose leaving one or more safe countries in order to enter the United States or another country for which he or she has a personal preference. And the ultimate personal preference is always the United States of America.

Mr. President, I do want to point out, however, that the Attorney General will have the discretion to waive, under my proposal, under extraordinary circumstances this requirement of direct travel to the United States.

I wish to conclude by saying a few words about the summary exclusion procedure in general. The present system is vulnerable to mass migration and other extraordinary situations and to persons who exploit the numerous levels of administrative and judicial review to stay in this country for years even though they have surreptitiously entered or sought to enter this country or have presented themselves for inspection with fraudulent documents or no documents and such individuals have no grounds for being in the United States of America except the possibility of asylum.

The bill's summary exclusion procedures provide a method for the Attorney General to significantly reduce this problem while still giving aliens a reasonable opportunity to seek asylum or withholding of deportation because of a fear of persecution for race, religion or one of the statutory or treaty grounds. And subject to the credible fear asylum procedure I have already described, an immigration officer can order an alien who has entered without documents or with fraudulent documents to be removed from the United States without bringing the alien before the immigration judge or the Board of Immigration Appeals. Only limited judicial review would be available. It would be limited to a habeas corpus proceeding devoted to no more than three issues:

First, Whether the individual is an alien or if he or she claims to be a U.S. citizen;

Second, Whether the individual was in fact specially excluded;

Third, Whether the individual has proven that he or she is a lawful permanent resident.

The court could order no relief other than the full exclusion hearings.

Finally, let me conclude, at least for this moment, and I hope we will continue toward a result here. We are talking here of immigration, and certainly there has been a reference to female genital mutilation. That is a very serious issue. I certainly concur totally as to the horror of that, and who could not? Certainly any compassionate person could not.

My colleague from Nevada, Senator HARRY REID, noted that Canada had made female genital mutilation a ground of asylum 3 years ago and had only two persons apply since that time. My information from the Canadian Embassy is a bit different, and I hope my colleagues will hear this. All of us admit that this is a hideous, barbaric thing. I understand, first, that this mutilation is not by itself grounds for a grant of asylum. This is our Canadian neighbors. But it is merely one of several factors to be considered in determining whether the applicant qualifies under the definition of a refugee.

Second—I think we must hear this—I understand that as victims of mutilation have come to Canada, they have brought their relatives along with them, or the relatives at least followed later. In any case, the result now has been that the practice of female genital mutilation has become a growing legal and criminal problem in Canada. It has now been imported into Canada, and one or more Provinces plan to make it a criminal offense. Police currently have to prosecute it under the assault statute, I say to my friend from Vermont, who has been a prosecutor, as I have, on the lower levels.

In other words, we have a situation where Canada has found that the victims end up being joined by the perpetrators. That fact suggests as well that we may be dealing here with a cultural practice—and that is exactly what we are dealing with, ladies and gentlemen, a cultural practice—and perhaps not a practice of official government-sanctioned persecution. This is going to be a real debate in the coming times because we in this body talk continually about respect of other cultures—cultures of the native American in my State, cultures of other ethnic groups, cultures of Hispanic-Americans, cultures of African-Americans.

The best practice is not to create some per se ground of asylum but do just as we do in all asylum and refugee

determinations, and that is consider each one of them on a case-by-case basis. That is what we must do.

So, again, we get into these situations by our remarkable strength and our remarkable weakness, which is our compassion, and then we get the blend of emotion, fear, guilt, and racism and blend that in, and we do erratic things in immigration reform, or we would not be doing what we are doing in these last days. The reason this is so difficult, you will be on one side or the other and you say: "How can we do this? Why can't we do this? How can this be? How did I vote this way? How can I get out of this thicket?"

The reason is, you are going to stay right in it because this is about America. It is about America, and America is a very complex place, thank God. We still have one thing that binds us, or several—a common flag, a common language, and a public culture. When we break it all down into individual cultures, Balkanize these great States that were fought so hard for in this Chamber to unite and to unite in the great melting pot, we do a disservice.

We are about to pass what many in this body will describe as a tough illegal immigration bill, and it will be, and it will pass, whatever form it is. Win or lose your amendments, forget it. It is an accomplishment that we will proudly reflect to our constituents. But remember this: We take in more asylees than all the rest of the countries on Earth, total. We take in more refugees than all the rest of the countries on Earth, total. We take in more immigrants than all the rest of the countries on Earth, total, period.

Finally—you have all heard that a thousand times—and it is very important to someone listening, wherever these words fall, this bill explicitly provides that this special exclusion procedure does not apply if the alien has a credible fear of persecution on one of the required grounds—race, religion, membership in national organization, and so on. Therefore, nearly the entire argument of the Senator from Vermont, my friend, vests on the inadequacy of the procedure provided in the bill to determine whether an alien has a credible fear of persecution—that is the intent of the Senator from Vermont, saying it is inadequate.

Let me read the standard that would be used by the specially trained asylum officers to determine whether an applicant for asylum has a credible fear of persecution and therefore should receive a full—full—asylum hearing and not be subject to the special exclusion. I cite the language in section 193 on page 173 of the bill, lines 6 through 14, saying:

As used in this section, the term "credible fear of persecution" means that (A) there is a substantial likelihood—

"Substantial likelihood" that is,

that the statements made by the alien in support of the alien's claim are true, and (B) there is a significant possibility in light of such statements and of country conditions—

Which will be determined by the State Department,

that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).

That is what this bill provides. It is not some swift or harsh provision. And this bill does not gut our asylum laws. The bill's provisions bring some sense and effectiveness to our asylum laws. These are laws that have been effectively gimmicked over the years because 400,000 backlogged asylum cases can well attest to that.

As my friend from Vermont says, if a person is fleeing for his life because of religious beliefs and must use forged papers and travel through several countries to get here under the bill that person will be summarily sent back—it is not so. If such a person arrives under the provisions of the bill he or she would get a hearing before a specially trained asylum officer. And if he or she had a credible fear of persecution, and there was a substantial likelihood the facts are true, as I have just cited, he or she will be permitted to remain in the United States and have a full asylum hearing when he or she is prepared and ready, with counsel.

So, I yield at this time.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Vermont.

Mr. LEAHY. Mr. President, I just want to make sure my colleagues understand the Senator from Wyoming and I have a longstanding friendship and affection and respect for each other, but we do look at this somewhat differently.

To begin with, regarding the vote on the anti-terrorism bill, while the issue may appear similar, the procedural situation was much different. There my motion would have required a recommitting of the whole conference report, a great burden to overcome.

As a matter of fact, I had a number of Senators come up to me and say, "Why do you not do this on the immigration bill? We will have a lot easier time voting for you on the immigration bill." Well, God bless you all, you will now have a chance to vote with me on the immigration bill.

In addition, that motion did not include the creation of authority for the Attorney General to declare a special migration situation of immigration emergency. The amendment I offer today includes such provisions.

Further, when we talk about the people coming in with false passports fleeing persecution, they do not get a hearing under the bill. They get an interview. They get an interview by whoever is there at the border, and they can get kicked out right then and there. It is cruel, it is fundamentally unfair to a traumatized and fatigued refugee, who would be allowed no assistance and no interpreter, to treat them so summarily.

The kind of screening process provided in the bill will mean an investment of enormous resources for a special screening that we do not need. We would be requiring extra resources to do an ineffectual job.

In 1995, for example, after our asylum processes were reformed, we had only 3,287 asylum seekers who arrived without valid documents. They could be handled through the normal process. They do not have to be bounced out following some truncated and confusing interview. As we have heard, these people have faced such traumatic experiences. They are not likely to be prepared to respond when hit with that first, all important interview.

We reformed, in 1994 and 1995, our asylum processes. The Justice Department can handle it very well under my amendment.

Do not confuse illegal immigrants with refugees.

This bill would establish summary exclusion procedures for refugees seeking to claim asylum. It would give low-level immigration officers unprecedented authority to deport refugees without allowing them a fair opportunity to establish valid claims. These provisions should not even be in this bill, if it is intended to focus on the problems of illegal immigration. Refugees who seek asylum in the United States are not causing problems for America and Americans. They come to us for refuge. They come to us for protection. They come to us for what America promises in constitutional freedoms and protections. We should not turn them back, and turn our back on them or destroy our country's reputation for protecting human rights.

Look at the Washington Times editorial, look at the Washington Post editorial, look at the New York Times editorial. They express the feelings of so many in this country.

Think about a person who talked before a press conference here on Capitol Hill yesterday, Alan Baban, who was held 16 months in detention.

He is a Kurdish national who had been in prison for over a year in Iraq. He was tortured, both because of his Kurdish nationality and his political involvement with an organization committed to securing political freedom for Kurds. His body has the scars of that ordeal. At one point in his captivity he bribed a guard and he escaped. His family's possessions were seized by the Iraqis.

Finally, in November 1994, he and his mother, who had been hiding for close to 3 years, used false documents to get out and arrived in the United States.

Most of us know what terrible treatment the Kurds have had at the hands of the Iraqis. But somehow the immigration inspector at the airport did not believe Alan and did not think that he had established a credible claim of persecution. So Alan was placed in detention, in prison, in the United States. A

year later, without a translator to help him, he was denied political asylum.

After 16 months in detention, when his true story came out, an immigration judge finally granted him asylum. Yesterday, he thanked the United States for finally listening to him and letting him out.

This is one of a number of examples of refugees who were initially ruled not to have satisfied a credible fear standard but who after a hearing were able to prove a claim for asylum.

I know the Senator from Massachusetts is seeking time.

Before I yield the floor, Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I just might ask the distinguished manager, am I correct in my understanding, as we offer these various amendments they will then be set aside for others so there will be a series of votes? Is that correct?

Mr. SIMPSON. Mr. President, at least this amendment and the next amendment of Senator ABRAHAM and Senator FEINGOLD will come up at a time around the hour of 2 o'clock. We will stack votes on these two, or others we might have problems on, including, perhaps, that of Senator BRADLEY, who is here.

Mr. LEAHY. Mr. President, just before that vote will we follow the usual thing where each side has a minute or so?

Mr. SIMPSON. We will put that in the unanimous-consent request, that there be 2 minutes equally divided.

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a moment because the Senator from Vermont has made the presentation and made it exceedingly well, which he did in our judiciary markup as well.

What I want to do is just take a moment of the Senate's time to describe the conditions that we were facing a number of years ago, and where we are on the issues of asylum today, because I think it reaches the core of the Leahy amendment. There is no question that, as he outlined, there are people who come here with a well-founded fear of persecution. They come here, few of them with papers, many of them without any papers, for the obvious reasons they are in terror and have been persecuted by the existing regime. That is an important group, but I will come back to the numbers in just a moment.

But there is no question that large numbers of people came here requesting asylum for one reason: they wanted jobs. As Senator SIMPSON has correctly stated, the process and procedure was that people would come in and declare they wanted asylum. The first thing that happened was they got a green card, went out and got lost in society. There was very, very significant abuse of that whole process. But that has changed dramatically in the last year.

By and large, we ought to be looking at what the current condition is, not what the conditions were 1 year ago, 2 years ago, 3 years ago when we had all the significant abuses in the asylum system. The principal abuses for the asylum system, as in the whole issue of illegal immigration, were jobs. People saw this as an opportunity to come to the United States, say "asylum," get that green card and then go to work. Instead of running across the Rio Grande or trying to come on in across another border, that was one of the ways that they came in here.

That whole spigot, in terms of the jobs, has been closed down by the INS because they no longer provide the green card so that these people can go out to work, and second, they are held in detention.

We have to ask ourselves whether we are going to be satisfied with a counselor, as well trained as they are, making the final judgment about a well-founded fear of persecution. I can remember it was not long ago when we had a number of Soviet Jews who came through Rome and were being evaluated as to whether they were real or refugees coming into the United States. There were a series of counselors out there. All had been trained, all seeing these various refugees, refuseniks, people who had been persecuted in the Soviet Union. At the end of the day, one group let in 60 percent and another group let in 20 percent. We had hearings on that. So you find diversity.

What we are talking about are the limited numbers which we are faced with now. In 1994, we had 122,000 asylum claims and we completed 60,000. In 1995, we had 126,000 claims and we completed 53,000. We have seen this dramatic change that has taken place with asylum claims—dramatic, dramatic change. Out of the 53,000, there are approximately 6,000 that actually receive asylum. Mr. President, 6,000 in this country, 6,000 that are actually granted asylum.

These are individuals who have gone through not just the airplane ride across and flushed their ID cards down the toilet or ate their ID cards, these are 6,000 people who have a well-founded fear and have gone through the process. It seems to me that those individuals whose lives have been a struggle, as we define them, to try to develop democratic institutions, democratic ideals, democratic values, democratic priorities in their countries so that their countries will move toward the kind of value system in the broad terms of respect for democracy and individual rights and freedoms are real heroes in many, many instances. We have recognized that over the long history of this country.

So I think the amendment of the Senator from Vermont makes a great deal of sense. I think the opposition, quite frankly, is directed toward a condition which no longer exists because of the excellent work of the INS in addressing it. Asylum claims declined 57 percent as productivity doubled in 1995. That is in this last year. They are continuing to make progress.

We ought to be sensitive to this issue of individuals who have gone through the harshness and the brutality of these foreign regimes. We cannot pick up the newspaper without being reminded of them. In so many instances, these individuals, who really do deserve asylum, deserve to be able to receive that in our country, approximately 6,000. I have very serious fears that that kind of sensitivity to the real needs of individuals who have been struggling for democratic ideals will not be as respected as it has been if we adopt the proposed recommendations.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I also rise in support of the Leahy amendment. Senator SIMPSON is correct that for a period, we went through this where people just memorized three or four words in the English language, "I seek asylum."

When his bill was first introduced, I was inclined to believe some additional strengthening language was needed. But I was visited by the INS people. I have to say Commissioner Doris Meissner just has made a terrific impression on all of us. She really knows her stuff, is very conscientious, and is very able.

This morning's Washington Post has a story, "Russia Bars Jewish Agency," and the Russian Ambassador to Israel said he thinks it was just a bureaucratic slipup. But then you get to the inside pages and read the story that out in the boondocks in Russia there are some anti-Jewish activities taking place. I hope it is just temporary and isolated.

We do not know what is going to happen. I think that the Leahy amendment is one that moves us in the right direction. I think the graph that Senator KENNEDY has shown us shows fairly dramatic improvement in the situation. I hope the Leahy amendment will be accepted.

Mr. President, I ask unanimous consent to have printed in the RECORD the Washington Post article to which I referred.

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

[From the Washington Post, May 1, 1996]

RUSSIA BARS JEWISH AGENCY—BAN COULD HAMPER IMMIGRATION TO ISRAEL

(By Barton Gellman)

JERUSALEM, April 30.—The Jewish Agency, a quasi-governmental body that has brought 630,000 Jewish immigrants to Israel from the former Soviet Union since 1989, announced tonight that Russian authorities have revoked its accreditation and notified local jurisdictions that the agency no longer is authorized to function in Russia.

There was no clear indication of Russia's intentions and no explanation from Moscow. But the potential stakes were seen in Israel as high.

Russian immigration has changed the face of Israel, adding nearly one-fifth to its Jewish population and infusing the state with one of the world's most productive flows of human capital. Before the thaw that accompanied the Soviet Union's final days, the Moscow government's sharp restrictions on emigration—and ill-treatment of Jewish "refuseniks" who could not leave—were a major source of friction with the West.

An estimated 1.4 million Jews remain in the former Soviet Union, 600,000 of them in Russia, and Israel had projected until now that they would continue to make new homes in Israel at last year's rate of 65,000 for several years to come. Officials here have observed no slowdown in Russia's distribution of exit visas, and they do not foresee a return to Russia's old bans on emigration itself, but they said most Russian Jews could not readily leave without the practical and financial assistance of the Jewish Agency.

Israeli officials said they were uncertain of the origins of the present impasse, and the Russian ambassador here qualified it as a bureaucratic slipup. But Israelis voiced two theories about what is happening.

One focused on the growing nationalist cast of a Russian election campaign that is threatening to unseat President Boris Yeltsin. The second looked to bilateral tensions and the bitterness of the new foreign minister, Yevgeny Primakov, at Israeli moves to keep Russia far from its desired role at the center of Middle East diplomacy.

A third explanation—mere misunderstanding—prevailed at first when the Jewish Agency lost its legal accreditation on April 4, which effectively terminated its right to operate offices, hold meetings and stage other activities in Russia. Agency officials treated it as a slipped formality and discouraged Israeli reporters from writing about the change.

Other signs—including closure of the agency's Birobidjan and Makhachkale offices in the Russian hinterland, a Justice Ministry notice to local authorities about the loss of accreditation and an increase in vandalism directed at agency properties—began to convince them otherwise as the month wore on.

Avraham Burg, the agency's chairman, decided to make public his protests after police and local government officials descended on a Jewish Agency gathering today in Pyatigorsk, an important regional emigration center in the northern Caucasus, and ordered the meeting to break up. Three Israeli representatives of the agency were asked to leave town.

"If this is just a bureaucratic stupidity, I will be happy," Burg said in an interview, "and if it is something else, we shall be ready in the international arena with the Jewish voice, Jewish pressure."

"We are working in the former Soviet Union under two assumptions," he added. "The first one is that the right of the ancient Jewish people to repatriation is a given, and the second one is that the constitutional, basic, elementary right of family reunification is [Russia's] passport to the free world. Without this you are not a Western modern country."

Burg said he had summoned the Russian ambassador to Israel, Alexander Bovin, for what became a sharp meeting last week. Burg said the ambassador assured him that the difficulty was merely technical.

Neither Bovin nor any other Russian diplomats here, nor officials in Moscow, could be reached for comment tonight.

Burg and Prime Minister Shimon Peres agreed to take the position that there can be no link between the agency's travails in Russia and any bilateral disputes between the Moscow and Jerusalem governments on the grounds that it affects the human rights of individual Jews and the broader interests of the world Jewish community. Foreign Ministry officials said tonight that they would play no role in protesting the change in Russian policy, and Burg planned to fly to New York Wednesday to confer with American Jewish leaders on possibly bringing pressure to bear in Moscow.

Alla Levy, chief of the Jewish Agency's efforts in the former Soviet Union and a 1970 immigrant, said today's crackdown in Pyatigorsk was especially sensitive because that city is one of 10 from which Russian Jews fly directly to Israel.

Several irritants trouble Israeli-Russian relations, and Primakov rebuffed a meeting request last month from Foreign Minister Ehud Barak. A specialist in the Arab world, Primakov is seen as resenting the combined efforts of Israel and the United States to squeeze Moscow out of its place as co-sponsor of regional peace talks.

Israel acknowledges, in addition, that it has been slow to transfer legal rights to Russia from the former Soviet Union's valuable land holdings in Jerusalem. Additional frictions arose at Israel's treatment of Russian visitors at passport control points after police found evidence that Russian organized crime had made inroads here.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, thank you very much. I rise today in strong support of this amendment. Our amendment would, in our view, greatly improve this section of the bill dealing with asylum. Frankly, this section does need improvement. It really creates a summary exclusion, a summary exclusion that would keep out of America some of the worthiest of all asylum seekers.

Further, it sets a legal standard that is both unprecedented and excessive for people who are the most in need, for people who are truly fleeing persecution, and it puts what for some people is a life-or-death decision in the hands of the INS bureaucrats.

As has been pointed out by my colleagues from Illinois and Massachusetts, there really is not the problem today that we may have seen 2, 3, 4 years ago. Today, the asylum system works pretty well, and we do not need this change, we do not need this summary exclusion. It is not worth the price that we are going to pay.

It is clear that several years ago, the asylum system was, in fact, broken. Under the old system, people could get a work authorization simply by applying for asylum, and this, obviously, became a magnet, even for those who had absolutely no realistic claim for asylum.

But the INS changed its rules in 1994, and it stopped automatically awarding work permits to those filing for asylum. Instead, it began to require an adjudication of the asylum claim before it awarded work authorization.

It also began resolving asylum claims within 180 days. The results are very, very significant.

According to the INS, in 1994, before the new rules were put in place, 123,000 people claimed asylum.

In 1995 however, after the new rules were established, only 53,000 people even applied for asylum. That is a 57-percent decline in those people who even apply for asylum, a 57-percent decrease in 1 year.

Also, the INS reports that it is now completing 84 percent of the new cases within 60 days of filing, and 98 percent—virtually all new cases—within 180 days of filing. That is why the administration, the INS, say that they did not need this provision.

Second point, Mr. President. The most worthy cases for asylum would be excluded if we impose this new summary exclusion procedure. Among those excluded would be cases of victims of politically motivated torture and rape, the very people who are most likely—most likely—to use false documents to flee from the country of their torture. These are the people who would be hurt the most, frankly, by this summary exclusion.

Let us talk about these individuals. We have already heard about the young woman who was seen in the press the last few days from Togo. But let me use two other examples. These are real world cases. These are cases where, if the law, as it is currently written in this bill, if this change does in fact go into effect, these people never would have gotten into this country. They would have been excluded by an INS bureaucrat and sent back to their country in that 1-hour determination that we have talked about.

A real example. First, a student in Sudan was beaten and given electric shocks by Government torturers for the crime of engaging in a peaceful protest against the Government. He escaped to the United States without a passport. He was placed in detention because an INS bureaucrat concluded he did not have the credible fear of persecution standard that we have heard about. However, on judicial review, this individual was granted asylum.

So under the procedure that is contained in the bill, under that procedure, the new procedure that we are

trying to take out, under the new procedure, it never would have gone beyond the INS bureaucrat. This student from Sudan would have been sent back to Sudan. There would have been no opportunity for this person to have a hearing on the matter beyond an initial 1-hour hearing from the bureaucrat where the bureaucrat made the decision, "Send him home."

Second example. A man from India—this is a true case—was imprisoned and tortured by the Government because of his religious beliefs. His family's home was bombed. Fearing for his life, he fled to the United States, where INS bureaucrats verbally abused him, and denied him food and water until the next day. They said his fear was not credible. This case on judicial review was changed. He was granted asylum. Again, under the provisions of this bill, without our amendment, this person never would have gotten to the judicial review, would have been sent back by the determination made by the bureaucrat.

Mr. President, I think that is too heavy a price to pay. I think it is very clear that we do not need to change the law in this area.

I think America, Mr. President, stands for something better than that. We have historically held out the lamp of freedom to the world. We are different than other countries. We have held out a lamp that is lit by the flames of justice, not by bureaucracy.

Mr. President, I ask the Members of the Senate, whether watching on TV or sitting in the Chamber, think back to stories you have heard—we have all heard stories—about people who have fled persecution, and whether that was in Nazi Germany, or more recent examples. How often did that person who fled persecution have to have a forged document? How often did that person go to great pains to obtain a forged document to flee the country? How often did that person have to have another country of immediate destination before they ended up in the country that they wanted to end up in? How many by necessity had to have that third country there?

Each one of us can remember these stories. I remember, as a very young boy, listening to a story told by a friend of my father, who fled Nazi Germany. Although some of the details have left me over the 40-some years since I heard this story, I can still remember parts of it, and how difficult it was and what great risks he took to get out of Nazi Germany, to get out of Nazi Germany with documents that clearly were fake. I think we need to keep this in mind, Mr. President, when we decide what to do in regard to this amendment.

My friend from Wyoming talks about compassion fatigue. I understand that. I get it. That is why, quite frankly, we have made changes. There are major changes in this bill. That is why the INS has made very, very significant changes in the last several years to speed up the process, to make sure that they weed out these cases that do not have merit. That system is working.

But I would just say that as we look at this amendment, I would ask my colleagues to keep this in mind, that in an immigration bill, more than in any other bill that we pass on the floor, more than any other bill that we debate, we do define who we are as a country. I think we should be different.

I understand the argument that Holland does it one way or Germany does it another way. That is fine. I understand the argument. But I think, quite frankly, we have to do it our way. We have to do it in a way that is consistent with our tradition. One of the great traditions of this country is that we have been a beacon of hope, and of light, as Ronald Reagan would say. We have been the country where people could come to when they were persecuted.

If you look at our history and our immigration policy, our best days—our best days—have been when we reached out and said, "Yes. We are this country that is different." The few times in our history when we have turned our back on people who are persecuted—and there are examples of this; the Nazi Germany situation, the few times we have done that—we have lived to regret it. And we have been sorry for it.

So, yes, I understand compassion fatigue. But we are, in a sense, in this bill defining who we are as a people and redefining that. I think the amendment that has been offered by my friend from Vermont is entirely consistent with that great tradition of this country. Thank you, Mr. President. I yield the floor.

Mr. JEFFORDS. Mr. President, I would like to express my strong support for the Leahy-DeWine amendment, which preserves critical due process rights for refugees arriving in the United States after fleeing persecution in their countries of origin. While the United States must control its borders and ensure that its hospitality is never abused, it must also live up to its finest traditions as a land of freedom and refuge for the oppressed.

Our country is built on the rule of law, and must preserve and protect that legacy for all. This amendment would ensure that those fleeing oppression have a fair opportunity to present their cases and have them studied and reviewed by appropriate officials. Many genuine refugees are forced to come to the United States with false documents and then apply for asylum. In fact, an argument could be made that the more dangerous their situation, the more urgent it is that they come to apply for asylum, and the more likely that they will not have access to government travel documents from the government which is persecuting them. It is just these most needy people who will suffer most directly from the summary exclusion measures which this amendment seeks to modify.

With adoption of this amendment, the United States will remain able to ensure that those with valid, deserving cases for asylum will continue to be able to apply for asylum in the United States.

I urge my colleagues to support this important amendment.

Mr. SIMPSON. Mr. President, I ask unanimous consent that this amendment be set aside for a few moments so Senator BRADLEY can go forward with an amendment. I do not think it will take a great deal of time. So if Senator BRADLEY will go forward, and then Senator HATCH could speak on this bill, and then I have a few more remarks on the pending amendment. I ask unanimous consent that it be set aside at this time.

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

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I thank the distinguished chairman.

AMENDMENT NO. 3790 TO AMENDMENT NO. 3743

(Purpose: To establish an Office for the Enforcement of Employer Sanctions)

Mr. BRADLEY. Mr. President, I call up amendment No. 3790.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 3790 to amendment No. 3743.

Mr. BRADLEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 47 of the amendment, strike line 1 and all that follows through line 21 and insert the following:

SEC. . ENFORCEMENT OF EMPLOYER SANCTIONS.

(a) ESTABLISHMENT OF NEW OFFICE.—There shall be in the Immigration and Naturalization Service of the Department of Justice an Office for the Enforcement of Employer Sanctions (in this section referred to as the "Office").

(b) FUNCTIONS.—The functions of the Office established under subsection (a) shall be—

(1) to investigate and prosecute violations of section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)); and

(2) to educate employers on the requirements of the law and in other ways as necessary to prevent employment discrimination.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $100,000,000 to carry out the functions of the Office established under subsection (a).

Mr. BRADLEY. Mr. President, this amendment is a second-degree amendment to the one proposed by the distinguished Senator from Wyoming. The amendment will improve the Federal Government's ability to deter illegal immigration by enhancing the enforcement of our existing laws. In particular, this amendment would create a separate office within the INS to ensure that our employer sanction laws are effectively and fairly enforced. The fact is that employment is the single most important enticement that brings illegal immigrants to our shores.

If we want to address seriously the illegal immigration problem in this country, we must address ourselves to the root of that problem, which is the jobs.

In 1986 we started down the right track with the Immigration Reform Control Act, better known as the Simpson-Mazzoli Act. In that bill we enacted, after considerable debate, employer sanctions which imposed civil penalties on employers of illegal aliens and criminal penalties for pattern or practice violations.

We put very tough teeth in the law—up to a $10,000 fine, up to 3 years in jail. Those provisions are strong and, if enforced adequately, would deter the hiring of illegal aliens.

This bill makes important headway in improving these laws. However, one critical element is missing: These laws, those that we passed in 1986, are not being adequately enforced.

I have heard many in the Chamber complain that employer sanction laws are not working and perhaps should be eliminated. I agree that they are not working as well as they could be working, but the problem is not with the law. The problem is with the implementation of the law. The INS' ineffective implementation of these laws has been noticed time and again by independent observers, including the Jordan Commission and the Office of the Inspector General.

For example, the Jordan Commission found that employer sanctions are accorded a low priority by the INS. The INS' own data bear that out. Between 1989 and 1995, the number of INS investigations of employer sanction violations dropped by more than 50 percent.

Let me repeat that: From 1989 to 1995, the number of investigations by the INS of employer sanctions dropped by more than 50 percent. The GAO found that the number of agents assigned to the workplace enforcement dropped more than half between 1989 and 1994.

Overall, financial resources allocated to the enforcement of employer sanctions also has declined significantly. While the INS is now increasing the number of workplace agents and resources directed toward the enforcement of employer sanctions, projections indicate that the INS will only employ, after these improvements are made, only employ about 708 workplace agents in 1996. Mr. President, 708 agents to cover a nation with 6.5 million employers—this contrasts sharply with the over 5,000 Border Patrol agents that the INS projects in 1996.

This disparity is notable given that according to the INS' own estimates, their own estimates, about half of all illegal immigrants do not cross the border illegally but overstay their visas.

Let me repeat that: Half of all illegal immigrants in this country are not sneaking across the border in the middle of the night but they are people that come into this country on a visitor's visa and overstay. They are people who come in on a visitor's visa, then get a job illegally. They are here in the workplace taking jobs away from Americans.

The law says an employer who hires an illegal immigrant who overstays on his visitor's visa, for example, is subject to fine and possible imprisonment. Yet, nobody is going after these employers. There is not enough enforcement.

Furthermore, the INS is failing to conduct investigations effectively. Like the Jordan Commission's report a year earlier, a September 1995 inspector general audit found numerous problems with the INS conduct of its employer sanctions investigations. The inspector general specifically found that "the INS is sending a signal to the business community that it does not take seriously its enforcement responsibilities in the area of employer sanctions." Those are the words of the inspector general that the INS is not seriously pursuing employer sanctions.

The problem is more, however, than numbers and authorizations. This bill provides much needed authorization for additional investigators available for the INS to use for employer sanctions. That is good. It does not go far enough because those investigators are not necessarily going to be directed toward employer sanction enforcement.

Moreover, these investigators are likely to continue to be wasted on less important and less effective enforcement efforts. That certainly is the case if past practice is any indication.

New investigators could deal with the part of the INS problems in this area, but only if they are used appropriately. As the critique of the Jordan Commission, the inspector general, and others have indicated, the problem is more than resources; it is more than simply a few more agents. Consequently, our solution must provide more than resources.

Mr. President, what is needed is a separate office for the enforcement of employer sanctions that will focus its activities on the most serious problem, which is employers hiring illegals, not having anyone go after them, as well as address the problems of employers discriminating on the basis of national origin. It is clear that a fundamental change is needed in the INS bureaucracy to make these laws work.

The amendment I am suggesting specifically addresses this problem by changing the task force provided by section 120(b) of the bill to an office for enforcement of employer sanctions and authorizing it for $100 million, the figure contained in the 1986 Immigration Act. The office will have two primary functions: to investigate and prosecute employer sanction violations, and to educate employers on the requirement of the law in order to prevent unlawful employment discrimination.

I think this amendment corrects the weaknesses in the existing bureaucracy. It will separate and dedicate necessary resources to the enforcement of employer sanctions so that it will be accorded the priority that it deserves. Of equal importance, the creation of a separate office within the INS will tell employers that the INS is now serious about enforcing the employer sanctions provision, that it has the budget and the manpower to investigate and follow up leads on the worst violations of these laws. As well, it will send a strong message to the INS that it needs to improve its enforcement activities.

I think it is also important to point out that this amendment does not add new sanctions or increase the burden on employers. It does not add one single form to the mountain of paperwork they must already fill out when they hire a new legal worker. It just asks that existing law be adequately enforced.

Finally, and of equal importance, it will require better education of employers to prevent discrimination.

In short, this amendment goes to the source of the illegal immigration problem in this country—the job magnet—by improving our mechanism for seriously working to eliminate that employment magnet, with adequate enforcement directed toward the problem, with no excuses, and with results required.

Mr. SIMPSON. Mr. President, I think my old friend, Senator BRADLEY from New Jersey, has put his finger right down on one of the most critical issues in dealing with the problem of illegal immigration, which is the magnet of jobs, employment, which draws illegals to this country.

This amendment would establish an office within the INS, as I understand it, specifically staffed and mandated to perform both of the functions that are essential to the success of any employer sanction provisions.

That is, the office would both educate employers about the law and their responsibilities to prevent unlawful discrimination, and would investigate and prosecute those employers who

knowingly hire illegal aliens. I think that we cannot claim to be serious about dealing with the problems of illegal immigration unless we are serious about dealing with those who knowingly hire illegals. So long as they can get the jobs they seek, illegal aliens will continue to regard this country as the land of opportunity, and some will refer to it almost as the land of slave labor as they come here as illegals and remain in that status. That is why it is important that we remove illegal persons from our society or else make them legal.

So we already have a special counsel for the prevention of discrimination against aliens. That is already on the books. I did not like that when it went in, but it is on the books. Surely, it would be appropriate to have an office of employer sanctions to deal with the single-most important element. As Barbara Jordan's Commission put it, "Shifting priorities and reduced funding have hamstrung some of those provisions."

As I understand it, this does not create a new Justice Department agency to enforce employer sanctions. It creates a new office within the INS. But there is a funding level increase. That is correct. Originally, that was not so, but it is so now, is that correct?

Mr. BRADLEY. Yes.

Mr. SIMPSON. This provision would not disrupt the balance between employer sanctions and antidiscrimination. I will have to, if I may, set the amendment aside because several wish to speak on that amendment. I personally do not have grave reservations about it, but others do.

AMENDMENT NO. 3780

Mr. SIMPSON. I ask that the amendment be set aside and that we go back to the Leahy amendment, and then we go to Senator ABRAHAM to lay down his amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, let me just come to a little review of the amendment of Senator LEAHY. The Senator from Vermont spoke of the alien who was so traumatized that he or she cannot speak about it at entry, and so they would not be in a position to immediately show a credible fear and, thereby, attain a full asylum hearing.

The Senator certainly goes to the hardest case. If the Senator's amendment was precisely directed only to that possibility, it would be appropriate. But the Senator's amendment goes far beyond that. It would simply gut the reforms proposed in the bill to deal with the large number of aliens. What we are trying to get at is aliens who enter without inspection, or with fraudulent documents, and those who board a plane with documents, then dispose of them, and upon entry fraudulently claim asylum.

I think we are still having a bit of distortion, not from the Senators from Vermont or Ohio, but when someone says that they will not be interviewed by "the guy at the border," that is simply not true. This provision will only be administered by specially trained asylum officers with translators. There will be translators. There always are translators of any language, subject to review by a superior, another trained asylum officer. These are not low-level immigration officers. This is not correct. These are highly trained individuals.

I remind our colleagues of one other item that has sprung from the debate. Our laws and treaties prevent our Government from returning any person to any country where their life or freedom may be in danger. That is the law of the United States. It is the law of the United Nations. It is the sacred law. It is called nonrefoulment: You cannot return a person to a country where their life or freedom may be in danger. That is not done. We do not do it, and that is the law of the United States. That is the law of the United Nations. No matter if a person can establish credible fear or not, the person will not be returned to certain imprisonment and danger. That will not change under any provisions of this bill.

Finally, I hope that we recognize that 70 percent—I hope these figures can be heard—of all asylum applicants in fiscal year 1995 came from three countries. El Salvador, 72,000, which, at last look, was a democracy. They had worked through tremendous civil war to get where it is a democracy. We gave their people an extended program called "extended voluntary departure" a few years ago. Guatemala, 22,900; and 9,300 from Mexico. So out of a total of 149,500 applicants, they are the countries: El Salvador, Guatemala, Mexico.

While there may be problems in those countries, they are not highly repressive countries. At least our Government does not find them such. There is turmoil in Guatemala, killings in Guatemala. There are killings in the United States—an awful lot of them. They are, however, known as leading sources of illegal immigration.

What you are seeing is, when you have a country that is your leading source of illegal immigration, they are picking them up, and they have been here 2, 3 years, and they say, "I am seeking asylum" because they know that these procedures are interminable. That is what we are trying to get at. We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system. For every one that you can point to with passion and drama, you can point to a hundred who are gimmicking the system. This is what the people of America are appalled at, that we will not deal with the issue.

There is a balance to be struck between granting asylum to those who are qualified and preventing this country's traditional hospitality being taken advantage of in a most extraordinary way. Remember, when you have 9,304 cases from Mexico—and a case can be more than one person—how many of those asylum claimants from Mexico were granted asylum? There were 55—55 out of 9,304. If that is not gimmickry of the system, I am missing something. It means that one-seventh of our asylum applicants, even under the new provisions, are almost guaranteed to be bogus or fraudulent. I hope that our colleagues will hear that as we go to the eventual vote on that.

Of the first four major countries of asylum cases—Guatemala, Mexico, China, and India—the final approval rate is 2 percent—2 percent of these people that we have heard these poignant, powerful stories about. And 98 percent of them are fake or bogus. So if we hear the 1 and forget the 100, we are making a mistake.

I yield the floor.

Mr. BRADLEY. If the distinguished Senator from Wyoming will yield, I wonder if we can get some time agreement on the amendment that I offered. I know a couple other Senators would like to speak. Is that possible?

Mr. SIMPSON. Mr. President, I do not think I am prepared to do that until the two people that have indicated they wish to debate come over. When I get in touch with them, and I will get back to you, perhaps we will get a half hour or an hour. I will work toward that, with the approval of Senator KENNEDY.

I yield the floor.

AMENDMENT NO. 3752 TO AMENDMENT NO. 3743

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

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Michigan [Mr. ABRAHAM], for himself, Mr. FEINGOLD, Mr. DEWINE, Mr. INHOFE, Mr. MACK, Mr. LOTT, Mr. LIEBERMAN, and Mr. NICKLES, proposes an amendment numbered 3752 to amendment No. 3743.

Mr. ABRAHAM. 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:

Strike sections 111–115 and 118.

Mr. ABRAHAM. Mr. President, I ask unanimous consent that Senator NICKLES be added as a cosponsor for the amendment.

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

Mr. ABRAHAM. Mr. President, the amendment I proposed is cosponsored, in addition to myself, by Senators FEINGOLD, DEWINE, LOTT, MACK, LIEBERMAN, INHOFE, and NICKLES.

Mr. President, our amendment does basically two things. First, it would

strike sections 111 through 115 of the bill, which would currently begin to implement a national identification system.

Second, the amendment would strike a related provision, section 118 of the bill, which would require State driver's licenses and birth certificates to conform to new Federal regulations and standards.

Mr. President, I intend to devote at least my opening statement here today to the first Senate provisions that we seek to strike with this amendment, those which pertain to the national identification system. Senator DEWINE, while in addition to commenting on those sections, will be speaking in more specific terms about the driver's license and birth certificate provisions.

I recognize that we are not under a time agreement and that it will be the option of the Presiding Officer in terms of floor debate. But we hope Senator DEWINE will have an opportunity following my remarks to be recognized soon so that he may comment on that portion of the bill which he has particularly been focused on.

That said, Mr. President, let me just begin by making it clear that those of us proposing this amendment consider the hiring of illegal aliens to be a wrong thing. We think wrongful hirings, no matter how they might be brought about, are not appropriate. We are not bringing this amendment to in any way condone, or encourage, or stimulate wrongful hirings of people who are not in this country under proper documentation.

The question is, how do we best address that problem, and how do we do it in the least intrusive fashion? Already this bill contains a variety of provisions which will have, I think, a marked impact on addressing the problem. In the bill we already increase substantially the number of Border Patrol employees, people patrolling the borders to prevent illegal aliens from entering the country.

Mr. President, in the bill we already addressed a very serious problem alluded to by the Senator from New Jersey, people who overstay their visas, and constitute some 50 percent of the illegal alien population by for the first time imposing sharp, stiff penalties on those who violate the visa rules. In addition, as we dealt with on numerous occasions yesterday, Mr. President, we have attempted to address the issue of access to public assistance for noncitizens, and particularly for illegal aliens, as a way of discouraging some who may have come to this country, or who might consider doing so for purposes of accessing our social service programs.

In addition, under the bill, we have dramatically, I think, moved to try to expedite the deportation of criminal aliens, a very substantial part of our current alien community, and by definition, in the case of those who have committed serious offenses, individuals who are deportable, and thus no longer appropriate to be in the country.

I believe these steps, combined with other provisions in the legislation, move us a long way down the road toward addressing the concerns we have about the wrongful hiring of illegal aliens. I think we need to understand the provisions that pertain to verification, which, at least in this Senator's judgment, are a very obvious example of a highly intrusive approach that will not have much of an effect on the problems that we confront.

Frankly, Mr. President, what we confront in this country is less, in my judgment, of a case of an innocent employer who has been somehow deceived, or baffled by a clever alien. We have largely confronted a situation in which some form of complicity takes place between employers who are looking for ways to hire less expensive labor, and illegal aliens who have no choice in terms of the options available to them. So what we find is intent on the part of the employer, and, obviously, a willingness on the part of the illegal alien to be an employee.

This identification system is not going to do very much to address that problem because no matter what type of identification document is used, whether it is a birth certificate, a driver's license, an ID card, a Social Security card, or anything else, at least in my judgment, it is not going to matter if the employer's objective is to hire a lower priced employee who happens to be an illegal alien because, whatever the system is, it will be circumvented intentionally to accomplish the objective of trimming down on overhead.

As a consequence, to a large extent, the system, no matter how effectively it is perfected, is not going to really have much impact on the large part of the problem we confront with regard to the hiring of illegal aliens. In my judgment, that makes the cost of this program greatly disproportionate to any potential benefit it might have in terms of reducing the population of illegal aliens who are improperly employed.

I also say in my opening today that we have taken, I think, with the amendment, with the provisions of the bill that were sustained yesterday in the vote with respect to providing employers with a shield against discrimination cases, a further tool that will allow employers who are innocent to take the steps necessary to avoid hiring unintentionally people who are meant to be hired under the current laws.

That is the backdrop, Mr. President. We have big Government, an expansive Government, an intrusive Government solution being brought to bear in a circumstance where I do not think it is going to do much good. For that reason, I think the verification system is headed in the wrong direction.

This approach is flawed, and it is, in my judgment, overextensive in the way it is structured in the bill right now without any definition as to the dimensions that such pilot programs are envisioned in the bill might encompass, it has the potential to be a very, very large program. What is the region? And how advanced are all regions in an entire quarter of the country? The bill does not specify how large the pilot programs might be.

So for those reasons we believe that the verification part of this legislation is unnecessary and should be struck.

Let me talk more specifically about why the costs are going to be greater than the benefits under the program.

First, Mr. President, even though this is a potential pilot program, it seems to me, it is impossible to effectively run a pilot program of this type unless a national database is collected. That national database check is going to be a very extensive step in the direction of a national identification system.

Furthermore, Mr. President, it seems to me, given the enormous downstroke cost of developing that kind of system, that there will be an enormous amount of pressure on us to continue building the system into a national system in the very near future. Indeed, that is the direction that the sponsors of the legislation in both the House and Senate had originally envisioned. But the bottom line in terms of the costs of the program really falls on three categories of U.S. citizens that we need to focus on today.

First, it is extremely unfair and costly to honest employers. Any kind of system that involves verifying new employees prior to hiring them in the fashion that is suggested here will be costly. The employer must phone a 1-800 number in Washington, or someplace else to determine whether an individual's name is in the database, or the person who is the employer must develop some type of, or require some type of, computer interface system, whatever it might be. These are additional business costs that will fall hard—especially hard—on small businesses at a time when I think this Congress at least in its rhetoric has been talking about trying to make the burdensome costs on small business less cumbersome.

In addition, there will be a very disproportionately costly burden on those types of small businesses that have a high turnover of employees. And there are a number of them in virtually every one of our States, whether it is the small fast food restaurant, or whether it is the seasonal type of small business. The list is endless of those kinds of businesses which have huge amounts of turnover in terms of their employee ranks. For each of those

under a verification system we are adding additional costs and additional burdens that must be borne regardless of the circumstances.

But really, Mr. President, this is an unfunded mandate on these small businesses, on businesses in general, on employers in general, whoever they might be. And, in my judgment, it sets a very bad precedent because it would be for the first time the case that we would require people to affirmatively seek permission to hire an employee.

To me, Mr. President, that is a gigantic step in the direction of big government that we should not take. I do not think we want to subject employers, no matter how, or how many employees they have, to this new-found responsibility to affirmatively seek permission to hire employees.

Again, though, the people who will pay these costs and suffer these burdens are going to be the honest employers.

Those who are dishonest, those who would hire illegal aliens knowingly will not engage in any of these expenses, will not undertake any of these steps because, obviously, their intent is to circumvent the law, whatever it might be. They are doing it today. They will do it whatever the system is that we come up with.

So what we are talking about in short is a very costly, very cumbersome, very burdensome new responsibility on employers in this country that will disproportionately fall on the shoulders of those employers who are playing by the rules instead of those who are breaking them. As I say, Mr. President, it will, for the first time, require employers to affirmatively seek permission to hire employees, seek that permission from Washington.

However, it is not just the employers who will suffer through a system of verification as set forth in the legislation; it is also the workers, the employees, U.S. citizens who will now be subjected to a verification system that, in my judgment, cannot be perfected accurately enough to avoid massive problems, dislocations and unhappy results for countless American citizens.

As I have said, there is no way such a system can really be effective unless there is, first, a national database. Such a national database, no matter how accurately constructed, is bound to be riddled with errors. Indeed, some of the very small projects the INS has already launched have been discovered to have error rates, in terms of names in the database, as high as 28 percent.

Now, I hope that we could do better than 28 percent, but let us just consider if the database had an error margin of 1 percent and let us also consider that that was a national program. That would be 600,000 hirings per year that would be basically derailed due to error rates in the database.

The project, of course, is not a national program to begin with, but 1 percent of any sizable regional project is going to mean that U.S. citizens who are entitled to be hired will not be hired and be placed in limbo because of this experimental program.

Again, though, Mr. President, this is not going to be a problem in the case of illegal aliens hired by employers who knowingly choose to do so because they will not be subjected to this verification process.

If we were to have this margin of error, if we were to even have a small handful of American citizens denied employment under these provisions, we would set in motion what I think would be an extraordinarily costly process for those employers and employees so affected.

Is it right to impose a system that would in fact mean that U.S. citizens or legal permanent residents who are entitled to work would be potentially put on hold for weeks to months while the system's database is corrected? I think that is wrong. I think it is the wrong direction to go. Anybody who has dealt with computer databases knows the potential for error in these types of systems. In my judgment, to invite that kind of high cost on the employees and employers of this country would be a huge mistake.

So those are the first two issues to consider, the first two. The victims are the honest, play-by-the-rules employers and employees or potential employees who want to play by the rules. They are going to be the victims. They are going to pay a high cost.

So, too, Mr. President, will the taxpayers pay a high cost for this, in effect, unfunded mandate, because just building the database capable of handling any kind of sizable regional project will cost hundreds of millions of dollars. The question is, is it going to produce the results that are being suggested? I would say no.

As I have indicated already, those who want to circumvent a system will circumvent this system, and they will do so intentionally. Meanwhile, the taxpayers will be footing a very substantial bill for a system that can be easily avoided by those employers and illegal alien employees who wish to do so.

I intend to speak further on this amendment this morning, but let me just summarize my initial comments. I believe we should strike these verification procedures. I believe that the cost of imposing these programs even on a trial basis is going to be excessive. I feel as if it leads us in the direction of big Government, big Government expansion and the imposition of costly Federal regulations and burdens, especially on small businesses that they do not need at this time.

I believe that the tough standards we have placed in the bill to deal with illegal aliens, combined with some of the other relief that has been granted to employers to try to ferret out those who should not be employed, are the sorts of safeguards that will have the least intrusive effect on those who play by the rules. The costs of this verification system, in my judgment, far outweigh any potential benefits. For those reasons, I urge my colleagues to support our effort to strike these provisions.

At this point, as I said, Mr. President, I realize we are not on a time agreement to yield time, but I know the Senator from Ohio would like to speak to another part of this, so I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Ohio.

Mr. DEWINE. I thank the Chair. I rise today to support this amendment.

The Senator from Michigan has discussed very eloquently the problems that we see with the employer verification section of the bill. I am going to talk in a moment about a related problem, a problem that we see in the part of the bill that will require for the first time, in essence, a national birth certificate, a national driver's license.

Before we discuss these parts of the bill, however, let me start by congratulating my colleague from Wyoming. He said something about an hour ago on this floor that is absolutely correct. We are going to pass an illegal immigration bill, and after we have had our way with the amendments, one way or the other, we are going to pass a bill. It is going to be a good bill, and it is going to be a real tribute to his work over the years and his work on this particular bill.

Make no mistake about it: This bill has very, very strong provisions, strong provisions that are targeted directly at the problem of illegal immigration. The bill that the Senator reported from the subcommittee, because of his great work and the other members of the subcommittee, is a strong bill targeted at illegal immigration, targeted at those who break the law. The bill that the committee reported out is a good bill as well. There are, however, several provisions in this bill—and this amendment deals with these provisions—we believe, frankly, are misguided and that are targeted and will have the undue burden not on the lawbreakers but we believe will have an undue burden, unfair burden on the other law-abiding citizens in this country. Let me discuss these at this point.

My colleague from Michigan has talked about the employer verification system. What is now in the bill is a pilot project. I am going to discuss this at greater length later on in this debate, but let me state at this point my experience in this area comes from a different but related field, and that is the area of criminal record systems. I started my career as a county prosecutor, and I became involved in the problem with the criminal record system.

In fact, I discussed this at length with the current occupant of the chair.

I have seen, as other Members have, how difficult it is to bring our criminal record system up to date, to make sure that it is accurate. We have spent hundreds of millions of dollars in this country to try to bring our criminal record system up to snuff so that when a police officer or parole officer or the judge setting bond makes a life and death decision—that is what it is many times—about whether to turn someone out or not turn them out, they have good, reliable information. We have improved our system and we are getting it better, but we still have a long, long way to go.

If, when the stakes are so high in the criminal system, and that is a finite system—we are dealing with a relatively small number of people—if we have such a difficult time getting it right in that system, can you imagine how difficult it is going to be for us to create an entirely new database, a much, much larger database? How many millions are we going to have to spend to do that and what are the chances we are going to get it right, and get it right in a short period of time? So I support the comments of my colleague from Michigan in regard to this national database, in regard to this national verification system.

Let me now turn to another part of this bill, a part that is addressed also by this same amendment we are now debating. This section has to do with the creation, for the first time, of a federally prescribed birth certificate and the creation for the first time of a federally prescribed driver's license.

Under the bill as currently written, on the floor now, all birth certificates and all driver's licenses would have to meet Federal standards. For the first time in our history, Washington, this Congress, would tell States how they produce documents to identify their own citizens. Let me read, if I could, directly from the law, or the bill as it has been introduced and as it is in front of us today. Then in a moment I am going to have a chart, but let me read from the bill. My colleagues who are in the Chamber, my colleagues who are in their offices watching on TV, I ask them to listen to the words because I think, frankly, they are going to be very surprised.

No Federal agency, including but not limited to the Social Security Administration and the Department of State and no State agency that issues driver's licenses or identification documents may accept for any official purpose a copy of a birth certificate as defined in paragraph 5 unless it is issued by a State or local authorized custodian of records and it conforms to standards prescribed in paragraph B.

Paragraph B, then, basically is the Federal prescribed standards. The bureaucracy will issue those regulations. Again, we are saying no Federal agency could issue this, and "No State agency that issues driver's licenses or identification documents may accept for any official purpose." Those are the key words.

Let me turn to what I consider to be the first problem connected with this language. It is a States rights issue. We hear a lot of discussion on this floor about States rights. This seems to be the time and the year when we are trying to return power to the local jurisdictions, return power to the people. It is ironic that the language of this bill as it is currently written goes in just the opposite direction. Although we oftentimes talk about the 10th amendment, I cannot think of a more clear violation of the 10th amendment than the language that we have in front of us today. This is the language that pertains directly to the States.

. . . no State agency that issues driver's licenses or identification documents, may accept for any official purpose a copy of a birth certificate . . . unless it is issued by a State or local government registrar and it conforms to standards . . . promulgated by the Federal agency designated by the President. . . .

Listen to the language, "No State agency that issues driver's licenses or identification documents, may accept for any official purpose. * * *" We are telling a State in one of the basic functions of government, one of their oldest functions, the issuance of birth certificates, and other functions we rely on States to do, issuing driver's licenses, we are turning to them and saying you cannot accept documents except as prescribed by the Federal Government. We are telling that agency, we are telling that State, what they can and cannot accept. This, I think, is going in the wrong direction.

I am not a constitutional scholar but I think it has clear problems with the 10th amendment if anything has any problems with the 10th amendment. You tell the State what they can accept and what they cannot accept for their own purposes.

Let me move, if I could, to another problem that I see with this provision. The second problem, I will call it sort of a nonmonetary problem, the nonmonetary cost. This bill as currently written, going to the national driver's license, going to a national birth certificate, is going to cause a tremendous amount of anguish and tremendous amount of inconvenience for the American people. It is the American people who are abiding by the law who are really going to be punished by this. This is, in essence, what the bill says. It says to the approximately 260-some million Americans, each presumably who has a birth certificate somewhere, that your birth certificate is still valid, it is still valid, you just cannot use it for anything, or almost anything. If you want to use that birth certificate, you have to get a new one. You have to get a new one that conforms to what the bureaucracy has said the new birth certificate must conform to.

Your old birth certificate is no good. You can keep it at home, you can keep it stored in your closet or wherever you have it, that is OK, it is still valid, but if you want to use it to get a passport or you want to use it for any purpose, you cannot do that. You have to go back and get a new birth certificate.

What am I talking about in the real world where we all live and our constituents live? Let me give three examples, real world examples of inconvenience and problems that this is going to cause. Every year, millions of Americans get married and many of them change their names. To have a name change legally accepted by Social Security—this is the law today—today, to have a name change legally accepted by Social Security or by the IRS, today you must show a marriage certificate plus birth certificate. That is the law today.

This amendment will not change that. But here is how it will affect it. If this bill becomes law, the birth certificate you currently have is no good and you will not be able to use it for this purpose. You are going to have to go back to your origin, the place of your birth. You are going to have to do as Mary and Joseph did, you are going to have to go back to where you came from, where you were born, or at least you are going to have to do this by mail, or in some way contact that county where you were born, because the birth certificate they gave your parents 20 years ago, 25 years ago, you cannot use that anymore, because that is what this bill says. They are going to have to issue you a new one and you are going to have to go back and get that new birth certificate. I think that is going to be a shock to many people when they decide they want to get married.

June is historically the most popular month, we are told, for weddings. My wife Fran and I were married in June so I guess we are average, with a number of million other Americans. If this bill passes, I do not think it is too much to say that June will not only be known as the month of weddings, people getting married, it will also be the month where people will have to stand in line, because that is really what people are going to have to do. It is one more step back to get a new birth certificate for them. How many people get married each year? I do not know, but each one of these people will be affected.

Let me give a second example. What happens when you turn 16 years of age? You ask any teenager. They will tell you that in most States at least they get the opportunity to try to get a driver's license. How many of us have had that experience, gone down with their child or, if we remember that long ago, ourselves, trying to get a driver's license? How many people had to stand in line? I do not think it is

unique to my experience, or the experience of my friends. You go and stand in line and it takes a while. Imagine your constituent or my constituent, our family members going down with our child at the age of 16, standing in line at the DMV. We get to the head of the line. You have a birth certificate. And the clerk looks at you and says, "Sorry." You say, "What's wrong? I have this birth certificate."

They say, "No, we are sorry. This is not one of the new federally prescribed birth certificates. This was issued 16 years ago. This doesn't conform. It doesn't work. The Federal law says we cannot accept that birth certificate."

You then leave and either go back to the place your child was born or write to the place your child was born and you get that birth certificate.

We live in a very mobile society. I always relate things to my own experience. In the case of our children, that means we would have to go back to Hamilton, OH; we would have to go back, for one of them, to Lima, OH; one to Springfield, OH; one to Springfield, VA, a couple to Xenia, OH. You would have to go back in each case to where that child was born and go back to the health department or whatever the issuing agency was of the State to get that birth certificate.

Once you got the birth certificate, you then have to get in line at the DMV. That is how it is going to work in the real world. Let me give one more example.

When people turn 65 in this country, they have an opportunity to receive Social Security and they have the opportunity to get Medicare. One of the things you have to do, obviously, is prove your age. How many people, Mr. President, who turn 65 in 1996, live in the same county they lived in when they were born? I suspect not too many.

How shocked they are going to be when they go in to Social Security and they present a birth certificate and Social Security says, "Sorry. Yeah, you waited in line for half an hour; sorry, we can't take this birth certificate."

"Why not? I have had this certificate for 65 years."

"No, Congress passed a law 2, 3 years ago. You can't use this birth certificate anymore. You have to go get a new one."

Imagine the complaints we are going to get in regard to that.

Getting married, turning 16 and getting a driver's license, wanting to go on Social Security—these are just three examples of how this is going to work in the real world.

I think it is important to remember that this is an attempt to deal with a problem not created by the people who we are, in essence, punishing by this language, not created by the teenager or his or her parents who turned 16, not created by the senior citizen who turned 65 and wants Social Security.

How many times are we going to have people call us saying, "I certainly hope you didn't vote for that bill, Senator." "I certainly hope, Congressman, you didn't vote for that bill."

Let me turn to another cost, because this is a costly thing, and we will talk just for a moment about the costs incurred in the whole reissuing of birth certificates. You can just imagine how many million new birth certificates are going to have to be issued. Somebody has to pay for that.

It is true the CBO has said this does not come under the new law we passed, because under that law, you have to be up to $50 million of unfunded mandates per year before it is labeled an unfunded mandate. But that does not mean it is not an unfunded mandate, nor does it mean it is not a cost to local or State government. Nor does it mean it is not going to be a cost to citizens. Let me go through a little bit on the cost.

If you look at the language in the bill, the idea behind the language is very good, and that is to get birth certificates that are tamper-free. We took the opportunity to contact printers and to talk to them to find out, under the language of this bill, what a State would have to do.

Although there is discretion left to the bureaucracy in how this is going to be implemented and the States are going to have some option about how it is done, the printers we talked to said there is anywhere from 10 to 18 to 20 different safety features that one would expect to be included in this new birth certificate.

Let me just read some of the things that they are talking about. I am not going to bore everyone with the details. We have two pages worth of different types of things:

Thermochromic ink—colored ink which is sensitive to heat created by human touch or frictional abrasion. When activated, the ink will disappear or change to another color.

Abrasion ink—a white transparent ink which is difficult to see, but will fluoresce under ultraviolet light exposure.

Chemical voids—incorporated into the paper must be images that will exhibit a hidden multilingual void message that appears when alterations are attempted with chemical ink eradicators, bleach or hypochlorites.

A fourth example: Copy ban and void pantograph.

A fifth example: Fluorescent ink.

A sixth example: High-resolution latent images.

A seventh example: Secure lock.

And on and on and on. This is not something, as I say, that is brain surgery. It is not something that cannot be done. It is something that clearly can be done. But let no one think this is not going to cost millions and millions of dollars, and someone is going to pay for it.

The American people are going to pay for it one way or the other. They are going to pay for it if the local government eats up the cost or absorbs the cost, and that is going to be what we like to refer to as an unfunded mandate.

If they pass it on to the consumer, to the couple who just got married, or the 16-year-old who gets his driver's license, or they pass it on to the 65-year-old who wants Social Security, that is going to be a tax. It will be a hidden tax. The cost is going to be there, and it is going to be millions and millions of dollars.

As my colleague from Michigan pointed out, all these changes, all this burden, all this inconvenience, all these violations of the States rights is being done, really, to go after the problem of illegal aliens and the people, really, who are hiring them.

We have talked—it is difficult to get accurate statistics on this—we talked to INS, we talked to the people who are experts in the field, and I think it is a common opinion that the majority of illegal aliens who are illegally hired are hired by people who know it. They know it.

This portion of this bill is not going to solve that problem at all. So, again, we narrow it down. We are doing an awful lot. We are doing all these things to correct only a portion of the problem.

Let me conclude by simply stating, again, this is a good bill. No one should think that there are not tough provisions in this bill. If a bill like this had been brought to the Senate floor 2 years ago, 4 years ago, 8 years ago, it probably would not have had any chance. I think I heard my colleague from Wyoming say something very similar to that.

It is a strong bill. It is a very strong bill without this what I consider to be a horrible infringement on people's rights. What we intend to do, or try to do, with this amendment is to take out these sections, these sections that are going to impact 260 million, 270 million Americans and punish them to try to get at this problem. We do not think it is going to work. We think it is going to be very intrusive, and we point out also that the bill, without these provisions, is, in fact, a very, very strong bill, and it is a bill that every Member in this Chamber can go home and be proud of and can say, "We have taken very tough measures to deal with illegal immigration."

I thank the Chair, and I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to oppose the Abraham-Feingold amendment. Let me not mince words. This amendment, in my view, is a bill

killer, it is a bill gutter, it decimates the foundation of employer sanctions. It will provide, if it passes, a bill that is gutless, toothless, aged, and will not work.

We must make employer sanctions work. And let me tell you why. The reason why is, take my State, California. We have 2 million people in California illegally. How do these people survive? They survive one of two ways—they either get on benefits through fraudulent documents or they work. How do they work? With employer sanctions, an employer is not supposed to give them jobs.

My opponents would have you believe that every employer wants to break the law, that every employer is going to hire people simply because they know them. I can tell you from the State that has the largest number of illegal immigrants in the Nation—40 percent of them—that is not the case.

Employer sanctions can only be effective if there is some method of verification. The Simpson-Kennedy language is a pilot to ask the INS to see how we can verify information that employers receive. Let me show you graphically why it is important that we do so. The birth certificate, which Senator SIMPSON has pointed out correctly, is the most counterfeited document in the United States. Let me show you why. Let me show you a few forms for birth certificates.

This is one from the State of Illinois. It is a fraudulent document that has not been printed upon.

This is a second one from the State of Illinois. There are literally tens of thousands of different kinds of birth certificates in the United States. This is a form from somewhere in Texas.

So the birth certificate is easy. These papers are duplicated in the right color, that of Austin, TX, then they are put out wholesale. They are then laminated, as you see here. And no one can tell the difference.

Same thing goes here. This is a forged copy of a record of marriage, a marriage certificate.

This is another from Cook County, IL, a forged copy of a marriage certificate.

This is another one, a forged copy of a marriage certificate.

This is a forged GED application. I mean, if I am interviewing someone and this application is filled out, and they say this is testimony to the fact that they have gotten an equivalency degree in this country—and, look, there is the official seal and here are my grades on it—who am I to say it is not true? I would have no way of knowing.

Here is a forged divorce certificate. If this were handed to me as an employer I would have no way of knowing.

Here is a trade school diploma that is forged. If this were handed to me, I would have no way of knowing.

Here is an achievement test certificate for high school from the State of Indiana. If this were handed to me as an employer, when I asked the question, "are you qualified to work in this country?" how would I know? I would not.

Here is another forged divorce certificate. If this were handed to me, I would not know. Why would I not? Because the industry is very sophisticated.

Here are some of the preliminary forgeries, the basic paper from which these forgeries are done. How easily it is replicated.

Here is the back of a green card before it is finished. How easy it is replicated.

Let me show you what the final result is. This is a forged green card. The names are blotted out. This is a real green card. Who can tell the difference? No one. These are the backs. Who can tell the difference? No one.

This is a forged green card. Who can tell the difference?

This is forged—and look at them, look at the numbers. These are all perfect forgeries, every single one of these. These exist by the millions. They are made in less than 20 minutes. And they cost anywhere from $25 to $150. Anyone can get them. How is an employer supposed to know? You cannot know without some way of verifying the authenticity of the document which is submitted to you.

What the Simpson-Kennedy test pilot does is ask INS to see what can be done so that the documents can be verified by an employer. The bill narrows the list of documents down to six. So at least some of the confusion can be avoided there.

It is not fair to anybody to have a system that exists in a bogus form more frequently than it exists in a real form. How does a birth certificate mean anything to anybody for any official purpose if it is counterfeited by the tens of millions in this country? How does a green card mean anything? How does a divorce certificate mean anything if it is counterfeited and you cannot verify it?

These are the real problems with which this bill attempts to deal. If this amendment is successful, you might as well junk employer sanctions, you might as well say, "We're going to permit people to continue to submit bogus documents."

Remember, somebody here illegally has only two choices—one, they earn a living, secondly, they go on public support. Unless they have somebody very well to do in this country who can take care of them—and I would submit to you that that is a remote possibility—those are the only two chances. So the only way they can exist or stay—and right now it is very attractive to come to this country illegally because it is so easy to obtain these counterfeit documents.

That is the reality. That is why we have on the Southwest border 5,000 people crossing every single day, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, because they can go to Alvarado Street in Los Angeles, and they can purchase these documents on the street within 20 minutes. Our system of verification is nonexistent, and they know that. Therefore, if they submit a counterfeit document to an employer, the employer has little choice other than to accept it or ask for more documents. Then if the employer asks for more documents, the employer very often is sued.

So it is a very, very tenuous, real-life experience out there. This bill makes a very modest attempt—where in committee, it became a test pilot. The language, which I think it was a Kennedy amendment, was already a compromise. Many of us on the committee wanted an absolute verification system, put into affect right away. That did not pass in committee.

So the compromise was a pilot. Then the results of the pilot would be brought back to Congress. Now we see an attempt to get rid of the pilot. If you get rid of a pilot, what is left? What is left is that we make ourselves into hypocrites, in my opinion, because we create a system that cannot function.

What we are seeing today is an employer verification method that does not function. It does not function because you cannot verify fraudulent documents, and because fraudulent documents abound.

I must say that I think it is very possible to verify. We live in an information age. Hundreds of data bases now exist in both public and private sectors, data bases for national credit cards, for health insurance companies, credit rating bureaus. Technology is, in fact, advancing so rapidly that the ability to create these data bases and ensure their accuracy is enhanced dramatically every year.

Why, then, does the Senate of the United States not want the U.S. Government to use a computer data base to try to find a better way to help employers verify worker eligibility? I really believe that many of the issues raised by opponents to this provision—that it is bureaucratic, that it is prone to errors, that it is unworkable, that it is too intrusive—are simply unfounded.

In fact, the provision was specifically written, as I understand, to alleviate such concerns, by defining clear limits on the use of the system, establishing strict penalties for the misuse of information, and requiring congressional approval before any national system goes into effect. What are the authors of this amendment so afraid of? Any national pilot system would come back to this body for approval prior to its being put in place.

The legislation also imposes some limits. It limits the use of documents.

Documents must be resistant to counterfeiting and tampering. The system will not require a national identification card for any reason other than the verification of eligibility for employment or receipt of public benefits. There is no one card. Those who use, I think, as a ruse to defeat this pilot project, I hear out there, "Well, Senator FEINSTEIN, you are calling for a national ID. That violates all our civil rights." To that I have to say, "There is no national ID anywhere in the legislation before this body". None. It is a red herring. It is a guise. It is a dupe. It is a ruse, simply to strike a mortal blow at the system.

I have a very hard time because California is so impacted by illegal immigration. For 3 years we have said we must enforce our border, we must improve customs, we must be able to really put a lid on the numbers because the numbers are so large. I have come to the conclusion that within the scope of possible immigration legislation, we are stuck with an existing system. That existing system is employer sanctions. Therefore, why not try to make them work? The already compromised verification system—just a pilot, which allows the INS to work it out, and bring it back to this body and let us say yea or nay to it—is simply a modest attempt to get some meaning into this legislation.

Let me say what I honest to God believe is the truth. If we cannot effect sound, just and moderate controls, the people of America will rise to stop all immigration. I am as sure of that as I am that I am standing here now, because where the grievances exist, they exist in large number. Where the fraud exists, it exists in large numbers. Where it exists, wholesale industries develop around it. It is extraordinarily important, in my opinion, that this amendment be defeated.

Let me talk for a moment about discrimination because I just met with a group of California legislators who wanted to know how this works. One of the big areas they raised was discrimination. As I understand the system, it must have safeguards to prevent discrimination in employment or public assistance. The way it would do that is through a selective use of the system or a refusal of employment opportunities or assistance because of a perceived likelihood that additional verification will be needed. The legislation contains civil and criminal remedies for unlawful disclosure of information. Disclosure of information for any reasons not authorized in the bill will be a misdemeanor with a fine of not more than $5,000. Unauthorized disclosure of information is grounds for civil action. The legislation also contains employer safeguards, that employers shall not be guilty of employing an unauthorized alien if the employer followed the procedures required by the system and the alien was verified by the system as eligible for employment.

In my view, the Simpson-Kennedy test pilot makes sense. I have a very hard time understanding why anyone would oppose it because it is the only way we can make employer sanctions work.

I yield the floor.

Mr. KENNEDY. Mr. President, the case for ensuring that birth certificates are going to be printed on paper to reduce the possibility of counterfeit has been made here. I want to speak to that issue because it has been addressed by some saying this is ultimately the responsibility of the State, and the Federal Government does not really have any role in this area.

Mr. President, sometime we will have to decide whether States will have their own independent immigration policies or whether we will have a national immigration policy. It really gets down to that. I have my differences with some of the provisions in this bill. One that I think the case has been made, and I know it will be made again in just a few moments by the Senator from Wyoming, is that if we do not deal in an important way with ensuring that we will have birth certificates which are going to be, effectively, even printed on paper that cannot be duplicated and other safeguards, really, this whole effort ought to be understood for what it is.

That is, basically, a sham. It will be a sham not only with regard to immigration, but it will be a sham on all of the programs that we talked about yesterday in terms of the public programs because individuals will be going out and getting the birth certificates and getting citizen documents to prove they are American citizens and then drawing down on the public programs.

We spent hours yesterday saying which programs we are going to permit, even for illegals to be able to benefit from, or which ones we will be able to permit legals to be eligible for, and we went through the whole process of deeming. If you go out there and are able to get the birth certificates and falsify those, you will be able to demonstrate you are a senior citizen and you will be able to draw down on all of those programs. This reaches the heart of the whole question of illegal immigrants. It reaches the whole question of protecting American workers. It reaches the whole issue of protecting employers. It reaches the issue about protecting the American taxpayers.

Let me give a few examples of what we are looking at across the country. Some States have open birth record laws. In these States, anyone who can identify a birth record can get a copy of it. The birth certificates are treated as public property. In some States—for example, in the State of Ohio, you can walk into the registry of vital statistics in Ohio, an open record State, and ask for, in this instance, Senator DEWINE's birth certificate. The registry would have to give it to me, no questions asked. I could walk into the registry in Wisconsin and get Senator FEINGOLD's birth certificate just as easily. Some States even let you have a copy through the mail. Once I have a copy of one of their birth certificates, I could take it, for example, down to the Ohio Department of Motor Vehicles and get an Ohio driver's license with Senator DEWINE's birth date and address, but my picture instead of his. I now have two employer identification documents to establish an eligibility to work in the United States and also to be able to be eligible for public programs.

Mr. President, with all that we are doing in terms of tamperproof programs, and all that we are doing in terms of setting up additional agencies and investigators and protections for American workers, and all of the resources that we are providing down at the border, when you recognize that half of the people that will be coming in and will be illegals came here legally, and they will have an opportunity to take advantage of these kinds of gaping holes in our system, then the rest of the bill—with all due respect, we can put hundreds of thousands of guards down on the border, but if they are able to come in, as half of them do, on various visas and be able to run through that process that anybody can achieve in a day or day and a half and circumvent all of that, then I must say, Mr. President, we are not really being serious about this issue.

We can all say, well, our local—I know the arguments and I have heard the arguments. There is a lot of truth in much of what is said in the arguments. But we have to, at some time—and I hope it is now—recognize that we are going to have to at least set certain kinds of standards and let the States do whatever they want to do within those standards. They have to print it on paper that is as resistantproof to tampering as we can scientifically make it. They can set this up, and they can do it whatever way they want to do it. But there are minimum kinds of standards to try to reach the basic integrity of the birth certificates that are going to be necessary. That has been pointed out. That is the breeder document. That is where all of this really starts. It is easily circumvented. We can build all the other kinds of houses of cards on top of trying to do something about illegal aliens, and unless we are going to reach down and deal with this basic document, we are really not fulfilling, I think, our responsibility to the American people with a bill that is really worthy of its name, because we are leaving these gaping holes.

I could go into other things, but I will not take the time because others

want to speak. I will go through other kinds of illustrations that are taking place today. We know what the problem is. You have, as Senator DEWINE said, the fraudulent documents that are all being duplicated fraudulently down at the border when we might be able to do something about tamperproof elements. But unless we are going to deal with the breeder document, which is the birth certificate, we are really not going to be able to get a handle not only on illegal immigration, but also on protecting the taxpayers, because people will be able to use the birth certificate to demonstrate that they are a citizen and then draw down on the various programs. That, I think, really makes a sham of a great deal of what is being attempted at this time.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I rise today to urge my colleagues to support the Abraham-Feingold amendment to strike the worker verification proposal from this bill.

It has been said many times already in the past, and today on the floor, that we cannot effectively combat illegal immigration without having a national worker verification proposal. It has been said that the employer sanction laws implemented in the 1986 act have been largely ineffective due to the absence of such a verification system.

As we all know, Mr. President, there are two major channels of illegal immigration. The first is composed of those who cross our borders illegally, without visas and without inspection. Roughly 300,000 such individuals enter and remain in our country unlawfully each year.

This, as we all know and agree, is unquestionably a serious problem along our southwestern border. This Congress does have a responsibility to provide additional resources to the U.S. Border Patrol and other enforcement agencies to prevent such individuals from crossing the border in the first place. So I strongly support the provisions in S. 1664 that provide additional border guards and enforcement personnel.

Mr. President, the second part of the equation, though, which represents up to one-half of the illegal immigration problem, is the problem known as visa overstayers. These are people who enter our country legally, usually on a tourist or student visa, and then remain in the United States unlawfully only after the visa has expired.

But despite this phenomenon, representing up to 50 percent—50 percent—of our illegal immigration problem, there was not a single provision in the original committee legislation to address this problem—not a single word about half of the whole illegal immigration problem.

Instead, the bill supporters proposed a massive, new national worker verification system, complete with uniform Federal identification documents. So, rather than targeting the individuals who break our laws and are here illegally, the premise of that proposal was to ensure that the identity of every worker in America—U.S. citizens, legal permanent residents, and so on—had to be verified by a Government agency in Washington, DC.

Mr. President, we are going to hear extensive debate about whether or not what is in this bill is actually going to work, and I will comment on that in a few minutes. But I think we first need to ask the question of whether this, in any way, is an appropriate response to the illegal immigration problem.

According to INS figures, less than 2 percent of the U.S. population is here illegally. Mr. President, do we really want to require 98 percent of Americans to have their identities verified by the Federal Government every time they apply for a job or public assistance?

Think about what this means to every employer in this country, Mr. President. Every employer would have to live under such a system if it was fully implemented. Suppose a dairy farmer in rural Wisconsin, or perhaps rural New Hampshire, wants to hire a part-time employee. Should that farmer have to get permission from a Washington bureaucrat before he hires the worker? How is the verification check to be completed? If it ends up being an electronic system, does that mean the farmer is going to have to spend $2,000 or $3,000 on a new computer and another $1,000 on the required software to be able to interface with a computer somewhere in Washington, DC—all so he can hire just one part-time employee on his farm in Wisconsin or New Hampshire?

Mr. President, if fully implemented, this, obviously, is not a measured response to the illegal immigration problem. It suggests that the way to find a needle in a haystack is to set the haystack on fire.

It is not as if we are moving to a national verification system as a last resort. Just in the past few years has the administration begun to take seriously the task of patrolling our Nation's borders. Experiments such as Operation Hold the Line in El Paso, and Operation Gatekeeper in San Diego, have demonstrated that there is a way to prevent undocumented persons from entering the United States.

Moreover, we have never tried to attack the visa overstayer problem. Again, that is the problem that constitutes nearly one-half of the illegal problem. No one has ever proposed such targeted reforms—until now.

Our amendment contains provisions that impose tough new penalties on persons who overstay their visas by withholding future visas from persons who violate the terms of their agreements.

In addition, anybody who applies for a legal visa must submit certain information to the INS that will allow the INS to track such persons and determine who is here lawfully and who is here unlawfully.

These bold reforms should be given an opportunity to work. Let us give them a try before we commit ourselves to experimenting with a costly and burdensome national verification system.

Moreover, Mr. President—and, of course, I acknowledge that during the committee's work, this was turned into more of a pilot program approach. Nonetheless, the so-called pilot programs contained in this legislation are riddled with problems. Let us be honest. We would not be having these so-called pilot programs if the eventual goal was not to have a national verification system up and running in the near future. Why would we do them if that was not the ultimate objective? Indeed, in addition to the pilot programs, this bill, as reported out of the Judiciary Committee, requires the President to develop just such a plan for a national system and submit it to Congress.

We also know there are going to be numerous errors in the system. As the Senator from Michigan has pointed out, one Federal data base that is to be used with this system currently has an error rate of over 20 percent.

So we know that millions and millions of Americans will be wrongfully denied employment and Government assistance due to bureaucratic errors.

Now the sponsors of the provision will tell you that the system is only supposed to have an error rate of 1 percent. But read the bill. The bill clearly states that the system should have an objective of an error rate of less than 1 percent. It could have an error rate of 5, 10, or 20 percent and it would be perfectly OK under this bill.

But perhaps nothing is as troubling to me about this proposal as the fact that it puts us squarely on the road to having some sort of national ID card.

Now I know that the very words "ID card" ruffles the feathers of the sponsors of this provision. And I know that they have crafted this language very carefully so there is not an actual identification document created by this language.

But even many of the congressional supporters of a national verification system have pointed out that this proposal will not work without some sort of national identification document. Why? Because any job applicant can hand an employer a legitimate ID card that has, for example, been stolen or doctored.

The employer will run the card through the system and it will check out. But the card does not belong to the individual, so that individual has just fraudulently obtained a job or received welfare assistance.

That is exactly what is likely to happen if this bill becomes law.

Well, Mr. President, is there any way to prevent this sort of fraud from happening? One solution has been suggested. Let me quote Frank Ricchiazzi who is the assistant director of the California department of motor vehicles.

In testimony before the Judiciary Committee last May, Mr. Ricchiazzi said the following:

All the databases and communication systems in the world fill not prevent the clever and resourceful individual from assuming multiple identities with quality fraudulent documents. What is needed is the ability to tie the documents back to a unique physiological identifier commonly referred to as biometric technology (retinal scan, fingerprint, hand print, voice print, etc).

So fingerprinting every person in America is one suggested solution to this problem.

Now this approach may sound a little farfetched, but my colleagues on both sides of the aisle may be surprised that the original committee bill required every birth certificate and driver's license in America to be adorned with a fingerprint.

This is not totally far-fetched. It is what we had to consider in the first place in committee.

And it is my understanding that even with the last-minute changes made yesterday to the birth certificate requirements, the bill continues to allow Federal agencies to preempt the authority of the States by requiring State agencies to follow federally mandated regulations with respect to the composition and issuance of their birth certificates and drivers license.

The bill's supporters claim that the fingerprint requirements have been removed from the legislation. But again, read the bill. The legislation before us allows the administration to determine what sort of safety and tamper-proof features every State's driver's licenses must have.

We are going to put something in this Congress to say you cannot use it for something else.

So if the Department of Transportation decides to require the State of Wisconsin to begin collecting and processing fingerprints of all driver's license applicants, the State of Wisconsin would be forced to comply under this legislation with the national fingerprint mandate.

That is why this provision, even with the recent modifications, continues to be opposed by the National Association of Counties and the National Conference of State Legislatures.

The bill's supporters will also say that the legislation clearly prohibits any identification documents required for the verification system to also be required for other purposes.

Mr. President, that is not much of a guarantee. In fact, it is no guarantee and on the contrary, by establishing such federally mandated identification documents we open the door for these documents and the verification system to be used in the future for a variety of purposes that could be completely different from what we intended, and something that none of us would support.

At first, Mr. President, Members of Congress may propose that people present these documents and go through the verification process for very legitimate purposes. Maybe they will say, "Well, we have to use these ID's or documents to board an airplane; maybe we will be required to use them to adopt a child; maybe it will be required if you want to enlist in the Armed Forces."

And pretty soon, the verification process and identification documents will be required for so many purposes that it just might be a good idea to carry the I.D. document around in your wallet.

Does that sound farfetched Mr. President? It should not, because I just described the Social Security card—a card that was originally intended for one purpose and is now required for so many purposes that most people carry it around in their wallets or pocketbooks. And Social Security numbers are used for numerous identification purposes from the number on your driver's license to assessing computer networks.

I know, Mr. President, that the Senator from Wyoming will claim that the bill specifically prohibits the verification system from being used for other purposes.

But nothing in this legislation, including the so-called privacy protections, can prevent a future Congress from passing a law to require these identification documents and the verification system to serve different purposes than originally intended.

That is precisely why Senators should not be misled into believing that the pilot projects contained in this legislation are harmless and will have no effect on their constituents.

The pilot programs are not intended to merely provide a testing ground. If the pilot programs are just meant to provide us with test results, why does the bill specifically require the President to develop and submit to Congress a plan for expanding the pilot projects into a nationwide worker verification system?

That is the goal of the verification proposal contained in the legislation and Senators should not be misled into believing that these are harmless pilot programs that are not going to affect their constituents and are going to somehow magically disappear in a few years.

Mr. President, the number and range of groups and organizations supporting the Abraham-Feingold amendment is quite astounding. It is a coalition of the left, represented by the ACLU, the National Council of La Raza and the American Jewish Committee, and the right, represented by the NFIB, the National Restaurant Association and the U.S. Chamber of Commerce, as well as some 30 other national organizations representing business, labor, ethnic and religious organizations which all support the Abraham-Feingold amendment.

Why do they do this? Because they know it is critical that we abandon this rather heavyhanded, costly approach to combating illegal immigration and instead focus on true reform that focuses on the individuals who break the law, and not those who abide by them.

So I very much commend my friends from Michigan and Ohio, and others, in their efforts in fighting this intrusive proposal.

I ask unanimous consent that a listing of the organizations supporting the Abraham-Feingold amendment be printed in the RECORD.

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

ORGANIZATIONS SUPPORTING ABRAHAM-FEINGOLD

National Federation of Independent Business.
National Council of La Raza.
National Restaurant Association.
American Civil Liberties Union.
U.S. Chamber of Commerce.
American Bar Association.
Americans For Tax Reform.
United States Catholic Conference.
Mexican-American Legal Defense and Education Fund.
National Retail Federation.
American Jewish Committee.
Associated Builders and Contractors.
Associated General Contractors.
National Asian-Pacific American Legal Consortium.
Asian-American Legal Defense and Education Fund.
International Mass Retail Association.
Cato Institute.
Service Employees International Union.
Asian-Pacific American Labor Alliance.
National Association of Beverage Retailers.
UNITE (Union of Needletrades, Industrial and Textile Employees).
National Association of Convenience Stores.
League of United Latin-American Citizens.
Food Marketing Institute.
Hispanic National Bar Association.
Food Distributors International.
The College and University Personnel Association.
American Hotel and Motel Association.
International Association of Amusement Parks and Attractions.

Mr. FEINGOLD. I thank the Chair. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I rise in strong opposition to the amendment.

Let me differ with my friend from Wisconsin who is one of the finest

Members of this body. It was a great day for the Senate when RUSS FEINGOLD was elected to serve here.

When he says this amendment increases penalties for those who come in legally and overstay, this amendment does nothing of the sort. This amendment does one thing and one thing only, and that is to weaken enforcement of illegal immigration.

What the bill does—not this amendment—on those who overstay legally, anyone who overstays more than 60 days cannot apply for coming back in again legally for 3 or 5 years. We hire more investigators. You have to apply for a visa to the original consular office where you made the original application.

Three things I do not think anyone can question. No. 1 is the thing that Senator SIMPSON has stressed over and over again, and that is the attraction for illegal immigration is the magnet of a job. I do not think anyone seriously questions that. No. 2 is that we have massive fraud that assists people who are here illegally. I do not think anyone questions that. No. 3 is the GAO report shows that we have a serious problem with discrimination particularly against Hispanics and Asian-Americans or people who speak with an accent, maybe a Polish accent or whatever the accent might be because there is a reluctance on the part of employers to hire them.

Unless we have some method of a voluntary identification, that discrimination is going to continue. So, in line with the recommendations of the Jordan Commission, pilot programs have been suggested. No pilot program can be followed through by a Clinton administration or a Dole administration or anyone else without congressional action. So there is that safeguard here.

I think this is essential. If this amendment is adopted, frankly, you just defang the whole bill. It is a toothless venture. You are trying to eat steak without teeth. I hope to never try that. I hope the Presiding Officer never has to try that. You have to have teeth in this if we are going to do anything about illegal immigration.

There are provisions in this bill that I do not like. I was defeated last night on an amendment, and I am probably going to be defeated today on a couple of amendments that I think make a great deal of sense. I think in some ways the bill is too harsh. But it is essential that we take a look at this.

Let me just add—and I know you should not make appeals on the basis of personalities—this whole issue of immigration is one of these cyclical things. Right now there is a lot of interest, but for a while there was very little interest. There were just three of us who served on that subcommittee, the smallest subcommittee in the Senate, because there was not that much interest—ALAN SIMPSON, TED KENNEDY, and PAUL SIMON. I was the very junior member both in terms of service and in terms of knowledge.

I say to my colleagues who may be listening or their staffs who may be listening, whenever ALAN SIMPSON and TED KENNEDY say this is a bad amendment in the field of immigration, I think you ought to listen very, very carefully. They know this area. Complicated as it is, they know this area well. We have a problem with illegal immigration, and you cannot deal with this problem unless you deal with the magnet that employers have, the area of fraud, and I also think the area of discrimination. There is no way of solving this without having some pilot programs.

We could launch something without having a pilot program. I think that would be unwise. It seems to me this is a prudent approach that really makes sense, and with all due respect to my friend from Michigan, I think this amendment should be defeated.

I yield the floor, Mr. President.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Wyoming.

Mr. SIMPSON. I think we have had an interesting debate. We probably will have a little bit more. There is no time agreement here. But there are some serious distortions presented to us, and that is always vexing because obviously persons are listening to those distortions and taking them to heart.

I have been in this business for 17 years, and that is not to say it has been a joyful experience, but it was much more a pleasure when Senator PAUL SIMON joined this ragged subcommittee consisting of Senator TED KENNEDY and myself because no one else would take on the issue. So for several years it was just a little three-member subcommittee—Senator KENNEDY, myself, and Senator SIMON—because others would come up to us in the course of the entire year of work saying, "When you get busy on doing something about illegal immigration, you let me know and I will help you."

Unfortunately, nobody does help because there are so many cross-currents. I have never seen more—I am not talking about the Senate. I am talking about outside the Senate. I have seen groups hop into the sack with other groups they would not even talk to 10 years ago. I have seen some of the most egregious pandering and prostituting of ideals outside this beltway that I have ever seen, people who are cynical, cynical in the extreme with what they are doing on this issue, some of the think tanks cynical to the extreme. I am not, please hear me, talking about a single person in this arena. I have the deepest respect for Senator SPENCER ABRAHAM. I helped campaign for him in Michigan and would do it again in an instant. I have high regard for Senator MICHAEL DEWINE. I helped campaign for him in Ohio, and I would do it instantly. Senator FEINGOLD I have come to know, a spirited legislator of the old school—doing your homework. So that is not the issue.

But you are missing everything we are trying to do. Somebody is missing the entire thing, and Senator SIMON has expressed it beautifully: You cannot do the things that are in this bill unless you have at least an attempt to find out what verification systems we will use in the United States.

The present stature of the bill simply says that we will have verification projects or processes of these following options. If I had my way, I would make them requirements, and I would say it is required that these following pilot projects take place in the next years. That is what we should be doing. Then none of them go into effect, or not one of them goes into effect, until we have another vote.

That is what is in this bill. There is nothing in here that has to do with national ID or all the sinister activity that you can ever discuss—Americans on the slippery slope, a tragedy of employers having to seek permission to hire people. They already do. It is almost as if one were speaking into a vacuum.

I know what it is. It comes from the fact when you are in it this long, you understand the nuances. That is not a cocky statement, I can assure you. But, boy, I tell you, when I first started the business, I would say, "You can't do that." Then 2 years later I said, "You have to do that."

That is where this one is. When I am up at Harvard teaching, I shall think of you all, and I will reflect. In a year or two—and I hope you are all here for many years—you are going to say, "I didn't know that's what we did," because if this amendment passes, you will have taken away everything from this bill. The rest of it, as Senator PAUL SIMON says, is like eating steak without teeth. You cannot do it with what you have put in this bill. If you think you have solved the problems of illegal immigration by the Border Patrol—put 20,000 of them down there—if you think you are going to solve it by this or that and all the things that are in this bill, forget it, because over half the people come here legally. You will not even touch them unless, ah, with the new Border Patrol we will give them the power to now go up and ask visa overstayers if they are visa overstayers. How is that one for discrimination in America? You are going to go up to people who look foreign under this provision, when we have nothing else that gives us any power or authority to do anything, and find out whether people are visa overstayers. I assume they will most likely be people who look foreign. So, remember, that one will take place.

It is a curious thing that the people and the institutions who want to do

the most to hammer illegal, undocumented persons will give us the least hammer. I do not understand that and I would like to have that explained to me in the course of the debate. How you can come to subcommittee and full committee and the floor and add layer upon layer of things which have to do with tightening the screws on illegal, undocumented people—and that is what you have done, and that may assuage all guilt, it may take care of all pain—but, then to take every bit, every tiny crumb left of how to do something about illegal undocumented persons in the United States, and that is to allow some kind, some kind of more counterfeit-resistant, more verifiable, identifiable—whether it is through the phone system with a slide-through or some kind of revised Social Security card or something—and then to go home and tell our people that, here in the United States of America, we finally did something about illegal immigration? And a year from now or 2 years from now you find out you could not get it done because you did not take the final step, which was minuscule, and that was to do something about the breeder document that Senator FEINSTEIN described so powerfully—you did not do anything with that document, did not do a thing with it.

You did not do a thing with the most stupefying thing that happens in America, where you look at the obituary list, and if you are between 20 and 40 years old you really look at that. You find out who died and then you go get their birth certificate—and between the years of 20 and 30 and 40, that is when most of this happens—and then off they go with the new birth certificate and into the stream they go, into the stream they go with a Social Security card, and into the stream with a driver's license, and into the stream of the public support system.

We are talking about the cost of a system to set that up? The cost to America, by what is happening to the welfare systems, the cost of what is happening to America with the hemorrhaging of California and Illinois and Florida, hemorrhaging—absolutely hemorrhaging, and we are not going to do anything about it? We are going to talk about the cost of a system? If this system costs $10 billion, it would be worth it, because we are losing $20, $30, $40 billion, with people who gimmick the housing programs, gimmick the welfare program, gimmick the employers. That is where we are. It is absolutely startling to me that those who want to do the most will allow us to do the least.

Let me just address a couple of old canards that just have to be addressed. In this league you are supposed to be as patient as you can. But I am always reminded of that great phrase in Rudyard Kipling's "If." Read it. You want to read "If." Read it every 5 years of your life because it will change.

If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated, don't give way to hating,
And yet don't look too good, nor talk too wise:

* * * * *

If you can fill the unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son.

But there is one part in it that is marvelous. It says:

If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,

And that is what I have seen outside, in this beltway, "twisted by knaves to make a trap for fools." I am not referring to a single person in this Chamber. I am referring to people who I know out there. I know the groups. I know them well. I have seen them in action.

So, let us look at the stuff that has floated through here with regard to the national ID card. In an April 11 "Dear Colleague" letter you were all told that:

Americans should not have to receive permission from the Federal Government to work and support their families, nor should U.S. employers need permission from the Federal Government to hire their fellow citizens. But ill-conceived measures in the illegal immigration bill to be taken up on the Senate floor during the week of April 15 will do just that.

And we have heard similar claims here on the floor today. I do not know whether this outrageous statement reflects willful distortion or something more bizarre, because, first, it is already unlawful under section 274(a) of the Immigration and Nationality Act, 8 U.S.C. 1324(a) for any person or entity to knowingly employ illegal aliens, or to hire without complying with the requirements of an "employment verification system." That is the law. And that is described in that section.

Most important, neither current law nor the proposals in S. 1664 require citizens or lawful permanent residents to obtain any form of permission from the Federal Government to work: None. Nor is there any requirement that U.S. employers obtain "permission" to employ such persons. In the present context, the word permission connotes a form of consent that can be withheld, at least partly on the basis of discretion.

In fact, there is not, under current law, and there would not be under any pilot project authorized under the bill or any system actually implemented in accordance with the provisions of this bill, after the required implementing legislation, that would give any legal authority to withhold verification except on the basis that an individual is not a citizen, lawful, permanent resident, or alien authorized to work.

Indeed, the bill includes as an explicit prohibition, a requirement that verification may not be withheld except on that basis. That was to protect the employer. We did not do that for any other reason but to protect the employer.

In that same letter you were informed that the verification provisions of the bill are "more than merely a pilot program. It is a new system that can cover the entire United States and last for up to 7 years at the discretion of the President."

In fact—fact, section 112 of the bill authorized the President to conduct "several local or regional demonstration projects." Are you going to let California just sink? Are you going to let California just sink and float off into the ocean? That is what you are doing if you do not allow them at least to do something; a pilot program. What about Texas? Are you just going to let it sink? What about Illinois? What about Florida? You cannot get there.

So we provided several local or regional demonstration projects. That this does not authorize at all what the authors of this letter assert, it will be made ever clearer as we finish up our work on this bill.

I had an amendment. We will see what happens with that. The word "regional" will be defined as an area more than an entire State, or various configurations. That would make it clear that the system covering nearly the United States of America, the entire Nation, would not be authorized. No one ever intended that. But the letter also asserts that the bill "does not replace the I-9 form but is added on top of the existing system."

The bill does not say that. The bill provides that if the Attorney General determines that a pilot project satisfies accuracy and other criteria, then requirements of the pilot project will take the place of the requirements of current law, including the I-9 form.

Furthermore, those are things that seem to escape us. We are trying to assure that employers will not have to comply with the requirements of both current law and pilot projects, pilot projects where their participation is mandatory. In addition, this same letter states, "Error rates are a serious problem." The letter refers to an estimate by the Social Security Administration that in 20 percent of the cases handled, it will not be able to identify an individual's employment eligibility "on the first attempt."

Hear that, "the first attempt." I am not familiar with the details of the estimate, but there are three responses that come to mind immediately.

First, in the INS' pilot project, if verification is not obtained electronically and the very first time, an additional,

nearly instantaneous, electronic attempt is made—instantaneous—using alternative databases or names. In the vast majority of cases, verification of persons actually authorized to work is obtained in a very few seconds.

Obviously, the whole point is to not verify certain individuals. Illegal aliens will not be verified. A handful of cases then require a visit to an INS office. To our knowledge, every one of those cases was resolved without significant delay, and remember that this is a pilot project and not a fully developed system.

Second, if there is something wrong with the data base of the Social Security Administration, it should be fixed, but we will not have to worry about that because we do not deal with that issue either. We cannot do anything with the Social Security card, to make it as secure as the new $100 bill. We cannot seem to do that, and it will not bother us because we are already told that Social Security will be broke in the year 2029 and will begin to go broke in the year 2012. But we do not deal with that one at all. That one will be one for all of you to deal with.

Third, the whole point of the pilot project is to develop a workable system, I say to my colleagues. We are not trying to do a number on our fellow Americans. We do not have a workable system right now, and you helped correct some of that yesterday, and I appreciate that. Well done. You protected the employer from a heavy fine or penalty just by asking for another document. That was good work; I think good work.

We do not have a workable system. We do not know all the problems on the surface as these projects are conducted, but if the development process is not begun, if something as milk soup in consistency as the present part of the bill, which is the Kennedy-Simpson verification process, which is all optional, if we cannot even start that, we will never have a workable system, at least in the years to come.

The letter also states that, "Employers who break the rules will continue breaking the rules while legitimate business owners must confront new levels of bureaucracy."

Most employers try to comply with the current law. They work hard to do that. They work hard not to hire illegal aliens. However, the current verification system, with which they are required to comply, is not reliable because of fraudulent documents.

I am going to show it one more time. There is no such thing in our line of work as repetition. There it is. Anybody can get one and when you get one, you can begin to do things that to the Cato Institute would be repugnant, because when you get one of these, you can go down and get welfare. You can get welfare, you can access other programs, you can do this and you can even vote in some jurisdictions with that kind of a card.

What are you going to do about that? Well, we have something in there about that, about forgery and about this and about that. We handle that. You will not handle it until you go to a pilot program to figure out what you are going to do with this kind of gimmickry, and then every time I read a report or paper from some of these opinion-filled brilliants off campus here, I am always stunned by the fact that they say what are we going to do, what are we going to do about people who abuse the welfare system, what are we going to do about people who come here pregnant and have a child in the United States of America and then give birth to a U.S. citizen? What are we going to do about people who denied a mother or father the opportunity to receive a welfare benefit because the county and the State had expended it all? It is all gone, millions are gone down the rat hole because of fake documents.

So what you have here without reliable documents is you have hundreds of thousands of illegal aliens employed by such employer. Employers can be punished if they fail to employ someone because they suspect a person is illegal if such person has documents that "reasonably appear on their face to be genuine." At least we protected the employer a bit yesterday. Right now employers can be fined by simply asking for another form of document.

Now the letter asserts, finally, "The system will lead to a national ID card. A number of congressional advocates of this system have admitted that the system will not work without a biometrically encoded identification card." I am quoting. "Establishing this far-reaching program sets us on a dangerous path toward identity papers and other objectionable elements incompatible with a free society."

I also saw an article during the days of this issue coming before the American public where it was even suggested that we were looking into the examination of bodily fluids. There is a debate and there is a thing of give and take and there is a thing such as honesty, but bodily fluids was never anything ever mentioned by any "congressional advocate" that I have ever met.

This is an especially blatant—blatant—example of the misleading nature of so many of the statements in these letters.

First, the assertion that there is a national ID card, but then the statement about congressional advocates does not refer to a national ID card, and I am one of those trained "congressional advocates" who has opposed national ID cards for all of the 17 years I have been involved in this issue, period.

I put it in every bill. Anybody who can read and write has found it in there and ignored it. I am tired of that one. You do not have to take all the guff in this place, and that is not a personal reference. I have heard that one, too. I am talking about lying.

I have put in every bill I ever did that this would not be a national ID card, and that it would be used only at the time of new hire, and it would be only presented at that time or at the time of receiving welfare benefits, that it would not be carried on the person, that it would not be used for law enforcement. That is in every single bill I have ever done, period.

The card that I believe is probably necessary is the one already used for ID purposes by most Americans, and especially in California, the State that takes all the lumps while we give all the advice. That is the driver's license or some kind of a State-issued identification card. But, ladies and gentlemen, what do you think this is? This is a State-issued identification card. That is what this is. That is why I favor the bill's required improvements in these State documents.

The reference to "biometrically encoded" is pure demagogery. "Biometric" merely refers to information relating to physical characteristics that are unique to an individual making it easier to determine if a card is being used by an impostor. That is what "biometric" is. Look it up. A photograph is a common example. A fingerprint is another.

Use of the ominous term "encoding," I guess, just appears as a totally gratuitous crack or shot. Is a photograph on a card encoded on that card? I guess it is, if you want to be stern about it. You will have to ask the authors what they mean, if they mean anything at all, by the use of that term, except inflammatory language.

With respect to the "dangerous path" statement, it is an indication of something I have noticed about many of the opponents of any improved verification system. I have found, in the 17 years of my work in this area, and especially with the Congressman from California, who is tougher than anybody ever in this Chamber—he is no longer a Member, but I had the highest respect for him; he was tough—but he displayed a fundamental distrust of the Government to do what it would do, fundamental distrust of our people, fundamental distrust of our political system. That has to be the root of this, a fundamental distrust of what we are doing. For, as I said many years ago, "There's no slippery slope toward some loss of liberty, only a long descending stairway. Each step downward has to be allowed by the American people and their leaders." That will never happen.

The claim is also made that the system "imposes costly new burdens on States and localities." CBO estimates the cost of all of the birth certificate and driver's license improvements required by section 118 of the bill, as

modified by the floor amendment which was adopted without objection yesterday—how curious, a floor amendment of mine to get all of the snarls and the bumps out of an amendment that had objection in the committee, and I then made these specific corrections to satisfy most of my colleagues, and it passed here by a voice vote without objection. That will be stricken by this amendment.

This motion to strike will take the work product that was done, with all of us in here and their staffs, and junk it, gone, history. You can do that. You may do that. If that happens, life will go on, the Sun will rise in the east, and it will be a joyous day on the morrow.

But let us be real. What I did with the phase-in of the driver's license requirements is going to cost now $10 to $20 million, spread over 6 years. I have seen estimates of the losses to the American people because of the use of fraudulent ID's. That is in the billions and billions and billions of dollars, ladies and gentlemen. That is what is happening. Not to mention voter fraud, terrorism, and other crimes that often involve document fraud.

One other one we have to put to bed, at least pull the covers up, and then go on anywhere you wish to go with this. I have to respond to a wild charge that has been made before. You try not to respond to all this stuff, but finally you just kind of get a belly full of it. The heated rhetoric which has been flying about the Chamber—threatening and stern—is totally untrue. That was about the pilot program in Santa Ana, CA.

My colleagues have heard the bill will create a massive, time-consuming, error-prone, error-riddled bureaucracy. They have heard accusations that we are racing, with no brakes, toward a national ID card that will be "riddled with mistakes" and will be "dangerous to our own workers."

Mr. President, I would like to extinguish this fiery, heated rhetoric with the cold splash of hard fact. Once my colleagues hear the truth, maybe they will be better able to sort out some of the rest of it, and the American people will finally hear the truth. I believe we will no longer have to deal with some of the old canards which are in vogue and have been in vogue for weeks here, because currently under the authority of the 1986 immigration bill, the INS is conducting a pilot project on an employment verification system. I hope no one here will try to stop it, but you never know. It is working. You might want to go scotch it before it goes too far. It is just like the pilot projects authorized by this bill.

Let me tell you what has happened so that you can hear it. Over 230 employers in Santa Ana, CA—230 employers—have volunteered to participate in this INS project, volunteered.

After the hiring of a new worker, the employer fills out an I-9 form and checks the worker's documents. Everybody is doing that in the United States, so if you hear any more argument about what we are putting on the employers to find out if the people in front of them are authorized to work in the United States of America, are citizens, do not think that I put it in this bill. It has been in the law for nearly 10 years.

So this is just like every other employer in the United States. It is a requirement of current law. It is a total distortion of fact and reality to say that we are going to ask something more of an employer to either get "permission to hire," or to "clear it" when he had not had to clear it before.

Ladies and gentlemen, they have been doing it for 10 years, every single day while we go about our work here. The I-9 is asked for, and people do it every single day. Some were offended when it first began. "Why should I do that?" I have a provision, if you are a U.S. citizen, you need do nothing more than a test that you are a U.S. citizen. That would take care of that. But we will not get the opportunity, likely, to get to that.

So let us at least start with what is there. We have a requirement in current law which requires the employer to ask the potential employee in front of him for documents. He is asked to ask for 29 different ones under the previous legislation, the present law—worker authorization ID—and then to make a tragic mistake, with no intent to discriminate, and ask for another one, and get a fine or the clink. So we corrected that. I hope we will keep that.

But remember now, in this pilot program, if the new hire is not a U.S. citizen, the employer then begins the verification process. Using a computer the employer transmits the alien registration number or the "A" number on an employee's green card to the INS. This happens after the employee has been hired. Please remember that. It happens after the employee has been hired. The majority of the time the employer's request is answered in 90 seconds. All of the inquiries are answered within 48 hours by the INS.

Here is where this fake figure comes in. For 17 percent of the newly hired workers—or maybe it is 20; I have heard both, about 1,100 workers; this was newly hired, about 1,100 workers—the INS was unable to confirm that they were legally authorized to work, ladies and gentlemen. So all of those individuals then were given 30 days to set up an appointment with a specific INS officer in a special office set up to correct possible mistakes in the INS data base.

Guess how many—I hope my colleagues will hear this—guess how many of these 1,100 individuals actually came to the INS? Mr. President, 22—22—of them came to the INS. Of these 22 people, only 17 were actually authorized to work in the United States. Their troubles were resolved within the day—within the day. The other five people who showed up were not authorized to work in the United States. I guess you have to assume that the other 1,000 people or so who never showed up to the INS were not authorized to work, either.

What about the 17-percent error rate, or 20 percent, that some opponents have spoken about? Is it the number of illegal aliens who were denied jobs by the INS pilot program? Is that it? Look at the statistics, the real statistics. The current INS pilot project is more than 99 percent accurate. In the few cases where mistakes were made, they were fixed promptly. In no case did any legal permanent resident of the United States lose a job due to this system—not one, nor any U.S. citizen.

Let me repeat myself because this is one of the most important facts my colleagues should remember: No one has ever lost a job due to faulty data in the INS pilot program. The system is used only after a new employee had been hired.

No one will ever be denied a job under this system. The horror stories which opponents have bandied about are completely and utterly without basis and fact. They are fears and illusions summoned up from the vapors to scare the wits out of the American people.

My colleagues should also know that the employers who participate in this verification pilot program think it is great stuff. They do not consider it a burden. They believe it to be a great help. I share with my colleagues' comments of those who use the system and try to look askance at the blather of the business lobbyists. When I make these remarks, I am not speaking of people in this Chamber, but those groups I know so well. I know them well. So they look askance at this blather of the business lobbies whose sole job is to vigorously oppose all legislation which impacts business.

Here is what these employers say about the INS pilot program. "I love this system," says Virginia Valadez, the human resources officer for GT Bicycles. "Now I don't have to be responsible for whether or not these people are legal. I don't have to be the watchdog."

Comments of the California Restaurant Association: "Some means of verifying Government documents is vital to the integrity of the employment system. We desperately need a reliable, convenient means for employers to verify the authenticity of the documents that the Government itself requires. I can assure you the restaurant industry will participate eagerly." It will be the first time in my memory—the restaurant groups, when I started this business, were the most resistant,

and they feel this would be extremely helpful.

Says their publication, describing the fledgling pilot verification program, "Bring offers of ready volunteer to our offices." The testimony of Robert Davis, the president of St. John Knits Co., before the select committee of the California Assembly, after describing the widespread availability of this stuff and the great difficulty that puts on the law-abiding employer says, "To a business that wants to comply and build a stable labor force, this is a major concern. Economic loss from hiring, training and loss of output from the removal of a forged document worker can be severe." He said, now he can "invest with confidence in the training of the individual, and plan for a long-term permanent work force." He believes in it. He has seen it work. "As a businessman * * * it is exciting and reassuring" and has had dramatic success.

There they are. The current program only tests individual or noncitizens in order to get a job. The illegal alien only has to claim to be a U.S. citizen, present a driver's license, Social Security card, and those are the things we will find out. How do they avoid the verification process? What do they do? Find out.

Others say we should try and call in—there has been a toll-free number called 1-800-BIG-BROTHER. They must have forgotten the one called 1-800-END-FRAUD. That is an 800 number, too, that you want to pipe into that next time you are grappling with 1-800-END-FRAUD or BIG-BROTHER and find out whether it will be cost effective, find out what we will do, see what is up in this country, do the testing we need to do, trust a Congress 6 years in the future having to cast another vote to do it right. If you do not get started, you will never get it started.

Obviously, I hope my colleagues will oppose the Abraham amendment and will acknowledge that some of the apocalyptic cries that come from out there, from the beltway, are truly without foundation and reality or fact. Remember, this is a pilot project that you are seeking to strike, with all the inevitable problems that a pilot project to a new system will involve, but if we do not even try to work out the bugs through pilot projects, we will never have a workable system. That will be, then, truly a hazing of the American public. They thought we got the job done, but we failed—and failed totally—in that.

I yield the floor.

Mr. ABRAHAM. Mr. President, I similarly acknowledge the efforts of Senator SIMPSON both with respect to the broad subject of immigration policy over the last 17 years and, more specifically, his hard work on the bill before the Senate on illegal immigration.

The positions which I have advocated on a number of the issues that are part of this bill, in some cases, have been this opposition to his position, and, in some cases, they have been on the same side. They have always been advocated with great respect for his efforts here.

I must say I sympathize with his feelings about some of the rhetoric which those outside of this Chamber have launched during the past couple of months as we have dealt with this issue before both the committee and here on the floor. I, too, have been the target of many rather unusual, strange, and exaggerated charges, as well as complaints. In my State of Michigan, in fact, groups who oppose some of the views I have on this issue have even launched paid media campaigns critiquing my activities here in the U.S. Senate on these issues. I am both an admirer of Senator SIMPSON's efforts and a sympathizer with the role he finds himself thrust into when he chose to become involved in highly important issues that touch a large number of Americans.

I comment now and finish on the comments I made earlier with respect to the implications of this verification system on the American people. We have been told as a starting point that the bill, without this pilot program, would be gutless, it would be toothless and, in various other ways, be a bill unworthy of us here. I cannot help, when we talk about exaggerated rhetoric, be a little shocked and surprised at those allegations, because I consider the bill as it currently stands, even if it did not have these pilot programs, an extraordinary piece of legislation that will combat many of the problems this country has with illegal immigration, and combat them squarely, head on, effectively, whether it is increasing the border patrols, whether it is cracking down on and ensuring the deportation of alien criminals, whether it is in partially penalizing the visa overstayers who make up such a large percentage of the illegal alien population, or whether it is sharply reducing the availability of public assistance programs to illegal aliens. All of these, I think, combined, will play a very effective role in dramatically reducing the illegal immigration problems we confront.

Equally, I think, we will see that the provisions in the legislation which protect employers, particularly small employers, from charges of discrimination, in cases where no intent to discriminate exists, are going to, likewise, allow us to address the problem of individuals who are legal aliens securing employment in this country and do so, I think, with great effectiveness.

(Mr. BROWN assumed the Chair.)

Mr. ABRAHAM. Does that make this pilot program that we are talking about, this identification verification program, the linchpin in this legislation? Is the absence of that going to make this toothless, Mr. President? I do not think so. Quite the contrary. I think, if anything, it will burden the bill and burden American citizens—taxpayers, employers, and employees—with an excessive amount of redtape, bureaucracy, and big Government intrusion that is not going to handsomely pay off in terms of the benefits it produces.

Let me just talk about some of those costs once again. First of all, this approach is the kind of big Government bureaucracy approach that I think most of us in this Congress have been arguing we find too dominant already in the American economy. Do we really want to have another bureaucracy, another effort here to try to create hoops for businesses to jump through as they make employment decisions, or for U.S. citizens, who are entitled to be employed, to jump through in order to secure employment?

Clearly, it is going to be a costly venture and a costly one both in terms of bureaucratic redtape as well as in taxpayer dollars. I was glad to hear the term "$10 billion" used as a possibility of the cost involved here. I do not know what the total costs are going to be. No one, in fact, on the floor knows that. But it is certainly conceivable that it will be great. Just as far as we are aware to this point, the assembling of this database is going to be in the hundreds of millions of dollars. The Social Security Administration has said that a national program would be $3 to $6 billion, and then it would have to be sustained.

Mr. President, that is thousands of dollars per illegal immigrant in the country just to build this system, if that is what we would end up doing. I do not think that is exactly the kind of cost-benefit approach we want to take. Let us not just talk about the burdened taxpayers; let us talk about the burden to business, and particularly to small business.

We can debate the terminology, we can talk about whether it is seeking permission or some other way to describe what would be called for under this type of an approach. But it certainly would be an additional step in the process, and it certainly would require, in some way, communicating with someone in a bureaucracy run by the Federal Government somewhere in America to determine whether or not verification indeed has occurred.

We have never, in my judgment, Mr. President, ever placed that level of burden on employers in this country. It is a costly burden, potentially a very costly burden, for small businesses, and particularly for those small businesses that have a large turnover of employees.

In addition, it is a burden on the employees themselves. Again, we have one

pilot program in Santa Ana, CA, carefully monitored by the INS, who are presumably pulling out all the stops to try to minimize delays on a database. So there are 22 cases out of 1,000—1, 2, 3 percent. Extrapolate that to the entire country or a large region, as is contemplated by the pilot program, and we are talking about thousands of American citizens who will be, in one way or another, denied initial hiring because the verification system database is not able to run at 100 percent.

While it may be the case that when a program is highly localized in a single city, with INS monitoring, the 22 people can get relatively quickly into the correct category, I do not think such a quick turnaround will be possible if the program is indeed larger, whether it is larger in terms of a full State or a region that goes beyond one State, or certainly if it was a national program.

We have had other similar kinds of things happen, Mr. President. Whenever databases are involved, there could be interminable delays. The Social Security Administration encounters this quite often, and it takes days to months to correct errors. I do not think that is the way to deal with the illegal immigration problem in America—by creating problems for people who are citizens who are entitled to work, rather than cracking down on those who are not entitled to work.

Let us not overlook the acquisition costs of the documents that will be required in order to effectuate this type of system if it goes beyond a very small project. The acquisition costs were so, I think, accurately and movingly laid out by the Senator from Ohio earlier. Imagine what we will encounter from our constituents if they determine or learn that we have moved us in a direction where new birth certificates are required, whether it is for passports, weddings, or anything else. Imagine what we will encounter if when young people go to get their driver's license, now living in a wholly different State or part of the country, find out that our law here today, in attempting to crack down on illegal immigration, has thwarted that effort, forcing them to incur additional costs in order to get their first license.

These are significant costs—costs not borne by the people who are breaking the rules, but by the people who are playing by the rules.

I do not believe, Mr. President, that we should attempt to solve the illegal immigration problem by bringing huge burdens on people who are playing it straight. I am sympathetic to the problems raised with respect to people who live in States such as California. I understand that they have different circumstances than we might have in my State, or yours. But to basically impose upon the entire country ultimately or, in the short-term, full States or regions the kinds of burdens that are contemplated by this type of verification system, it just seems to me, Mr. President, that is not a cost-benefit analysis that works out favorably for the American people.

Now, Mr. President, the real issue that we should focus on, in addition to costs, are benefits, because that is the calculus. I think it is important for everyone who is considering how they feel about this issue to think about the degree to which such a program as is being contemplated here can possibly work. Will the forgery stop, Mr. President? Will it really mean that there is not the capability of circumventing the new system that might be developed? Do we really believe that a system can be made perfect? Do we really think that on Alvarado Street in Los Angeles, or in any other city where there might be this type of forgery, in a couple of years, if not sooner, somebody not will come up with a system that breaks the code, that somehow penetrates the new security that is developed as part of these pilot programs? I am very skeptical, Mr. President.

But, also, let us not lose sight of the fact that, even separate from the ability to develop a foolproof system, we have the problem that many, if not an overwhelming percentage, of the employer problems we have are intentional. So let us ask ourselves this: If there is an employer who knowingly or intentionally intends to hire someone who is an illegal alien, are they even going to participate in the verification system? I do not think so. I do not think so, Mr. President.

So while the people who play by the rules are incurring the additional costs of setting up the kinds of systems that will be required to interface with the database in Washington, the ones who would shun the rules today will shun the rules tomorrow. As a consequence, the issue of whether or not there is a job magnet will not be very effectively addressed by this type of an approach, because as long as there are people willing to work around the rules, there will be an audience of people who will think they can come to the country illegally and get jobs with those who basically eschew the responsibilities as employers of following the rules today.

So there we bring ourselves to the final balance. On the one hand, massive costs, taxpayer costs, putting this kind of program together. Whether it is a national database, regional database, State database, it is going to be costly—costs for the small businesses, in particular, but for the employers of America, who have to develop whatever system it is to comply with and interface with the database; and then costs in terms of actually doing such compliance; costs to the employees themselves, who will be required to go through the additional step, and especially to those who, because of a database mistake, do not initially get hired and have to go through the additional bureaucratic red tape to get back into the system; costs to all who will need either birth certificates and driver's licenses and find out that because of what we have done, they now have to get a new one. Those are the costs on one side.

On the other side, as I say, the benefits, in my judgment, are substantially less than that which has been suggested earlier, because I think it will ultimately still be possible to find a way around the system. For those who want to find a way around the system on the employer side, a verification system will only make a very minimal impact. For that reason, I think we do not need this step in the direction of more big Government. I think we should strike the verification system and the driver's license and birth certificate provisions of the legislation.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I again rise in support of the amendment.

I would like to return, if I could, to the issue of the birth certificate because I think it is so revolutionary what we would do if we actually passed this bill as it is written and if we turn this amendment down. As I pointed out earlier, we are saying to 270 million Americans that your birth certificates are still valid. You just cannot use them for anything. If you really want to use them in the traditional way in which we use birth certificates today, you have to go back to the county where you were born or contact that county. You have to get a new birth certificate under the prescription of the Federal Government. For the first time, we have a federally prescribed birth certificate. We have a federally prescribed driver's license. In essence, they are not even "grandfathered in," to use the term we use many times. You will have to get a new one if you want to use it.

A 16-year-old who just wants to get his or her driver's license, we are going to say, "No, you cannot use that birth certificate that your parents have held onto for 16 years. You have to get a new one." We are going to say the same thing to someone who wants to get married. You have to go back to contact that county where you were born 20, 30, or 40 years ago to get that birth certificate. You have to be reissued a new form. We will have to say to someone 65 years of age who wants to get Social Security, or Medicare, "Sorry." You come into the Social Security Administration and you think you are going to get your check next month. You sign up, doing what you are supposed to be doing. We will say to them, "No, you have to go back and

get a new birth certificate," a birth certificate that was issued initially 65 years before that. I think that is an undue burden. I think it is a terrible burden.

I would like to talk now for a moment about another aspect of this, and that is those who argue in favor of requiring this national birth certificate—nationally prescribed birth certificate. To those who argue that it is worth it, we are going to help solve the illegal immigration problem—and I know they are well intentioned when they say this—and it is worth it to require the people we represent to do all of this, I would argue, walk through this with me and see if at the end you still think that a birth certificate—this new tamperproof birth certificate—is really going to solve very many problems, because it is based upon the premise that the person who gets this new tamperproof birth certificate is in fact the person they purport to be. That, I think, is a leap in logic which may not necessarily be true.

My colleague from Wyoming has consistently—and I respectfully say that he has been at this for 17 or 18 years. He refers to the birth certificate as the "breeder document." This is the real problem: We have to get at the birth certificate. The difficulty with that is that under the laws of many States and the way it operates in many States, that breeder document may be a second-generation document or a third-generation document.

Let me take my home State of Ohio. Ohio is what might be referred to as an open State. It is not the only State that follows this procedure. There are many other States that follow this as well. All you need to do in Ohio to get a birth certificate is to stop in at the county health department office. You put down your $7, and you get a copy of your birth certificate. Not only can you get a copy of your birth certificate, Mr. President, but you can get a copy of anybody's birth certificate. It is a public document. It is a public record. So I can go into Ohio and get a birth certificate for anybody if they were born in that county.

What is the protection here? You can issue the finest document in the world, with all the bells and whistles on it in the world; you can spend all of the money you want to make it tamperproof, but if the person who walks in and gets that document is not that person, what good have you done? So in States like Ohio that have this open system, open record system, what good does it do? There is absolutely no good at all.

There are other States that probably are more restrictive, but I would say even in those States that are more restrictive, unless we are willing to impose burdens on American citizens that no one in this Chamber will impose, unless we are willing to say to the 65-year-old who wants to get Social Security who now lives in South Carolina and was born in Ohio that you have to personally go back to Cleveland, OH, or Cincinnati where you were born to get your birth certificate, unless we are willing to say that, how in the world do you protect the integrity of that birth certificate? How in the world do you do it by mail?

Let us take it a step further. Let us assume the State even has some very restrictive ways in which they will issue a birth certificate. What is the use of being able to demonstrate who you are, whether it is a driver's license, if you have a driver's license such as Senator SIMPSON has over there—I heard him tell the story of how cheap it was to get that driver's license. It is a great story. It illustrates a lot of the problems that we have. Then you go to get the breeder document, and you can go circular. Even if you have a restrictive State, not like Ohio and other States where you can get anybody's birth certificate, what in the world good does it do to have all these bells and whistles on these birth certificates?

We will spend a ton of money. We will violate States' rights because we are going to tell the States what they can accept and what they cannot accept for official State business, all in the name of trying to solve this problem. I would submit it is not going to solve it at all. In fact, again, it is not too much of a leap of the imagination to think it may create more problems. Why? Because now you are going to have this routine of millions of people every year having to go back through when they turn 16 and want their driver's license and want their Medicare card, or when they want to get married; millions of people have to go back to the origin county of their birth to get a birth certificate. These will be issued en mass.

It seems to me that you do not have to be too smart if you are a person who wants to violate the system. If you are a person who wants to game the system, as the Senator from Wyoming said very eloquently, there are people who are doing it, and it is a problem. But now you do not have to be too bright to be able to figure out how to start working that system and how to get out of some of these counties, particularly in States that are open for birth certificates, this breeder document. Only now it is going to be a breeder document that is going to be superior. You are going to be in the situation where you, as an imposter, are going to have a better document than the person who is actually that person.

MIKE DEWINE can go in; I could figure out how to game the system. I could get someone's birth certificate if I was close in age to that person. It might be able to pass. It might be able to work. I have a great birth certificate. If I took it to the Chair and he was the employer, he would say, "That's it, a new birth certificate, it has to be right." And if the next day the real person came in and they had their old birth certificate, the old, moldy birth certificate that had been in their closet or in their attic, or had been in the desk for a number years, you would say, "Well, that is not as good. I have to take the other one."

So I think when you work this out—it all sounds great in theory—it just will not work. If you look at how the government really works at the county level, if you look at how health departments issue these certificates that really work, if you take into consideration the fact that an open State can get anybody's birth certificate, this just does not make any sense.

Let me turn to another point. I think my friend from Wyoming has been too modest. This is a good bill. He has made it a good bill. He has had 17 years of experience at looking at things that we need to do. There is a consistent list of things that we have done. I say "we"—"he" has done. This is the legal immigration bill passed by the subcommittee, a portion of it. These are the things each one of us think relates to a specific problem of dealing with illegal aliens.

I reduced it to a chart form because I do not want anyone in this Chamber to think that if this amendment is accepted—which I certainly hope it will be—that there is nothing left in the bill to deal with illegal aliens. This is a tough bill. The Senator has done a great job. He has taken his years of experience in the subcommittee, along with members of the subcommittee, and he did a great job.

Look at what the subcommittee did:

Increased Border Patrol, INS investigators, wiretaps for alien, smuggling, and document fraud;

RICO for alien smuggling and document fraud;

Increased asset forfeiture for alien smuggling and document fraud;

5. Doubled fines for document fraud;

Next, faster deportation of illegal aliens;

And finally, faster deportation of immigrants convicted of crimes.

That was the bill coming out of the subcommittee. It is a bill that I think I have heard my friend say would have been hard to get through on the Senate floor even as recently as a couple of years ago. But it is tough and it is good.

Then the bill went to the full committee, and the full committee even upped the ante. The full committee added additional things. This is what the full committee did.

"Bill Made Tougher in Committee."

Increased penalties for visa overstayers.

Let me stop with that for a minute because that is a problem. My friend

from Wyoming has identified this as a problem. These are people who overstay. They are people who come here legally—they are not legal immigrants, but they are people who come here legally. They are students. For any number of reasons they are here, but then they stay. That is a problem. This provision put in by the full committee deals with that—increased penalties for visa overstayers.

Next: More investigators for visa overstayers;

Next: Eliminate additional judicial review of deportations;

No bail for criminal aliens;

Three-tier fence along the border;

Next: Expand detention facilities by 9,000 beds;

And finally: Increase Border Patrol by 1,000 agents.

All of those provisions are in this bill. So it is a bill that is a strong bill, and no one, no one should be ashamed of voting for this bill. No one should feel they cannot go home and be able to say, "We passed a very, very tough bill."

Let me turn, as I said I would earlier, to the issue of a national verification system.

I understand that this is a pilot project. Again, I only bring to the floor my own experience. Each one of us brings our own experience. I think that is the great thing about the Congress and the Senate. We do have varied backgrounds. My background has been, at least in part, in law enforcement as a county prosecuting attorney.

One of the things that shocked me 20 years ago is when I found what kind of state our criminal records were in. What am I talking about when I am talking about criminal records? I am talking about basically the same type of thing here, only I am talking about a finite group of individuals, criminals.

It is important for the police officer who comes up behind a car to be able to determine who is in that car, if that person has a record, to be able to determine if that person is wanted, or at least if that car is a stolen car. When someone is apprehended, then it is important to be able to determine whether that person is wanted, whether they have had a criminal record in the past. The same way for a judge who looks down at arraignment. He is on his 52d person, or she is on her 52d person, the judge is, and is trying to determine what the bond is. It is important, when they glance at that record, the record be complete; that they know 3 years ago this person committed a rape, or they know that 4 years ago this person fled the jurisdiction. All of that is important, and police officers deal with this every day and have to rely on this information to make life and death decisions.

I was shocked a number of years ago to find that this system is not entirely accurate. That is a kind way of putting it. When I became Lieutenant Governor in Ohio, we had as one of our goals to try to upgrade the criminal records system so police officers would know who they were dealing with. We found that only 5 percent of the criminal records in the State of Ohio were totally accurate—only 5 percent. That is not unusual. That is not unusual.

In all the discussion about the Brady bill, we got into the whole issue of the accuracy of criminal records. We found that there are very, very few States that could put in an instant check system because of the high inaccuracy level.

Now, after having spent hundreds of millions of dollars to try to upgrade a criminal record system that we depend on to make life and death decisions, how in the world do we expect to, overnight, re-create a national data base system for employment, a system that, by definition, is going to have to be a lot bigger?

Now, people could say: "Well, you are talking about a pilot project, Senator. Isn't that what you are talking about?"

"Yes."

Yes, we are talking about a pilot project, but I have been thinking about this, and I cannot come up with any way you can have a pilot project that really works and is really accurate and really protects employees or potential employees unless you have a national system. We cannot build walls around States. We cannot build walls around communities. People go back and forth. You have to create a national system, even if you are only using it in four or five pilot projects, and so we will have to build a national system. We will have to build a national system that is not going to be error prone. Anyone who has had any experience with the criminal system in this country, who really has looked at it, I think is going to be hard pressed to be able to make a good argument that this new system we are going to create is not going to cause serious, serious problems as well as be extremely expensive.

I know there are some of my colleagues who want to talk some more on this bill, but I just believe this amendment makes eminent sense. It is a good bill without it. It is a great bill. It does a lot. The Senator from Wyoming is to be commended for the work he has done. But unless we take out these provisions, unless this amendment passes, I think we are all going to be very sorry, and I think we are going to have a lot of explaining to do to our constituents when that 16-year-old wants to get his or her driver's license and they find out, no, that birth certificate is not any good; the 65-year-old finds out, no, my birth certificate is not any good anymore; I have to go back and get a new one, or when someone wants to get married and they find out their birth certificate is not any good either. I think that is a very serious problem.

Mr. President, I see my friend from Wyoming standing. I yield the floor.

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

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I thank the Senator. I wish to review the situation. We have a Leahy amendment, on which, I believe, if anyone wishes to address that, we are ready to close that debate. There is no time agreement here, but I think that is ready to be closed. I think Senator HATCH has a statement and maybe will enter that in the RECORD. Senator BRADLEY has an amendment, and there were several who said they wished to speak on that. I have not had any further word from anyone on that. There is no time agreement on it. Then the Abraham amendment, which now goes to Senator KYL for his time. I have really nothing much further on any of those three.

So, again, if we are going to go on, maybe we could lock in a time agreement to be sure that we let our colleagues know there will at least be three votes on these three amendments.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I shall be quite brief. If the ranking majority and minority members wish to discuss a time agreement, that would be fine, or perhaps while I am speaking they could do it, but I will not speak more than 15 minutes for sure.

Mr. President, I rise in opposition to the amendment. The discussion that my colleague from Ohio has just engaged in primarily relating to the issue of the birth certificate, I will leave to Senator SIMPSON. I should rather respond to arguments primarily made earlier by the Senator from Michigan and, to some extent, the Senator from Ohio relating to the problem of verification of employment status.

I wish to go back in time to set this issue in proper context. In 1990, 6 years ago, the Congress increased the limit on legal immigration to the country by 37 percent because we thought the laws that imposed serious sanctions for hiring illegal immigrants would have the effect of reducing that illegal immigrant population; that making it harder to employ illegal immigrants would in effect remove that magnet—employment—that was drawing many people across the border, particularly from Mexico.

Unfortunately, it has not worked out that way because the system just has not worked very well. Unfortunately, between 300,000 and 400,000 illegal immigrants are now entering the United States every year, many of them people seeking these job opportunities. In fact, in my own State, the INS estimates that about 10 percent of the State's work force is made up of illegal immigrants.

I hope Members of the Senate believe that it should not be acceptable to have so many illegal immigrants taking jobs here in the United States. The question, then, is what we do about it. We have a system that is not working, and we need to do something about it.

That is what the bill attempts to deal with. We started out with a bill that dealt with it in a much more effective way. But in order to compromise and get more support over the weeks and months, many changes were made, to the point, now, that it is really a very modest approach. This is a very modest change we are seeking, to try to find out how to strengthen this verification process so not so many illegal immigrants are working in the United States. This is clearly the focus of the effort, to reduce the effect of the magnet of employment.

It has been illegal to hire illegal aliens for 10 years now. So I think the first thing you have to do is ask what is not working and what can we do about it? The Jordan commission, which has been referred to many times in this debate, studied this problem as much as any, and it came up with several recommendations. What the Jordan commission and many other immigration experts have concluded is that the best way to reduce the number of illegal aliens working in our country today is to implement some kind of an easy-to-use, reliable employment verification system. In fact, the Jordan commission reported that current employer sanction laws cannot be effective without a system for verifying the work eligibility of employees.

So, if the current system is not effective in weeding out those individuals who are here illegally and, as the Jordan commission and others have said, we have to find a way to develop a workable system, what is the next step? You do some research. You try to do some pilot projects, some experiments, some demonstration projects, as they are sometimes called, to find out what will work the best. That is what the committee did. It adopted a verification provision which authorizes a series of pilot projects. We are not changing the law. We are not imposing a system. We are certainly not imposing a national system. We are simply authorizing the Attorney General to experiment with some pilot projects over a short period of time, 4 years, to determine what will work, what is the most effective way for employers to verify that the person they have hired is legally authorized to work. That is very straightforward.

These projects are intended to assist both the employer and, frankly, the person seeking employment. Because, if an individual seeks employment and, frankly, looks like me, there probably are not going to be too many questions asked. But, in my own State of Arizona, we have a very large Hispanic population. There are a lot of people who seek employment in which the employer is basically in a dilemma, in a catch-22 situation. If he asks too many questions of that individual, perhaps because he or she looks Hispanic, speaks with a Spanish accent, that employer can be charged with discrimination. But if the employer does not ask enough questions to verify the legal status of the employee, he can be charged with violating our immigration laws for hiring somebody who is not legally authorized to work here.

As Senator SIMPSON and others have said, the system we have tried to devise to verify the working status, or legal status, of the individual for work purposes is not working because it relies on a series of documents, all of which are easy to forge. Therefore, you end up with a situation where it is virtually impossible for the employer to really know whether the individual is entitled to work or not.

The employer fills out what is called an I-9 form to verify the eligibility of each person hired. But, as I said, that system is open to great fraud and abuse. So one of the purposes of the verification system is, obviously, to make the law work. Another purpose is to make it easier for the employer to verify the legal status of the individual. Another purpose is to protect the individual seeking employment.

I want to make it very clear that the bill specifically prohibits the establishment of any national ID card. What many of us believe, ideally, is there is no card at all. Let us take the Social Security number. You are frequently asked to give your Social Security number, but you do not necessarily have to have a card with you that identifies you as an individual for other purposes. On those few occasions in your life, hopefully few for most of us, where you are applying for a job, you give the Social Security number. Perhaps one of the pilot projects is a 1-800 number that the employer can dial up and punch in the numbers of the Social Security number and get information back that the individual who he has just hired is, in fact, legal.

In any event, we are not talking about a national ID card here, and the debate should not be confused with that prospect. Moreover, the employee verification would only be used after an individual was hired, so you do not run into problems of discrimination here. Perhaps most important—and I really view this as a deficiency in the bill, not something to brag about, but it certainly answers one of the objections of my opponents—is that these pilot projects would not in and of themselves establish any new verification system for the country. The Congress would have to actually act, would have to pass a law implementing a verification system before it ever took effect. So there would be plenty of opportunity for those who oppose this, once a pilot project had established some good ideas here, to pick those ideas apart if they do not like them. Basically what they are arguing against is something that has not even been created yet. They are saying we cannot imagine a system that would work well and therefore we should not even try to find one.

As one of my colleagues said, it is impossible to have a foolproof system. That is the last argument, except for the ad hominem argument, that is made in a debate when you do not have a good answer. It makes perfection the enemy of the good. There is only one perfect thing in this universe and that is He Who made the universe. None of us is perfect. None of our laws is perfect. No system we can devise is perfect. Nothing is foolproof. Nothing is even tamperproof for people who are not fools but are very clever individuals.

But we can try to do something to enforce a law that, 10 years ago, everyone thought was still a good law and none of the opponents of this verification system is trying to repeal. They are, in effect, willing to allow a law on the books they know cannot be enforced. Nothing detracts more from a society than keeping laws on the books that everyone knows are not being enforced. It breeds an attitude against the law, and, after all, the law is the underpinning of the country. We are a nation of laws.

If we willingly, knowingly, allow a lot of laws to be on the books that everybody ignores because we know they do not work, it makes them unimportant, in effect. It make the purpose behind them unimportant. I submit we are not seriously doing our job if we simply argue against trying to improve a law with nothing to substitute to make it better. There are no concrete, positive suggestions here, no constructive criticism. It is all negative criticism. You cannot make a perfect, foolproof system, they say.

Nobody is saying we can. But we can sure make it a lot better than it is. We cannot make a foolproof system along the border either, but that does not keep us from trying. Almost everyone here is going to support training 1,000 new agents to put on the border and in our cities every year for the next 7 years; to build fences, to build lights, to do all the other things to try to keep the border more secure than it is. It will never be totally secure, but we do not give up. We try to seek new ways of protecting that border. In fact, we have some pilot projects in this bill to experiment with different kinds of fencing and different kinds of lighting and roads, to see what works the best to secure the border.

Why can we not have some pilot projects to experiment, to see what are

the best ways of verifying the legal status of people for employment purposes—and welfare benefits, I might add? It is a false argument, to make perfection the enemy of the good.

All this bill does is allow us to try some new things to see if they will work. Now what is wrong with that, Mr. President?

I also heard an argument that it is going to cost the employers. Absolutely false. First of all, we made it very clear that the pilot projects cannot cost the employers anything and, secondly, one of the reasons we are trying to develop a new verification system is to decrease the cost of compliance. It is not easy to comply with the filling out of these I-9 forms. I know, I talked to a lot of employers who do it. It is a hassle. It will be much easier and less costly for them if we can implement a truly effective verification system.

In the end, Mr. President, as I said, the verification system that is contemplated in this legislation is really a very minimal effort. It is a pilot project only. There is no assurance, as the original bill provided, that a nationwide system will ever be implemented. Such a system would only arise if we concluded that there are some really good ideas that come out of this pilot project, presumably with a majority of the House and Senate agreeing to implement that verification system with legislation.

As I said, this can really only be called a beginning, but it is an important first step, and I think that the verification provisions of this bill, minimal as they are, should not be eliminated as the opponents suggest, but rather should be retained.

Therefore, I urge my colleagues to vote against the motion to strike these important provisions from the bill.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I know we have had a good debate and discussion on this amendment. Let me just summarize very briefly the reasons that I believe that the existing provisions are so important if we are serious about dealing with the problems of illegal immigration.

First of all, there have been comments by those who are supporting striking these various provisions that utilize an old technique that we know of around here and many of us have seen many times, and that is, misstate what is in the bill and then differ with it. Misstate what is in the bill and then differ with it.

That is true with those who have suggested that we are moving toward a national identity card. It is also true of those who say we do not want a new kind of national system that is going to be governing in the rural areas or urban areas of this country; that it somehow is going to be national.

Mr. President, at the present time, we know, as it says in the Immigration and Nationality Act, to hire for employment in the United States an individual, complying with the requirements of the subsection (B), and subsection (B) is spelled out in such a way as to require everyone in the United States of America, whether they are in Maine, Wisconsin, Florida, Massachusetts, Texas or California, to fill out this particular form, the I-9 form. That is a national requirement in existence at the present time.

Do we understand that that is already in existence? And behind that, with the other requirements in terms of the identification of the individual, you have a list of acceptable documents.

The purpose and the thrust of this particular amendment in the first instance, on the question of the birth certificate, is to make sure that documents that are going to have to be required and be supplied are going to be accurate.

Why is that important? It is important, first of all, if we are serious about doing something about illegal immigration. If we are not going to do that, then the magnet attraction of jobs in the United States is going to continue to invite people from all over the world to come to the United States.

We can build fences and fences and fences and hire border guards and border guards and border guards, but we have seen what happened in Vietnam when we had those various fences out and mine fields and every kind of lighting facility. People still were able to bore through to where they wanted to go if they had a sufficient interest in doing so.

No. 1, we have a national program at the present time.

No. 2, everyone who wants to work and every employer in this country is required to fill this out.

The thrust of the Simpson proposal is to get at the question of ensuring that the documents that are going to be provided to that employer are going to be legitimate and that we are going to make substantial improvements with the problems of fraud in the making of those documents, as well illustrated by the Senator from California. That is what this is all about.

One of the provisions says that we are going to have to try and make sure that we are going to have birth certificates put on tamperproof paper. We hear how the world is coming down because we are going to have that requirement.

Let us look at what the legislation says on birth certificates:

The standards described in this paragraph are set forth in the regulations on page 38, and it says on line 13:

(i) certification by the agency issuing the birth certificate—

Whatever agency in the State issues the birth certificate.

Use of safety paper, tamper-free paper, that is true. We have said that they have to move toward tamper-free paper.

The seal of the issuing agency—

Whatever that agency is in any State.

and other features designed to limit tampering—

Left up, again, to the State.

counterfeiting, and use by impostors.

There it is, I say to my friends. Those are the provisions that we are asking in order to stop illegal immigration into this country. How can we say that these are unreasonable? How can we say that these are not necessary? How can we say if we are serious about illegal immigration that just insisting that there is going to be tamperproof paper out there, the seal of the issuing agency, whatever that might be, and other features designed to limit tampering and counterfeiting. We let the States do whatever else they want to do, but we are trying to get a handle on this.

Mr. President, we have heard a lot of questions about how this is going to be costly. It is approximately $10 an issuance of a birth certificate in the State of Georgia. We can give other illustrations of that as well.

So it is important as we go to this issue about the birth certificates to really understand it. As has been pointed out time in and time out during this debate, the birth certificate is that breeder document. If you get that birth certificate from any State that has open files on it—we have 13 States that have open files on it—as I mentioned earlier, and you can go on in there and get a copy of anyone's birth certificate and get your own picture put with that birth certificate, and you can have a driver's license, if you pass the driver's requirement, and that is one of the eligibility cards for employment.

So, Mr. President, if we are serious about trying to deal with this underlying issue, this proposal that Senator SIMPSON has is absolutely essential, necessary and reasonable to try and deal with this issue.

On the second question about the various pilot programs to figure out a better way to help employers verify who can work, because the current approach is not working, our provision simply requires the Attorney General to conduct some pilot programs.

I wish we would spend a moment, and I will just take a moment, referring our colleagues to those provisions on page 13 of the legislation which outlines what will be necessary in terms of these various pilot projects. We pointed out they are not being put into effect. They will be completed and then a report will be made to the Congress, and the Congress will be able to take whatever steps that it will.

It says:

(2) The plan described . . . shall take effect on the date of enactment of a bill or joint resolution . . .

The objectives it must meet: the purpose is to reduce illegal immigration, to increase employer compliance, to protect individuals from unlawful discrimination, to minimize the burden on businesses.

Those are the objectives. They sound pretty good to me. That is basically what we are considering on that.

Within that, Mr. President, as I have seen as a member of the Judiciary Committee, they believe that they may very well be able to issue or develop programs to increase the certification and accuracy that are industry based, perhaps regionally based, but industry or employer based. You have about 80 percent in seven States, 80 percent of the illegals in seven States.

There are some very interesting pilot programs that are in the process at the present time. We have not the time to go through them, although I think anyone on the Judiciary Committee who took the time to get the briefing from the Justice Department has to be impressed about what they think the possibilities are of really strengthening the whole process to be able to root out illegal immigrants from the employment process in this country.

There are very important privacy protections, Mr. President, and the list goes on. We have drafted to deal with that. The amendment has been drafted to try to take into consideration every possible limitation and sensitivity.

But, Mr. President, we are going to have to ultimately make a judgment. If you are serious about controlling illegal immigration, serious about that, recognizing that half the illegals get here legally and then jimmy the system with these documents that are fraudulent, picked up easily, and get jobs and displace American workers. If you are interested in halting illegal immigration, you are going to have to do more than border guards. You are going to have to get at the breeder documents and get it in an effective system.

If you are interested in protecting the Federal taxpayer, from illegal aliens getting fraudulent documents so that they can qualify for public assistance programs, you better be interested in doing something about these fraudulent documents or otherwise we are just giving lip service to trying to protect the taxpayer.

If you recognize the importance of trying to do something about the illegals, again, displacing jobs, we feel that it is important that we at least try to develop three pilot programs to see what recommendations can be made to try to deal with this problem. These are recommendations that are made by the Jordan commission and by others who have studied it. We ought to be prepared to examine those at the time they are recommended, to evaluate them, to find out if they are going to make a difference. I believe they can make important recommendations and suggestions.

Mr. President, this is a hard and difficult issue. It is a complicated one. For people just to say that we can solve our problems with illegal immigration by bumper-sticker solutions, that with that we are going to halt illegal immigration, that all we have to do is put up fences and more border guards, that we are going to halt that just by adding more penalties—I have been around here. We have added more penalties on the problems of guns since I have been around here than you can possibly imagine. You think it is stopping gun crimes in this country? Absolutely not.

You can just keep on adding these penalties, but unless you are going to get to the root causes of any of these problems, we are not going to have a piece of legislation that is worthy of its name in dealing with a complex, difficult problem.

Let me just say, finally, unless we are going to do that, we are going to do what we have heard stated out here on the floor, the American people are going to get frustrated by the failure to act; and then we are going to have recriminations that are going to come down in a cruel kind of world and divide families and loved ones, and there will be a backlash against legitimate people being reunited and trying to make a difference and contribute to this country.

This, I think, is one of the most important pieces of this whole legislation. I hope the Abraham-Feingold amendment will be defeated.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. This has been a good debate. It appears to be winding down. Let me just add a couple responses to the comments of the Senators from Wyoming and Massachusetts.

One of the words that has been kicked around here is the word "permission." Does this employer identification system, if it is fully implemented, require permission from the Federal Government for an employer to hire somebody? It has been sort of muddying the issue.

I suppose you could call the current system, asking for "permission." It is kind of a loose use of the word, because what is required now with the I-9 is the obtaining of a certain kind of identification card. But what it does not include—and this is the phrase I used when I spoke; I did not just say "permission," I said, "having to ask permission from Washington, DC." That is what this system that could arise from this proposal may create.

What happens now is the employer does not have to get on the phone or through a computer to find out something from a national databank. That is a big difference. Ask anybody who tries to run a small business or a farm how they are going to like the idea that, in addition to everything else they have to do now to try to keep their business going, every time they want to hire somebody under one of these alternatives, they would have to either call Washington or they would have to communicate with Washington through some other system, such as a computer system.

Who is going to pay for all those systems? Who is going to make up for the lost time of the employer who has these additional burdens? It is very important to distinguish here between what is current law and what this bill could do if this amendment is not adopted—getting permission from Washington, DC. I think that is a fair statement of what this adds to this bill.

How can this possibly square with the rhetoric and legislation proposed in the 104th Congress? Whatever happened to the notion that we should not do more unfunded mandates from Washington, especially on small businesses? Whatever happened to the notion of regulatory reform, which almost every Senator at least paid lip service to? This seems to be one of the biggest potential unfunded mandates that has ever been proposed on this floor.

I am confident that almost no employer in the State of Wisconsin would feel comfortable with the notion that suddenly, in addition to everything else they have to do, they have to call up Washington under this. If there is any ambiguity involved about the possibility that this might occur, I refer to page 26 of the bill, and subsection (E), where it explicitly states that one of the things that could be done in these pilot projects is to create the following:

A system that requires employers to verify the validity of employee social security account numbers through a telephone call, and to verify employee identity through a United States passport, a State driver's license or identification document, or a document issued by the Service for purposes of this clause.

So it is explicit in the bill. It is not just some objectives, general objectives, as the Senator from Massachusetts was reading earlier.

You go 13 pages later, there are the explicit approaches that are permitted. One of those approaches is to put in place a pilot program that presumably would lead to a national program requiring every employer to essentially call Washington after they have hired someone. I think this is very troubling and certainly something that should be removed from the bill.

Another comment that I found interesting was the comment of the Senator from Wyoming. He said that if this system costs $10 billion, it would be worth

it. I think that is debatable, perhaps. But we have no assurance that even after we have gone through this process, either allowed every employer to do this or mandated every employer to do this, after we spend $10 billion, we have no assurance at all that this system will work.

There will still be fraud. There will still be fraudulent documents. No one has been able to assure us this is foolproof. We may have created this giant mandate and spent $10 billion, have this huge system in place, and it may not work. So it is not just a question of spending the money. There is no guarantee it would, in fact, work.

So the question here in the end is, What the adoption of this amendment will do to this whole bill? Some say it will destroy the bill. Others think, as I do, as Senator ABRAHAM does, that it will make it a measured response. Instead of using a meat ax to deal with the problem of illegal immigration, we will focus on the tough items that are in the bill that the Senator from Ohio identified.

There are strong measures in this bill. Frankly, I think a couple of them might go a little too far. This is not a weak-kneed piece of legislation if we get rid of this extreme mandate that could potentially arise from these pilot programs.

So, Mr. President, for those who support a strong immigration bill, I reject the notion that getting rid of this potential employer verification system would make it a weak bill. I think that is wrong. I think everyone should remember the balance here between keeping the strong provisions that are in the bill versus making the bill so difficult for so many Americans and so many businesses that it would be resented rather than welcomed. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SIMPSON. Mr. President, let me propose a unanimous-consent request, which will get us to vote on the pending amendments, if I may, and answer any questions, or you may reserve the right to object. I will certainly do that. Here is the consent agreement I would propose.

I ask unanimous consent that the vote occur on or in relation to amendment No. 3790 at the hour of 4 o'clock today to be followed by a vote on or in relation to amendment No. 3780, to be followed by a vote on or in relation to amendment No. 3752; further, that there be 2 minutes of debate equally divided in the usual form prior to each of those votes.

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

Mr. SIMPSON. Let me say, too, that there are two other amendments. There was an amendment of Senator FEINSTEIN from last night with regard to fencing, which Senator KYL and Senator FEINSTEIN are working toward resolving and may have something on that. We are not ready for a vote there. Of course, that is not part of this.

Then there is an amendment of Senator SIMON with regard to deeming, with regard to the issue of disabled persons. We have not included that here, but that will be coming up as soon as we conclude this.

Senator REID has an amendment with regard to criminal penalties on female genital mutilation.

Mr. ABRAHAM. Mr. President, I do not intend to speak much longer. I just wanted to give a brief summary of a few points, both in response to some of the arguments that have been made by the last few speakers and also just to kind of put in perspective exactly what this all comes down to.

First of all, a statement made earlier that this pilot program approach or the broader approach would not have any cost to employers is simply not the case for a variety of reasons, but the National Retail Federation has suggested that even the pilot program as conceptualized would probably work out to something in the vicinity of $7 per verification. That might not mean a lot to a business that does not have much turnover, but to those that have lots of employees coming and going it is a pretty big impact.

In addition, it has been suggested that somehow because the 1986 legislation has not gone as far as people had hoped for, it is a mistake to resist this approach that is being proposed with the pilot program. I think that is actually counter-intuitive, Mr. President. The fact is, every few years people come along with a new, better mousetrap, it would seem, or they would claim, for addressing the problems of illegal aliens securing employment.

Ten years ago we burdened the American economy and our businesses and employers with a lot of redtape—I-9 forms and other things—and they have not worked. Those who bring this amendment today are saying, "Let's not add yet another level, another tier, another round of redtape to those people who are trying to play by the rules and create opportunities for people in this country."

Third, Mr. President, it has been suggested that somehow this is really something good for employers, it is good for people who might be discriminated against because of their ethnicity or their race. This is a case, though, where frankly the people who are the alleged beneficiaries are saying, "Thanks, but no thanks." That is why this amendment that we are bringing, both the verification amendment as well as the amendment that Senator DEWINE has separately offered with respect to birth certificates and driver's licenses, are being supported by the National Federation of Independent Business, and they are key votes for that organization, by the chamber of commerce, by the National Association of Manufacturers, by the National Retail Federation, and yes, the National Restaurant Association. We have heard earlier somehow that restaurants were supporting this. The national association opposes it.

The businesses who will have to implement this, whether in pilot program form or otherwise, say, "Thank you, but no thanks." So, too, do groups historically fighting discrimination, such as the ACLU and others. The fact is, the beneficiaries are not really going to benefit, Mr. President, if this is looked at closely.

Meanwhile, I draw attention to the issue of the pilot project. We are being asked to support this on a theory it is not really a national system but a pilot project. The way the legislation is drafted allows that type of pilot program to encompass regions with no definition as for their size. In addition, because of the nature of verification, it almost certainly will require the creation of the type of national data base that will be both costly, onerous, and burdensome. To say that a pilot program is just a small step is not accurate, Mr. President. It is a very big step.

That brings me to the final point I want to make today—the cost versus the benefits. The costs will be great to employers who have to verify new employees, whatever the size of the program. The cost will be great to the employees themselves who are playing by the rules—U.S. citizens and those who legally can seek employment—because those people in some cases will be denied employment because of data base malfunctions. The cost to taxpayers of setting up the type of data base involved will be considerable, and the cost to average American citizens who, because of this type of program, find they need new birth certificates or new driver's licenses, will be considerable as well. A lot of costs, Mr. President.

The benefits, on the other side, are not very clear to me. First of all, as I have said in previous comments, those employers who intend to fire illegal aliens at lower-paying jobs or below the wage level they otherwise would have to pay will get around any kind of verification system because they will not participate. To the idea that we will create a foolproof system, a card that defies any type of tampering or counterfeiting, to me, is a remote possibility.

There will be plenty of costs and very few, in my view, benefits. Rather than going down the route we went in 1986, it is our argument that we understand, very simply, the losers here are the taxpayers, the employers, the employees, the people playing by the rules. Those are the folks we should be helping, Mr. President.

The balance of this legislation does exactly that, by cracking down on the people who are violating this. I do not think we should take a step other than in that direction. For those reasons, Mr. President, I strongly urge passage of this amendment, support for the striking of both the verification procedures as well as the procedure of the driver's license and the birth certificate procedure.

Mr. SIMPSON. Mr. President, I think this has been a very impressive and important debate. I commend Senator ABRAHAM. I can see why the people of his State placed him here. He will have a great career here. I wish him well. He is very able, formidable, and fair. We try to express to each other what is occurring on the floor, even though it may be arcane and somewhat bizarre from time to time, but I always try to do that. To Senator DEWINE and his participation, and Senator FEINGOLD, a very thorough debate.

Now, the reason we set that unanimous-consent agreement is that there are at least several who have told me, "I do want to get over and speak on the amendment of Senator LEAHY and Senator BRADLEY." I do not believe any further persons intend to debate on the issue of the Abraham amendment, but the reason we set the vote for 4 o'clock is to allow those who wish to debate the issues of Senator LEAHY's amendment and Senator BRADLEY to come forward. If they do not, they are foreclosed as of 4 o'clock. I hope they realize that, that there will be no further opportunity to address those two amendments, or three amendments—the Abraham amendment, too—after the hour of 4 o'clock. Then we will go to the order of the amendments as Senator BRADLEY, Senator LEAHY, Senator ABRAHAM, with the usual 2 minutes of debate.

Mr. President, let me inform the Chair that the majority leader has designated Senator HATCH as the manager of the bill for the present time and that the majority leader has yielded 1 hour to me, in my capacity as an individual Senator, for the purposes of being able to complete debate on the bill, because I only have 27 minutes left. That is the purpose of that. I promise I shall not expend any more on the other issue. Maybe on the birth certificate—I could do a few minutes on that.

Well, I think I will since no one has come forward.

Let me indicate that I will speak a very few minutes on the issue of the birth certificate, but if these Senators who are going to come forward immediately will notify me—I will yield to them—that will expedite our efforts.

Let me just briefly remark about the birth certificate, because I think it is very important that we understand that that is the fundamental ID-related document. I think it would be just as disturbing to the Senator from Ohio as it is to me. We do not have any way to match up birth and death records in the United States. That seems bizarre, but we do not. Maybe some States have tried to do that. One of the questions that arose in the debate was, well, what will this do? One thing it will do, which we do not do now, is that if it is known that the person is deceased, the word "deceased" will be placed upon that birth certificate, wherever that birth certificate is. Now, that is one of the advantages of the word "deceased" being stamped on a birth certificate. You would think, surely, they must be doing that in the United States of America. But they are not doing that in the United States of America.

That is just one part of the proposal. Again, please recognize that the motion to strike is directed toward the revised or amended form as it left the Senate Judiciary Committee, as I say, trying to work with all concerns, realizing that we cannot indeed satisfy all aspects; but a good-faith attempt was done with regard to that.

Of course, the ID-related document that is the most fundamental. It proves U.S. citizenship, the most valuable benefit the country can provide. As we all have indicated, it is the common breeder document used to obtain other documents, including a driver's license and a Social Security number and card. That is the power of the birth certificate.

With the birth certificate, plus the driver's license, and a Social Security card, a person can obtain just about any other ID-related document and would be verified as authorized to work and receive public assistance by nearly any verification system it is possible to conceive, including any system likely to be implemented in the foreseeable future.

Yet, the weird part of it is that this birth certificate—and it is a sacred document, the type of document that is pressed into the Bible; it is the book that goes into the safe deposit box—is the most easily counterfeited of all ID-related documents, partly because copies are issued by 50 States, some with laws like Ohio, some with laws like Wyoming—50 States and over 7,000 local registrars in a myriad of forms and political subdivisions and, as Senator LEAHY indicated in committee, I think townships.

So how can anyone looking at a particular certificate know whether it even resembles a bona fide certificate? Furthermore, birth certificates can readily be obtained in genuine form by requesting a copy of a deceased person's certificate. And birth and death records are only beginning—this is the very beginnings—to be matched. That is puzzling to me in every sense. In most States, it is only for recent deaths. So we have a situation where people want to build a new identity. They try to get the certificate of a person who was born in the year they were, or near their own birth year, or died as an infant, perhaps, so that the deceased person would not have obtained a Social Security card or otherwise established an identity.

It is acknowledged by a great majority of experts that a secure verification system cannot be achieved without improvements in the birth certificate, and in the procedures followed to issue it. Without a secure, effective verification system, the current law prohibiting the knowing employment of illegal aliens cannot be enforced. I emphasize current law because some of my colleagues argue as if this bill would put this provision into law, and that is not so. It need not.

This is the law now. We are not putting this into the law. There is a system in the law. The issue simply is, do we here in Congress intend to take reasonable steps so that this part of current law can be effectively enforced? That is the problem. Do we want to do that?

Mr. President, without effective employer sanctions, illegal immigration, including not only unlawful border crossing, but visa overstays, will not be brought under control. It is just that simple. Thus, fraud resistant birth certificates and procedures to issue them are a crucial part of any effort to make that effective. In addition to immigration and welfare advantages, a more secure birth certificate will help us to reduce many more harms associated with fraudulent use of ID's, ranging from financial crimes—we will see ever more of those—and then those through the Internet—and we will see more of those—and through electronic and computer-based systems, to voting fraud, to terrorism. Accordingly, S. 1664 proposes significant reforms in birth certificates themselves, and in the procedures followed to issue them, and improvements of a similar nature for driver's licenses, which I think are critically important.

The final provision on birth certificates was drafted with assistance from the Association for Public Health Statistics and Information. I want to share that with my colleagues. The National Association of State Registrars and Vital Statistics Offices—that was drafted with their assistance—these officials made very valuable suggestions to us, and they expressed their approval of the final language, which is here to be stricken. Additional improvements were made in the amendment I offered yesterday, which was accepted, and which will be stricken if this amendment is passed.

I will just summarize the birth certificate provisions of the bill. I am using my time, but I will yield to my friend from Ohio. I emphasize to those who are waiting to come to the floor on the Bradley amendment or the Leahy amendment that their opportunity will close at 4 o'clock on that procedure.

If my friend from Ohio has any comment at this time, I will save some of my time.

Mr. DEWINE. Mr. President, I thank my colleague from Wyoming, and I agree with him that we have had a very spirited debate and, I think, a very good debate—a debate that has covered, I think, most of the issues that we are going to cover here today.

Let me just state, on a couple of related subjects, the following. We have, again, confirmed, I say to the Members of the Senate, this afternoon that this amendment is supported by the National Conference of State Legislators, the National Association of Counties, and by the National League of Cities. All three organizations support this amendment. Again, they emphasize they support it on the basis of cost—cost to them as local units of government—and they also support it on the basis of the whole question of preemption. Once again, that is the Federal Government coming in and, frankly, telling them exactly what to do.

Let me just make a couple of additional comments in regard to the issue my colleague from Wyoming was talking a moment ago about, which is birth certificates. To me, it is almost shocking when we think of the implications of what this bill, as currently written, would do. I have given the example here on the floor that when you turn 65, you are hopefully going to get Social Security and Medicare; at 16, in most States, a driver's license, or try to get your driver's license; or you will get married. For any of those purposes, you will have to get a birth certificate, and your old birth certificate is no longer going to be any good for that purpose.

Let your imagination run. You can think of all the other reasons why during your lifetime you might need a birth certificate. Everybody can just about figure 270 million Americans are at some point in time going to need their birth certificates.

I suppose if you are over 65 and already on Social Security, and you are not traveling, I suppose some folks never are going to have to use this new birth certificate and are never going to have to do what tens of millions of Americans are now going to have to do under the provisions of this bill, which is to go and get new birth certificates.

Again, what we are saying in this bill and with this amendment, what we are saying to 270 million Americans is, "Yes, your birth certificate is still valid, but you really just cannot use it much for anything. You will have to get a new one." That, to me, is onerous, whether you travel overseas—how many of us have had occasion as Members of the Senate or the House to get the frantic call from someone who says, "I am supposed to be going overseas and I had this passport. I cannot find it. I found out today it is expired. I am leaving in 5 days, or 4 days." What if you had to add to all of the problems they have to go through now, with the red tape, one more thing—you have to go back and get a new birth certificate because that birth certificate which you have had all of these years will not work anymore. That might be acceptable. At least, it would not be for me. I do not think it would be.

If we could make the case that the reissuance of a new birth certificate on this tamperproof paper, with all of the bells and whistles prescribed by the Federal bureaucrats, if that would deal with the problem—but maybe I am missing something in this discussion. I believe my colleague from Wyoming when he says it is the breeder document. I trust him on it. He has had enough experience on this. He has talked about this problem. But it still is going to be a problem, and, in fact, it may be even worse of a problem, more of a problem.

There are States—and Ohio is one, but Ohio is not the only one—where you can get anybody's birth certificate. Let me repeat that: You can get anybody's birth certificate. You walk into the county, and if someone was born there, you can get their birth certificate. You put down $7; you can get 5, 20, or as many birth certificates as you want as long as you know the name of the people. You can get them. They are public records.

What we are now saying is, instead of the old birth certificate copy, these are going to be new ones. Obviously, they are more expensive—tamperproof, bells and whistles—with all of the things the printers told us when we tried to find out what the cost would be, and they will have them. So what? What is the protection? What is the protection if I have walked in and MIKE DEWINE, at the age of 49, went in and got somebody else's who is 49 and might look the same? I now have a birth certificate. I do not see what has been accomplished. I do not see what we have done in regard to this, even in States where it is more difficult.

Again, instead of the breeder document, instead of the father document or the mother document, this may be the son, or the granddaughter. This may be two generations away. It may be an illegal license, as my colleague still has displayed in the Senate here, maybe an illegal license that is the breeder document. I do not know.

Again, this is not going to solve the problem. My friend talks about now the provision is in the bill that States should, if they know it, stamp on this birth certificate if the person is deceased. We can imagine how accurate that is going to be, or what percentage of these birth certificates is going to ever be stamped with the deceased on them. It may be a great idea. But, again, it is going to be a very, very small percentage where the local clerk of the county is going to know that someone is deceased. In some cases, they will, but in a great majority of the cases, they will not. We live in a very mobile society, Mr. President. This, I do not think, is going to help a great deal.

If you really want to make these tamperproof, what you are going to do is require people to go in and, face to face, get their new birth certificate. I do not think we are going to do that. I do not think we are going to say to a retiree who lives in North Carolina or who lives in Florida or lives in California, "You have to go back to Cincinnati, OH, you have to drive back and get a new birth certificate." I do not think anyone is going to make them do that. I do not think it is a serious idea. But yet, if you are going to make it tamperproof, you at least have to do that, not allowing it to be by U.S. mail and getting anybody's birth certificate. I think it is very onerous, but I think it is not going to be effective. It is going to be no good at all.

In thinking about this, we ought to learn from our past mistakes. We ought to learn from what this Congress has done in the past that we have regretted. I have cast votes that I have regretted. I have cast votes where I looked around and said later on that I was wrong. This is not the first time we have tried in this Congress within recent memory to deal with a specific targeted problem by putting an onerous burden on everybody. We have a finite problem. It is important. But the way we deal with it, the way we would deal with it, without this amendment, is to put the burden on absolutely everyone, to say to 270 million Americans that "your birth certificate no longer is any good. You will have to go get a new one." If you ever want to use it, you will have to say to every employer in this country that if you, in fact, want to hire someone, you will have to call a 1-800 number. You will have to seek permission from the Federal Government. I know there has been comment on the floor about that not being the right terminology. That is what it is. You will have to check the person out and to do it by how the Federal bureaucracy tells you how to do it. As an employee, you are going to be in the situation of arguing with a computer.

Again, I have had some experience in dealing with the criminal records system. Anybody who has dealt with any kind of big data base knows the problems. Someone gets turned down for a job or someone is told after they have been hired that we have a problem. You need to get this problem straightened out with the INS. You need to get this problem straightened out with the computer data base. How many of us in this world today enjoy dealing with computers, particularly in regard to one of the most important things in our lives, how to make our livelihood?

So this is not the first time Congress has spread a burden among every single American to deal with a few people. If history tells us anything, it tells us that people in this country ultimately will not put up with this.

Let me give you a couple of examples. Remember contemporaneous recordkeeping for people who used their car in business? Remember when we passed that? We did it because some people cheated on their taxes when calculating the business use of their car. Because of that fact, because some people cheated, Congress made all of the people who used their car in business to keep very detailed daily records. I was in the House when that happened. I was in the House when we started getting calls. I was in the House when I would go out and have office hours and be flooded by people who said, "What is this? I do not keep records every single day just because a few people cheat." What did we do, Mr. President? We did what we always do: We repealed it. It was a mistake.

Remember section 89 because some businesses discriminated in setting up the benefit plans for their employees? Congress made all businesses comply with detailed recordkeeping to prove they were not discriminating. We did that. The public did not stand for that either. And, again, it was repealed. It happens every single time that we spread the burden among everyone for a very specific problem. In fact, I do not think Congress has ever had a provision as burdensome or really as broad as this particular provision. This provision applies to everyone who wants to use a birth certificate or a driver's license—to everyone.

I submit, Mr. President, that we do this at our own peril. The public ultimately is not going to stand for it. I think it is a very, very serious mistake.

Therefore, again, I urge my colleagues to pass the Abraham-Feingold amendment. It is an amendment that is supported by a broad group of Senators, certainly across the political spectrum.

At this point, Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent the pending amendment be set aside.

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

AMENDMENT NO. 3865, AS MODIFIED

Mr. REID. Mr. President, I send to the desk a modified version of my amendment, No. 3865.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 3865), as modified, is as follows:

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . FEMALE GENITAL MUTILATION.

(a) CONGRESSIONAL FINDINGS.—The Congress finds that—

(1) the practice of female genital mutilation is carried out by members of certain cultural and religious groups within the United States;

(2) the practice of female genital mutilation often results in the occurrence of physical and psychological health effects that harm the women involved;

(3) such mutilation infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional;

(4) the unique circumstances surrounding the practice of female genital mutilation place it beyond the ability of any single State or local jurisdiction to control;

(5) the practice of female genital mutilation can be prohibited without abridging the exercise of any rights guaranteed under the First Amendment to the Constitution or under any other law; and

(6) Congress has the affirmative power under section 8 of article I, the necessary and proper clause, section 5 of the Fourteenth Amendment, as well as under the treaty clause of the Constitution to enact such legislation.

(b) CRIMINAL CONDUCT.—

(1) IN GENERAL.—Chapter 7 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 116. Female genital mutilation

"(a) Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) A surgical operation is not a violation of this section if the operation is—

"(1) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

"(2) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

"(c) In applying subsection (b)(1), no account shall be taken of the effect on the person on whom the operation is to be performed of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.

"(d) Whoever knowingly denies to any person medical care or services or otherwise discriminates against any person in the provision of medical care or services, because—

"(1) that person has undergone female circumcision, excision, or infibulation; or

"(2) that person has requested that female circumcision, excision, or infibulation be performed on any person;

shall be fined under this title or imprisoned not more than one year, or both.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 7 of title 18, United States Code, is amended by adding at the end the following new item:

"116. Female genital mutilation.".

(c) EFFECTIVE DATE.—Subsection (c) shall take effect on the date that is 180 days after the date of the enactment of this Act.

Mr. REID. Mr. President, the modification I send to the desk is a modification of the amendment regarding female genital mutilation. The modified version of this amendment strikes the language requiring the threat of female genital mutilation be made consideration for an asylum claim.

I repeat, at this time I believe in the asylum aspect of it, but I understand the problems associated with this; that we would need to make a better case to the committee and to this body. Therefore, I will not go into the reasons why I think it should be made a basis for asylum. The fact of the matter is, we are not going to do it in this legislation. We will look down the road to work with the committee to see if we can come up with a basis for doing that.

I offer this modified version of my amendment today so we can criminalize this torture in the United States, as a number of other countries have already done.

The PRESIDING OFFICER. Is there further debate?

The Senator from Wyoming.

Mr. SIMPSON. I thank the Senator from Nevada. This is not some issue that he has come to in recent times, simply because of media attention. He has been involved in this, and I have observed him with great admiration. It is a serious issue. It is an issue of criminal activity. It is an issue of assault. It is an issue of culture. And there is much to it.

As the Canadian experience has indicated, the problem, sometimes, with bringing in an asylee is that soon thereafter, when other family members join, they have not only brought the victim but they bring the perpetrator. We will be glad to have some hearings on that. We will discuss that.

I thank the Senator from Nevada. He has always been very helpful. This is very helpful, that we do not go into the deep issue of asylum, but that we make it a crime because at that point we will solve a great deal of it.

Mr. REID. Mr. President, I will just say in closing—and I would want spread on the record—that I have spoken personally with the chairman of the Judiciary Committee in the House, HENRY HYDE. He acknowledges the brutality of this and has indicated on the bill that was signed by the President last Saturday, the omnibus appropriation bill, there was this provision that was taken out in conference.

That is not because of the chairman of the Judiciary Committee in the House that was taken out. He supports this issue. I hope my friend, as I know he will during the conference on this matter, will hang tough for this issue.

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

The amendment (No. 3865), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I think we may be able to dispose of one of my amendments just before the 4 o'clock vote. I will simply speak briefly on this.

This is an amendment that says, "To exempt from the deeming rules, immigrants who are disabled after entering the United States."

That is the current law. It simply goes back to the current law. It sets a safety net there. So that no one thinks all of a sudden people are going to claim that they are disabled, the amendment says, the requirements of subsection (A) shall not apply with respect to any alien who has been lawfully admitted to the United States for permanent residence and who since the date of such lawful admission has become blind or disabled, as those terms are defined in the Social Security Act.

Social Security disability is not an easy thing to achieve, as my colleagues here know. I will add, the amendment is endorsed by State and local governments. I think it makes sense, and I hope it can be adopted.

Mr. SIMPSON. Mr. President, we do have a Member ready to debate briefly the Leahy or Bradley amendment. May we come back to that, please?

I yield to Senator HATCH, whose time is limited. We certainly thank the chairman.

The PRESIDING OFFICER. The Senator from Utah is recognized.

AMENDMENT NO. 3780

Mr. HATCH. Mr. President, with regard to the Leahy-Simon amendment, let me say that this amendment is an improvement of the amendment that Senator LEAHY offered in the Judiciary Committee, because it will permit for special summary exclusion procedures in extraordinary migration situations. The amendment will remove summary exclusion procedures where they could be problematic.

In particular, the amendment removes the summary exclusion procedures for asylum applicants. Those would require that INS officers at points of entry make threshold determinations of how an alien traveled to the United States and whether someone claiming asylum has a credible fear of persecution. This would present a burden to our INS officers at borders, who would now have to become experts in asylum law and would have to perform additional bureaucratic functions.

I am also concerned about the harsh consequences that could result to asylum applicants who do have a valid claim but who may not speak English, may not have the necessary proof of their claim with them, and that sort of thing.

I also note that the INS has had success with reducing frivolous asylum claims. This provision seems unnecessary at this time and could create burdens on INS border agents, who should be focussing on other matters.

This amendment also deletes provisions of the bill providing that an alien using fraudulent documents for entry is excludable and ineligible for withholding of deportation. Many asylum applicants fleeing persecution may have to destroy their documents for various reasons and may have to present fraudulent documents. The bill does provide for an exception for those who have a valid asylum claim. Accordingly, I do not think those provisions of the bill are as problematic. but I think that on the whole the provisions of the amendment are meritorious and I support the amendment.

I realize that the terrorism bill that came out of conference included summary exclusion provisions for asylum applicants. That provision was primarily driven by some House Members and, although I did not think it belonged in the terrorism bill, I knew that we would deal with this here on the immigration bill. Accordingly, I do not think it is inconsistent for those who supported the terrorism bill to support the Leahy asylum amendment.

Mr. President, I am going to support the Leahy asylum amendment because I think it is the right thing to do. I do like the changes he made. Even though I voted against the amendment in committee, I think the changes make the amendment a good amendment.

AMENDMENT NO. 3790

Mr. HATCH. Mr. President, I would like to speak to the Bradley amendment for a few minutes as well, and I appreciate my colleagues giving me this opportunity.

This Congress is supposed to be about reducing the Federal bureaucracy. I must confess that I am perplexed about where the idea for a new Federal bureaucracy is coming from. The administration opposes this provision for a new Office of Enforcement of Employer Sanctions. It argues that this new Office would be duplicative of ongoing programs within the INS and the Office of Special Counsel. In fact, the Attorney General's office suggests that a new office would not only be a waste of money, but make the program even less effective.

The employer sanctions provisions of the Immigration Reform and Control Act of 1986 [IRCA] have not successfully controlled illegal immigration. That is not simply my opinion, it is a fact.

Illegal aliens continue to pour into this country. A cottage industry in counterfeit and fraudulent documents has flourished, and an increasingly lucrative black market in smuggling aliens into this country has thrived.

Employer sanctions do not work. If they did, we would not be debating a verification system. If sanctions worked, we would not have the level of concern we presently have about the very issue of illegal immigration. We would not have seen so much television footage of persons illegally crossing our borders by running against traffic on highways in order to defeat vehicular pursuit. We would not have seen a ship ground off of the New Jersey shore a few years ago loaded with aliens to be smuggled into our country. We would not be reading about illegal aliens loaded onto boxcars which are then sealed south of our border on their way north.

At the same time, sanctions have had serious adverse consequences. Though unintended, they are still very real. Some employers have engaged in illegal discrimination against Americans who look or sound foreign in order to avoid potential lawsuits, fines, and jail sentences under IRCA's sanctions provisions. Further, the paperwork and related burdens on American businesses—as small as entities with just one employee—impose costs onto the American consumer.

In my view, employer sanctions simply are not worth the price of increased employment discrimination and increased burdens on small business.

Let us speak for a few moments about the anticivil rights nature of employer sanctions. The easiest way for an employer to avoid sanctions is to refuse to hire those who look or sound different. To be sure, the law penalizes such discrimination. But the law does not always catch up with all the discrimination that occurs. So to place an incentive into the law for discrimination is, I respectfully submit, truly unfortunate.

The Comptroller General's testimony before the Judiciary Committee on March 30, 1990, highlighting key issues in GAO's report to Congress on IRCA and the question of discrimination was quite simple and straightforward: He stated that the GAO had found widespread discrimination as a result of IRCA.

The GAO said:

> The results of our survey of a random sample of the Nation's employers shows that an estimated 891,000 employers, 19 percent of the 4.6 million in the population surveyed reported beginning discriminatory practices because of the law.

The American people have a right to know these facts, and I think Members of the Senate have a right to know these facts.

Notably, in 1994 the AFL–CIO Executive Council called for "a thorough reexamination of * * * employer sanctions * * * and their effects on workers,

as well as the exploration of changes and viable alternatives that will best meet our criteria of fairness and justice for all workers."

EMPLOYER SANCTIONS PLACE AN UNREASONABLE BURDEN ON BUSINESS, PARTICULARLY SMALL BUSINESS

Even those who have long disagreed with my position on sanctions have, in effect, acknowledged that the current system does not work. The failure is due, in part, to the number of work eligibility documents and the widespread use of fraudulent documents.

This bill seeks to address those deficiencies in some way, but potential improvement efforts have not yet been implemented, let alone evaluated. To assume, therefore, that the employer sanctions program will now be more workable is simply wrong.

There is little evidence to support the assumption that employer sanctions have done anything more than increase discrimination and place tremendous burdens on small business. While jobs may be a magnet for illegal immigration, there is no evidence that the existence of sanctions has in any way deterred illegal immigrants from attempting to enter this country. These sanctions have been in effect for 10 years. The problem of illegal immigration, as we all know, has gotten worse during that period.

The employer sanctions regime, in effect, converts our Nation's employers into guardians of our borders—that is the job for the Border Patrol and the INS.

I support many of the provisions in this bill, and I compliment my distinguished colleague from Wyoming for the hard work he has done in putting this together. I support including strengthening our Border Patrol and curbing alien smuggling.

Our 10 years of experience with employer sanctions, however, offers more than sufficient evidence that they do more harm than good.

Our employers have enough to do competing in the global marketplace while complying with hundreds of other Federal rules and regulations.

The appropriate response to a bankrupt policy with a 10-year history of all costs and no benefits should not be to throw more money at it. And most certainly, the appropriate response is not to create a new Federal bureaucracy to manage it.

Mr. President, I really believe that we should defeat this amendment, and I ask my colleagues to consider doing that.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on the Bradley amendment.

Mr. BRADLEY addressed the Chair.

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

Mr. BRADLEY. Mr. President, I hope people will support this amendment. What is the problem with illegal immigration? Why are illegal immigrants coming to this country? Because they get jobs. Employers hire them.

In 1986 we said, if an employer hires an illegal immigrant, taking that job away from an American, that person can be fined, ultimately can be put in jail for up to 3 years. Employer sanctions were the right policy in 1986. The problem is, they were not enforced.

The number of inspections, the number of inspectors between 1989 and 1995, dropped 50 percent. Employer sanctions should be enforced. If so, we would have fewer illegal immigrants coming into this country. This amendment simply creates a special enforcement office in the Immigration Service, allocates such funds to do the job, and says to the Immigration Service, "Enforce employer sanctions. Stop illegal immigration."

I am pleased to yield the remainder of my time to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I do agree with the Senator's amendment. Senator HATCH and I respectfully differ on this. There are two things wrong with employer sanctions—lack of enforcement and fraudulent documents. This will solve one.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 30 seconds to the distinguished Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 30 seconds.

Mr. FEINGOLD. Thank you, Mr. President.

I use these few seconds to say I strongly agree with the Senator's opposition to this amendment. As we learned in committee, this is a duplication to add to this agency. Where is the $100 million going to come from that this amendment provides for this agency? The Clinton administration has been clear that they do not need it, that this would probably make their lives more difficult in terms of fighting the problem.

On a bipartisan basis in committee we were able to defeat this notion. I hope we will not go backward on it on the floor. I thank the Senator from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the Clinton administration, as my distinguished colleague just said, opposes the creation of an office for the enforcement of employer sanctions. The Congress should be about cutting the Federal bureaucracy, not adding to it. This bill throws another $100 million of employer sanctions enforcement on top of the $43 million spent in the current year on worksite enforcement.

Sanctions have not worked. They are a burden on business, especially small business. They cause discrimination against those who look and sound foreign. The Judiciary Committee struck the office from the bill. Frankly, I urge the rejection of the Bradley amendment for those reasons.

The PRESIDING OFFICER. The question now occurs on agreeing to amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY.

Mr. BRADLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment No. 3790, offered by the Senator from New Jersey [Mr. BRADLEY]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 26, nays 74, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—26

Akaka	Ford	Moynihan
Boxer	Graham	Nunn
Bradley	Hollings	Pryor
Breaux	Inouye	Reid
Bryan	Lautenberg	Robb
Daschle	Levin	Rockefeller
Dodd	Lieberman	Shelby
Exon	Mikulski	Simpson
Feinstein	Moseley-Braun	

NAYS—74

Abraham	Feingold	Lott
Ashcroft	Frist	Lugar
Baucus	Glenn	Mack
Bennett	Gorton	McCain
Biden	Gramm	McConnell
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Brown	Gregg	Nickles
Bumpers	Harkin	Pell
Burns	Hatch	Pressler
Byrd	Hatfield	Roth
Campbell	Heflin	Santorum
Chafee	Helms	Sarbanes
Coats	Hutchison	Simon
Cochran	Inhofe	Smith
Cohen	Jeffords	Snowe
Conrad	Johnston	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kennedy	Thompson
DeWine	Kerrey	Thurmond
Dole	Kerry	Warner
Domenici	Kohl	Wellstone
Dorgan	Kyl	Wyden
Faircloth	Leahy	

The amendment (No. 3790) was rejected.

AMENDMENT NO. 3780

The PRESIDING OFFICER (Mr. THOMPSON). Under the previous order, there will now be two minutes of debate on the Leahy amendment.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, this is an important amendment. You each have on your desk editorials from the Washington Times, the Washington Post, and the New York Times. They all

agree and are in support of this amendment.

Do not confuse asylum with illegal immigration. This speaks of America's vital role in offering asylum. Senators HATCH, KERRY, DEWINE, HATFIELD, and I have united on this because what we are saying is, if somebody comes to this country trying to escape religious oppression, political oppression, or whatever, the mere fact that they have come here under a false passport—usually the only way they can get out of the country these escape—we should not have a low-level person be able to turn them back automatically for that.

Let them have a full asylum hearing. It does not do anything for illegal immigrants. But it makes sure that the U.S. promise of a fair hearing for those who are escaping religious or political persecution can get it.

Mr. SIMPSON. Mr. President, this amendment would seriously impair the bill's provisions to expedite the exclusion of aliens who attempt to enter the United States surreptitiously, or through the use of fraudulent documents. You saw the "60 Minute" segment some time ago.

This is the scenario. The alien uses documents to board an airliner, then disposes of the documents, and claims asylum. And that cannot be. The amendment is not required to protect the deserving asylum applicants. We have a credible fear exception. If they have credible fear, they get a full hearing without any question. They simply show that to a specially trained asylum officer, and not to just somebody who is at a lower level. It is a significantly lesser fear standard than we use for any other provision.

That is what we use with Hatians.

I yield two seconds to Senator D'AMATO.

Mr. D'AMATO. Mr. President, if we pass this amendment what you are saying is let people come in with illegal documents with just plain political persecution, and set them lose. They just continue. You are just going to compound this problem. You do not have to the facilities to hold them in, nor the facilities to have hearings. You will be gutting this bill. It absolutely flies in the face of what we are attempting to do.

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

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—51

Abraham	Baucus	Biden
Akaka	Bennett	Bingaman
Boxer	Graham	Mack
Bradley	Harkin	Mikulski
Breaux	Hatch	Moseley-Braun
Bumpers	Hatfield	Moynihan
Byrd	Heflin	Murray
Campbell	Inouye	Nunn
Chafee	Jeffords	Pell
Daschle	Kennedy	Pryor
DeWine	Kerry	Robb
Dodd	Kohl	Rockefeller
Feingold	Lautenberg	Sarbanes
Feinstein	Leahy	Simon
Ford	Levin	Snowe
Frist	Lieberman	Wellstone
Glenn	Lugar	Wyden

NAYS—49

Ashcroft	Gorton	Murkowski
Bond	Gramm	Nickles
Brown	Grams	Pressler
Bryan	Grassley	Reid
Burns	Gregg	Roth
Coats	Helms	Santorum
Cochran	Hollings	Shelby
Cohen	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Johnston	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
Dole	Kerrey	Thompson
Domenici	Kyl	Thurmond
Dorgan	Lott	Warner
Exon	McCain	
Faircloth	McConnell	

The amendment (No. 3780) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3752

The PRESIDING OFFICER. The question occurs on amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

There will order in the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, after the 2 minutes of explanation on this, I will make the motion to table and ask for the yeas and nays.

The PRESIDING OFFICER. The Senate will come to order.

The Senator from Wyoming.

Mr. SIMPSON. Mr. President, it is appropriate you recognize the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I will not make the motion now, but immediately after the 2 minutes of explanation on this amendment, I will make the motion to table and ask for the yeas and nays.

Mr. SIMPSON. Are you asking for the yeas and nays?

Mr. SIMON. I have not made the motion to table because we have not had the final 2 minutes.

I move to table, Mr. President, and I ask for the yeas and nays.

The PRESIDING OFFICER. It would not be appropriate at this time. It will be necessary to wait until the time for debate has expired.

Mr. KENNEDY. Mr. President, can we have order, now? This is an extremely important 2 minutes we are having here on this debate. I think it is probably as important as any issue on the legislation. Members ought to have an opportunity to be heard.

If we could still insist on order in the Senate?

The PRESIDING OFFICER. The Senate will come to order. There will now be 2 minutes of debate equally divided.

The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would say this is an amendment brought by Senators DEWINE, FEINGOLD, INHOFE, MACK, LOTT, LIEBERMAN, NICKLES, and myself. It represents an effort to strike from the bill a verification system that is a Government intrusive system to try to verify employment. In our view it will not succeed, but it will be very costly, costly to employers, costly to employees who will be denied jobs because it is impossible to perfect such a system, costly to the taxpayers to the tune of hundreds of millions of dollars, and costly for reasons that the Senator from Ohio will now address in terms of the need for people to obtain new birth certificates in order to comply with this legislation.

I yield the remainder of my time to the Senator from Ohio.

Mr. DEWINE. Mr. President, this bill says to 270 million Americans that your birth certificate is still valid, but if you ever want to use it, you have to go back to the origin, the place you were born, and get a new federally prescribed birth certificate that this Congress is going to tell all 50 States they have to reissue.

If you get a driver's license at age 16, when you turn 65 and you want Social Security or Medicare, or you get married, or you want a passport, you are going to need your birth certificate, and that birth certificate that you have had all these years no longer is going to be valid for that purpose.

It is very costly. It is a hidden tax, and it is going to be a major, major mistake. It will be something I think, if we vote for it, will come back and we will be very, very sorry.

Mr. SIMPSON. Mr. President, this is the critical test of the legislation. Without effective employer sanctions, the United States will not achieve control over illegal immigration. Without an effective verification system, there cannot be effective employer sanctions. Without more fraud-resistant birth certificates and driver's licenses—this is my California variety, you can get them for 75 bucks—there will never be an effective verification system.

This amendment strips the verification process that was in the bill and strips any ability to deal with the worst fraud-ridden breeder document, which is the birth certificate. I yield.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, Senator SIMPSON is absolutely right. This is the most important vote we are going to have on immigration. It is a question of whether we are going to continue with document abuse or not. That is the basic difficulty in terms of trying to protect American jobs, as well as trying to limit the magnet of immigration, which is jobs. If we deal with that, we are going to stop the magnet of immigration of people coming here illegally.

This is the heart and soul of that program. Otherwise, we are going to continue to get these false documents produced day in and day out. This is the only way to do it. It is a narrow, modest program. If we do not do it now, the rest of the bill, I think, is unworkable.

The PRESIDING OFFICER. All time has expired.

Mr. SIMON. Mr. President, 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 agreeing to the motion to lay on the table amendment No. 3752, offered by the Senator from Michigan [Mr. ABRAHAM].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 54, nays 46, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—54

Akaka	Exon	Lautenberg
Biden	Faircloth	Levin
Bingaman	Feinstein	Mikulski
Bond	Glenn	Moynihan
Boxer	Gorton	Murkowski
Bradley	Grassley	Nunn
Brown	Gregg	Pell
Bryan	Harkin	Pryor
Byrd	Heflin	Reid
Campbell	Hollings	Robb
Chafee	Inouye	Rockefeller
Cochran	Jeffords	Roth
Cohen	Johnston	Sarbanes
Conrad	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Simpson
Dodd	Kohl	Specter
Dole	Kyl	Stevens

NAYS—46

Abraham	Graham	McConnell
Ashcroft	Gramm	Moseley-Braun
Baucus	Grams	Murray
Bennett	Hatch	Nickles
Breaux	Hatfield	Pressler
Bumpers	Helms	Santorum
Burns	Hutchison	Smith
Coats	Inhofe	Snowe
Coverdell	Kassebaum	Thomas
Craig	Kempthorne	Thompson
DeWine	Leahy	Thurmond
Domenici	Lieberman	Warner
Dorgan	Lott	Wellstone
Feingold	Lugar	Wyden
Ford	Mack	
Frist	McCain	

The motion to lay on the table the amendment (No. 3752) was agreed to.

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

Mr. LEAHY. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, let me commend you on a very forceful and fair procedure during these many months. It has been a rare privilege for me to come to know you better and to know you as a legislator. You are fair, formidable, efficient, and effective. That is not just because of the win and lose issue. I would have said that under either circumstance and meant it. And Senator DEWINE, dogged and determined. I would not want to be practicing law or doing much more of this with worthy adversaries such as Senator SPENCER ABRAHAM and MICHAEL DEWINE and my friend RUSS FEINGOLD from Wisconsin. I commend them all.

Someone came up to me said, "Oh, you really are on a roll," and I said, "I have been rolled for 6 months." The roll is not always in the eye of the beholder. Win a few, lose a few, and you move on in good camaraderie, good spirit. You are setting that tone as you occupy the chair after a very vigorous debate. You have learned the essence of the Senate: Do your work, give it your best shot, take a shot in the neck and a belt in the head, swallow hard and move on, shake hands with the adversary, and go off, have a great big pop or something else.

Mr. KENNEDY. If I could have 30 seconds, I want to thank all those that participated in that debate and discussion. I think the Members found there were appealing arguments on all sides. I think as we find out on these immigration issues sometimes, when you prevail you are not always right. It has been a constant learning experience because it involves human beings' behavior and trying to predict how people will react to different suggestions and recommendations.

I join Senator SIMPSON and thank all those who are on different sides and those that were on our side for the courtesy and attention they gave to the debate and discussion.

Mr. SIMON. Mr. President, let me just comment, I have frequently said on the floor we are too partisan, excessively partisan. It is true. But this is a case where we discussed the issues, where on one side you had the Simpson-Kennedy leadership, on the other side you had Senator ABRAHAM and Senator FEINGOLD. That is the way it should be on most issues. Very few issues, really, involve party political philosophy. Whether you won or lost on this issue, this is the way legislating ought to take place.

AMENDMENT NO. 3810

Mr. SIMON. Mr. President, I believe the pending amendment is my amendment No. 3810, is that correct?

The PRESIDING OFFICER. The amendment is now pending.

Mr. SIMON. Mr. President, what this does—and this is not a complicated one—this simply says that we are going to go back to the current law that if someone is disabled under the definition of the Social Security Act, if you are blind or disabled, then the deeming provision does not apply.

The pending bill requires that 100 percent of an immigrant sponsor's income be deemed to the immigrants. Say your sponsor has a $30,000-a-year income; it is totally unrealistic, among other things, to assume that sponsor can provide $30,000 worth of support for the immigrant.

I hope we would keep the current law. I think it is simply sensible and compassionate as well as practical that we not move in this direction. I know my colleague from Wyoming has a slightly different perspective on this. My amendment is supported by the National Conference of State Legislatures, the Natural League of Cities and the National Association of Counties.

Mr. KENNEDY. Mr. President, I commend my colleague and friend for this amendment. I think it is important to note that disabled persons are covered by this amendment only if they become disabled after the immigrants arrive. It is unfair to make the sponsors foot the bill for unforeseen tragedies such as this. No one can predict when disability will strike. It is a very small target, but it will make a very important difference to a number of individuals who are experiencing this type of tragedy. I hope we might be able to see this amendment through and accept it.

Mr. SIMPSON. Mr. President, again, what seems to be so appropriate in immigration matters often has a deeper tenor when we are talking about the blind and the disabled. We all want to respond.

Let me say this: We only make the sponsor pay what the sponsor is able to pay. We are back to the same issue. This is a very singular issue, as were the amendments we voted on last night. The issue is, when you come to the United States of America as a sponsor, you are saying that the immigrant you are bringing here will not become a public charge. That is the law.

If you become disabled or blind and you go to seek assistance, the law provides that if your sponsor has a lot of money, you are going to get the money from the sponsor first. That is what we are going to do. It does not matter what your level of disability; that is the law, or will be the law under this bill. It will be clarified, it will be strengthened, and that is what this is about. We are not saying that we are going to break the sponsor because the person is disabled. If the sponsor has tremendous assets, and you have a disabled or blind person, that sponsor is supposed to keep their promise. Why should he or she not? That was the promise made. Maybe they were not

disabled at the time. I understand that. But they become disabled and here they are. Should the taxpayers of America pick that up when the sponsor is financially able to do it?

But there is a little more to this here. The number of "disabled immigrants" receiving SSI has increased 825 percent over the last 15 years. That is an extraordinary figure. The number of disabled immigrants receiving SSI has increased 825 percent over the last 15 years. American taxpayers pay over $1 billion every year in SSI payments to disabled immigrants. The purpose of the requirement that immigrants obtain the sponsor agreement is precisely to provide a reasonable assurance to the American taxpayer that, if they need financial assistance, it will come first from the sponsor and not from the taxpayers.

It would actually be more reasonable to provide an exception, I think, here, if the sponsor became disabled and it was impossible for that sponsor to provide the support. Of course, please hear this: If the sponsor has no income, there is no income to deem, and no exception is needed. You do not need to have an exception if the sponsor went broke or if the sponsor cannot afford to do this. Then there we are. The sponsor's income is not deemed, and then the taxpayers pick up the program, pick up the individual. That is where we are.

I urge all of us to remember, as we do these amendments, that they all have a tremendous emotional pull. We have seen the emotional pulls for 11 or 12 days on this floor. But in each of these amendments related to deeming—whether it is blindness, whether it is disability, whether it is veterans, whether it is kids, whether it is senior citizens, whatever, plucks genuinely at your heartstrings—the issue is that none of those people should become the burden of the taxpayers if they had a sponsor that remains totally able, because of their assets, to sustain them. That is it. That is where we are. That was the contract made. That is what they agreed to do, and that is the public charge that we have always embraced since the year 1882, and which we are now trying to strengthen, and believe that we certainly will.

Mr. SIMON. Mr. President, I will take 1 minute in rebuttal. The figures that my friend from Wyoming cites are people, many of whom came here disabled, and so they have ended up on SSI. This applies to people who have become disabled after they have come here. I hope that the amendment will be accepted.

I ask the Senator from Wyoming this. I have another amendment that I am ready with. The understanding is that we will stack the votes, is that correct?

Mr. SIMPSON. No, Mr. President, that is not my understanding. The leader is here. Mr. President, we will work toward some type of agreement if we can either lock things in, and maybe get time agreements. There are not many amendments, actually, left. There are some place-holder amendments. But I cannot say that we will be stacking votes.

Certainly, if you wish to present an amendment and go back-to-back on that, we will certainly do that and maybe have 15 minutes on the first vote and 10 for the second. I think we can get a unanimous consent to do that, with the approval of the leader, at an appropriate time, according to the leader.

Mr. SIMON. Mr. President, if this is acceptable to the Senator from Wyoming, I will ask that we set aside the amendment I just offered so that I may consider a second amendment that I have.

Mr. SIMPSON. That is perfectly appropriate with me, Mr. President.

Mr. SIMON. Mr. President, I ask unanimous consent to set aside my first amendment.

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

AMENDMENT NO. 3813 TO AMENDMENT NO. 3743

(Purpose: To prevent retroactive deeming of sponsor income)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. GRAHAM, Mrs. FEINSTEIN, and Mrs. MURRAY, proposes an amendment numbered 3813 to amendment No. 3743.

Mr. SIMON. 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:

Strike page 199, line 4, and all that follows through page 202, line 5, and insert the following: "to provide support for such alien.

"(d) EXCEPTIONS.—

(1) INDIGENCE.—

(A) IN GENERAL.—If a determination described in subparagraph (B) is made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period—

(I) beginning on the date of such determination and ending 12 months after such date, or

(ii) if the address of the sponsor is unknown to the sponsored alien, beginning on the date of such detemination and ending on the date that is 12 months after the address of the sponsor becomes known to the sponsored alien or to the agency (which shall inform such alien of the address within 7 days).

(B) DETERMINATION DESCRIBED.—A determination described in this subparagraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor.

(2) EDUCATION ASSISTANCE.—

(A) IN GENERAL.—The requirements of subsection (a) shall not apply with respect to sponsored aliens who have received, or have been approved to receive, student assistance under the title IV, V, IX, or X of the Higher Education Act of 1965 in an academic year which ends or begins in the calendar year in which this Act is enacted.

(B) DURATION.—The exception described in subparagraph (A) shall apply only for the period normally required to complete the course of study for which the sponsored alien receives assistance described in that subparagraph.

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to any service or assistance described in section 201(a)(1)(A)(vii).

(e) DEEMING AUTHORITY TO STATE AND LOCAL AGENCIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, but subject to exceptions equivalent to the exceptions described in subsection (d), the State or local government may, for purposes of determining the eligibility of an alien for benefits, and the amount of benefits,under any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a State or local government (other than a program of assistance provided or funded, in whole or in part, by the Federal Government), require that the income and resources described in subsection (b) be deemed to be the income and resources of such alien.

(c) LENGTH OF DEEMING PERIOD.—Subject to exceptions quivalent to the exceptions described in subsection (d), a State of local government may impose the requirement described in paragraph (1) for the period for which the sponsor has agreed, in such affidavit or agreement, to provide support for such alien.

Mr. SIMON. Mr. President, this is an amendment that is cosponsored by Senator GRAHAM of Florida, Senator FEINSTEIN of California, and Senator MURRAY of Washington.

This amendment simply makes the deeming provisions prospective. Every once in a while—not often in this body—we retroactively change the law. And three out of four times, we do harm when we do it. This simply says to sponsors that this is going to apply prospectively.

Let me give you a very practical example. Let us say that, right now, because under the present law the only Federal programs that are subject to deeming are AFDC, food stamps, and SSI. Without my amendment, I say to my colleagues here from Michigan, Kansas, New Mexico, and Wyoming, if a student is at a community college and getting student assistance of one kind or another, without this amendment, the sponsor who signed up for 3 years is responsible for 5 years, not just for the three welfare programs, but for any Federal assistance.

I just think that is wrong. We ought to say it is prospectively. And I support Senator SIMPSON in this. Let us make it 5 years, but we should not say

we are going back to sponsors who signed up for 3 years, and say, "Even though you signed up for 3 years, we are making it 5. And you thought you were only going to be responsible for three programs—AFDC, food stamps, and SSI—but you are going to be responsible for every kind of Federal program."

Let me just add, the higher education community strongly favors my amendment.

I think we ought to move in this direction. I think it is fair. I think, again, three out of four times when this body tries to do something retroactively, we make a mistake. If we go ahead with this retroactively, we are going to make a mistake.

I see my colleague, Senator GRAHAM, on the floor. I believe he wants to speak on this, too.

Mr. SIMPSON. Mr. President, here we are again dealing with the issue of deeming. When I said that my colleagues were persistent, I did not mean to leave out Senator PAUL SIMON of Illinois. In my experience of 25 years knowing this likeable man, I know his persistence is indeed one of his principal attributes.

He is back again with another deeming type of amendment. They are all very compassionately offered. They are carefully thought through. But, again, it is an issue we dealt with last night.

It is true, and he is right; he has found this provision that individuals already in this country will not be the beneficiaries of the new legally enforceable sponsor agreements. They are going to be very strict. We have done a good job on that. The ones that will be required is after enactment.

It is also true that some of them who have been here less than 5 years will nevertheless be subject to at least a portion of the minimum 5-year deeming period. Thus, there could be a case where such an individual would be unable to obtain public assistance because under deeming they neither received the promised assistance from their sponsor nor were able to sue them for support.

But, again, let me remind my colleagues that no immigrants are admitted to the United States if they cannot provide adequate assurance to the consular officer, or to the immigration inspector, that they are not likely become a public charge, making that promise to the American people that they will not became a burden on the taxpayers. If they do use a substantial amount of welfare within the first 5 years, they are subject to deportation under certain circumstances. That is not a swift procedure. It is a thoughtful procedure.

I remind my colleagues again that major welfare programs already require deeming—AFDC, food stamps for 3 years, SSI for 5, even though sponsored agreements are not now legally enforceable. Furthermore, the President's own 1994 welfare bill proposed a 5-year deeming for those programs. This would have applied to those who had only received the sponsor agreement to provide support for 3 years, an agreement that is not legally enforceable.

So I just do not believe it is unreasonable for the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for the first 5 years under all circumstances if the sponsor has the assets. If the sponsor does not have the assets, we will pick them up. We have never failed to do that.

It is only on that basis of assurance that they even came here because they could not have come here if they were to be a public charge.

Regardless of the compassionate aspects of it, that is what we ought to do.

Thank you.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had not intended to speak on this subject, but we have now had about a half dozen amendments on this deeming issue. It seems to me that the Senate has spoken on this issue. Far be it from me to say that our colleagues are infringing on our patience, but it seems to me this is a very clear issue. The American people have very strong opinions about it. We have voted on it. I do not see what we gain by going over and over and over again plowing this same ground, or in this case dragging this dead cat which smells rank back across the table.

Here is the issue. When people come to America, they get the greatest worldly gift you can get. They have an opportunity to become Americans. I am very proud of the fact that I stood up on the floor of the Senate and fought an effort that was trying to slam the door on people who come to this country legally. I believe in immigration. I do not want to tear down the Statue of Liberty. I believe new Americans bring new vision and new energy, and America would not be America without immigrants. But when people come to America, they come with sponsors, and these sponsors guarantee to the American taxpayer that the immigrant is not going to become a ward of the State.

If you want to know how lousy the current program is, in the last 10 years when we have had millions of immigrants come to America legally, how many people do you think have been deported because they have become wards of the State? In 10 years with millions of legal immigrants, we have had, I understand, 13 people that have been deported. Obviously, the current system is not working.

What the bill of the distinguished Senator from Wyoming says is simply this: When you sign that pledge that you are going to take care of these people until they can take care of themselves, we expect you to live up to your promise. We expect you to use your energy and your assets to see that the person you have sponsored does not become a burden on the taxpayers.

So what the bill does, in essence, is count the sponsor's income and the sponsor's assets as yours for the purpose of your applying for welfare.

It seems to me that we do not have anything to apologize about in giving people the greatest worldly gift you can get, and that is becoming an American. I do not think we ought to have any deviations, period, from this whole deeming issue. If you come to America, you have a sponsor. They say they are going to take care of you. If things go wrong, we ought to go back on their assets.

But this idea that there ought to be some magic things that we are going to exempt—and we have seen all of these real tear-jerkers about, you know, in this particular case, or that particular case—this is a principle where I do not think there ought to be any particular cases.

If people want to come to America, let them come to America, but let them come with their sleeves rolled up ready to go to work. Do not let them come with their hand out. If you want to live off the fruits of somebody else's labor, go somewhere else; do not come to America. But if you want to come here and build your dream and build the American dream and work and struggle and succeed as the grandparents of most of the Members, the parents of most of the Members of this body did, welcome. We have too few people who want to come and work and build their dream.

But I think we pretty well settled this whole deeming issue. I think we ought to get on with it. This is now a good bill. We have spoken. I think we are at the point where people are ready to vote. I think after a half dozen votes on this issue that, "Well, you are exempt from deeming if you are going to church to say a prayer and you trip and you break your back"—I mean, I think we have established the principle. I do not think we have to go on plowing this ground over and over again.

The American people want people to come to work. They do not want people to come to go on welfare. We have a provision in the welfare bill that is even stronger than the deeming provision in this bill. Maybe we could have a vote that says under any circumstances except divine intervention that we stay with the provisions. We could vote on it and be through with it.

Mr. SIMON. Will the Senator from Texas yield?

Mr. GRAMM. I am happy to yield.

Mr. SIMON. My friend talks about the contract you sign. What I want to

do is say the United States, which signs the contract with the sponsor, will live up to its side of the contract. That contract right now is for 3 years for every sponsor. I am for moving to 5 years but doing it prospectively. This bill says to the people who signed the contract that Uncle Sam has changed his mind. He is going to make you responsible for 5 years when you sign for 3 years.

Does the Senator from Texas think that is fair?

Mr. GRAMM. Let me respond by saying that I believe that when we are talking about people coming to America, that is a great deal. I do not think we have to second-guess it by saying that we are going to try to see that after so many years you can get welfare. I personally believe that until a person becomes a citizen, they ought not to be eligible for welfare. I am for a stronger provision than the Senate has adopted. I do not think immigrants should be eligible for welfare until they become citizens and, therefore, under the Constitution must be treated like everybody else, because under the Constitution there can be no differentiation between how they are treated as a natural-born American or naturalized. There is only one difference, and that is you cannot become President.

But here is the point. I think that ought to be the provision. That is not even what we are talking about here. We are talking about something much less, and that is the deeming provision. The point I am making is this:

The point I am making is this. We have voted on this thing a half a dozen times. I wish we could come up with every story or manipulation or hardship that we could get, put it all into one and vote on it and settle it. That is all I wish to do.

Mr. SIMON. First of all, the Senator does not understand the amendment, obviously.

Mr. GRAMM. No, I understand the amendment perfectly.

Mr. SIMON. The Senator then did not respond to my question. The question is whether Uncle Sam is going to live up to his contract. We say to the sponsors you are a sponsor for 3 years. Now we come back with this legislation and say, sorry, we are changing the contract. You thought you signed up for 3 years. We are going to make it 5 years.

I think that is wrong.

Mr. GRAMM. Would the Senator, if he wants to change the provision, change it to say that immigrants are not eligible for welfare or public assistance until they become citizens?

Mr. SIMON. We already have a provision in here for 5 years. That is not the issue. The issue is, are we going to go back, on this amendment, retroactively and say to sponsors, sorry, Uncle Sam is not going to live up to his word; we are changing your contract from 3 years to 5 years.

I think I know the Senator from Texas well enough—and, incidentally, he has had a lot more amendments on this floor than the Senator from Illinois over the years.

Mr. GRAMM. I do not think so today.

Mr. SIMON. Not today.

Mr. GRAMM. I object to amendments I am not participating in today.

Mr. SIMON. I am not complaining about the Senator from Texas offering too many amendments. But the question on this amendment—

Mr. GRAMM. Reclaiming my time, Mr. President. Let me just make a point on the deeming issue. The only point I wanted to make is this. We have had a half a dozen votes on it. The outcome has been the same each time, and each time we have had a new amendment we have had some new sob story where we picked out a little blue-eyed girl 3 years old or younger or something.

I am just saying I would like to settle the issue. I think the Senate has decided on the deeming issue, and I think the decision that we have made is you ought not to be able to come to America as an immigrant to go on welfare. We are having to go about that in different ways through different bills. My point is I do not know what the seventh or eighth or ninth amendment is going to do. I hope we will defeat these amendments decisively and get on with passing a bill that the American public wants.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wish to say to Senator GRAMM, first, I am totally, fully aware of the Senator's commitment to legal immigration, and I have personally told the Senator that I saw his speech in the Chamber which had some personal aspects of the Senator's views because of his family, because of his wife and her family.

I have told the Senator of mine. Both of mine came over as little kids to Albuquerque from Italy. I was very lucky. I always say the only good thing about the farm programs of Italy at the turn of the century was they were so awful that kids like my folks could not make a living and so they sent them to America.

That is true. In my dad's family were six kids, and they had enough acreage, why, for 50 years before that they could all make a living. But as bureaucracies grow, they had a farm policy, and they could not make a nickel. So thank God for bad farm policy in Italy. That is why I am here.

From our earliest days, we did not intend that aliens be public charges. This is not today. This is America when we accepted millions that made America great. We had a philosophy that the public money would not be used for aliens.

Now, that is not a mean, harsh policy. It is a reality. And I am telling you what has happened. If it was a reality of the philosophy of America in the early days, what has happened to it today is that nobody paid attention to the programs that they were applying for, so that Medicaid has, it is estimated, up to $3 billion—it could be that high—being paid to people who are aliens. That is $3 billion of public charge when we probably never really intended it, for all of these did not come in after deeming periods. Everybody knew the deeming periods and all that were irrelevant.

Why did they know that? The Senator just stated it. Nothing happened to them if they violated them. I had them on the witness stand. I asked INS, "Could you enforce these?" "No, we cannot enforce them." I said, "Do you think there are only 13?" There are 1.2 million aliens on one program—1.2 million people. I said, "Could you enforce it? Could there be 500 of them that are illegal?" I said, "I think probably there are 600,000 that should not be on there." I think that might be so.

So I do not think this is an issue of changing the contract. In fact, this is a whole new concept about deeming the resources of a sponsor liable for an alien before the citizens of America under taxes pay for it. And it is pretty patent to me that to say everything stays just like it is for the past is just not fair to the American people.

We are talking about it is unfair to some certain patrons. We are still saying—this bill is very generous because what it says is, if a sponsor does not have the money, they are back on public charge.

Did the Senator know that?

That is different than we were thinking of. That is a generous act on the part of the chairman, saying, well, OK, if the ward does not have any money, then it does not do much good to deem them; they cannot pay for it.

That is pretty generous. That is a whole new act of generosity on the part of America, if that becomes law.

Now, I would say it is fair because if you do not want that new act of generosity, then maybe we will go back to the old one. But you can count on it: Up to the deeming period, we will not pay for you whether your sponsor runs out of money or not because that was the law, albeit never enforced.

So I think there are things on both sides of that scale of fairness, and, frankly, from my standpoint, I have been through so many efforts to cut back programs that Americans get angry at us about that are programs for Americans that I thought we had to come here as budgeteers—the Senator worked at it with me, I say to the senior Senator from Texas. We are over here saying, look, we cannot afford education money, we cannot afford this. Why, here we have $3 billion maybe, $1 to $3 billion in Medicaid going to aliens. And I am not sure the

public even knows that. Where should we save first? It seems to me we should save by passing this bill. That is what I think.

I yield the floor.

Mr. SIMPSON. I thank the Senator and Senator GRAMM.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. I thank the Chair.

Let me review where we are and where the leader would like us to be. We have the Simon amendment and two Graham amendments, Senator GRAHAM of Florida, and Senator FEINSTEIN will modify her amendment. Senator KYL and she have resolved any difficulty there. We will take that.

We would like to proceed with debate and try to have votes stacked around 7 or 7:30, if we could proceed with gusto, and I will try to do that, too. It is very difficult. But that would be the pattern, if there is further debate. And I concur with Senator GRAMM. It is about deeming, and we have addressed that last night and we will address it again today.

Just remember one thing. We did not like this before. A few years ago, we voted to extend deeming from 3 to 5 years for SSI, and we did that to achieve savings for an extension of unemployment benefits. We did not ask the sponsors. We just extended the deeming period, and we have done that in the past.

I think those would be my final remarks on that. I wonder if we might—unless there is some further discussion of that amendment, if we might set that aside and go to Senator GRAHAM.

Mr. GRAHAM. Mr. President, I wish to speak in support of the amendment of the Senator from Illinois.

Mr. SIMPSON. I see.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, we had a lot of rhetoric, expressions of what we might have fantasized reality was, what we thought it might be; words like "we expect you to live up to your promise." All of those are patriotic, soaring statements, which have little to do with the reality of the amendment that the Senator from Illinois has offered.

What is the reality today, of the requirement of sponsors to their legal alien sponsoree, who is in the United States? As the Senator from Illinois has pointed out, we Members of Congress have looked at all the programs that we might wish to require deeming to apply to, that is to require the sponsor's income to be added to the alien's income in determining the alien's eligibility for programs. What have we decided? We have decided we will require deeming for SSI, supplemental Social Security income, which primarily affects older aliens; we will require deeming for food stamps; and we will require deeming for aid to families with dependent children.

We could have passed deeming for Medicaid, we could have passed deeming for college Pell grants and guaranteed Federal loans, we could have passed deeming for weatherization and heating for low-income people, we could have passed deeming for any one of the hundreds of programs the Federal Government has that requires some form of means testing in order to be eligible. But we decided thus far not to do so, but to limit it to those three programs. As the Senator from Illinois has pointed out, in two of those three programs the deeming period is 3 years, not the 5 years that is being suggested here today.

But I think even more powerful is the fact that this Congress has known for a long, long time that the courts have held the current application, the affidavit signed by the sponsor, to be legally unenforceable. Let me read a paragraph from a letter from the office of the Commissioner of INS on the issue of what is the enforceability of these affidavits that sponsors sign. To quote from the letter:

> In at least three States, however, courts have held that an affidavit of support does not impose on the person who signs it a legally enforceable obligation to reimburse public agencies and provide public assistance to an alien.

The letter then cites a case, San Diego County versus Viarea, from the California court, a 1969 opinion; the Attorney General versus Binder, an opinion from the State of our Presiding Officer, from 1959; California Department of Mental Hygiene versus Reynault, a case from 1958; another case from New York dated 1959.

The letter goes on to state,

> The Michigan Supreme Court has also held that Michigan public assistance agencies may not consider the income of a person who executed an affidavit of support to be an alien's income in determining the alien's eligibility for State public assistance programs.

That is a 1987 Michigan case, despite the fact that this income deeming is permitted in determining eligibility for food stamps.

Finally, the Missouri Court of Appeals has held that an affidavit of support does not create an express or implied contract for the payment of child support on behalf of a child adopted by a former spouse. That is a 1992 opinion.

Mr. President, I cite these cases, not with the spirit of support but of the cold reality that this is the state of the law. So a person who has sponsored an alien to come into the United States today has had the legal expectation of the unenforceability of that affidavit and this Congress has, at least since 1958, been aware that courts were ruling thus and has not, until the action of the Senator from Wyoming, taken steps to make these affidavits enforceable.

So the consequence of applying this new standard retroactively is going to be to substantially change the expectation of both the legal alien and the legal alien's sponsor, because now we are about to say that an affidavit which the courts have consistently ruled to be unenforceable, we are going to breathe life into that affidavit and we are going to expand that affidavit to cover an indeterminate number of programs for which there is some Federal financial involvement.

Mr. President, I do not disagree with the thrust of the idea that we ought to be making these affidavits financially responsible, that we ought to make them documents which have some legal enforceability. I am concerned about the reach that we are about to apply to the number of programs, but that is for another debate. But I think it is patently unfair to now say we are going to retroactively go back and make affidavits that have been unenforceable, enforceable, and expand them to an indeterminate number of programs.

The argument for doing so, for reaching back retroactively, is that, "We have two people who can pay. We have one person who can pay who is the sponsor. We have the other person who can pay who is the Federal taxpayer. It is better to force the sponsor to pay even if we do it in derogation of the understandings when the sponsor signed the affidavit, than it is to continue to ask the Federal taxpayer to pay." I suggest that is a false analysis of what is really going to happen. What is really going to happen is not that the sponsor is going to pay retroactively, because I do not think we can legally breathe life into a currently unenforceable affidavit. And I do not think the Federal taxpayer is the party that is at final risk.

I suggest what is really going to happen is what the National Conference of State Legislators has said. What really is going to happen is what the National Association of Counties has said. What is really going to happen is what the National League of Cities has said. What is really going to happen is what the National Association of Public Hospitals and Health Systems has said. What is really going to happen is what Catholic Charities USA has said. And that is that there is going to be a massive transfer of responsibility to the communities and States, and they will be asked to pick up these costs.

The most dramatic example of that is going to be in the area of health care. In the field of health care, we have the anomaly that, by Federal law, public hospitals are required to treat anybody with an emergency condition. By laws that we passed, they are prohibited from asking a person seeking emergency assistance, what is your income? What is your financial capability? So we are going to be encouraging people to get sick enough to come in and use the emergency rooms at the local hospital and then, with no one to pay and

with the Federal Government no longer picking up part of the cost through Medicaid, they will become a massive burden on those hospitals and on the communities which support those hospitals.

The further irony of this is, this is going to be occurring in communities which are already paying a substantial burden because of the Federal Government's failure to enforce its immigration laws and to have provided adequately for the impact of these large populations. I know it well in my own State, which is one of the States that is particularly at risk under this proposal. Dade County, FL, Miami, has had one of the fastest if not the fastest growing urban school systems in America in the last 10 years, primarily because of the massive numbers of nonnative students who have entered that school system. It has stretched the system to the breaking point.

Now we are about to say in this bill that the Federal Government will provide less support to the education system of that and other stressed counties, and that the Federal Government will restrict the funding for individuals who would otherwise be eligible for these programs, retroactively, so that those costs will now become an additional burden of those already overburdened communities.

I think, Mr. President, in the fundamental spirit of fairness to all concerned, and specifically to those communities that have already paid a heavy price, that it is only fair and proper that we make this change of rules be prospective. Let us apply it to those people who come from the enactment of this bill forward, who come with the understanding that they are signing an affidavit, if they are a sponsor, that will be legally enforceable; that they will know if they are coming as a legal alien what they are going to be able to expect once they arrive here.

I think it is patently unfair to change the rule for thousands of people who are already here and then to have us, essentially, transfer this financial responsibility to the communities in which they happen to have chosen to live.

So, Mr. President, I urge in the strongest terms the support of the amendment of the Senator from Illinois, because without his amendment, I think this legislation carries with it the fatal flaw of fundamental unfairness.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I think we have perhaps completed the debate on that amendment and we might set that aside and proceed to—my friend from Massachusetts is not here.

Is there a second Graham amendment? Does the Senator from Florida have any idea as to the time involved in the presentation of this amendment? May I inquire, Mr. President, of the Senator from Florida if he has any idea where we are, because so many people are involved—apparently there is an Olympics banquet, many awards banquets. Many people have asked for a window. I am perfectly willing to stand right here until midnight and finish this bill. I would do that. If we can get an idea of time, that would be very helpful.

Mr. GRAHAM. Mr. President, in response to the question of the Senator from Wyoming, the time to present this amendment, which is amendment No. 3764, will be approximately 15 to 20 minutes.

Mr. SIMPSON. I thank the Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the pending amendment of the Senator from Illinois be set aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The amendment is temporarily set aside. The Senator from Florida is recognized.

AMENDMENT NO. 3764 TO AMENDMENT NO. 3743

(Purpose: To limit the deeming provisions for purposes of determining eligibility of legal aliens for Medicaid, and for other purposes)

Mr. GRAHAM. Mr. President, I call up amendment No. 3764.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 3764 to amendment No. 3743.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 201, strike lines 1 through 4 and insert the following:

(3) CERTAIN SERVICES AND ASSISTANCE.—The requirements of subsection (a) shall not apply to—

(A) any services or assistance described in subsection 201(a)(1)(A)(vii); and

(B) in the case of an eligible alien (as described in section 201(f)(1))—

(i) any care or services provided to an alien for an emergency medical condition, as defined in section 1903(v)(3) of the Social Security Act; and

(ii) any public health assistance for immunizations and immunizable diseases, and for the testing and treatment of communicable diseases.

(4) MEDICAL SERVICES FOR LEGAL IMMIGRANTS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the eligibility for medical assistance under title XIX of the Social Security Act (other than services for which an exception is provided under paragraph (3)(B))—

(i) the requirements of subsection (a) shall not apply to an alien lawfully admitted to the United States before the date of the enactment of this Act; and

(ii) for an alien who has entered the United States on or after the date of enactment of this Act, the income and resources described in subsection (b) shall be deemed to be the income of the alien for a period of two years beginning on the day such alien was first lawfully in the United States.

Mr. GRAHAM. Mr. President, the underlying bill, S. 1664, for the first time would deny to legal immigrants—legal immigrants—access to Medicaid through newly federally imposed or mandated deeming requirements. This prohibition, as the discussion of the amendment of the Senator from Illinois has indicated, will apply both prospectively, to persons who arrive after this bill is enacted, and retroactively, to legal aliens who are already in the country.

My amendment changes the deeming period for Medicaid to 2 years. It eliminates the retrospective nature of this provision, and it would apply these provisions to future immigrants and provide for an exemption for emergency care and public health.

So to restate what the amendment does, the amendment changes the deeming period for Medicaid to 2 years. Second, it eliminates the retroactive nature of the legislation in the same way that the amendment of the Senator from Illinois would do to all of the deemed programs. It would apply these provisions prospectively to future legal aliens, and it would provide an exemption for emergency care and for public health.

This amendment is supported by the National Conference of State Legislators. It is supported by the National Association of Counties. It is supported by the National League of Cities. It is supported by the United States Conference of Mayors. It is supported by the National Association of Public Hospitals. It is supported by the American Public Health Association. It is supported by the National Association of Community Health Centers. It is supported by Interfaith, by the Catholic Charities USA and the U.S. Catholic Conference. It is supported by the Council of Jewish Federations, the Lutheran Immigration and Refugee Services and the Evangelical Lutheran Church of America.

Mr. President, I offer this amendment today which I consider to be a substantial improvement of this bill. It is a substantial improvement by recognizing the fact that health services are different from other benefits that a legal alien might seek.

While I strongly support the idea that sponsors should be required to provide housing, transportation, food, cash assistance to legal aliens who they have sponsored, legal aliens and the sponsor would be unable to provide for themselves, for whatever reason, reasonable access to the health care which unpredictable illness and debilitating disease or injury might impose.

Unlike cash assistance, housing or food, health care must be provided by a

qualified professional, tailored to the specific diagnostic and treatment needs. Ultimately, no amount of hard work and personal responsibility can protect an immigrant or anyone else from illness or injury.

My proposal would be to deem Medicaid for 2 years. That is, for the first 2 years that the legal alien is in the United States, the income of the sponsor will be deemed to be that of the alien.

This is a reasonable compromise with what I hope will have bipartisan support. It would not exempt Medicaid from deeming altogether. Instead, it would create a 2-year deeming period for the Medicaid Program alone.

As a result, this amendment eliminates the magnet, the draw or incentive to come to the United States in order to receive medical care, especially since an immigrant cannot plan to get sick 2 years in advance.

However, it does recognize that in the long run, health care is different from other benefits. This amendment also recognizes and attempts to alleviate the tremendous other burdens, cost shifts, unfunded mandates and public health problems which potentially could be caused by S. 1664.

What are some of these potential problems?

First, cost shifting. The Medicaid provisions in S. 1664 are currently nothing more than a cost shift to States, local governmental units and our Nation's hospital system. Simply put, if people are sick and cannot afford to pay for coverage for some of the most disabling conditions, someone will absorb the cost.

The question is whether the Federal Government will pay a portion of that cost, or will such costs be shifted entirely to those States and local governments and hospitals where legal aliens will seek those services?

As the National Conference of State Legislatures, the National Association of Counties and National League of Cities wrote in an April 24, 1996, letter:

> Without Medicaid eligibility, many legal immigrants will have no access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics in States and localities would incur increased unreimbursed costs for treating legal immigrants.

The National Association of Public Hospitals, in their April 12, 1996, letter added:

> The [National Association of Public Hospitals] opposes a deeming requirement for Medicaid. It will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals. * * *

The Congressional Budget Office estimates that the effect of this bill's current provision will be to reduce Federal reimbursement for such Medicaid costs by $2.7 billion. This is nothing more than a massive cost shifting to the States and local governments in which these legal aliens reside.

The bill's deeming provisions, in addition to being nothing more than a huge cost-shift to State and local governments, will also impose an administrative burden and a huge unfunded mandate on State Medicaid programs. In light of a series of calls throughout the year by the Nation's Governors, the administration and this Congress have been asked to provide States with greater flexibility to more efficiently administer their Medicaid programs. This provision is incredibly ironic and in sharp contrast to everything that we have been discussing in Medicaid policy over the last 2 years.

For a Medicaid case worker, who already has to learn the complex requirements of the Medicaid program, he or she now must also learn immigration law. As a study by the National Conference of State Legislatures notes, this would require an extensive citizenship verification made for all applicants to the Medicaid Program.

According to the Conference of State Legislatures:

> These [deeming] mandates will require States to verify citizenship status, immigration status, sponsoring status, and length of time in the U.S. in each eligibility determination for a deemed Federal program. They will also require State and local governments to implement and maintain costly data information systems.

In addition to all these costs, States will have infrastructure training and ongoing implementation costs associated with the staff time needed to make these complicated deeming calculations. The result will be a tremendously costly and bureaucratic unfunded mandate on State Medicaid programs.

This bill also threatens our Nation's public health. Residents of communities where legal aliens live would face an increased health risk from communicable diseases under this provision of the bill because immigrants would be ineligible for Medicaid and other public health programs designated to provide early treatment to prevent communicable disease outbreaks.

Such policies have historically and consistently had horrendous results. For example, in 1977, Orange County, TX, instituted a policy that required people to prove legal status or be reported to the Immigration and Naturalization Service when requesting service at any county health facility.

As noted by El Paso County Judge Pat O'Rourke, in a letter dated September 24, 1986:

> . . . within eighteen months, the county experienced a 57 percent increase in extrapulmonary tuberculosis, a 47 percent increase in salmonella, a 14 percent increase in infectious hepatitis, a 53 percent increase in rubella and a 153 percent increase in syphilis.

The judge cites a 1978 report by the Task Force on Public General Hospitals of the American Public Health Association in saying:

> Hence, what was a simple condition requiring a relatively small expense became a large matter adversely affecting all taxpayers.

In an analysis of the potential health impacts of S. 1664, the bill before us this evening, conducted by Dr. Richard Brown, the president of the American Public Health Association and director of the University of California at Los Angeles Center for Health Policy Research, Dr. Brown states:

> In a study of tuberculosis patients in Los Angeles, more than 80 percent learned of their disease when they sought treatment for a symptom or other health condition, not because they sought a TB screening. Yet [S. 1664] would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers.

Dr. Brown concludes:

> Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of the infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

In the interest of our Nation's public health, why, Mr. President, why would we wish to take such an unnecessary risk?

In addition, the Medicaid deeming provisions, by creating a obstacle to preventive health services, will result in certain cases of immigrants resorting to emergency room care. Health care costs will thus be more expensive.

This would further strain the already overburdened and underfunded emergency and trauma care facilities across the country, particularly in our Nation's urban centers. Without reimbursements, such hospitals will be forced to consider shutting their emergency room doors for all residents of the county, affecting all residents, immigrants or otherwise.

For example, Jackson Memorial Hospital in Miami estimates that its uncompensated care costs for fiscal year 1995 for undocumented immigrants was $45.8 million. To repeat, for 1995, in that one public hospital, Jackson Memorial in Miami, the cost in uncompensated care for undocumented aliens was $45.8 million. An additional $60 million in uncompensated care costs

was attributed by Jackson Memorial Hospital to legal aliens in the community. However, they currently do receive some reimbursement for care to legal aliens through private health care plans and Medicaid. Without the Medicaid payments, total uncompensated costs will grow and require the local community to either raise its taxes or consider reducing hospital services.

In addition, by reducing access of pregnant immigrant women to prenatal care and nutrition support programs, the health of the U.S.-citizen infants will be threatened. The National Academy of Sciences' Institute of Medicine estimates that for every $1 spent on prenatal care, there is a $3 savings in future medical care for low birthweight babies. Denying prenatal and well-baby care to an immigrant only threatens the life of her U.S.-citizen child. Mr. President, that makes absolutely no sense. In fact, it is neither cost effective nor in the interest of public health.

Another concern raised by Catholic Charities USA is the potential for increased abortions as a result of S. 1664.

To quote from the Catholic Charities U.S.A.,

> The most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than to carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1,000 deposit at a hospital for labor and delivery.

In summary, as currently drafted, S. 1664 would have the following negative consequences: It shifts costs to States, local governments, and hospitals. It imposes an administrative unfunded mandate on State medicaid programs. It threatens the Nation's or the public's health. It is not cost effective and it may lead to an increase in abortions.

My amendment would help address these problems. Therefore, it is supported by the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, U.S. Conference of Mayors, the National Association of Public Hospitals, the American Public Health Association, the National Association of Community Health Centers, InterHealth, Catholic Charities U.S.A., and the U.S. Catholic Conference, the Council of Jewish Federations, Lutheran Immigration and Refugee Services, and Evangelical Lutheran Church of America.

Mr. President, I ask unanimous consent to have printed in the RECORD immediately after my remarks statements by several of these organizations in support of this amendment.

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

(See exhibit 1.)

Mr. GRAHAM. Mr. President, I close by saying that I regret we have had to consider so many amendments that related specifically to the provisions in this bill that will apply retroactively and prospectively the income of a sponsor to the income of a legal alien—I emphasize legal alien—for purposes determining eligibility for means-tested programs.

Mr. President, if you represent the concerns of the millions of Americans who are represented by these organizations, if you understand the pragmatic reality of what we are about to do both to individuals and to the communities in which they live, and to the taxpayers in the communities and States in which you live, you would understand why there have been so many amendments offered on this subject.

I believe that the amendment which I have offered is a reasoned middle ground. By setting a 2-year deeming provision it would give us assurance that no one would come to this country with a specific condition—whether that be pregnancy or a known medical infirmity—in order to receive U.S. taxpayer-financed medical service. Very few people are prophetic enough to know what their condition is going to be 24 months from now. By providing that this will be prospective, all persons who come into this country from this point forward, from the enactment of this bill forward, will know under what conditions they will be entering this country.

By exempting those programs that affect the public health and relate to emergency care, we will be recognizing the fact that those steps are not just for the benefit of the individual but they are for the benefit of the broad public with its interest in continuing to have access to emergency facilities and to be saved from having unintended access to communicable diseases.

Mr. President, I believe this is a constructive amendment which deals with serious issues within this legislation. I urge its adoption.

EXHIBIT 1

NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES

April 24, 1996.

DEAR SENATOR: The National Conference of State Legislatures (NCSL), the National Association of Counties, (NCAo), and the National League of Cities (NLC) are very concerned about unfunded mandates in S. 1664, the Immigration Control and Financial Responsibility Act of 1996 that would be an administrative burden on all states and localities. We urge you to support a number of amendments that will be offered on the Senate floor to mitigate the impact of these mandates on, and cost shifts to, states and localities.

S. 1664 would extend "deeming" from three programs (AFDC, SSI and Food Stamps) to all federal means-tested programs, including foster care, adoption assistance, school lunch, WIC and approximately fifty others. As you know, "deeming" is attributing a sponsor's income to the immigrant when determining program eligibility. It is unclear what "all federal means-tested programs" means. Various definitions of the phrase "federal means-tested programs" would include a range of between 50–80 programs. Furthermore, regardless of the size of their immigrant populations, this mandate will require all states to verify citizenships status, immigration status, sponsorship status, sponsor's income and length of time in the U.S. in each eligibility determination for "all federal means-tested programs." NCSL estimates that implementing deeming restrictions for just ten of these programs will cost states approximately $744 million. Extending deeming mandates to over 50 programs garners little federal savings and should be eliminated as part of the Congressional commitment to eliminating cost shifts to state and local budgets and taxpayers.

Therefore, we urge you to support Senator Bob Graham's effort to raise a point of order against S. 1664 based on its violation of P.L. 104–4, the Unfunded Mandates Act of 1995. This is a critical test of your commitment to preventing cost-shifts to, and unfunded administrative burdens on, states and localities. We also urge you to support subsequent amendments that will reduce the scope of the deeming provisions and limit the administrative burden on states and localities. These include:

Senator Graham's amendment giving deeming mandate exemption to: 1) programs where deeming costs more to implement than it saves in state or local spending; or 2) programs that the federal government does not pay for the administrative cost of implementing deeming. This ensures that new deeming mandates are cost effective and are not unfunded mandates.

Senator Graham's amendment substituting a clear and concrete list of programs to be deemed for the vague language in S. 1664 requiring deeming for "all federal means-tested programs." This amendment ensures that Congress, and not the courts, will decide which programs are deemed.

Senator Kennedy's amendment conforming Senate deeming exemptions to those accepted by the House in H.R. 2202.

In addition, we urge you to support other amendments that would temper the unfunded mandates in S. 1664 and relieve the administrative burden on states and localities. We are especially concerned about the impact of extending the deeming requirements to the Medicaid program. Without Medicaid eligibility, many legal immigrants will not have access to health care. Legal immigrants will be forced to turn to state indigent health care programs, public hospitals, and emergency rooms for assistance or avoid treatment altogether. This will in turn endanger the public health and increase the cost of providing health care to everyone. Furthermore, without Medicaid reimbursement, public hospitals and clinics and states and localities would incur increased unreimbursed costs for treating legal immigrants. We support the following compromise amendment to preserve some Medicaid eligibility for legal sponsored immigrants.

Senator Graham's amendment to limit Medicaid deeming to two years.

We strongly support amendments to exempt the most vulnerable legal immigrant populations from deeming requirements. We urge you to support the following amendments that will preserve a minimal amount

of federal program eligibility for the neediest legal immigrants and protect states and localities from bearing the cost of these services.

Senator Kennedy's amendment exempting children and pre-natal and post-partum care from Medicaid deeming restrictions.

Senator Simon's amendment exempting immigrants disabled after arrival from deeming restrictions.

Senator Leahy's amendment exempting immigrant children from nutrition program deeming.

Finally, we firmly believe that deeming restrictions are incompatible with our responsibility to protect abused and neglected children. Courts will decide to remove children from unsafe homes regardless of their sponsorship status and state and local officials must protect them. Deeming for foster care and adoption services will shift massive administrative costs to states and localities and force them to fund 100% of thee benefits. We urge you to support the following amendments to protect states and localities from this cost shift.

Senator Murray's amendment exempting immigrant children from foster care and adoption deeming restrictions.

Senator Wellstone's amendment exempting battered spouses and children from deeming restrictions.

We appreciate your consideration of our concerns and urge you to protect states and localities from the unfunded mandates in S. 1664.

Sincerely,

JAMES J. LACK,
New York Senate,
President, NCSL.
DOUGLAS R. BOVIN,
Commissioner, Delta County, MI,
President, NACo.
GREGORY S. LASHUTKA,
Mayor, Columbus, OH,
President, NLC.

CATHOLIC CHARITIES USA SUPPORTS THE ELIMINATION OF THE MEDICAID "DEEMING" REQUIREMENT INCLUDED IN THE IMMIGRATION REFORM BILL

S. 269 currently requires that the income and resources of a legal immigrant's sponsor and the sponsor's spouse be "deemed" to the income of the legal immigrant when determining the immigrant's eligibility for all means-tested federal public assistance programs, including Medicaid. The deeming period would be a minimum of 10 years (or until citizenship).

Catholic Charities USA supports the elimination of the Medicaid deeming requirement for two main reasons. First, requiring deeming for the Medicaid program ignores the dichotomy between medical services and other need-based assistance that Congress has followed since the inception of Medicaid. For over 30 years, Congress has treated Medicaid benefits for legal immigrants in a fundamentally different fashion than other federal benefits programs. Historically, Congress has never required deeming for Medicaid, recognizing that no level of hard work and personal responsibility can protect someone from illness and injury, and that payments for medical care are significantly higher and more unpredictable than payments for other necessities. In addition, although an immigrant's sponsor or other charitable individual may be able to share food and shelter—and even income to a certain extent—a person cannot share his or her medical care. Unlike housing or food, health care must be provided by a qualified professional and must be tailored to a person's specific health needs. In this sense, Medicaid is substantively different than other needs-based assistance. S. 269 would end Congress' longstanding recognition of the special nature of Medicaid.

Second, the Medicaid deeming requirement will lead to an increase in the number of uninsured patients and exacerbate an already tremendous burden of uncompensated care on public hospitals and other providers who treat large numbers of low-income patients. Although the bill would require the sponsor to agree, in a legally enforceable affidavit of support, to financially support the immigrant, many sponsors may nevertheless be unable to finance the health care costs of the immigrants, many sponsors may nevertheless be unable to finance the health care costs of the immigrants they sponsor.

Finally, it should be noted that in order to qualify for Medicaid coverage an individual must not only be very poor but in addition must qualify under one of the vulnerable categories that include pregnant women, children, the elderly, and people with disabilities. Therefore, because of the strict eligibility requirements for the Medicaid program, legal immigrants who do qualify for coverage are very limited in number and extremely vulnerable.

For these reasons, Catholic Charities USA supports the elimination of the deeming requirement for Medicaid. Should the elimination of deeming for Medicaid prove unworkable in the current political context, we would support an amendment to limit Medicaid deeming to the shortest time period possible.

MEDICAID "DEEMING" FOR LEGAL IMMIGRANTS SHOULD BE LIMITED TO TWO YEARS

The Immigration Control and Financial Responsibility Act (S. 1664), which is scheduled for Senate floor action on April 15, proposes harsh new restrictions on immigrants who are in this country legally. The bill denies Medicaid for a minimum of ten years, or until citizenship, for immigrants who have come to this country, worked hard, paid taxes, and in every respect "played by the rules." The bill does this through a mechanism called "deeming."

How Deeming Works: To be eligible for Medicaid, an individual must have sufficiently low income to qualify. Deeming is a process where by a person's income is "deemed" to include not only is or her own income, but also income from other sources. S. 1664 requires a legal immigrant's income to be deemed to include the income of the immigrant's sponsor and the sponsor's spouse. In addition, the immigrant's income is "deemed" to include the value of the sponsor's resources, such as the sponsor's car and home. Although a legal immigrant could well qualify for benefits based on his or her own resources, many immigrants will effectively be denied Medicaid because of their sponsor's income and resources.

Catholic Charities USA opposes Medicaid deeming for the following reasons:

The Risk of Increased Abortions: To most immediate threat of the Medicaid deeming provision is the pressure on poor pregnant women to end their pregnancies inexpensively through abortion rather than carry them to term. A legal immigrant who becomes pregnant and does not have the means to obtain health care will be able to finance a $250 abortion at a local clinic much more easily than either she or her sponsor can pay for prenatal care or put down a $1000 deposit at a hospital for labor and delivery.

Medical Needs are Unpredictable and Impossible to "Share:" If an immigrant cannot provide for him or herself S. 1664 requires that a sponsor provide housing, transportation, food, or even cash assistance in some circumstances. Although Catholic Charities USA opposes these extensions of current law, we acknowledge a distinction between these forms of assistance and the specific area of medical care. Unlike housing or food, health care must be provided by a qualified professional and tailored to a persons's specific diagnostic and treatments needs. Although a citizen may have enough income and resources to qualify as a sponsor, the sometimes expensive and often unpredictable nature of medical care may limit the sponsor's ability to finance a sudden and drastic emergency.

Early Diagnosis and Treatment is Less Expensive Than Emergency Care: Basic preventative and diagnostic services treat conditions inexpensively before they become aggravated. If such services are denied, relatively unthreatening illnesses may turn into emergencies to be treated with much more expansive and expensive means. For example, $3 is saved on average for every $1 spent in prenatal care. Moreover, if a legal immigrant is denied prenatal services, her child may be born with serious conditions that will last an entire lifetime. These children, born to legal immigrants, are citizens who will be eligible for Medicaid.

The Cost of Denying Care is an Unfunded Mandate to be Borne By Local Hospitals and Communities: Public hospitals in local communities are required to treat anyone with emergency conditions. If legal immigrants are denied medical services and forced to let their illnesses deteriorate, local hospitals eventually will be required to treat them as emergencies. Since public hospitals are funded by local taxpayers, this policy represents an enormous cost-shift from the federal government onto state and local entities. Although designed to reduce federal expense, the deeming provision would essentially create an entirely new population of uninsured individuals, force immigrants to wait until their conditions become more expensive, and then mandate that local hospitals serve them and pay for this service—all effects that will have real-world financial repercussions for citizens.

Denying Medical Services to Immigrants Endangers Entire Communities: Due to the increased cost to local hospitals, services will degenerate—not only for legal immigrants—but for every person in the community who relies on that hospital for care. If a portion of a hospital's budget is diverted to cover the increased expense of handling emergency conditions, less money will be available to finance services for everyone. Perhaps more importantly, if immigrants are not immunized or treated for communicable diseases, entire communities will be at risk.

Immigrants Currently Finance Benefits for Citizens: Legal immigrants are subject to the same tax laws as citizens. However, as a group, legal immigrants pay more proportionally in taxes than citizens. They also use fewer benefits than citizens. Although some claim immigrants drain resources, legal immigrants actually finance public assistance benefits for citizens. Because of these factors, basic fairness counsels against denying legal immigrants the same safety net security as citizens. Immigrants should be able to rely on support times of need in the same manner as other taxpayers, especially since they have demonstrated that they require such services less often.

Catholic Charities USA favors a reduced deeming period of two years for Medicaid. A two-year deeming period would substantially remove what some view as a "draw" for immigrants entering the country solely to obtain medical services, especially since an immigrant could hardly plan an illness two years in advance. In addition, this compromise would preserve the distinction between medical services and other forms of assistance, recognizing that no amount of hard work and personal responsibility can protect someone from illness and injury. Although opponents may oppose such an amendment because it won't reduce federal spending as much, the effect of a longer period would be an exponential increase in the cost to state and local entities. The bill itself, by setting the deeming period at two years, recognizes that a sponsor's liability should not continue indefinitely. Catholic Charities USA believes a reduced, two year deeming period for Medicaid is a viable compromise that recognizes all of these concerns.

THE HEALTH EFFECTS OF S. 1664 AND H.R. 2202

(By E. Richard Brown, Ph.D)

S. 1664 and H.R. 2202 threaten the health of immigrants and of the larger community. They threaten the health of immigrants and the larger community by making it more difficult to control the spread of serious communicable diseases and making it more likely that such diseases would spread through the community, threaten the health of U.S.-citizen infants by reducing the access of pregnant immigrant women to prenatal care and nutrition support programs; and threaten the health of immigrants by reducing management of chronic illnesses and early intervention to prevent health problems from developing into more serious ones, resulting in more disability and higher medical costs both among immigrants and their U.S.-citizen children.

PROVISIONS OF S. 1664 AND H.R. 2202

Public health care services and publicly funded community-based services are essential to control the progression and spread of disease among low-income persons and communities. These services are essential because a high proportion of low-income immigrants do not receive health insurance through employment, despite their high rates of labor force participation. Because of their low incomes, they cannot afford to purchase health insurance in the private marketplace. Although uninsured immigrants pay a considerably higher proportion of their incomes out-of-pocket for medical services than do persons with insurance, they often cannot afford an adequate level of medical care without the assistance of public programs and publicly subsidized health services.

S. 1664 and H.R. 2202 would impose such onerous financial requirements on legal immigrants that they effectively exclude millions of legally resident children and adult immigrants from receiving any health services or nutrition supplements. These bills also prohibit undocumented immigrants from receiving all but emergency medical care from any public agency or from community-based health services, such as migrant health centers and community health centers. These bills will reduce access to cost-effective primary care and prevention and force immigrants to use expensive emergency and hospital services—at increased cost to taxpayers and poorer health outcomes for immigrants and the larger community.

Legal immigrants

Legal immigrants would become deportable if they participate in Medicaid, virtually any state health insurance or health care program that is means-tested, or any local means-tested services for more than 12 months during their first five years (seven years in the House bill) in the United States. This provision would strongly deter most legal immigrants from enrolling in Medicaid or otherwise obtaining health services on a sliding fee-scale from a local health department or any community health center, migrant health center, or other community-based health service which receives any federal, state or local government funds. Receiving any combination of such benefits for a total of more than 12 months would make the immigrant ineligible for citizenship.

Furthermore, to determine eligibility for such services or programs, the sponsor's income (and the income of the sponsor's spouse) would be "deemed" available to the immigrant. The bills would require that the sponsor's income be combined with the immigrant's income until the immigrant had worked for 40 quarters (at least 10 years) in which he/she earned enough to pay taxes or until he/she became a citizen. This provision would make most sponsored legal immigrants ineligible for such benefits, even if they maintain a separate household with substantial combined expenses or do not have access to their sponsor's income.

These provisions make more stringent the conditions under which legal immigrants may receive these public benefits, lengthening the time during which they are potentially deportable for receiving benefits, reducing the conditions under which they may legitimately receive them, and extending the "deeming" process to more programs and for a longer period of time.

Undocumented immigrants

Undocumented immigrant women would be barred from receiving prenatal and postpartum care under Medicaid. States may provide prenatal and postpartum care to undocumented immigrant women who have continuously resided in the United States for at least three years (the House bill excludes pregnancy care altogether). The bills would allow undocumented immigrants to receive immunizations and be tested and treated for serious communicable diseases. Because these provisions apply to any services provided or funded by federal, state or local government, they prohibit most community-based health services, such as migrant health centers and community health centers, from providing primary or preventive care to undocumented immigrants.

Undocumented immigrants currently are not eligible for any means-tested health programs except *emergency* medical services, including childbirth services (funded by Medicaid), immunizations, and nutrition programs for pregnant women and children. These bills extend this prohibition to prenatal and postpartum care, and they extend to nearly all publicly funded programs and services the prohibitions on providing non-emergency care that formerly were restricted to Medicaid.

EFFECTS ON HEALTH

These bills would maek it more difficult for low-income immigrants, whether they are here legally or not, to obtain preventive or porimary health care. By denying access to cost-effective health services that can prevent or limit illness, this legislation would increase the use of emergency rooms and hospitals at greater cost to taxpayers and cause more disability among immigrants.

Prenatal care and birth outcomes

The provisions in these bills will result in an increased number of low birthweight and higher death rates among U.S.-citizen infants. The expanded "deeming" provisions would prevent many legal immigrant women who are pregnant and needy from qualifying for Medicaid, and the expanded threats of deportation would discourage other needy legal immigrant women from applying for Medicaid. The bills also would prohibit pregnancy-related health services to most undocumented immigrant women.

Denying inexpensive prenatal care to many pregnant women will increase the health risks to the women and their U.S.-citizen infants, all at great cost to federal and state taxpayers. The National Academy of Sciences' Institute of Medicine estimates that every $1 spent on prenatal care saves $3 that otherwise would be spent on medical care for low birthweight infants. A recent study by the California Department of Health Services found that Medi-Cal hospital costs for low birthweight babies averaged $32,800, thirteen times higher than those of non-low birthweight babies ($2,560). With no prenatal care, the expected hospital medical costs for a baby born to a Mexican-American woman with no prenatal care are 60% higher than if she had gotten adequate prenatal care, or $1,360 higher per birth. The American-born infants of immigrant mothers automatically would be U.S. citizens, entitling them to medical care paid for by Medicaid. These added medical costs may well exceed any savings due to reduced Medicaid eligibility among immigrant pregnant women.

Management of chronic illness

These bills would prohibit undocumented and many legal immigrants from using local health department clinics or community-based clinics, such as migrant or community health centers, for other than emergency care or diagnosis and treatment for a communicable disease. High blood pressure, diabetes, asthma, and many other chronic illnesses can be managed effectively by regular medical care, which includes monitoring of the condition, teaching the patient appropriate self-management, and provision of necessary medication. When diabetes goes untreated, it results in diabetic foot ulcers, blindness, and many other complications. Uncontrolled high blood pressure causes heart attacks, strokes, and kidney failure, all of which lead to expensive emergency hospital admissions. In the absence of regular care, people with these controllable diseases will present repeatedly to hospitals in severe distress, resulting in emergency and intensive care for a much higher cost than periodic visits and maintenance medication. Primary care and prevention are cost-effective alternatives to use of emergency rooms, specialty clinics, and hospitalization—and they preserve and improve the person's functional status. As with pre- and postnatal care, the costs of increased use of emergency and hospital services are likely to offset any savings due to reduced use of primary and preventive care.

Communicable diseases

These bills would make it more difficult for undocumented immigrants or legal immigrants to obtain care for communicable diseases. Although they explicitly permit undocumented immigrants to be diagnosed and treated for communicable diseases, public health services throughout the country are

being restructured to eliminate dedicated clinics for tuberculosis, sexually transmitted diseases, and other cummunicable diseases. Instead diagnosis, treatment, and management of these health problems are being integrated into primary care, which would be denied to undocumented immigrants and most legal immigrants alike who cannot afford to pay the full cost of these services. Without access to primary care, immigrants would have few options to receive medical attention for persistent illnesses. Coughs that do not go away, fevers that do not subside, and rashes and lesions that do not heal may be due to communicable diseases such as tuberculosis, hepatitis, meningitis, or a sexually transmitted disease.

Tuberculosis is prevalent among legal, as well as undocumented, immigrants from Asia and Latin America. It is easily spread if those who are infected are not diagnosed and treated. In a recent study of tuberculosis patients in Los Angeles, more than 80% learned of their disease when they sought treatment for a symptom or other health condition, not because they sought tuberculosis screening. Yet these bills would make it more difficult for immigrants to seek diagnosis and treatment because their access to health care would be sharply reduced, permitting this debilitating and often deadly disease to spread throughout the community. When an infected person becomes seriously ill with tuberculosis, the costs of treating these true emergencies will be borne by everyone, especially taxpayers. The California Department of Health Services estimates that it costs $150 to provide preventive therapy to a tuberculosis-infected patient, but it costs 100 times as much for a tuberculosis patient who must be hospitalized—and more than 600 times as much if the patient has developed a drug-resistant variety of tuberculosis.

Tuberculosis and other communicable diseases do not respect distinctions between citizens and non-citizens, legal residents and people who are not here lawfully. The key to controlling an outbreak of tuberculosis, hepatitis, sexually transmitted diseases, or other communicable diseases is early identification of the source of infection and immediate intervention to treat all infected persons. Because these bills will discourage immigrants from seeking treatment, they will endanger the health of everyone in the community.

ADMINISTRATIVE COSTS

S. 1664 and H.R. 2202 would impose substantial administrative burdens on health care services to check clients' immigration status and obtain information necessary to "deeming." These administrative costs include interviewing clients and obtaining the information from them, verifying the accuracy of information, training of staff, and record keeping and processing. The administrative burden includes obtaining information about the client's immigration status, date on which the person entered the country, whether the immigrant has a sponsor, whether the immigrant has worked for 40 quarters during which they earned enough to have a tax liability, and the income and resources of the immigrant, the sponsor, and the sponsor's spouse. These administrative costs must be borne by the program or service provider, except for anti-fraud investigators in hospitals.

SUMMARY

1664 and H.R. 2202 will:

Reduce access of legal immigrants and undocumented immigrants to primary care and preventive health services and increase immigrants' use of emergency and hospital services;

Result in poorer health outcomes for immigrants and their U.S.-citizen infants;

Increase the larger community's risk of contracting communicable diseases;

Increase expenditures on emergency and hospital services, offsetting savings due to reduced use of preventive and primary care; and

Increase administrative costs for publicly funded health care providers.

Mr. SIMPSON. Mr. President, may we set aside this amendment and go directly to the amendment of Senator FEINSTEIN so she might modify a previous amendment?

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

The pending amendment No. 3764 is set aside.

AMENDMENT NO. 3777, AS MODIFIED

Mrs. FEINSTEIN. I thank the Senator from Wyoming. Mr. President, I send a modification to amendment 3777 to the desk.

The amendment (No. 3777), as modified, is as follows:

Beginning on page 10, strike line 18 and all that follows through line 13 on page 11 and insert the following:

SEC. 108. CONSTRUCTION OF PHYSICAL BARRIERS, DEPLOYMENT OF TECHNOLOGY AND IMPROVEMENTS TO ROADS IN THE BORDER AREA NEAR SAN DIEGO, CALIFORNIA.

There are authorized to be appropriated funds of $12 million for the construction, expansion, improvement or deployment of triple-fencing in addition to that currently under construction, where such triple-fencing is determined by the Immigration & Naturalization Service (INS) to be safe and effective, and in addition, bollard style concrete columns, all weather roads, low light television systems, lighting, sensors and other technologies along the international land border between the United States and Mexico south of San Diego, California, for the purpose of detecting and deterring unlawful entry across the border. Amounts appropriated under this section are authorized to remain available until expended. The INS, while constructing the additional fencing, shall incorporate the necessary safety features into the design of the fence system to insure the well-being of Border Patrol agents deployed within or in near proximity to these additional barriers.

Mrs. FEINSTEIN. Mr. President, earlier I sent an amendment to the desk on behalf of Senator BOXER and myself which relates to the triple fencing of the Southwest border, particularly in the vicinity of San Diego and Mexico. This is an amendment to that amendment which has been worked out with Senator KYL and which I believe, hopefully will be acceptable to both sides. Senator KYL and I have discussed this. We have also discussed it with Doris Meissner, the INS Commissioner. We have worked out language to which INS now agrees.

Essentially, the language would authorize the appropriation of $12 million for the construction, expansion, improvement, and deployment of triple fencing. In addition, that currently under construction where such triple fencing is determined by the INS to be safe and effective, and in addition, bollard-style concrete columns, all weather roads, low-light television systems, lighting sensors and other technologies along the international land border between the United States and Mexico south of San Diego, CA, for the purpose of detecting and deterring unlawful entry across the border.

I believe this amendment in full is acceptable to both sides. Commissioner Meissner has also agreed to send a letter to Representative HUNTER which would State that the INS is in the process of testing triple fencing, will continue that testing, and is prepared to add to it where it has proven to be effective and safe.

Mr. President, I ask unanimous consent to vitiate the yeas and nays.

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

Mr. SIMPSON. Mr. President, let me commend the Senator from California for the fine work that she has done here in conjunction with the Senator from Arizona, Senator KYL. Both of you committed to the same objective, both of you from States heavily affected, both of you more aware of these things than any of us in this Chamber.

I insist in these remarks of all these past months that if there are people that understand illegal immigration any better than the people of Texas, California, Florida, and Illinois—although not on the border of our country but yet one of the large States with a large number of formally undocumented persons; that I think has been corrected; but a large and sometimes vexing population. I think you have resolved that to the betterment of all.

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

The amendment (No. 3777), as modified, was agreed to.

Mr. SIMPSON. Mr. President, I believe now that the status of matters is that we have two Simon amendments that we will deal with.

Mr. SIMON. We have dealt with them.

AMENDMENT NO. 3764

Mr. SIMPSON. We have not quite finished dealing with them. I had a comment or two to make.

Mr. President, with regard to Senator GRAHAM's remarks and his amendment, I hope—and I will not be long—we have heard in that amendment the revisitation of an old theme. The issue is very simple. As we hear the continual discussion about taxpayers and what is going to happen to taxpayers—taxpayers this, taxpayers that—I have a thought for you. I will tell you who should pay for the legal immigrant: the sponsor who promised to pay for the legal immigrant.

This is not mystery land. This is extraordinary. How can we keep coming

back to the same theme when the issue is so basic?

If you are a legal immigrant to the United States, this is such a basic theme that I do not know why it needs to be repeated again and again and again. But I hope it will be dealt with in the same fashion again and again and again, because it is this: When the legal immigrant comes to the United States, the consular officer, the people involved in the decision, and the sponsor agrees that that person will not become a public charge. That was the law in 1882. We have made a mockery of that law through administrative law judge decisions and court decisions through the years, where it is not just the "steak and the tooth," as my friend from Illinois referred to, there is no steak and no teeth in it.

And so, one of the most expensive welfare programs for the United States taxpayers is Medicaid. Everybody knows it. The figures are huge. Senator DOMENICI knows it. He covered it the other day. They are huge, and we all know that. We know the burden on the States.

So all we are saying is the sponsor, the person who made the move to bring in the legal immigrant, is going to be responsible, and all of that person's assets are going to be deemed for the assets of the legal immigrant. So it does not matter what type of extraordinary situation you want to describe to us all, and all of them will be genuinely and authentically touching, they will move us, maybe to tears. I am not being sarcastic. Those things are real. They will be veterans, they will be children, they will be disabled, they will be sick, and all we are saying is that the sponsor will pay first, which is exactly what they promised to do. And so, if the sponsor, having been hit too hard, is pressed to bankruptcy, is pressed to destruction, is pressed wherever one would be pressed, then we step in, the U.S.A., the old taxpayers step into the game —but not until the sponsor has suffered to a degree where they cannot pony up the bucks that they promised to pay.

If the sponsor has the financial resources to pay for the medical care needed by an immigrant, why on God's earth should the U.S. taxpayers pay for it? That is the real question. That is one that is easy to debate.

Does any Senator in this Chamber believe that the taxpayers of this country would agree to admit to our country an immigrant if they believed that the immigrant would impose major medical costs on the taxpayers, and that the immigrant sponsor would not be providing the support that they promised to pay? Now, that is where we are. That is where we have been. We can argue on into the night and get the same result, I think, that we got last night and will get tomorrow—the issue being, regardless of the tragic nature of this situation, whatever it is, the sponsor pays.

Then if you are saying, "But if the sponsor cannot pay," we have already taken care of that. If the sponsor cannot pay—goes bankrupt, dies, or whatever—the Government of the United States of America, the taxpayers, will pick up the slack; but not until the sponsor has had the slack drawn out of them—not to the point so they cannot live or become public charges themselves, but that is what this is about.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I wish to slightly, again, correct the RECORD. I know the Senator from Wyoming feels passionately about his position. His position just happens to be at variance with the facts.

I will cite and read this and ask if the Senator would disagree that these are the words in the United States Code 42, section 1382(j). This happens to be one of the three areas in which this Congress, at its election, has decided to specifically require that the income of the sponsor be added to that of the income of the legal alien for the purposes of determining eligibility for benefits. This happens to be the program of Supplemental Security Income. Here is what the law says:

> For the purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who, as a sponsor of such individual's entry into the United States, executed an affidavit of support, or similar agreement, with respect to such individual, and the income and resources of the sponsor spouse shall be deemed to be the income and resources of the individual for a period of 3 years after the individual's entry into the United States.

That is quite clear. That is what the obligation of the sponsor was. There is similar clarity of language to be found under the provisions relating to Aid to Families with Dependent Children and food stamps. So if a person wanted to know, what is my legal obligation when I sign a sponsorship affidavit, they could go to the law books of the United States and read, with clarity, what those programs happen to be.

My friend from Wyoming, the reality is that this Congress, until tonight, has not chosen to place Medicaid as one of those programs for which such deeming is required. By failing to do so, and by doing so for these three distinct programs, I think a very clear implication has been created that we did not intend, that there be deeming of the sponsor's income for the purposes of eligibility for Medicaid.

I believe that the kinds of arguments that are made by responsible organizations, such as the Association of Public Hospitals, is why this Congress, up until tonight, has not deemed it appropriate to deem the income of the sponsor to the legal alien for the purposes of Medicaid.

If that argument was so persuasive in the past, why have we not added Medicaid to the list of responsibilities in the past?

Mr. President, I believe—the rhetoric aside—that the facts are that there is clarity as to what the sponsor's obligation is today. No. 2, that we are about to change that responsibility and make those changes retroactive, applying to literally hundreds of thousands of people. And, in the case of Medicaid, in my judgment, we are about to adopt legislation that would have a range of negative effects, from increasing the threat to the public health of communicable diseases, to endangering the already fragile financial status of some of our most important American hospitals, to increasing the likelihood that a poor, pregnant woman would choose abortion rather than deliver a full-term child.

And so, Mr. President, I believe that both the amendment offered by the Senator from Illinois and, immodestly, the amendment I have presented to the Senate represent the kind of public policy that is consistent with the reality of our history of the treatment of legal aliens—again, I underscore legal aliens—and should be continued by the adoption of the amendments that will be before the Senate shortly.

Thank you.

The PRESIDING OFFICER. Is there further debate?

MODIFICATION TO AMENDMENT NO. 3866

Mr. SIMPSON. Mr. President, I have a unanimous-consent request cleared with the minority.

Mr. President, I ask unanimous consent to make two minor technical corrections to two provisions of amendment No. 3866 to the bill, S. 1664.

The first correction corrects a printing error, by which a provision belonging in one section of the amendment No. 3866 was inadvertently placed in a different section.

The second correction is a minor change in the wording.

These two corrections have been cleared on both sides, and I ask unanimous consent that they be accepted.

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

The modification follows:

(1) Subsection (c) of section 201 of S. 1664, (relating to social security benefits), as amended by amendment no. 3866, is further amended to read as follows:

(c) SOCIAL SECURITY BENEFITS.—(1) Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

"Limitation on Payments to Aliens

"(y)(1) Notwithstanding any other provision of law and except as provided in paragraph (2), no monthly benefit under this title shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

"(2) Paragraph (1) shall not apply in any case where entitlement to such benefit is

based on an application filed before the date of the enactment of this subsection.".

(2) Nothing in this subsection (c) shall affect any obligation or liability of any individual or employer under title 21 of subtitle C of the Internal Revenue Code.

(3) No more than 18 months following enactment of this Act, the Comptroller General is directed to conduct and complete a study of whether, and to what extent, individuals who are not authorized to work in the United States are qualifying for Old Age, Survivors, and Disability Insurance (OASDI) benefits based on their earnings record.

(2) In section 214(b)(2) of the Housing and Community Development Act of 1980, as added by section 222 of S. 1664 (relating to prorating of financial assistance), as added by amendment no. 3866—

(A) strike "eligibility of one or more" and insert "ineligibility of one or more"; and

(B) strike "has not been affirmatively" and insert "has been affirmatively".

(3) In the last sentence of section 214(d)(1)(A) of the Housing and Community Development Act of 1980, as added by section 224 of S. 1664 (relating to verification of immigration status and eligibility for financial assistance), as added by amendment no. 3866, insert after "Housing and Urban Development" the following: "or the agency administering assistance covered by this section".

Mr. SIMPSON. Mr. President, I think we can go forward. We now, so that our colleagues will be aware, are in a position to vote on three amendments. We will likely do that in a short period of time.

The Feinstein amendment has been resolved.

There is a Simon amendment on disability deeming, a Simon amendment on retroactivity deeming, and the Graham amendment that we have just been debating with regard to 2-year deeming.

We have many of our colleagues who apparently are involved with the Olympic activities tonight passing on the torch, and some other activity.

There is a Gramm amendment on the Border Patrol and a Hutchison amendment on Border Patrol. Those will be accepted. There is a Robb amendment which will be accepted.

I inquire of the Senator from Florida if he has any further amendments. At one time there was a list. I wonder if there is any further amendment other than the pending amendment from the Senator from Florida.

Mr. GRAHAM. Yes. I have one other amendment that relates to the impact on State and local communities of unfunded mandates. I understand that there may be a desire to withhold further votes after the three that are currently stacked. If that is the case, I would be pleased to offer my next amendment tomorrow morning.

Mr. SIMPSON. Mr. President, I thank our remarkable staff. And Elizabeth certainly is one of the most remarkable. I think we can get a vote here in the next few minutes on three amendments which are 15 minutes in original time and 10 on the second two with a lock-in of tomorrow to take care of the rest of the amendments on this bill. We may proceed a bit tonight with the debate. That will be resolved shortly.

But the Senator from Florida has one rather sweeping amendment on which we will need further debate, will we not; more than 15 minutes perhaps?

Mr. GRAHAM. I anticipate it will require more than 15 minutes.

Mr. SIMPSON. I see. I would probably have that much on the other side.

Then I have one with Senator KENNEDY and share with my colleagues that I do have a place holder amendment. It is my intention, unless anyone responds to this, not at this time but tomorrow—you will recall that Senator MOYNIHAN placed an amendment at the time of the welfare bill with regard to the Social Security system having a study, that they should begin to do something in that agency to determine how to make that card more tamper resistant. It was cosponsored by Senator DOLE. It passed unanimously here. That would be an amendment that I have the ability to enter unless it is exceedingly contentious. I intend to do so because it certainly is one that is not strange to us, and the date of its original passage was—so that the staff may be aware of the measure, that was in the CONGRESSIONAL RECORD of September 8, 1995, page S12915, directing the Commissioner to develop—this is not something that is immediate—to be done in a year, and a study and a report will come back. There is nothing sinister with regard to it, but it is important to consider that.

We have an amendment of Senator ROBB, and apparently an objection to that amendment from that side of the aisle. I hope that might be resolved.

Let me go forward and accept the Gramm amendment, the Hutchison amendment, and if you have those, I will send them to the desk.

AMENDMENT NO. 3948 TO AMENDMENT NO. 3743

(Purpose: To express the sense of the Congress regarding the critical role of interior Border Patrol stations in the agency's enforcement mission)

On behalf of Senators GRAMM and HUTCHISON, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside, and the clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. GRAMM, for himself, Mrs. HUTCHISON, and Mr. DOMENICI, proposes an amendment numbered 3948 to amendment No. 3743.

Mr. SIMPSON. 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, insert the following:

SEC. . FINDINGS RELATED TO THE ROLE OF INTERIOR BORDER PATROL STATIONS.

The Congress makes the following findings:

(1) The Immigration and Naturalization Service has drafted a preliminary plan for the removal of 200 Border Patrol agents from interior stations and the transfer of these agents to the Southwest border.

(2) The INS has stated that it intends to carry out this transfer without disrupting service and support to the communities in which interior stations are located.

(3) Briefings conducted by INS personnel in communities with interior Border Patrol stations have revealed that Border Patrol agents at interior stations, particularly those located in Southwest border States, perform valuable law enforcement functions that cannot be performed by other INS personnel.

(4) The transfer of 200 Border Patrol agents from interior stations to the Southwest border, which would not increase the total number of law enforcement personnel at INS, would cost the federal government approximately $12,000,000.

(5) The cost to the federal government of hiring new criminal investigators and other personnel for interior stations is likely to be greater than the cost of retaining Border Patrol agents at interior stations.

(6) The first recommendation of the report by the National Task Force on Immigration was to increase the number of Border Patrol agents at the interior stations.

(7) Therefore, it is the sense of the Congress that—

(A) the U.S. Border Patrol plays a key role in apprehending and deporting undocumented aliens throughout the United States;

(B) interior Border Patrol stations play a unique and critical role in the agency's enforcement mission and serve as an invaluable second line of defense in controlling illegal immigration and its penetration to the interior of our country;

(C) a permanent redeployment of Border Patrol agents from interior stations is not the most cost-effective way to meet enforcement needs along the Southwest border, and should only be done where new Border Patrol agents cannot practicably be assigned to meet enforcement needs along the Southwest border; and

(D) the INS should hire, train and assign new staff based on a strong Border Patrol presence both on the Southwest border and in interior stations that support border enforcement.

Mr. SIMPSON. This amendment has been cleared by both sides of the aisle. It has to do with the Border Patrol, and I urge its adoption.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. May I make an inquiry? Is this the amendment that says, in effect, that if Border Patrol personnel are relocated from the interior assignment to the assignment in a border position, that there has to be some coordination with the law enforcement agencies in the communities from which the personnel are being relocated?

Mr. SIMPSON. Mr. President, that would be the Hutchison amendment, not this amendment.

Mr. GRAHAM. That will be next, the Hutchison amendment?

Mr. SIMPSON. Yes. The one that is before the body is the sense of the Congress regarding the critical role of the

interior Border Patrol saying that it plays a key role in apprehending and deporting undocumented aliens and plays a critical role in the agency's enforcement mission and serves as a valuable second line of defense. Redeployment of Border Patrol agents at interior stations would not be cost-effective, and it is unnecessary in view of plans to nearly double the Border Patrol agents over the next 5 years, and INS should hire, train, and assign new staff based on a strong Border Patrol presence, both on the Southwest border and interior stations that support border enforcement.

Mr. GRAHAM. Mr. President, I am not going to object to either of these amendments, but I would like to raise the concern that currently there is a great deal of apprehension by interior law enforcement, that is, law enforcement that is not directly on the Nation's border, at the level of support being provided by INS and the Border Patrol.

I might state that I recently met with a group of law enforcement leaders from the central part of my State who stated that the common practice was that for the first 6 to 9 months of the year, if they had an illegal alien in detention, the Border Patrol or appropriate other INS officials would come and take custody of that individual. During the last 3 to 6 months of the fiscal year depending on the status of the budget of the INS, nobody would show up, and therefore the law enforcement officials were in the position of either making a judgment to release the individual or to continue them in detention at their expense and oftentimes on a questionable legal basis for continued detention.

I raise this phenomenon to say I hope that as the INS and the Border Patrol look at the redeployment of resources that this legislation is going to call for it is more than just a coordination with local law enforcement but, rather, that there is an affirmative effort made to assure that the capability to assume responsibility for and detain illegal aliens wherever they are determined in the United States is a high priority of the agencies.

I thank the Chair.

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

Mr. SIMPSON. Mr. President, perhaps we could go ahead—since there was no objection to that amendment, I certainly withhold the other one because it does address what the Senator from Florida is saying. So I urge adoption of the pending amendment.

The PRESIDING OFFICER. Without objection the amendment is agreed to.

The amendment (No. 3948) was agreed to.

NUTRITION PROGRAMS AND IMMIGRATION

Mr. LEAHY. Mr. President, yesterday the Senate agreed to include an amendment which I submitted to the immigration bill. This amendment addresses the serious problem of adding to the administrative load of the already overburdened nutrition programs.

I met a couple of weeks ago with the Vermont School Food Service Association and they expressed tremendous concern over the additional workload this bill would add to their schools. Marlene Senecal, Connie Bellevance, and Sue Steinhurst of the American School Food Service Association urged me to take action as did Jo Busha, the State director of child nutrition programs.

For the school lunch and breakfast programs the ASFSA estimated that 14,881 new staff would have to be hired nationwide to handle the additional paperwork of verifying citizenship status for each child and working with the INS.

If the average salary of new staff is $25,000 to $30,000 a year we are talking about a huge burden for schools—at least $370 million per year.

The magnitude of this unfunded mandate imposed on schools could drive thousands of schools off the school lunch and breakfast program.

The National Conference of State Legislatures are also concerned that the bill, as written, places a huge unfunded mandate on local schools, local governments, and State agencies.

This bill also inflicts complex sponsor deeming procedures regarding legal immigrants in most Federal programs, including child nutrition programs, and WIC.

"Deeming", the practice of counting a sponsor's income as that of an immigrant's when calculating eligibility for Federal programs, would add unnecessary bureaucratic burdens on local and State administrators, schools, child care providers, and WIC clinics.

Those already burdened will be forced to spend more time filling out forms and less time providing for the poor and disadvantaged.

States like Vermont, with very few immigrants, will still be affected by the additional administrative burden.

Also, denying these benefits to pregnant immigrant women will lead to increased costs for taxpayers. It is estimated that for every dollar WIC spends on pregnant women $3 is saved in future Medicaid costs. We will end up paying far more through Medicaid to take care of children with low birth rates.

Regardless of the citizenship status of these mothers, their children will be U.S. citizens and eligible for means tested programs.

And, ironically, States with large native American populations who benefit from the food distribution program on Indian reservations would have been forced to verify the citizenship of their native American citizens.

The American School Food Service Association, the National Conference of State Legislatures, and others, are very concerned about the additional mandates and administrative duties that would have been imposed upon schools and States by the "deeming" requirements and the immigrant determination process as they affect child nutrition programs.

Most soup kitchen and food bank programs are run by volunteers. Requiring volunteers to do alien status checks and income verification with sponsoring families would be nearly impossible, but hiring staff for this purpose would use donated funds in ways not intended by those making the donations.

School lunch and breakfast programs are run by local schools who struggle with increasing administrative and overhead costs. Requiring them to closely monitor immigrant status and sponsor incomes would have burdened them greatly according to the American School Food Service Association. Fifty million children attend school each school day in the United States.

Similar arguments can be raised for other child nutrition programs such as the WIC Program.

My amendment also corrected what I believe are some drafting errors in the bill and makes additional improvements.

First, on page 180, ineligible aliens are disqualified from receiving public assistance except for certain programs such as those under the National School Lunch Act, the Child Nutrition Act, and other assistance such as soup kitchens if they are not means tested.

This language omits several programs such as the commodity supplemental food program which is an alternative to WIC in many areas of the country.

There is no reason I can think of for pregnant women getting WIC benefits to be treated differently from pregnant women getting the same benefits under the Commodity Supplemental Food Program which was the precursor to WIC, and is still operated in about 30 areas around the Nation.

Also, the soup kitchen program, the food bank program and the emergency food assistance program could be considered to be means tested so they would not be exempt either.

These programs provide emergency food assistance to families and I doubt if anyone intended to treat them differently from the nutrition programs already exempted.

HARKIN-BYRD-DASCHLE AMENDMENT

Mr. BYRD. Mr. President, I am pleased to have joined with my colleagues, Senators HARKIN and DASCHLE, in sponsoring an amendment to this bill which requires the Attorney General to ensure that every State has at least 10 full-time active duty agents from the Immigration and Naturalization Service. Currently, West Virginia

is one of only three States that does not have a permanent INS presence. Our amendment rectifies that problem.

As the debate on this bill has shown, the Senate is determined to strengthen our current laws with respect to immigration, particularly illegal immigration. But whatever we pass, whatever new laws we fashion to combat the serious problem of illegal immigration, they will mean little if we are not also willing to provide the tools and support to enforce those laws.

Mr. President, In America today, illegal immigration is not simply a California problem, or a Texas problem, or a New York problem. On the contrary, it is a national problem that impacts on every one of the 50 States. Obviously, my State of West Virginia does not suffer the consequences associated with illegal immigration to the same degree as do other States. But I believe that if we are to have a coherent national policy, a policy based on stopping the hiring of illegal aliens and swiftly deporting those who are here illegally, then every State must be brought into our enforcement efforts. And that means providing every State, not just some States, with the law enforcement tools they need.

Clearly, every State needs a minimum INS presence to meet basic needs. By providing each State with its own INS office, the Justice Department will, I believe, save taxpayer dollars by reducing not only travel time for those agents who must now come from other areas, but also jail time per illegal alien, since a permanent INS presence would substantially speed up deportation proceedings.

Moreover, there is a growing need to assist legal immigrants and to speed up document processing. How are employers—who will be mandated under this bill to aggressively work to deter the hiring of illegal aliens—going to receive the administrative help they need without the assistance of local INS personnel?

Mr. President, this amendment makes sense, good common sense. It is a modest proposal that I believe will send a clear message that we are serious in our commitment to enforcing our immigration laws. Consequently, I am pleased to have sponsored the amendment, and equally pleased that the Senate has included it in the current bill.

Mr. SIMPSON. And now I have a unanimous-consent request to propose.

I ask unanimous consent that votes occur on or in relation to the following amendments at 7:15 p.m., with 2 minutes equally divided for debate between each vote: Simon amendment No. 3810, Simon amendment No. 3813, Graham amendment No. 3764.

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

Mr. SIMPSON. Now, with that having been accomplished, we will I think be able to accommodate you, all of our colleagues, by finding out tonight and wrapping up everything so that we will finish this measure tomorrow. That will be I think attainable from what I see at the table, and I think my colleague from Massachusetts will agree. And we will then proceed at 7:15.

Mr. President, I ask unanimous consent that 60 minutes of Senator DASCHLE's time be allotted for Senator GRAHAM and 60 minutes of Senator DOLE's time be allotted to myself.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. If I may ask the Senator from Wyoming, as I understand it, that would leave the Graham, Chafee and SIMPSON amendments remaining for consideration on tomorrow. Is that the Senator's understanding? That would be at least my understanding. If we are missing something, some Member out there has a measure that we have not mentioned, we hope at the time of the vote they will mention it. We are not urging other Senators to add more to the list. But that is at least my understanding. I will be glad to hear from others if that is not correct.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I might have more than one amendment tomorrow.

Mr. SIMPSON. Mr. President, we can all have more than one amendment. I hope the Senator from Florida will assist us in buttoning this down. If there is another amendment or two other amendments, let us button it down and get it to rest. We do have a Robb amendment, I say to the Senator from Massachusetts, which has an objection on that side of the aisle.

Mr. KENNEDY. I understand the Robb amendment has been withdrawn.

Mr. SIMPSON. Withdrawn?

Mr. KENNEDY. Withdrawn.

Mr. SIMPSON. There is a Hutchison amendment which has been questioned by the Senator from Florida. There is a Simpson-Kennedy amendment with regard to verification. And then there is a place holder amendment which I intend to present, the Moynihan-Dole amendment, which passed unanimously in September, to allow the Social Security Administration to begin, nothing more, a study to determine how in the future we are to make that system more tamper resistant. It is not anything that goes into place. It is a report. And those who were involved at the time will recall.

That is what I have. That is the extent of it.

Mr. KENNEDY. Since we have another moment then, is it the intention, after we dispose of this, to at least make a request that only those amendments which have been outlined now be in order for tomorrow? And that it would at least be our attempt during the evening time to try and get some time understandings with those——

Mr. SIMPSON. That is being done at the present time, all of that.

Mr. KENNEDY. The leader will be out here, I am sure, shortly, but we would start then early and try and move this through in the course of the day.

Mr. SIMPSON. This matter will be concluded. The staffs on both sides of the aisle are working to present that to us in a few moments, to tighten and button down a complete agreement on time agreements and unanimous consent.

Mr. KENNEDY. The leader will outline the plan for the rest of the evening. Is it the Senator's understanding that those three amendments will be the final voting amendments for the evening?

Mr. SIMPSON. I think that would be the case. The leader is not here, but I think conjecture would have it be so.

Mr. KENNEDY. We will wait on that issue until the leader makes a final definitive decision. I thank the Chair.

Mr. SIMPSON. I thank my colleagues.

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. SIMPSON. 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. SIMPSON. Mr. President, let me ask unanimous consent, in the voting to take place at 7:15, that the first vote at 7:15 be 15 minutes and the subsequent votes 10 minutes each.

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

Mr. SIMPSON. 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.

VOTE ON AMENDMENT 3810

The PRESIDING OFFICER. The question is on agreeing to the amendment, No. 3810. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mr. KASSEBAUM] is necessarily absent.

The result was announced, yeas 30, nays 69, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—30

Akaka	Dodd	Hollings
Breaux	Dorgan	Inouye
Bumpers	Feingold	Jeffords
Conrad	Graham	Kennedy
Daschle	Harkin	Kerrey

Kerry	Mikulski	Rockefeller
Lautenberg	Moseley-Braun	Sarbanes
Leahy	Moynihan	Simon
Levin	Murray	Wellstone
Lieberman	Pell	Wyden

NAYS—69

Abraham	Domenici	Lugar
Ashcroft	Exon	Mack
Baucus	Faircloth	McCain
Bennett	Feinstein	McConnell
Biden	Ford	Murkowski
Bingaman	Frist	Nickles
Bond	Glenn	Nunn
Boxer	Gorton	Pressler
Bradley	Gramm	Pryor
Brown	Grams	Reid
Bryan	Grassley	Robb
Burns	Gregg	Roth
Byrd	Hatch	Santorum
Campbell	Hatfield	Shelby
Chafee	Heflin	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Johnston	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kohl	Thompson
DeWine	Kyl	Thurmond
Dole	Lott	Warner

NOT VOTING—1

Kassebaum

The amendment (No. 3810) was rejected.

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

Mr. KEMPTHORNE. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3813

The PRESIDING OFFICER. The question before the Senate now is Simon amendment No. 3813. There are 2 minutes to be divided equally between the sides.

Mr. SIMON. Mr. President, this is a relatively simple amendment. If anything, this area is simple. If you are a sponsor of someone coming in, you sign up for 3 years. The Simpson bill says we go to 5 years. I am for that prospectively. I do not believe it is right for Uncle Sam to rewrite the contract and say, "You signed up for 3 years, now you are responsible for 5 years." That is what happens without my amendment.

I favor the 5 years prospectively, but I think if Uncle Sam signs a deal, Uncle Sam should be responsible. He should not change a contract. That is true for a used car dealer. It certainly ought to be true for Uncle Sam.

Mr. SIMPSON. It is true that individuals already in the country will not be the beneficiaries of new legally enforceable sponsor agreements that will be required after enactment. It is also true that some of those, those who have been here less than 5 years, will nevertheless be subject to at least a portion of the minimum 5-year deeming period.

I remind my colleagues, however, that no immigrant is admitted to the United States if the immigrant does not provide adequate assurance to the consular officer and commissioner and the immigration inspector that he or she is not likely to become a public charge. In effect, that is a promise to the American people that they will not become a burden to the taxpayers, under any circumstance.

Mr. SIMON. 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.

The PRESIDING OFFICER (Mr. SANTORUM). The question occurs on agreeing to amendment No. 3813. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

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

The result was announced—yeas 36, nays 63, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—36

Akaka	Heflin	Mikulski
Boxer	Hollings	Moseley-Braun
Breaux	Inouye	Moynihan
Chafee	Johnston	Murray
Conrad	Kennedy	Pell
Daschle	Kerrey	Pryor
DeWine	Kerry	Rockefeller
Dodd	Lautenberg	Sarbanes
Feinstein	Leahy	Simon
Glenn	Levin	Specter
Graham	Lieberman	Wellstone
Hatfield	Mack	Wyden

NAYS—63

Abraham	Domenici	Lott
Ashcroft	Dorgan	Lugar
Baucus	Exon	McCain
Bennett	Faircloth	McConnell
Biden	Feingold	Murkowski
Bingaman	Ford	Nickles
Bond	Frist	Nunn
Bradley	Gorton	Pressler
Brown	Gramm	Reid
Bryan	Grams	Robb
Bumpers	Grassley	Roth
Burns	Gregg	Santorum
Byrd	Harkin	Shelby
Campbell	Hatch	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kempthorne	Thompson
D'Amato	Kohl	Thurmond
Dole	Kyl	Warner

NOT VOTING—1

Kassebaum

So the amendment (No. 3813) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3764

The PRESIDING OFFICER (Mr. SANTORUM). Under the previous order, the question occurs on amendment No. 3764 offered by the Senator from Florida, Senator GRAHAM.

Mr. KENNEDY. Mr. President, the Senator would like to speak.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, the amendment, which will next be voted on, would do three things: One, it will say that the application of deeming to Medicaid will be only for a period of 2 years. Second, it will exempt emergency care and public health services. Third, it will apply prospectively.

Mr. President, this amendment is supported by groups, which range from the Catholic Conference to the League of Cities. They support it for a set of common reasons. They understand that the public health will be at risk if we deny Medicaid to this population of legal aliens, and that there will be a massive cost shift to the communities in which hospitals, which are obligated to provide medical services that will now no longer be reimbursed in part by Medicaid, are located. Catholic Charities is concerned about an increase in abortion, as poor pregnant women would find it economically necessary to seek an abortion rather than pay the cost of a delivery.

For all of those reasons, I urge adoption of this amendment.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, this amendment, like so many others before, would reduce the sponsor's responsibility for their immigrant relatives they bring to the United States on the basis that they will not become a public charge. This amendment would nearly eliminate deeming for Medicaid, the most costly and expensive of all of the welfare programs. Medicaid deeming would be limited to 2 years.

The sponsors who promised to provide the needed assistance should pay the health care assistance, as long as they have the assets to do so. Otherwise, the taxpayers pick up the tab.

The PRESIDING OFFICER. Does the Senator request the yeas and nays?

Mr. SIMPSON. 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.

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

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Kansas [Mrs. KASSEBAUM] is necessarily absent.

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

The result was announced—yeas 22, nays 77, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—22

Akaka	Feingold	Hollings
Boxer	Ford	Kennedy
Daschle	Graham	Kohl
Dodd	Hatfield	Lautenberg

Lieberman	Murray	Simon
Mikulski	Pell	Wyden
Moseley-Braun	Rockefeller	
Moynihan	Sarbanes	

NAYS—77

Abraham	Dorgan	Lott
Ashcroft	Exon	Lugar
Baucus	Faircloth	Mack
Bennett	Feinstein	McCain
Biden	Frist	McConnell
Bingaman	Glenn	Murkowski
Bond	Gorton	Nickles
Bradley	Gramm	Nunn
Breaux	Grams	Pressler
Brown	Grassley	Pryor
Bryan	Gregg	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roth
Byrd	Heflin	Santorum
Campbell	Helms	Shelby
Chafee	Hutchison	Simpson
Coats	Inhofe	Smith
Cochran	Inouye	Snowe
Cohen	Jeffords	Specter
Conrad	Johnston	Stevens
Coverdell	Kempthorne	Thomas
Craig	Kerrey	Thompson
D'Amato	Kerry	Thurmond
DeWine	Kyl	Warner
Dole	Leahy	Wellstone
Domenici	Levin	

NOT VOTING—1

Kassebaum

The amendment (No. 3764) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate resumes S. 1664 on Thursday, May 2, the following amendments be the only amendments remaining in order: Senator GRAHAM of Florida, Senator GRAHAM of Florida, Senator CHAFEE, Senator SIMPSON, and Senator DEWINE.

I further ask that following the debate on the above-listed amendments, the Senate proceed to vote on in relation to those amendments, with the votes occurring in the order in which they were debated, and there be 2 minutes equally divided for debate between each vote.

I further ask that following the disposition of the amendments or points of order, the Senate proceed for 30 minutes of debate only to be equally divided between Senator SIMPSON and Senator KENNEDY, and following that time the Senate proceed to vote on Simpson Amendment No. 3743, as amended, to be followed by a cloture vote on the bill; and if cloture is invoked, the Senate proceed immediately to advance S. 1644 to third reading and proceed to the House companion bill, H.R. 2022; that all after the enacting clause be stricken, the text of S. 1644 be inserted, the bill be advanced to third reading and final passage occur, all without further action or debate.

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

Mr. KENNEDY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Senator BYRD evidently notified the leadership that he wanted to be able to address the Senate before the final vote on the bill.

Mr. DOLE. Mr. President, I also ask that Senator BYRD have whatever time he wishes under his control prior to the vote.

Mr. GRAHAM. Mr. President, reserving the right to object, it is my intention to offer a point of order prior to the vote on the Dole-Simpson amendment. Is that provided for?

Mr. DOLE. Yes. In fact, I said, "or points of order."

Mr. GRAHAM. All right.

Mr. DOLE. There could be more than one, so we did not designate any names.

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

Mr. DOLE. I might also indicate to my colleagues and perhaps the managers that between 10 and 12 they could sort of stack the votes, whatever works out. We could have a series of votes at noon. Otherwise, whatever the managers desire.

PRESIDIO PROPERTIES ADMINISTRATION ACT

The Senate resumed consideration of the bill.

Mr. DOLE. Mr. President, I now ask unanimous consent that the Senate turn to the consideration of Calendar No. 300, H.R. 1296, regarding Presidio properties, and the bill be considered in the following fashion:

That amendments numbered 3571 and 3572 be withdrawn and all other amendments and motions other than the Murkowski substitute and the committee substitute be withdrawn, and the committee-reported substitute be modified to reflect the adoption of the Murkowski substitute, as modified, to reflect the deletion of title XVI, Sterling Forest, and title XX, Utah Wilderness, and containing the text of amendment numbered 3572, with Lost Creek land exchange modified to reflect the text I now send to the desk, and the committee substitute, as amended, be immediately agreed to, the bill be advanced to third reading and passed, and the motion to reconsider be laid upon the table, all without any intervening action or debate.

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

The modification to the Murkowski substitute amendment No. 3564 is as follows:

Delete title XVI and title XX of amendment No. 3564 and insert the following new title:

TITLE I—MISCELLANEOUS

SECTION 101. LOST CREEK LAND EXCHANGE.

The Secretary of Agriculture shall submit a plan to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives detailing the terms and conditions for the exchange of certain lands and interests in land owned by the R-Y Timber, Inc., its successors and assigns or affiliates located in the Lost Creek area and other areas of the Deerlodge National Forest, Montana.

TITLE —VANCOUVER NATIONAL HISTORIC RESERVE

SEC. 01. VANCOUVER NATIONAL HISTORIC RESERVE.

(a) ESTABLISHMENT.—There is established the Vancouver National Historic Reserve in the State of Washington (referred to in this section as the "Reserve", consisting of the area described in the report entitled "Vancouver National Historic Reserve Feasibility Study and Environmental Assessment" published by the Vancouver Historical Study Commission and dated April 1993 as authorized by Public Law 101-523 (referred to in this section as the Vancouver Historic Reserve Report").

(b) ADMINISTRATION.—The Reserve shall be administered in accordance with;

(1) the Vancouver Historic Reserve Report (including the specific findings and recommendations contained in the report); and

(2) the Memorandum of Agreement between the Secretary of Interior, acting through the Director of the National Park Service, and the City of Vancouver, Washington, dated November 14, 1994.

(c) NO LIMITATION ON FAA AUTHORITY.—The establishment of the Reserve shall not limit;

(1) the authority of the Federal Aviation Administration over air traffic control, or aviation activities at Pearson Airpark; or

(2) limit operations and airspace in the vicinity of Portland International Airport.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

The bill (H.R. 1296), as amended, was passed.

Mr. MURKOWSKI. Mr. President, I strongly support the passage of this important environmental legislation. Taken together, these measures represent the most significant and important conservation package to come before the Senate in over a decade. They will preserve and protect for future generations important natural resource and historic treasures of this country as well as providing critically needed management authorities.

For the most part, the measures contained in this package have languished on the Senate floor due to holds and delaying tactics from Senators. I want to congratulate the majority leader, Senator DOLE, for his successful efforts to end the seemingly endless parade of obstacles to the passage of this legislation. Had we less rhetoric and a modicum of rational assistance from the administration, we might have accomplished this far earlier. We all observed the administration's game plan and the willingness of the media to cater to it, including attaching the minimum wage package to the parks legislation.

Mr. President. I will not go into lengthy detail on the various measures that are finally being released, but I do

want to highlight some of them at this time.

Title I of this measure deals with the Presidio of San Francisco. By itself, this title is an important and critically needed measure that should have been enacted months ago. With the closure of the Presidio, the National Park Service was facing an almost impossible drain on its limited funds to maintain a unique and important resource. The legislation establishes a mechanism whereby the Presidio will be preserved and maintained for future generations, the National Park Service will be able to focus on interpretation and the visitor experience, and the site will be self-supporting. I appreciate the willingness of the two Senators from California to work with me and the committee in crafting this novel approach.

Title II contains 25 miscellaneous amendments and boundary changes. Some of these measures were reported from the committee over a year ago. They affect areas from the Atlantic to the Pacific and provide essential authorities that the administration needs for proper and effective management.

The remaining 34 titles include the establishment of new areas, such as the Tall Grass Prairie National Preserve, which will preserve one of the last portions of the prairie that symbolized the West. Both Senator DOLE and Senator KASSEBAUM deserve credit for the efforts to secure passage of that measure, but it too had been held up by the other side. Among those titles is the Snowbasin Land Exchange, which is critical for the Winter Olympics. Apparently the administration is only concerned with getting through November and was prepared to let that measure languish with the other measures. The title also includes the Selma to Montgomery National Historic Trail, an important measure that will commemorate a significant part of the civil rights movement.

The Taos Pueblo Land Transfer title would transfer 764 acres of land within the Wheeler Peak Wilderness in New Mexico to the Secretary of the Interior to be held in trust for Pueblo de Taos Indians. This tract is surrounded on three sides by Pueblo lands and is an important area for use in their religious ceremonies. The Pueblo would use the lands for traditional purposes, but the lands would otherwise be managed to protect its wilderness character. Both Senator DOMENICI and Senator DOLE were instrumental in moving that measure and I appreciate their support.

The Rocky Mountain National Visitor Center, sponsored by Senators CAMPBELL and BROWN addresses a critical need at Rocky Mountain National Park through a creative public-private partnership to provide a visitor center for the park. Rocky Mountain National Park is the most popular tourist attraction in the State of Colorado, drawing over 3 million visitors every year, but has not had a visitor center.

Mr. President. All these measures are important and all should have passed on their own merits long ago. These measures are important to the environment, essential to the National Park System, and will be of lasting benefit to future generations. As I stated earlier, they represent the single largest conservation package to come before the Senate in over a decade.

This Senator at least wants to express his gratitude to the majority leader, Senator DOLE, for being able to free at least this group of hostages from the political games. He will probably not receive the credit he is due, but if we can enact the Presidio and the other measures included in this package, it will be as a result of his efforts and his leadership and I thank him.

Mr. DOLE. Mr. President, the legislation before us today contains several issues of priority for several States. Today, we are prepared to go forward with a number of items concerning parks and public lands issues across this country and I am pleased to support this package.

I would like to thank Senator MURKOWSKI for including provisions critical to Kansas and California. I am pleased that the Presidio legislation is included in this package. This critical provision will allow for the innovative preservation of the Presidio, one of our Nation's true treasures. This bill also includes the establishment of the Tall Grass Prairie National Preserve in Kansas.

More so than any other legislation, this package represents the interests and priorities of individual States. States like Kansas and California want these initiatives accomplished—not battered about by outsiders and Washington bureaucrats who think they know best. National forests; land conveyances, visitor centers, land exchanges and historic parks—these are all issues of importance to the various interest involved and should no longer be delayed. I urge the President to support this package.

PRESIDIO

Mr. President, this bill provides for the administration of the Presidio in California. I am pleased to join with my colleagues to pass this legislation which will provide for an exciting future for the Presidio.

The Presidio is a treasured resource of this country. The legislation before us today provides for national recognition of the Presidio. I believe Senator MURKOWKI has sought a balance between the interests of the trust charged with preserving this resource and the interests of the National Park Service. In my view, the Presidio trust will ensure an important partnership between the local community and this property.

This trust, established within the Department of the Interior, will manage the renovation and leasing of the specific Presidio properties. The revenues generated from these leases will then offset the costs of maintaining the Presidio as a national park, reducing the need for Federal funding. Through this innovative approach to managing one of our Nation's finest landmarks, we can ensure the preservation of the Presidio while also providing significant opportunities to the local community.

The unique history of the Presidio's operation as a military post dates back to 1776. Its designation as a national historic landmark in 1962 recognized the importance of the post in many military operations. After the Army closed the post, the National Park Service took over the Presidio. When comparing our limited resources against the number of national parks and historic sites, it is apparent that we must find new ways to manage and preserve such important resources.

ESTABLISHMENT OF THE TALL GRASS PRAIRIE NATIONAL PRESERVE IN KANSAS

For several years there have been attempts to create a National Tall Grass Prairie Preserve on nearly 11,000 acres in Kansas, known as the Z-Bar Ranch. Proposals for this preserve have faced valid opposition from concerned citizens and landowners in the area. Any involvement by the Federal Government generates concerns, but this legislation provides for involvement by the Federal Government.

Senator KASSEBAUM has worked to bring all parties together to discuss the establishment of a prairie park and strike a balance with this legislation. I have always supported Senator KASSEBAUM's efforts to encourage private participation in the establishment of a national prairie preserve in Kansas.

The Z-Bar Ranch is currently owned by a private trust, but establishing Z-Bar as a national preserve requires legislation. Under this legislation, the Federal Government is limited to ownership of a maximum of 180 acres of the Z-Bar Ranch. The Federal Government would be authorized to purchase or accept a donation of this portion of land.

The current owners of the ranch have offered to donate the core area of land to the Federal Government. This will minimize the cost of establishing the preserve. In my view, a compromise which includes minimal Federal ownership and continued local input sets this proposal apart from other efforts.

The Tall Grass Prairie is a vital part of the natural environment and heritage of the high plains. Those who have visited the Flint Hills of Kansas appreciate the beauty of this prairie. Senator KASSEBAUM's work in creating a partnership between public and private sectors will help preserve the history of the Midwest. With a private/public partnership, we can officially recognize the Tall Grass Prairie while limiting

the involvement of the Federal Government. I commend Senator KASSEBAUM for her hard work on this innovative legislation and her efforts to recognize this important Kansas landmark.

I again commend Senator MURKOWSKI and Senator CAMPBELL for their work on this important piece of legislation. I know that earlier the administration expressed some concerns about the Presidio legislation, I think in reviewing the bill before us they will find their concerns were addressed by the committee. I commend the community of San Francisco and people of California for recognizing this important resource and working to develop an approach that will allow generations to come to enjoy this historic and unique landmark.

Mr. MCCAIN. Mr. President, I want to thank Senator MURKOWSKI for all of his hard work on the Energy Committee and on the many difficult public lands issues he must deal with.

As my colleagues are aware, I have had serious concerns about legislation requiring rather than authorizing agency heads to acquire land and to construct particular buildings, thereby incurring costs to the Federal taxpayer.

Usually, such Federal acquisition and construction activities are authorized by Congress. Once authorized, administrative procedures are in place to ensure that the project is necessary and is undertaken in the order of its relative priority. The final decision of whether to go forward is traditionally left to the discretion of the Secretary based on merit and priorities.

When the Presidio bill first came to the floor, I expressed my concerns about several titles containing acquisition and construction mandates. In order not to hold up the bill unnecessarily, I canvassed the affected agencies to determine if they opposed any of these mandates. The purpose of this inquiry was so that I did not have to insist on changing bill mandates to authorizations if the administration intended to undertake the activity even if not congressionally mandated.

The Department of the Interior objected to one requirement dealing with a land acquisition in the Corinth, MS. The bill requires the National Park Service to acquire land in the vicinity of the Corinth battlefield, and requires the Secretary to construct, operate, and maintain an interpretive center on the property.

I had intended to offer an amendment to change the acquisition mandate to a traditional authorization so that the applicable needs assessment and prioritization procedures could be applied, but I have been assured by the chairman of the Senate Energy Committee that he will address my concern in the conference committee.

Mr. MURKOWSKI. Senator MCCAIN is correct. I understand his concern about the mandate on the Corinth battlefield title, and I will address it in the conference report.

Mr. MCCAIN. I thank the Senator. I would also like to add that the Senators from Mississippi have made a strong argument that the visitor center is necessary. I trust and expect that the Secretary will fully consider their views in administering the authorization.

Furthermore, I know it is the intent of the Senator from Mississippi to subject the authorization to appropriations.

Mr. LOTT. Senator MCCAIN is correct. It has always been my intention that the acquisition and construction be subject to appropriations, and that this project be undertaken in the order of its relative priority.

Mr. CAMPBELL. Mr. President, I would like to congratulate all of the Members and their staff who have worked so hard on collaborating on this omnibus package. In particular, I would like to thank my good friend, the majority leader from Kansas, for his persistent efforts to shepherd this bill into law. He has done a great service for many of us, and the bill's final passage is a testament to his strength and tenacity as a leader.

I would like to say a few words about a couple of the bills, that have specific meaning to me.

The Presidio bill, the flagship of this package, offers a unique, creative, and innovative approach to provide for the long-term protection and preservation of one of our Nation's greatest cultural, historical, and natural treasures. Many people have been waiting a long time for this bill. I know the Senators from California and Congresswoman PELOSI have put a great deal of time and energy into this legislation, as have the staff from the Energy Committee and personal offices. In our efforts to try to reach consensus on all levels, we have managed to craft a bill that will provide enough balance and flexibility to incorporate all points of view.

Mr. President, I also would like to discuss several bills within the omnibus package that are of particular interest to me and my home State of Colorado. These bills deserve distinction in their own right, being crafted with years of collaborative hard work and dedication. I would like to make brief comments on each of them, and once again send my congratulations to all those who have worked so hard on these important bills.

The Rocky Mountain National Park Visitor Center title provides the authority for the National Park Service to use appropriated and donated funds to operate a visitor center outside of the boundary of Rocky Mountain National Park. The Park Service has been in need of a visitor's center at the eastern entrance to Rocky for many years now, but due to fiscal constraints, they have been unable to get adequate appropriations. Thanks to a generous private-public partnership proposal, the Park Service has an opportunity to provide a visitor service outside of the park boundaries. This legislation simply allows the Park Service to enter into this type of partnership with private individuals. I would particularly like to applaud the individuals in Estes Park, whose innovative work, generous contributions, and persevering dedication have made this idea a reality.

This type of private-public opportunity is exactly what the Federal Government should be taking advantage of these days, and I am encouraged by the proposal for this visitor center that has been put forth. This center would help the thousands of visitors that come to the park each year, and would save the Government millions in taxpayer dollars.

The Cache La Poudre title, sponsored by the distinguished senior Senator from Colorado, designates approximately 35,000 acres between the cities of Fort Collins and Greeley, CO, as the Cache La Poudre River National Water Heritage Area. The headwaters of the streams that flow into this river tell the story of water development and river basin management in the Westward expansion of the United States. This historical area holds a special meaning for Coloradans, and we feel that it deserves national recognition as a heritage area. In addition to the designation, this title helps establish a local commission to develop and implement a long-term management plan for the area.

This bill holds great distinction for me, for I have been working on it for many years with my good friend and colleague, Senator BROWN from Colorado. The good Senator has been working hard to get this bill enacted into law, and each revision of the bill has been a more worthy product than the last. There are always a couple of bills that hold special meaning for us personally, and the Cache La Poudre is a good example of one that the senior Senator from Colorado has a particular interest in. It would be a great honor to have this bill enacted into law before my friend retires this year.

The Giplin County Land Exchange title represents the best type of land exchange possible. It is a simple, straightforward land exchange bill that will convey 300 acres of Bureau of Land Management lands in Gilpin County, CO, for the acquisition of 8,733 acres of equal value within the State.

The bill seeks to address a site-specific land management problem that is a result of the scattered mining claims of the 1800's. The Federal selected lands for conveyance are contained within 133 scattered parcels near the communities of Black Hawk and Central City, most of which are less than one acre in

size. These lands would be exchanged to the cities of Black Hawk and Central City to help alleviate a shortage of residential lots.

In return for these selected lands, the Federal Government will receive approximately 8,773 acres of offered lands, which are anticipated to be of approximately equal dollar value to the selected lands. These lands are in three separate locations, described as follows:

Circle C Church Camp: This 40-acre parcel is located within Rocky Mountain National Park along its eastern boundaries, and lies approximately 5 miles south of the well known community of Estes Park. This acquisition can provide additional public camping sites and address a current shortage of employee housing in the popular national park.

Quilan Ranches tract: This 3,993-acre parcel is located in Conejos County, in southern Colorado. This land has excellent elk winter range and other wildlife habitat, and borders State lands, which are managed for wildlife protection.

Bonham Ranch—Cucharas Canyon: This 4,700-acre ranch will augment existing BLM land holdings in the beautiful Cucharas Canyon, identified as an AREA of Critical Environmental Concern [ACEC]. This ranch has superb wildlife habitat, winter range, riparian areas, raptor nesting and fledgling areas, as well as numerous riparian areas, rator nesting and fledgling areas.

Any equalization funds remaining from this exchange will be dedicated to the purchase of land and water rights, pursuant to Colorado water law, for the Blanca Wetlands Management Area, near Alamosa, CO.

It is clear that the merits of this bill are numerous. Moreover, the bill is noncontroversial, and while it may not have dramatic consequence for people outside of the State of Colorado, it represents a tremendous opportunity for citizens in my State. Due to the time-sensitive and fragile nature of the various components of this bill, I am delighted that the Senate has acted as expeditiously as possible.

In addition, for the past 5 years now, I have been supporting legislation that seeks to bring some common sense and reason to the administration of Forest Service ski area permits. The ski fees title will take the most convoluted, subjective, and bizarre formula for calculating ski fees, developed by the Forest Service, and replace it with a simple, user friendly formula in which the ski areas will be able to figure out their fees with very little effort.

The current formula utilized by the Forest Service is encompassed in 40 pages and contains hundreds of definitions, rulings, and policies. It is simply Government bureaucracy at its worst. For the ski industry, this formula is a monstrous burden, and with the expansion and diversification of many ski resorts, this burden grows increasingly more complex each year. I am pleased that this title will offer some clarity and common sense to the ski resorts of my home State.

Mr. President, the Grand Lake Cemetery title simply directs the Secretary of the Interior to authorize a permit for the town of Grand Lake, CO, to permanently maintain their 5-acre cemetery, which happens to fall within the boundaries of Rocky Mountain National Park. This cemetery has been in use by the town since 1892, and continues to carry strong emotional and sentimental attachments for the residents.

Currently, the cemetery is operated under a temporary special use permit, which is set to expire this year. By granting permanent maintenance authority to the town, this title creates lasting stability to this longstanding issue. It is completely noncontroversial, and widely supported by both the community and the Park Service.

Finally, Mr. President, the last title in this package that I would like to address is another bill that holds special meaning for me. I have been working on this legislation for many years now, and I am pleased to see that this title has seven different cosponsors from both sides of the aisle. The Old Spanish Trail title will designate the Old Spanish Trail and the Northern Branch of the Old Spanish Trail for study for potential addition to the National Trails System as a National Historic Trail.

The Old Spanish Trail has rightly been called "the longest, crookedest, most arduous pack mule route in the history of America." It is that, and more. The Old Spanish Trail tells a dramatic story that spans two centuries of recorded history and originated in prehistoric times. This trail witnessed use by Ute and Navajo Indians, Spaniards, Mexicans, and American trappers, explorers, and settlers, including the Mormons. Its heyday spans the development of the West, from the native on foot to the mounted Spaniard to the coming of the transcontinental railroad. Few routes, if any, pass through as much relatively pristine country. It is time to recognize and celebrate our common heritage, and I am thrilled to have this included in the package passed.

These bills may not mean a whole lot to many Members in this Chamber, but they mean a great deal to my constituents and me. I again commend my colleagues for their hard work, and strongly support passage of this important legislative package this evening.

Mrs. BOXER. Mr. President, I would like to ask the distinguished chairman of the committee a question regarding the duties and authorities of the trust as outlined in section 104(b) of the Presidio trust legislation.

Section 104(b) provides that "Federal laws and regulations governing procurement by Federal Agencies shall not apply to the trust." However, the same section of the bill states that the Presidio trust "shall establish and promulgate procedures applicable to the trust's procurement of goods and services" that just "conform to laws and regulations related to Federal Government contracts governing working conditions and wage scales including the provisions of 40 U.S.C. Sec. 276a–276a6 (Davis Bacon Act)."

Can I ask the chairman if this language means that contractors and subcontractors who contract to do work at the Presidio on behalf of the trust will be required to comply with prevailing wage provisions in all construction contracts and subcontracts?

Mr. MURKOWSKI. I would like to tell my friend, Senator BOXER, that yes, she is correct.

Mr. BENNETT. Mr. President, I rise to express my strong support to the efforts of Chairman MURKOWSKI to move this package of bills. I would like to add my thoughts as well, as to what some have called the demise of the Utah wilderness bill.

I am disappointed that the Senate failed to break the filibuster of the Utah wilderness bill. I would have liked to have had the Senate continue to debate the bill because I believe that, given the opportunity, we could have convinced those of my colleagues who had doubts about this bill to support it. I am also a realist and I understand that in this Chamber, if one does not have the votes to invoke cloture, it is difficult to move any piece of legislation.

I want my constituents, the people of Utah, to know of my appreciation for their tremendous support over the last 14 months. Despite what a small, but very vocal minority would have the Senate believe, the people of Utah wanted a sensible, balanced wilderness bill. S. 884 achieved that balanced approach and it was supported widely across the State of Utah. I believe that a letter in support of our bill signed by over 300 elected officials in Utah is a good indicator that it has strong public support. A rigorous public comment process, involving thousands of written comments, personal testimony, and over 40 public hearings assisted the Utah delegation in drafting this bill. It was a thorough, well-thought-out process and it was open to plenty of criticism from the other side.

I, particularly, want to express my tremendous appreciation to those county commissioners from the rural Utah counties who would have been most impacted by wilderness designation. These faithful and dedicated public servants have devoted thousands of hours to develop the county proposals. Despite the fact that S. 884 included 1.1 million acres more than the counties recommended as wilderness, these individuals recognized the need to bring

the 20-year debate to closure. The county commissioners have invested thousands of dollars, and sacrificed their personal time to come to Washington to enlighten my colleagues about the wilderness issue.

There are dozens of names that deserve to be mentioned, but I would like to give particular credit to Commissioner Louise Liston of Garfield County, Commissioner Lana Moon of Millard County, Commissioners Bill Redd and Ty Lewis of San Juan County, Commissioners Randy Johnson and Kent Peterson of Emery County. I would also be remiss if I failed to mention Commissioners Joe Judd of Kane County and Teryl Hunsaker of Tooele County. As always, the fine commissioners of Washington County, Gayle Aldred, Jerry B. Lewis, and Russ Gallian were instrumental in providing expertise. There are dozens of other faithful commissioners and I apologize that I cannot mention them all by name.

The Utah wilderness issue is not dead. On the contrary, it is very much alive and very much unresolved. It will come again before the Senate, and at some point we will be forced to finally deal with the issue. It is my hope that next time, my colleagues will give greater consideration to the $10 million of taxpayers' money and the 20 years of BLM expertise that went into providing the basis for our recommendation.

Again, while I am disappointed that Utah wilderness will not be included in this package, there is a silver lining in this cloud. Mr. President, as you know, Utah is preparing to host the 2002 Winter Olympics. Last fall, Senator HATCH and I introduced the Snowbasin Land Exchange, which would authorize the Forest Service to enter into a land exchange with the Snowbasin ski resort to exchange 1,320 acres of Forest Service land around Snowbasin for over 4,000 acres throughout the Wasatch Front. It is an equal value exchange, and a win-win situation for both parties. Not only for the Olympics, but for other reasons as well.

For example, in Utah open space in some areas is at a premium. As our population swells each year as thousands of people from other States like California and New Jersey come to Utah because of our quality of life, our precious open spaces along the Wasatch Front are rapidly disappearing. As part of this exchange, the Forest Service will acquire lands along the Bonneville Shoreline Trail which is one of the most heavily used recreational trails in northern Utah. The people of Weber County will benefit as the critical wildlife habitat along the benches above Ogden is preserved along with the open spaces. Development will be prevented from encroaching upon these areas. Again, it is a win-win situation arranged for through this exchange.

Unfortunately, the Snowbasin exchange was caught up in the politics of the day and for various reasons, this legislation had the brakes put on it by the Clinton administration. Snowbasin and the Utah delegation proceeded through months of negotiations with the Forest Service and finally reached agreements on virtually every one of the administration's concerns. This legislation is necessary for the successful implementation of the 2002 Winter Olympics and I know that my colleagues are as concerned as I am that this legislation is implemented so Snowbasin may proceed to prepare for the men's and women's downhill. We all want a successful Olympic event. This legislation is included as part of the chairman's package and I am pleased that we can finally act upon this bill.

Again, Mr President, I thank the chairman for his willingness to move this package and I encourage my colleagues to support it. I thank the Chair.

NICODEMUS NATIONAL HISTORIC SITE AND THE NEW BEDFORD NATIONAL HISTORIC LANDMARK

Mr. DOLE. Mr. President, I ask unanimous consent that immediately following the disposition of H.R. 2202, the immigration bill, the Senate proceed to an original bill (S. 1720), which I now send to the desk; that the bill be advanced to third reading and the vote occur on passage immediately, without further action or debate, following the vote on H.R. 2202.

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

Mr. DOLE. I ask unanimous consent that it be in order for me to ask for the yeas and nays on passage of the bill at this time.

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

Mr. DOLE. 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. DOLE. That vote will occur then tomorrow after the immigration bill.

IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I would now ask that we resume immigration. I understand there are a couple of amendments Senators can dispose of.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NOS. 3949 AND 3950, EN BLOC

Mr. KENNEDY. I send to the desk two amendments to S. 1664 at the request of Senator SIMPSON and myself that have been cleared on both sides, and ask unanimous consent they be considered en bloc and adopted.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Massachusetts [Mr. KENNEDY], for Mr. BRYAN, proposes an amendment numbered 3949.

The Senator from Massachusetts [Mr. KENNEDY], for Mrs. HUTCHISON, proposes an amendment numbered 3950.

The amendments are as follows:

AMENDMENT NO. 3949

(Purpose: To prevent certain aliens from participating in the family unity program)

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . EXCLUSION OF CERTAIN ALIENS FROM FAMILY UNITY PROGRAMS.

Section 301(e) of the Immigration Act of 1990 (8 U.S.C. 1255a note) is amended to read as follows:

"(e) EXCEPTION FOR CERTAIN ALIENS.—An aliens is not eligible for a new grant or extension of benefits of this section if the Attorney General finds that the alien—

"(1) has been convicted of a felony or 3 or more misdemeanors in the United States.

"(2) is described in section 243(h)(2) of the Immigration and Nationality Act, or

"(3) has committed an act of juvenile delinquency which if committed by an adult would be classified as—

"(A) a felony crime of violence that has an element the use or attempted use of physical force against the person of another; or

"(B) a felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.".

AMENDMENT NO. 3950

(Purpose: To preserve law enforcement functions and capabilities in the interior of States)

At the appropriate place, insert the following section:

SEC. . The Immigration and Naturalization Service shall, when redeploying Border Patrol personnel from interior stations, coordinate with and act in conjunction with State and local law enforcement agencies to ensure that such redeployment does not degrade or compromise the law enforcement capabilities and functions currently performed at interior Border Patrol stations.

The PRESIDING OFFICER. There being no objection, the amendments are considered read and agreed to.

The amendments (Nos. 3949 and 3950) were agreed to.

Mr. KENNEDY. I thank the Chair. For Senator SIMPSON and myself, we thank all the Members for their attention during the course of the debate and for all of the cooperation that was given to Senator SIMPSON and myself. We made good progress. The end is in sight. These are important matters that still must be addressed tomorrow, but we will start at 10 o'clock. We know which amendments are out there. We hope those who are going to offer those amendments will make themselves available at the earliest possible

times for the convenience of all Senators. We look forward to the conclusion of the bill. We thank all Members for their cooperation and attention today.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. DOLE. Mr. President, I now ask there be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

VIOLENCE IN LIBERIA

Mr. PELL. Mr. President, I am distressed at the latest outbreak of violence in Liberia. Yesterday, young gang members fired upon the U.S. Embassy, prompting the marines to return fire. Fortunately, no Americans were injured. Since this exchange, the situation in Monrovia has calmed down and the State Department has called this an isolated incident. Nevertheless, this spasm of violence demonstrates the intractability of the conflict in Liberia and the need for a diplomatic solution.

I believe the United States should remain committed to securing a peaceful solution in Liberia. I applaud the work of Assistant Secretary of State for African Affairs, George Moose, and Deputy Assistant Secretary of State William Twaddell. Their diplomatic efforts to implement a cease-fire are important to U.S. national interests. In addition, I commend the administration's response of providing $30 million in logistical assistance to the West African Peacekeeping force, ECOMOG. Such assistance is necessary to keep ECOMOG actively engaged in the on-the-ground peace process.

Mr. President, I call upon the various warlords to respect the cease-fire and to pursue a peaceful solution. In addition, it is important to remind the warlords that an attempt by any faction to seize power by force or to undo the Abuja Accords will receive a strong American response.

While the ultimate resolution of the crisis remains the responsibility of the Liberians, the United States has an important role to play. The United States is the most influential foreign power in Liberia. The United States must remain committed to seeking peace in Liberia. An engaged United States can help a Liberia that wants peace.

FCC'S PAGING FREEZE

Mr. PRESSLER. Mr. President, on February 8, 1996, the Federal Communications Commission issued a notice of proposed rulemaking which proposed to fundamentally change the way in which paging systems are licensed. The FCC adopted a freeze on the filing of paging applications, which immediately brought about many harmful effects. I promptly expressed my concerns to the FCC about its actions and asked Chairman Hundt to do something about the freeze in a letter dated March, 15, 1996.

I am glad to say that on April 23, 1996, the FCC issued an order demonstrating it had listened to my concerns and the concerns of the industry with regard to the paging freeze. The FCC has modified the freeze so that existing paging carriers can apply to expand their systems by putting transmitters within 40 miles of stations they already are operating, so long as these stations were licensed before the freeze. The FCC also has decided against retroactively applying the freeze and will now process all applications which were filed before the February 8 freeze date.

These are two very important steps towards mitigating the harmful impact of the freeze, and I wish to congratulate the FCC on its response. However, it has come to my attention there are some significant shortcomings in the mechanics of the new rules. With minor clarifications, the FCC could eliminate these shortcomings.

In particular, the industry believes—and several Members of Congress agree—75 miles would be a more appropriate zone of expansion as opposed to 40 miles. The increased distance would allow existing paging businesses to accommodate their customers' immediate needs and respond to new requests for paging service as factories, hospitals, and neighborhoods are constructed and the need for paging coverage expands.

Paging companies should be allowed to apply for new transmitters within 75 miles of any transmitter which has been licensed or which will be licensed based on an application filed before the freeze. The point is, many expansion proposals were filed by paging companies more than 1 year ago, and have been delayed at the FCC. These applications reflect expansions that were needed months ago. Indeed, these carriers now are receiving requests for further expansions. If we limit paging companies to a zone 40 miles from transmitters already licensed and operating, the only expansion they may be able to achieve would be adding those locations for which they applied last year. Additional coverage needs in the coming months will go unmet.

Another problem is created by the FCC's proposal to allow anyone to file a competing application against the expansion proposals of existing carriers. The FCC has defended the freeze as a mechanism to prevent filing by speculators and application mills, many of which use the application process to defraud consumers out of their life savings. This is a worthy goal. However, the new rule contains an ironic twist. If anyone can file a competing application against an existing paging carrier's expansion, speculation and fraudulent filings will be encouraged. The application mills that currently are not able to file applications will now target each and every expansion proposal, because it will be their only opportunity to practice their unholy trade. This will allow continued consumer fraud. It also will prevent bona fide paging companies from expanding their coverage, since any expansion proposal which is filed against will be held in abeyance and probably dismissed. This result would nullify the good work of the FCC in modifying the freeze. I strongly suspect it is an unintended result.

To prevent this anomalous result, the FCC can make minor adjustments to its freeze modification order: First, allowing a 75-mile expansion zone; second, allowing the expansion sites to be established within 75 miles of any transmitter granted from an application filed before the freeze; and third, limiting competing applicants to other carriers.

It is vital the FCC take steps to mitigate the harmful effects of the freeze. The paging industry provides service to over 34 million subscribers. Industry members have been encouraged to make considerable investments to improve their services, and have relied in good faith on the FCC's published regulations. Paging services are designed to serve the needs of increasingly mobile customers. To be competitive, these businesses need to provide their service to the customers where and when they need it. If a paging service cannot respond to the needs of its existing and potential customers, it will not survive in this extremely competitive industry.

This competition has spurred technological advances in what can be communicated over a pager. No longer is a pager some simple little box that beeps to let you know you should call your office. Today's pagers are vehicles for communicating written messages. For example, news organizations like Reuters now offer periodic summaries of breaking news stories through pagers. Pagers also provide cost-efficient means of communicating within large factory complexes. Additionally, we must not forget the lifesaving contribution these services make when used by doctors, ambulance crews, and critically ill patients, to summon assistance in the event of an emergency.

The bottom line, Mr. President, is that this technology must be allowed to grow. That was the basis for my letter in March. At the same time, the process must not be so full of loopholes as to allow the unscrupulous to benefit at the expense of consumers. That is the challenge faced by the FCC. It has begun meeting the challenge by modifying its freeze on the filing of paging

applicants. The flaws in its initial proposal should prove easy to address. As chairman of the Senate Committee on Commerce, Science, and Transportation, I stand ready to help this process in any reasonable manner.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, 4 years ago when I commenced these daily reports to the Senate it was my purpose to make a matter of daily record the exact Federal debt as of the close of business the previous day.

In that first report, February 27, 1992, the Federal debt the previous day stood at $3,825,891,293,066.80, as of the close of business. The point is, the Federal debt has since shot further into the stratosphere.

As of yesterday at the close of business, a total of $1,276,157,534,167.42 has been added to the Federal debt since February 26, 1992, meaning that as of the close of business yesterday, Tuesday, April 30, 1996, the Federal debt stood at $5,102,048,827,234.22. On a per capita basis, every man, woman, and child in America owes $19,271.23 as his or her share of the Federal debt.

TRIBUTE TO VICE ADMIRAL JOHN BULKELEY

Mr. WARNER. Mr. President, I rise today to recognize the dedication, public service and patriotism that personified the life of Vice Admiral John Duncan Bulkeley, USN. Admiral Bulkeley, who passed away on April 6, was one of the most highly decorated combat veterans of World War II, and served nearly 60 years of active duty during his career.

A native of New York City, Admiral Bulkeley entered the U.S. Navy after graduating from the Naval Academy at Annapolis, and was commissioned in March of 1934. He began his Navy career as a junior watch officer aboard the cruiser *Indianapolis*. He then spent time on the carrier *Saratoga* and as an engineering officer in Chinese waters aboard the gunboat *Sacramento*, before being given a special assignment in 1941 to help begin a new branch of naval service—patrol torpedo boats.

Lieutenant John Bulkeley's performance as a PT boat squadron leader is legendary. He earned the nickname "Sea Wolf" for his daring raids on the Japanese Navy in the early days of the Pacific war. Most notable among his heroic deeds was Lieutenant Bulkeley's bold rescue of General Douglass MacArthur from the Philippines in 1942. General MacArthur had become surrounded by the Japanese while remaining on the island of Corregidor during the Japanese invasion of the Philippines. Lieutenant Bulkeley's PT squadron broke through a Japanese blockade and carried the general and his family to safety. "Johnny," said MacArthur, "you've taken me out of the jaws of death—and I won't forget it." General MacArthur did not forget, and for his efforts in the early part of the war, John Bulkeley received the highest award this Nation bestows for valor, the Medal of Honor.

The Sea Wolf's career did not end there. In 1942, he spent time stateside recruiting young officers for the PT program, among them a stalwart young man named John F. Kennedy.

Admiral Bulkeley then headed for Europe, where he commanded a group of PT boats that helped clear the way for the D-Day invasion at Utah beach in Normandy. He commanded the destroyer *Endicott* during the invasion of southern France, and sank two German warships—the only German warships sunk in surface-to-surface combat during the entire war in the Mediterranean.

At the end of WWII John Bulkeley was not yet 32 years old, but he had already received every medal for courage that our country awards. Following the war, Bulkeley graduated from the Armed Forces Staff College. He also taught electrical engineering at the Naval Academy and served on the staff of the Joint Chiefs of Staff.

His service did not stop here, however. Admiral Bulkeley commanded a destroyer division in Korean waters during the Korean war; in 1961 he was appointed commander of the Guantanamo Naval base in Cuba, an assignment he received from his old friend President John F. Kennedy; and in 1964 he was assigned as president of the Navy Board of Inspection and Survey, a position which he held for nearly 23 years. Under his active leadership, the INSURV Board was directly responsible for the delivery of combat-ready ships, whether new or coming out of overhaul.

When his remarkable career came to an end, Vice Admiral Bulkeley was one of the most decorated sailors in American history. In addition to receiving the Medal of Honor, Admiral Bulkeley was also presented the Navy Cross, two awards of the Army Distinguished Service Cross, three Distinguished Service Medals, two Silver Stars, two awards of the Legion of Merit, two Purple Hearts, and numerous other decorations and citations for outstanding performance and service to his country.

Vice Admiral Bulkeley was a true American patriot and a superb naval officer who, throughout his naval career, led with courage and integrity. His leadership and performance throughout an intense and demanding period in naval and military history were instrumental in the successful administration of the Navy and outstanding support for naval forces throughout the world. Thanks to his inspirational leadership and selfless dedication to duty, our Navy has remained second to none. He will be sorely missed.

RELATING TO CERTAIN REGULATIONS REGARDING THE OFFICE OF COMPLIANCE

The text of the concurrent resolution (S. Con. Res. 51) to provide for the approval of final regulations that are applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, and that were issued by the Office of Compliance on January 22, 1996, and for other purposes, as agreed to by the Senate on April 15, 1996, is as follows:

S. CON. RES. 51

Resolved by the Senate (the House of Representatives concurring), That the following regulations issued by the Office of Compliance on January 22, 1996, and applicable to employing offices that are not employing offices of the House of Representatives or the Senate, and to covered employees who are not employees of the House of Representatives or the Senate, are hereby approved as follows:

PART 825—FAMILY AND MEDICAL LEAVE

825.1 Purpose and scope.
825.2 [Reserved].

SUBPART A—WHAT IS THE FAMILY AND MEDICAL LEAVE ACT, AND TO WHOM DOES IT APPLY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT?

825.100 What is the Family and Medical Leave Act?
825.101 What is the purpose of the FMLA?
825.102 When are the FMLA and the CAA effective for covered employees and employing offices?
825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?
825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?
825.105 [Reserved].
825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?
825.107—825.109 [Reserved].
825.110 Which employees are "eligible" to take FMLA leave under these regulations?
825.111 [Reserved].
825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?
825.113 What do "spouse", "parent", and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?
825.114 What is a "serious health condition" entitling an employee to FMLA leave?
825.115 What does it mean that "the employee is unable to perform the (functions of the position of the employee"?
825.116 What does it mean that an employee is "needed to care for" a family member?
825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?
825.118 What is a "health care provider"?

SUBPART B—WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT?

825.200 How much leave may an employee take?
825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
825.202 How much leave may a husband and wife take if they are employed by the same employing office?
825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?
825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?
825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?
825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?
825.207 Is FMLA leave paid or unpaid?
825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?
825.209 Is an employee entitled to benefits while using FMLA leave?
825.210 How may employees on FMLA leave pay their share of group health benefit premiums?
825.211 What special health benefits maintenance rules apply to multi-employer health plans?
825.212 What are the consequences of an employee's failure to make timely health plan premium payments?
825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?
825.214 What are an employee's rights on returning to work from FMLA leave?
825.215 What is an equivalent position?
825.216 Are there any limitations on an employing office's obligation to reinstate an employee?
825.217 What is a "key employee"?
825.218 What does "substantial and grievous economic injury" mean?
825.219 What are the rights of a key employee?
825.220 How are employees protected who request leave or otherwise assert FMLA rights?

SUBPART C—HOW DO EMPLOYEES LEARN OF THEIR RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA, AND WHAT CAN AN EMPLOYING OFFICE REQUIRE OF AN EMPLOYEE?

825.300 [Reserved].
825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?
825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?
825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?
825.304 What recourse do employing offices have if employees fail to provide the required notice?
825.305 When must an employee provide medical certification to support FMLA leave?
825.306 How much information may be required in medical certifications of a serious health condition?
825.307 What may an employing office do if it questions the adequacy of a medical certification?
825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?
825.309 What notice may an employing office require regarding an employee's intent to return to work?
825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?
825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?
825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

SUBPART D—WHAT ENFORCEMENT MECHANISMS DOES THE CAA PROVIDE?

825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?
825.401—825.404 [Reserved].

SUBPART E—[RESERVED]

SUBPART F—WHAT SPECIAL RULES APPLY TO EMPLOYEES OF SCHOOLS?

825.600 To whom do the special rules apply?
825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?
825.602 What limitations apply to the taking of leave near the end of an academic term?
825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?
825.604 What special rules apply to restoration to "an equivalent position"?

SUBPART G—HOW DO OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS AFFECT EMPLOYEE RIGHTS UNDER THE FMLA AS MADE APPLICABLE BY THE CAA?

825.700 What if an employing office provides more generous benefits than required by FMLA as Made Applicable by the CAA?
825.701 [Reserved].
825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

SUBPART H—DEFINITIONS

825.800 Definitions.
Appendix A to Part 825—[Reserved].
Appendix B to Part 825—Certification of Physician or Practitioner.
Appendix C to Part 825—[Reserved].
Appendix D to Part 825—Prototype Notice: Employing Office Response to Employee Request for Family and Medical Leave.
Appendix E to Part 825—[Reserved].

PART 825—FAMILY AND MEDICAL LEAVE

§ 825.1 Purpose and scope

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611-2615) to covered employees. (The term "covered employee" is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See § 825.800 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA]".

(c) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ 825.2 [Reserved]

SUBPART A—WHAT IS THE FAMILY AND MEDICAL LEAVE ACT, AND TO WHOM DOES IT APPLY UNDER THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.100 What is the Family and Medical Leave Act?

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows "eligible" employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to perform the functions of his or her job (see § 825.306(b)(4)). In certain cases, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employing office, or a disbursing or other financial office of the House of Representatives or the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office has a right to 30 days advance notice from the employee where practicable. In addition, the employing office may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (see § 825.311(c)). The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

§ 825.101 What is the purpose of the FMLA?

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The enactment of FMLA was predicated on two fundamental concerns "the needs of the American workforce, and the development of high-performance organizations". Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§ 825.102 When are the FMLA and the CAA effective for covered employees and employing offices?

(a) The rights and protection of sections 101 through 105 of the FMLA have applied to certain Senate employees and certain employing offices of the Senate since August 5, 1993 (see section 501 of FMLA).

(b) The rights and protection of sections 101 through 105 of the FMLA have applied to any employee in an employment position and any employment authority of the House of Representatives since August 5, 1993 (see section 502 of FMLA).

(c) The rights and protections of sections 101 through 105 of the FMLA have applied to certain employing offices and covered employees other than those referred to in paragraphs (a) and (b) of this section for certain periods since August 5, 1993 (see, e.g., title V of the FMLA, sections 501 and 502).

(d) The provisions of section 202 of the CAA that apply rights and protections of the FMLA to covered employees are effective on January 23, 1996.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee eligibility.

§ 825.103 How does the FMLA, as made applicable by the CAA, affect leave in progress on, or taken before, the effective date of the CAA?

(a) An eligible employee's right to take FMLA leave began on the date that the rights and protections of the FMLA first went into effect for the employing office and employee (see § 825.102(a)). Any leave taken prior to the date on which the rights and protections of the FMLA first became effective for the employing office from which the leave was taken may not be counted for purposes of the FMLA as made applicable by the CAA. If leave qualifying as FMLA leave was underway prior to the effective date of the FMLA for the employing office from which the leave was taken and continued after the FMLA's effective date for that office, only that portion of leave taken on or after the FMLA's effective date may be counted against the employee's leave entitlement under the FMLA, as made applicable by the CAA.

(b) If an employing office-approved leave is underway when the application of the FMLA by the CAA takes effect, no further notice would be required of the employee unless the employee requests an extension of the leave. For leave which commenced on the effective date or shortly thereafter, such notice must have been given which was practicable, considering the foreseeability of the need for leave and the effective date.

(c) Starting on January 23, 1996, an employee is entitled to FMLA leave under these regulations if the reason for the leave is qualifying under the FMLA, as made applicable by the CAA, even if the event occasioning the need for leave (e.g., the birth of a child) occurred before such date (so long as any other requirements are satisfied).

§ 825.104 What employing offices are covered by the FMLA, as made applicable by the CAA?

(a) The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, 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.

(b) [Reserved].

(c) Separate entities will be deemed to be parts of a single employer for purposes of the FMLA, as made applicable by the CAA, if they meet the "integrated employer" test. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(i) Common management;

(ii) Interrelation between operations;

(iii) Centralized control of labor relations; and

(iv) Degree of common financial control.

§ 825.105 [Reserved]

§ 825.106 How is "joint employment" treated under the FMLA as made applicable by the CAA?

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the

workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when—

(1) an employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in §§ 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in §825.216, be responsible for accepting the employee returning from FMLA leave.

§825.107 [Reserved]

§825.108 [Reserved]

§825.109 [Reserved]

§825.110 Which employees are "eligible" to take FMLA leave under these regulations?

(a) An "eligible employee" under these regulations means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months. If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employer (e.g., workers' compensation, group health plan benefits, etc.), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months", 52 weeks is deemed to be equal to 12 months.

(c) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA), as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of record-keeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked may be used. For this purpose, full-time teachers (see §825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. An employing office must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim that the employee is not "eligible" for FMLA leave.

(d) The determinations of whether an employee has worked for any employing office for at least 1,250 hours in the previous 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date leave commences. The "previous 12 months" means the 12 months immediately preceding the commencement of the leave. If an employee notifies the employing office of need for FMLA leave before the employee meets these eligibility criteria, the employing office must either confirm the employee's eligibility based upon a projection that the employee will be eligible on the date leave would commence or must advise the employee when the eligibility requirement is met. If the employing office confirms eligibility at the time the notice for leave is received, the employing office may not subsequently challenge the employee's eligibility. In the latter case, if the employing office does not advise the employee whether the employee is eligible as soon as practicable (i.e., two business days absent extenuating circumstances) after the date employee eligibility is determined, the employee will have satisfied the notice requirements and the notice of leave is considered current and outstanding until the employing office does advise. If the employing office fails to advise the employee whether the employee is eligible prior to the date the requested leave is to commence, the employee will be deemed eligible. The employing office may not, then, deny the leave. Where the employee does not give notice of the need for leave more than two business days prior to commencing leave, the employee will be deemed to be eligible if the employing office fails to advise the employee that the employee is not eligible within two business days of receiving the employee's notice.

(e) The period prior to the effective date of the application of FMLA rights and protections under the CAA must be considered in determining employee's eligibility.

(f) [Reserved].

§825.111 [Reserved]

§825.112 Under what kinds of circumstances are employing offices required to grant family or medical leave?

(a) Employing offices are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(b) The right to take leave under FMLA as made applicable by the CAA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

(c) Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave pursuant to paragraph (a)(4) of this section before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) Employing offices are required to grant FMLA leave pursuant to paragraph (a)(2) of this section before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to a physical examination. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(f) In situations where the employer/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

(g) FMLA leave is available for treatment for substance abuse provided the conditions of §825.114 are met. However, treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment.

However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for an immediate family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for an immediate family member receiving treatment for substance abuse.

§ 825.113 What do "spouse", "parent", and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?

(a) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

(b) Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter as defined in (c) below. This term does not include parents "in law".

(c) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability".

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

(3) Persons who are "in loco parentis" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(d) For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The employing office is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

§ 825.114 What is a "serious health condition" entitling an employee to FMLA leave?

(a) For purposes of FMLA, "serious health condition" entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(b) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(c) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(e) Absences attributable to incapacity under paragraphs (a)(2) (ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

§ 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier.

§ 825.116 What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently "such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

§ 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (see § 825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employing office's operations. In addition, an employing office may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

§ 825.118 What is a "health care provider"?

(a)(1) The term "health care provider" means:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Office of Compliance to be capable of providing health care services.

(2) In making a determination referred to in subparagraph (1)(ii), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Secretary of Labor (under section 101(6)(B) of the FMLA, 29 U.S.C. 2611(6)(B)) that a person is capable of providing health care services, provided the Secretary's determination was not made at the request of a person who was then a covered employee.

(b) Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions without supervision by a doctor or other health care provider.

SUBPART B—WHAT LEAVE IS AN EMPLOYEE ENTITLED TO TAKE UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT?

§ 825.200 How much leave may an employee take?

(a) An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job.

(b) An employing office is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month "leave year", such as a fiscal year or a year starting on an employee's "anniversary" date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before the date on which the application of FMLA rights and protections first becomes effective for the employing office; see § 825.102).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1997, four weeks beginning June 1, 1997, and four weeks beginning December 1, 1997, the employee would not be entitled to any additional leave until February 1, 1998. However, beginning on February 1, 1998, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved].

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period, the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employing office's activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in § 825.205.

(g)(1) If employing offices jointly employ an employee, and if they designate a primary employer pursuant to § 825.106(c), the primary employer may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided

that the alternative chosen is applied consistently and uniformly to all employees of the primary employer including the jointly employed employee.

(2) If employing offices fail to designated a primary employer pursuant to §825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employer of the employee for purposes of the application of paragraphs (d) and (e) of this section.

§825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless the employing office permits leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period.

§825.202 How much leave may a husband and wife take if they are employed by the same employing office?

(a) A husband and wife who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken—

(1) for birth of the employee's son or daughter or to care for the child after birth;

(2) for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or

(3) to care for the employee's parent with a serious health condition.

(b) This limitation on the total weeks of leave applies to leave taken for the reasons specified in paragraph (a) of this section as long as a husband and wife are employed by the "same employing office". It would apply, for example, even though the spouses are employed at two different work sites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave.

(c) Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for one of the purposes in paragraph (a) of this section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those contained in paragraph (a) of this section. For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition.

§825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

(a) FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

(c) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(1) Intermittent leave may be taken for a serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employing office may limit leave increments to the shortest period of time that the employing office's payroll system uses to account for absences or use of leave, provided it is one hour or less. For example, an employee might take two hours off for a medical appointment, or might work a reduced day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in §§825.601 and 825.602.

§825.204 May an employing office transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

(a) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee or a family member, including during a period of recovery from a serious health condition, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. See §825.601 for special rules applicable to instructional employees of schools.

(b) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and any applicable law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited-acts provisions of the FMLA, as made applicable by the CAA.

(e) When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he/she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

§825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(a) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use ⅕ of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule

with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

§ 825.206 May an employing office deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, as made applicable by the CAA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee, or when utilizing the fluctuating workweek method for payment of overtime, under the Fair Labor Standards Act?

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, as a salaried executive, administrative, or professional employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employing office provides FMLA leave, whether paid or unpaid, or maintains any records regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of the Board's regulations at part 541.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the "salary basis" requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of employing offices who are eligible for FMLA leave, and to leave which qualifies as (one of the four types of) FMLA leave. Hourly or other deductions which are not in accordance with the Board's regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, e.g., leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by FMLA as made applicable by the CAA, such as leave in excess of 12 weeks in a year. The employing office may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an "hourly" employee and pay overtime premium pay for hours worked over 40 in a workweek.

§ 825.207 Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that paid leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a spouse, child or parent who has a serious health condition. The term "family leave" as used in FMLA refers to paid leave provided by the employing office covering the particular circumstances for which the employee seeks leave for either the birth of a child and to care for such child, placement of a child for adoption or foster care, or care for a spouse, child or parent with a serious health condition. For example, if the employing office's leave plan allows use of family leave to care for a child but not for a parent, the employing office is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal, or medical/sick leave may be made for any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. Substitution of paid sick/medical leave may be elected to the extent the circumstances meet the employing office's usual requirements for the use of sick/medical leave. An employing office is not required to allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employing office's uniform policy would not normally allow such paid leave. An employee, therefore, has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employing office's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employing office's leave plan.

(d)(1) Disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA as made applicable by the CAA. Because the leave pursuant to a temporary disability benefit plan is not unpaid, the provision for substitution of paid leave is inapplicable. However, the employing office may designate the leave as FMLA leave and count the leave as running concurrently for purposes of both the benefit plan and the FMLA leave entitlement. If the requirements to qualify for payments pursuant to the employing office's temporary disability plan are more stringent than those of FMLA as made applicable by the CAA, the employee must meet the more stringent requirements of the plan, or may choose not to meet the requirements of the plan and instead receive no payments from the plan and use unpaid FMLA leave or substitute available accrued paid leave.

(2) The FMLA as made applicable by the CAA provides that a serious health condition may result from injury to the employee "on or off" the job. If the employing office designates the leave as FMLA leave in accordance with § 825.208, the employee's FMLA 12-week leave entitlement may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition. As the workers' compensation absence is not unpaid leave, the provision for substitution of the employee's accrued paid leave is not applicable. However, if the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the employing office's offer of a "light duty job". As a result the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the 12-week entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. See also §§ 825.210(f), 825.216(d), 825.220(d), 825.307(a)(1) and 825.702(d) (1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(e) Paid vacation or personal leave, including leave earned or accrued under plans allowing "paid time off", may be substituted, at either the employee's or the employing office's option, for any qualified FMLA leave. No limitations may be placed by the employing office on substitution of paid vacation or personal leave for these purposes.

(f) If neither the employee nor the employing office elects to substitute paid leave for

unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(g) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(h) When an employee or employing office elects to substitute paid leave (of any type) for unpaid FMLA leave under circumstances permitted by these regulations, and the employing office's procedural requirements for taking that kind of leave are less stringent than the requirements of FMLA as made applicable by the CAA (e.g., notice or certification requirements), only the less stringent requirements may be imposed. An employee who complies with an employing office's less stringent leave plan requirements in such cases may not have leave for an FMLA purpose delayed or denied on the grounds that the employee has not complied with stricter requirements of FMLA as made applicable by the CAA. However, where accrued paid vacation or personal leave is substituted for unpaid FMLA leave for a serious health condition, an employee may be required to comply with any less stringent medical certification requirements of the employing office's sick leave program. See §§825.302(g), 825.305(e) and 825.306(c).

(i) Compensatory time off, if any is authorized under applicable law, is not a form of accrued paid leave that an employing office may require the employee to substitute for unpaid FMLA leave. The employee may request to use his/her balance of compensatory time for an FMLA reason. If the employing office permits the accrual of compensatory time to be used in compliance with applicable Board regulations, the absence which is paid from the employee's accrued compensatory time "account" may not be counted against the employee's FMLA leave entitlement.

§825.208 Under what circumstances may an employing office designate leave, paid or unpaid, as FMLA leave and, as a result, enable leave to be counted against the employee's total FMLA leave entitlement?

(a) In all circumstances, it is the employing office's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. In the case of intermittent leave or leave on a reduced schedule, only one such notice is required unless the circumstances regarding the leave have changed. The employing office's designation decision must be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of paid leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying.

(1) An employee giving notice of the need for unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine that the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the paid leave as FMLA leave. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(2) As noted in §825.302(c), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the FMLA as made applicable by the CAA or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employing office of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave—consistent with the employing office's established policy or practice—and the employing office denies the employee's request, the employee will need to provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employing office is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement.

(b)(1) Once the employing office has acquired knowledge that the leave is being taken for an FMLA required reason, the employing office must promptly (within two business days absent extenuating circumstances) notify the employee that the paid leave is designated and will be counted as FMLA leave. If there is a dispute between an employing office and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(2) The employing office's notice to the employee that the leave has been designated as FMLA leave may be orally or in writing. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). The written notice may be in any form, including a notation on the employee's pay stub.

(c) If the employing office requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employing office within two business days of the time the employee gives notice of the need for leave, or, where the employing office does not initially have sufficient information to make a determination, when the employing office determines that the leave qualifies as FMLA leave if this happens later. The employing office's designation must be made before the leave starts, unless the employing office does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. If the employing office has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employing office may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the FMLA, as made applicable by the CAA, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

(d) If the employing office learns that leave is for an FMLA purpose after leave has begun, such as when an employee gives notice of the need for an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave. For example, an employee is granted two weeks paid vacation leave for a skiing trip. In mid-week of the second week, the employee contacts the employing office for an extension of leave as unpaid leave and advises that at the beginning of the second week of paid vacation leave the employee suffered a severe accident requiring hospitalization. The employing office may notify the employee that both the extension and the second week of paid vacation leave (from the date of the injury) is designated as FMLA leave. On the other hand, when the employee takes sick leave that turns into a serious health condition (e.g., bronchitis that turns into bronchial pneumonia) and the employee gives notice of the need for an extension of leave, the entire period of the serious health condition may be counted as FMLA leave.

(e) Employing offices may not designate leave as FMLA leave after the employee has returned to work with two exceptions:

(1) If the employee was absent for an FMLA reason and the employing office did not learn the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period), the employing office may, upon the employee's return to work, promptly (within two business days of the employee's return to work) designate the leave retroactively with appropriate notice to the employee. If leave is taken for an FMLA reason but the employing office was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, the employee must notify the employing office within two business days of returning to work of the reason for the leave. In the absence of such timely notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

(2) If the employing office knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the employing office has requested medical certification which has not yet been received or the parties are in the process of obtaining a second or third medical opinion, the employing office should make a preliminary designation, and so notify the employee, at the time leave begins,

or as soon as the reason for the leave becomes known. Upon receipt of the requisite information from the employee or of the medical certification which confirms the leave is for an FMLA reason, the preliminary designation becomes final. If the medical certifications fail to confirm that the reason for the absence was an FMLA reason, the employing office must withdraw the designation (with written notice to the employee).

(f) If, before beginning employment with an employing office, an employee had been employed by another employing office, the subsequent employing office may count against the employee's FMLA leave entitlement FMLA leave taken from the prior employing office, except that, if the FMLA leave began after the effective date of these regulations (or if the FMLA leave was subject to other applicable requirement under which the employing office was to have designated the leave as FMLA leave), the prior employing office must have properly designated the leave as FMLA under these regulations or other applicable requirement.

§ 825.209 Is an employee entitled to benefits while using FMLA leave?

(a) During any FMLA leave, the employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of "group health plan" is set forth in § 825.800. For purposes of FMLA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that—

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, etc., must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, etc. See § 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for "key" employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a "key employee" (see § 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

§ 825.210 How may employees on FMLA leave pay their share of group health benefit premiums?

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in § 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment (i.e., prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (e.g., through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. (See § 825.301.)

(e) An employing office may not require more of an employee using FMLA leave than the employing office requires of other employees on "leave without pay".

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking unpaid FMLA leave. See paragraph (c) of this section and § 825.207(d)(2).

§ 825.211 What special health benefits maintenance rules apply to multi-employer health plans?

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in §825.209(f), group health plan coverage must be maintained for an employee on FMLA leave until:

(1) the employee's FMLA leave entitlement is exhausted;

(2) the employing office can show that the employee would have been laid off and the employment relationship terminated; or

(3) the employee provides unequivocal notice of intent not to return to work.

§825.212 What are the consequences of an employee's failure to make timely health plan premium payments?

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a "group health plan". See §825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. See §825.215(d)(1)–(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

§825.213 May an employing office recover costs it incurred for maintaining "group health plan" or other non-health benefits coverage during FMLA leave?

(a) In addition to the circumstances discussed in §825.212(b), the share of health plan premiums paid by or on behalf of the employing office during a period of unpaid FMLA leave may be recovered from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA;

(2) Other circumstances beyond the employee's control. Examples of "other circumstances beyond the employee's control" are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a "key employee" who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child; or

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. Such certification is not required unless requested by the employing office. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional form developed for this purpose (see §825.306(a) and Appendix B of this part). If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, e.g., life insurance, disability insurance, etc., by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have "returned" to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable "premiums" as would be calculated under COBRA, excluding the 2 percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (e.g., unpaid wages, vacation pay, etc.), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

§825.214 What are an employee's rights on returning to work from FMLA leave?

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. See also §825.106(e) for the obligations of employing offices that are joint employing offices.

(b) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employing office's obligations may be governed by the Americans with Disabilities Act (ADA), as made applicable by the CAA. See §825.702.

§825.215 What is an equivalent position?

(a) An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially

equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) Equivalent Pay:

(1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employing office's policy or practice to do so with respect to other employees on "leave without pay". In such case, any pay increase would be granted based on the employee's seniority, length of service, work performed, etc., excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Many employing offices pay bonuses in different forms to employees for job-related performance such as for perfect attendance, safety (absence of injuries or accidents on the job) and exceeding production goals. Bonuses for perfect attendance and safety do not require performance by the employee but rather contemplate the absence of occurrences. To the extent an employee who takes FMLA leave had met all the requirements for either or both of these bonuses before FMLA leave began, the employee is entitled to continue this entitlement upon return from FMLA leave, that is, the employee may not be disqualified for the bonus(es) for the taking of FMLA leave. See §825.220 (b) and (c). A monthly production bonus, on the other hand, does require performance by the employee. If the employee is on FMLA leave during any part of the period for which the bonus is computed, the employee is entitled to the same consideration for the bonus as other employees on paid or unpaid leave (as appropriate). See paragraph (d)(2) of this section.

(d) Equivalent Benefits. "Benefits" include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. See §825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, §825.209 addresses health benefits.)

(e) Equivalent Terms and Conditions of Employment. An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (i.e., one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis or intangible, unmeasurable aspects of the job. However, restoration to a job slated for lay-off, when the employee's original position is not, would not meet the requirements of an equivalent position.

§825.216 Are there any limitations on an employing office's obligation to reinstate an employee?

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee.

(c) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees ("key employees", as defined in paragraph (c) of §825.217) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in §825.310.

(d) If the employee has been on a workers' compensation absence during which FMLA leave has been taken concurrently, and after 12 weeks of FMLA leave the employee is unable to return to work, the employee no longer has the protections of FMLA and must look to the workers' compensation statute or ADA, as made applicable by the CAA, for any relief or protections.

§ 825.217 What is a "key employee"?

(a) A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term "salaried" means paid on a salary basis, within the meaning of the Board's regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313) (regarding employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA, as executive, administrative, and professional employees).

(c) A "key employee" must be "among the highest paid 10 percent" of all the employees "both salaried and non-salaried, eligible and ineligible "who are employed by the employing office within 75 miles of the worksite":

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, e.g., benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be "key employees".

§ 825.218 What does "substantial and grievous economic injury" mean?

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a "key employee" threatens the economic viability of the employing office, that would constitute "substantial and grievous economic injury". A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute "substantial and grievous economic injury".

(d) FMLA's "substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the ADA (see, also § 825.702).

§ 825.219 What are the rights of a key employee?

(a) An employing office which believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until either the employee gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

§ 825.220 How are employees protected who request leave or otherwise assert FMLA rights?

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA as made applicable by the CAA. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by an employing office to avoid responsibilities under FMLA, for example—

(1) [Reserved];

(2) changing the essential functions of the job in order to preclude the taking of leave;

(3) reducing hours available to work in order to avoid employee eligibility.

(c) An employing office is prohibited from discriminating against employees or prospective employees who have used FMLA leave. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot "trade off" the right to take FMLA leave against some other benefit offered by the employing office. This does not prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a "light duty" assignment while recovering from a serious health condition (see § 825.702(d)). In such a circumstance the employee's right to restoration to the same or an equivalent position is available until 12 weeks have passed within the 12-month period, including all FMLA leave taken and the period of "light duty".

(e) Covered employees, and not merely eligible employees, are protected from retaliation for opposing (e.g., file a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA.

They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the FMLA, as made applicable by the CAA or regulations.

SUBPART C—HOW DO EMPLOYEES LEARN OF THEIR RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA, AND WHAT CAN AN EMPLOYING OFFICE REQUIRE OF AN EMPLOYEE?

§ 825.300 [Reserved]

§ 825.301 What notices to employees are required of employing offices under the FMLA as made applicable by the CAA?

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA as made applicable by the CAA are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (b), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b)(1) The employing office shall also provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The written notice must be provided to the employee in a language in which the employee is literate. Such specific notice must include, as appropriate—

(i) that the leave will be counted against the employee's annual FMLA leave entitlement (see § 825.208);

(ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see § 825.305);

(iii) the employee's right to substitute paid leave and whether the employing office will require the substitution of paid leave, and the conditions related to any substitution;

(iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see § 825.210), and the possible consequences of failure to make such payments on a timely basis (i.e., the circumstances under which coverage may lapse);

(v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see § 825.310);

(vi) the employee's status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see § 825.218);

(vii) the employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and

(viii) the employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see § 825.213).

(2) The specific notice may include other information—e.g., whether the employing office will require periodic reports of the employee's status and intent to return to work, but is not required to do so. A prototype notice is contained in Appendix D of this part, or may be obtained from the Office of Compliance, which employing offices may adapt for their use to meet these specific notice requirements.

(c) Except as provided in this subparagraph, the written notice required by paragraph (b) (and by subparagraph (a)(2) where applicable) must be provided to the employee no less often than the first time in each six-month period that an employee gives notice of the need for FMLA leave (if FMLA leave is taken during the six-month period). The notice shall be given within a reasonable time after notice of the need for leave is given by the employee—within one or two business days if feasible. If leave has already begun, the notice should be mailed to the employee's address of record.

(1) If the specific information provided by the notice changes with respect to a subsequent period of FMLA leave during the six-month period, the employing office shall, within one or two business days of receipt of the employee's notice of need for leave, provide written notice referencing the prior notice and setting forth any of the information in subparagraph (b) which has changed. For example, if the initial leave period were paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(2)(i) Except as provided in subparagraph (ii), if the employing office is requiring medical certification or a "fitness-for-duty" report, written notice of the requirement shall be given with respect to each employee notice of a need for leave.

(ii) Subsequent written notification shall not be required if the initial notice in the six-month period and the employing office handbook or other written documents (if any) describing the employing office's leave policies, clearly provided that certification or a "fitness-for-duty" report would be required (e.g., by stating that certification would be required in all cases, by stating that certification would be required in all cases in which leave of more than a specified number of days is taken, or by stating that a "fitness-for-duty" report would be required in all cases for back injuries for employees in a certain occupation). Where subsequent written notice is not required, at least oral notice shall be provided. (See § 825.305(a).)

(d) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA as made applicable under the CAA.

(e) Employing offices furnishing FMLA-required notices to sensory impaired individuals must also comply with all applicable requirements under law.

(f) If an employing office fails to provide notice in accordance with the provisions of this section, the employing office may not take action against an employee for failure to comply with any provision required to be set forth in the notice.

§ 825.302 What notice does an employee have to give an employing office when the need for FMLA leave is foreseeable?

(a) An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. Whether the leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employing office within one or two business days of when the need for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see § 825.305).

(d) An employing office may also require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employing office procedures will not permit an employing office to disallow or delay an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the leave so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the

scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

(f) In the case of intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. In addition, an employing office may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement or applicable leave plan allow less advance notice to the employing office. For example, if an employee (or employing office) elects to substitute paid vacation leave for unpaid FMLA leave (see §825.207), and the employing office's paid vacation leave plan imposes no prior notification requirements for taking such vacation leave, no advance notice may be required for the FMLA leave taken in these circumstances. On the other hand, FMLA notice requirements would apply to a period of unpaid FMLA leave, unless the employing office imposes lesser notice requirements on employees taking leave without pay.

§825.303 What are the requirements for an employee to furnish notice to an employing office where the need for FMLA leave is not foreseeable?

(a) When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employing office of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employing office within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved.

(b) The employee should provide notice to the employing office either in person or by telephone, telegraph, facsimile ("fax") machine or other electronic means. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member or other responsible party) if the employee is unable to do so personally. The employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA, but may only state that leave is needed. The employing office will be expected to obtain any additional required information through informal means. The employee or spokesperson will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

§825.304 What recourse do employing offices have if employees fail to provide the required notice?

(a) An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employing office may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employing office of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Compliance to the employing office in a manner suitable for posting. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

§825.305 When must an employee provide medical certification to support FMLA leave?

(a) An employing office may require that an employee's leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employing office must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by §825.301. An employing office's oral request to an employee to furnish any subsequent medical certification is sufficient.

(b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(c) In most cases, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within two business days thereafter, or, in the case of unforeseen leave, within two business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration.

(d) At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employing office shall advise an employee whenever the employing office finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

(e) If the employing office's sick or medical leave plan imposes medical certification requirements that are less stringent than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see §825.207), only the employing office's less stringent sick leave certification requirements may be imposed.

§825.306 How much information may be required in medical certifications of a serious health condition?

(a) The Office of Compliance has made available an optional form ("Certification of Physician or Practitioner") for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge.

(b) The Certification of Physician or Practitioner form is modeled closely on Form WH–380, as revised, which was developed by the Department of Labor (see 29 C.F.R. Part 825, Appendix B). The employing office may use the Office of Compliance's form, or Form WH–380, as revised, or another form containing the same basic information; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists. The form identifies the health care provider and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) A certification as to which part of the definition of "serious health condition" (see §825.114), if any, applies to the patient's condition, and the medical facts which support the certification, including a brief statement as to how the medical facts meet the criteria of the definition.

(2)(i) The approximate date the serious health condition commenced, and its probable duration, including the probable duration of the patient's present incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) if different.

(ii) Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis (i.e., part-time) as a result of the serious health condition (see §825.117 and §825.203), and if so, the probable duration of such schedule.

(iii) If the condition is pregnancy or a chronic condition within the meaning of §825.114(a)(2)(iii), whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3)(i)(A) If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

(B) If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any.

(ii) If any of the treatments referred to in subparagraph (i) will be provided by another provider of health services (e.g., physical therapist), the nature of the treatments.

(iii) If a regimen of continuing treatment by the patient is required under the supervision of the health care provider, a general description of the regimen (see §825.114(b)).

(4) If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), whether the employee—

(i) is unable to perform work of any kind;

(ii) is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions the employee is unable to perform (see §825.115), based on either information provided on a statement from the employing office of the essential functions of the position or, if not provided, discussion with the employee about the employee's job functions; or

(iii) must be absent from work for treatment.

(5)(i) If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety, or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period.

(ii) If the employee's family member will need care only intermittently or on a reduced leave schedule basis (i.e., part-time), the probable duration of the need.

(c) If the employing office's sick or medical leave plan requires less information to be furnished in medical certifications than the certification requirements of these regulations, and the employee or employing office elects to substitute paid sick, vacation, personal or family leave for unpaid FMLA leave where authorized (see §825.207), only the employing office's lesser sick leave certification requirements may be imposed.

§825.307 What may an employing office do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employing office may not request additional information from the employee's health care provider. However, a health care provider representing the employing office may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.

(1) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to have direct contact with the employee's workers' compensation health care provider, the employing office may follow the workers' compensation provisions.

(2) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. See also paragraphs (e) and (f) of this section.

(b) The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

(d) The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within two business days unless extenuating circumstances prevent such action.

(e) If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) In circumstances when the employee or a family member is visiting in another country, or a family member resides in a another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country.

§825.308 Under what circumstances may an employing office request subsequent recertifications of medical conditions?

(a) For pregnancy, chronic, or permanent/long-term conditions under continuing supervision of a health care provider (as defined in §825.114(a)(2) (ii), (iii) or (iv)), an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

(1) Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absences, the severity of the condition, complications); or

(2) The employing office receives information that casts doubt upon the employee's stated reason for the absence.

(b)(1) If the minimum duration of the period of incapacity specified on a certification furnished by the health care provider is more than 30 days, the employing office may not request recertification until that minimum duration has passed unless one of the conditions set forth in paragraph (c) (1), (2) or (3) of this section is met.

(2) For FMLA leave taken intermittently or on a reduced leave schedule basis, the employing office may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in paragraph (c) (1), (2) or (3) of this section is met.

(c) For circumstances not covered by paragraphs (a) or (b) of this section, an employing office may request recertification at any reasonable interval, but not more often than every 30 days, unless:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or

(3) The employing office receives information that casts doubt upon the continuing validity of the certification.

(d) The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

§825.309 What notice may an employing office require regarding an employee's intent to return to work?

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to requirements of COBRA or 5 U.S.C. 8905a, whichever is applicable) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have

changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (i.e., within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

§ 825.310 Under what circumstances may an employing office require that an employee submit a medical certification that the employee is able (or unable) to return to work (i.e., a "fitness-for-duty" report)?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may have a uniformly-applied policy or practice that requires all similarly-situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work.

(b) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA), as made applicable by the CAA, that any return-to-work physical be job-related and consistent with business necessity apply. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his/her job or to his/her impairment.

(c) An employing office may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work. A health care provider employed by the employing office may contact the employee's health care provider with the employee's permission, for purposes of clarification of the employee's fitness to return to work. No additional information may be acquired, and clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made.

(d) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(e) The notice that employing offices are required to give to each employee giving notice of the need for FMLA leave regarding their FMLA rights and obligations as made applicable by the CAA (see § 825.301) shall advise the employee if the employing office will require fitness-for-duty certification to return to work. If the employing office has a handbook explaining employment policies and benefits, the handbook should explain the employing office's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification will be required either at the time notice of the need for leave is given or immediately after leave commences and the employing office is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employing office's practice or policy. No second or third fitness-for-duty certification may be required.

(f) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notices required in paragraph (e) of this section.

(g) An employing office is not entitled to certification of fitness to return to duty when the employee takes intermittent leave as described in § 825.203.

(h) When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of the employee's or family member's serious health condition, thereby preventing the employing office from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition. (See § 825.213(a)(3).) The cost of the certification shall be borne by the employee and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

§ 825.311 What happens if an employee fails to satisfy the medical certification and/or recertification requirements?

(a) In the case of foreseeable leave, an employing office may delay the taking of FMLA leave to an employee who fails to provide timely certification after being requested by the employing office to furnish such certification (i.e., within 15 calendar days, if practicable), until the required certification is provided.

(b) When the need for leave is not foreseeable, or in the case of recertification, an employee must provide certification (or recertification) within the time frame requested by the employing office (which must allow at least 15 days after the employing office's request) or as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employing office may delay the employee's continuation of FMLA leave. If the employee never produces the certification, the leave is not FMLA leave.

(c) When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (see § 825.310(a)) if the employing office has provided the required notice (see § 825.301(c)); the employing office may delay restoration until the certification is provided. In this situation, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. See also § 825.213(a)(3).

§ 825.312 Under what circumstances may an employing office refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employing office may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employing office of the need for FMLA leave. (See § 825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employing office may delay continuation of FMLA leave until an employee submits the certificate. (See §§ 825.305 and 825.311.) If the employee never produces the certification, the leave is not FMLA leave.

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employing office may delay restoration until the employee submits the certificate. (See §§ 825.310 and 825.311.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, an employee's rights to continued leave, maintenance of health benefits, and restoration cease under FMLA, as made applicable by the CAA, if and when the employment relationship terminates (e.g., layoff), unless that relationship continues, for example, by the employee remaining on paid FMLA leave. If the employee is recalled or otherwise re-employed, an eligible employee is immediately entitled to further FMLA leave for an FMLA-qualifying reason. An employing office must be able to show, when an employee requests restoration, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See § 825.216.)

(e) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See § 825.309.) If an employee unequivocally advises the employing office either before or during the taking of leave that the employee does not intend to return to work, and the employment relationship is terminated, the employee's entitlement to continued leave, maintenance of health benefits, and restoration ceases unless the employment relationship continues, for example, by the employee remaining on paid leave. An employee may not be required to take more leave than necessary to address the circumstances for which leave was taken. If the employee is able to return to work earlier than anticipated, the employee shall provide the employing office two business days notice where feasible; the employing office is required to restore the employee once such notice is given, or where such prior notice was not feasible.

(f) An employing office may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the "key employee" exemption. Denial of reinstatement must be necessary to prevent "substantial and grievous economic injury" to the employing office's operations. The employing office must notify the employee of the employee's status as a "key employee" and of the employing office's intent to deny reinstatement on that

basis when the employing office makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See §825.219.)

(g) An employee who fraudulently obtains FMLA leave from an employing office is not protected by job restoration or maintenance of health benefits provisions of the FMLA as made applicable by the CAA.

(h) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA as made applicable by the CAA on this basis unless the FMLA leave was fraudulently obtained as in paragraph (g) of this section.

SUBPART D—WHAT ENFORCEMENT MECHANISMS DOES THE CAA PROVIDE?

§825.400 What can employees do who believe that their rights under the FMLA as made applicable by the CAA have been violated?

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA made applicable by the CAA must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA as made applicable by the CAA have been violated—

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

(B) a civil action in a district court of the United States.

(c) Regulations of the Office of Compliance describing and governing these procedures are found at [proposed rules can be found at 141 Cong. Rec. S17012 (November 14, 1995)].

§825.401 [Reserved]

§825.402 [Reserved]

§825.403 [Reserved]

§825.404 [Reserved]

SUBPART E—[RESERVED]

SUBPART F—WHAT SPECIAL RULES APPLY TO EMPLOYEES OF SCHOOLS?

§825.600 To whom do the special rules apply?

(a) Certain special rules apply to employees of "local educational agencies", including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA as made applicable by the CAA (and these special rules). The usual requirements for employees to be "eligible" apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

§825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. "Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see §825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met. See §825.207(h).

§825.602 What limitations apply to the taking of leave near the end of an academic term?

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) the leave will last at least three weeks, and

(ii) the employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) the leave will last more than two weeks, and

(ii) the employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employing office may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

§825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?

(a) If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

§825.604 What special rules apply to restoration to "an equivalent position"?

The determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave will be made on the basis of "established school board

policies and practices, private school policies and practices, and collective bargaining agreements". The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. See §825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an "equivalent position" with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SUBPART G—HOW DO OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS AFFECT EMPLOYEE RIGHTS UNDER THE FMLA AS MADE APPLICABLE BY THE CAA?

§825.700 What if an employing office provides more generous benefits than required by FMLA as made applicable by the CAA?

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (e.g., provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA. If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

(c) [Reserved].

§825.701 [Reserved]

§825.702 How does FMLA affect anti-discrimination laws as applied by section 201 of the CAA?

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act), as made applicable by the CAA. FMLA's legislative history explains that FMLA is "not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990, or the regulations issued under that Act. Thus, the leave provisions of the [FMLA] are wholly distinct from the reasonable accommodation obligations of employers covered under the [ADA] * * * or the Federal government itself. The purpose of the FMLA is to make leave available to eligible employees and employing offices within its coverage, and not to limit already existing rights and protection". S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees.

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, etc., barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's "disability" and FMLA's "serious health condition" are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an "eligible employee" entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the employee would be shielded from FMLA's provision for temporary assignment to a different alternative position. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. See §825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a "light duty" position. If the employing office offers such a position, the employee is permitted but not required to accept the position (see §825.220(d)). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. See §825.207(d)(2). If the employee

returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by any employing office (and, therefore, not an "eligible" employee under FMLA, as made applicable by the CAA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) For further information on Federal anti-discrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

SUBPART H—DEFINITIONS

§ 825.800 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

CAA means the Congressional Accountability Act of 1995 (Pub. Law 104–1, 109 Stat. 3, 2 U.S.C. 1301 et seq.).

COBRA means the continuation coverage requirements of title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99–272, title X, section 10002; 100 Stat. 227; as amended; 29 U.S.C. 1161–1168).

Continuing treatment means: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(1) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(2) Any period of incapacity due to pregnancy, or for prenatal care.

(3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Covered employee—The term "covered employee", as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Eligible employee—The term "eligible employee", as defined in the CAA, means a covered employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the previous 12 months.

Employ means to suffer or permit to work.

Employee means an employee as defined in the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity: See Teacher.

Employee of the Capitol Police—The term "employee of the Capitol Police" includes any member or officer of the Capitol Police.

Employee of the House of Representatives—The term "employee of the House of Representatives" includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employee of the Office of the Architect of the Capitol—The term "employee of the Office of the Architect of the Capitol" includes any employee of the Office of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants.

Employee of the Senate—The term "employee of the Senate" includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under "covered employee" above.

Employing Office—The term "employing office", as defined in the CAA, 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 Congessional 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.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. (See § 825.209(a)).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 et seq.).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term "group health plan" shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that—

(1) no contributions are made by the employing office;

(2) participation in the program is completely voluntary for employees;

(3) the sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) the employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) the premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(5) Any health care provider from whom an employing office or a group health plan's

benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(6) A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See Teacher.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See Physical or mental disability.

Office of Compliance means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. See the Americans with Disabilities Act (ADA), as made applicable by section 201(a)(3) of the CAA (2 U.S.C. 1311(a)(3)).

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition entitling an employee to FMLA leave means:

(1) An illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes:

(A) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom) of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) Any period of incapacity due to pregnancy, or for prenatal care.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(E) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(2) Treatment for purposes of paragraph (1) of this definition includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (1)(ii)(A)(2) of this definition, a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(3) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(4) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(5) Absences attributable to incapacity under paragraphs (1)(ii) (B) or (C) of this definition qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or employee employed in an instructional capacity, or instructional employee) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

APPENDIX A TO PART 825—[RESERVED]

APPENDIX B TO PART 825—CERTIFICATION OF PHYSICIAN OR PRACTITIONER

CERTIFICATION OF HEALTH CARE PROVIDER

(FAMILY AND MEDICAL LEAVE ACT OF 1993 AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

1. Employee's Name:

2. Patient's Name (if different from employee):

3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act as made applicable by the Congressional Accountability Act. Does the patient's condition[1] qualify under any of the categories described? If so, please check the applicable category.

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

(6) _____, or

None of the above _____

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity[2] if different):

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give probable duration:

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated[2] and the likely duration and frequency of episodes of incapacity[2]:

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind? _____

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform: _____

c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment? _____

8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation? _____

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery? _____

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Type of Practice)

(Address)

(Telephone number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

(Employee signature)

(Date)

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care.—Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity[1] or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment.—A period of incapacity[2] of more than three consecutive calendar days (including any subsequent treatment or period of incapacity[2] relating to the same condition), that also involves:

(1) Treatment[3] two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment[4] under the supervision of the health care provider.

3. Pregnancy.—Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments.—A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity[2] (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision.—A period of incapacity[2] which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions).—Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity[2] of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

FOOTNOTES

[1] Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

[2] "Incapacity", for purposes of FMLA as make applicable by the CAA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

[3] Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

[4] A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

APPENDIX C TO PART 825—[RESERVED]

APPENDIX D TO PART 825—PROTOTYPE NOTICE: EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY AND MEDICAL LEAVE

EMPLOYING OFFICE RESPONSE TO EMPLOYEE REQUEST FOR FAMILY OR MEDICAL LEAVE

(OPTIONAL USE FORM—SEE §825.301(B)(1) OF THE REGULATIONS OF THE OFFICE OF COMPLIANCE)

(FAMILY AND MEDICAL LEAVE ACT OF 1993, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

(Date)

To:_____
(Employee's name)

From:_____
(Name of appropriate employing office representative)

Subject: Request for Family/Medical Leave

On_____, (date) you notified us of your need to take family/medical leave due to:

(Date)

The birth of your child, or the placement of a child with you for adoption or foster care; or

A serious health condition that makes you unable to perform the essential functions of your job; or

A serious health condition affecting your spouse, child, parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____(date) and that you expect leave to continue until on or about_____ (date).

Except as explained below, you have a right under the FMLA, as made applicable by the CAA, for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to

reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are ☐ eligible ☐ not eligible for leave under the FMLA as made applicable by the CAA.

2. The requested leave ☐ will ☐ will not be counted against your annual FMLA leave entitlement.

3. You ☐ will ☐ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by_____ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We ☐ will ☐ will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used the following conditions will apply: (Explain)

5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.).

(b). You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled: *Provided*, That we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We ☐ will ☐ will not pay your share of health insurance premiums while you are on leave.

(c). We ☐ will ☐ will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you ☐ will ☐ will not be expected to reimburse us for the payments made on your behalf.

6. You ☐ will ☐ will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

7(a). You ☐ are ☐ are not a "key employee" as described in §825.218 of the Office of Compliance's FMLA regulations. If you are a "key employee", restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.

(b). We ☐ have ☐ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (Explain (a) and/or (b) below. See §825.219 of the Office of Compliance's FMLA regulations.)

8. While on leave, you ☐ will ☐ will not be required to furnish us with periodic reports every _____ (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work (see §825.309 of the Office of Compliance's FMLA regulations). If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you ☐ will ☐ will not be required to notify us at least two work days prior to the date you intend to report for work.

9. You ☐ will ☐ will not be required to furnish recertification relating to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the Office of Compliance's FMLA regulations.)

Subtitle C—Regulations Relating to the Employing Offices Other Than Those of the Senate and the House of Representatives—C Series

CHAPTER III—REGULATIONS RELATING TO THE RIGHTS AND PROTECTIONS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

PART C501—GENERAL PROVISIONS

Sec.
C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C501.101 Purpose and scope.
C501.102 Definitions.
C501.103 Coverage.
C501.104 Administrative authority.
C501.105 Effect of Interpretations of the Labor Department.
C501.106 Application of the Portal-to-Portal Act of 1947.
C501.107 [Reserved].

§ C501.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the parts of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding parts of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
Part 531 Wage payments under the Fair Labor Standards Act of 1938	Part C531
Part 541 Defining and delimiting the terms "bona fide executive", "administrative", and "professional" employees	Part C541
Part 547 Requirements of a "Bona fide thrift or savings plan"	Part C547
Part 553 Application of the FLSA to employees of public agencies	Part C553
Part 570 Child labor	Part C570

SUBPART A—MATTERS OF GENERAL APPLICABILITY

§ C501.101 Purpose and scope

(a) Section 203 of the Congressional Accountability Act (CAA) provides that the rights and protections of subsections (a)(1) and (d) of section 6, section 7, and section 12(c) of the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C. §§206(a)(1) and (d), 207, 212(c)) shall apply to covered employees of the legislative branch of the Federal Government. Section 301 of the CAA creates the Office of Compliance as an independent office in the legislative branch for enforcing the rights and protections of the FLSA, as applied by the CAA.

(b) The FLSA as applied by the CAA provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included also in the FLSA are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the FLSA exempts specified employees or groups of employees from the application of certain of its provisions.

(c) This chapter contains the substantive regulations with respect to the FLSA that the Board of Directors of the Office of Compliance has adopted pursuant to sections 203(c) and 304 of the CAA, which requires that the Board promulgate regulations that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of §203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section".

(d) These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 203(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 203 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 203 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 203 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 203 of the CAA]".

(e) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ C501.102 Definitions

For purposes of this chapter:

(a) "CAA" means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) "FLSA" or "Act" means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201 et seq.), as applied by section 203 of the CAA to covered employees and employing offices.

(c) "Covered employee" means any employee, including an applicant for employment and a former employee, of the (1) the

Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment, but shall not include an intern.

(d)(1) "Employee of the Office of the Architect of the Capitol" includes any employee of the Architect of the Capitol, the Botanic Garden, or the Senate Restaurants;

(2) "Employee of the Capitol Police" includes any member or officer of the Capitol Police.

(e) "Employing office" and "employer" mean (1) the Capitol Guide Service; (2) the Capitol Police; (3) the Congressional Budget Office; (4) the Office of the Architect of the Capitol; (5) the Office of the Attending Physician; (6) the Office of Compliance; or (7) the Office of Technology Assessment.

(f) "Board" means the Board of Directors of the Office of Compliance.

(g) "Office" means the Office of Compliance.

(h) "Intern" is an individual who (a) is performing services in an employing office as part of a demonstrated educational plan, and (b) is appointed on a temporary basis for a period not to exceed 12 months: *Provided*, That if an intern is appointed for a period shorter than 12 months, the intern may be reappointed for additional periods as long as the total length of the internship does not exceed 12 months: *Provided further*, That the defintion of "intern" does not include volunteers, fellows or pages.

§ C501.103 Coverage

The coverage of section 203 of the CAA extends to any covered employee of an employing office without regard to whether the covered employee is engaged in commerce or the production of goods for interstate commerce and without regard to size, number of employees, amount of business transacted, or other measure.

§ C501.104 Administrative authority

(a) The Office of Compliance is authorized to administer the provisions of section 203 of the Act with respect to any covered employee or covered employer.

(b) The Board is authorized to promulgate substantive regulations in accordance with the provisions of sections 203(c) and 304 of the CAA.

§ C501.105 Effect of interpretations of the Department of Labor

(a) In administering the FLSA, the Wage and Hour Division of the Department of Labor has issued not only substantive regulations but also interpretative bulletins. Substantive regulations represent an exercise of statutorily-delegated lawmaking authority from the legislative branch to an administrative agency. Generally, they are proposed in accordance with the notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. §553. Once promulgated, such regulations are considered to have the force and effect of law, unless set aside upon judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Batterton v. Francis, 432 U.S. 416, 425 n.9 (1977). See also 29 C.F.R. §790.17(b) (1994). Unlike substantive regulations, interpretative statements, including bulletins and other releases of the Wage and Hour Division, are not issued pursuant to the provisions of the APA and may not have the force and effect of law. Rather, they may only constitute official interpretations of the Department of Labor with respect to the meaning and application of the minimum wage, maximum hour, and overtime pay requirements of the FLSA. See 29 C.F.R. §790.17(c) (citing Final Report of the Attorney General's Committee on Administrative Procedure, Senate Document No. 8, 77th Cong., 1st Sess., at p. 27 (1941)). The purpose of such statements is to make available in one place the interpretations of the FLSA which will guide the Secretary of Labor and the Wage and Hour Administrator in the performance of their duties unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect. The Supreme Court has observed: "[T]he rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in the consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.". Skidmore v. Swift, 323 U.S. 134, 140 (1944).

(b) Section 203(c) of the CAA provides that the substantive regulations implementing section 203 of the CAA shall be "the same as substantive regulations promulgated by the Secretary of Labor" except where the Board finds, for good cause shown, that a modification would more effectively implement the rights and protections established by the FLSA. Thus, the CAA by its terms does not mandate that the Board adopt the interpretative statements of the Department of Labor or its Wage and Hour Division. The Board is thus not adopting such statements as part of its substantive regulations.

§ C501.106 Application of the Portal-to-Portal Act of 1947

(a) Consistent with section 225 of the CAA, the Portal-to-Portal Act (PPA), 29 U.S.C. §§216 and 251 et seq., is applicable in defining and delimiting the rights and protections of the FLSA that are prescribed by the CAA. Section 10 of the PPA, 29 U.S.C. §259, provides in pertinent part: "[N]o employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, . . . if he pleads and proves that the act or omission complained of was in good faith in conformity with and reliance on any written administrative regulation, order, ruling, approval or interpretation of [the Administrator of the Wage and Hour Division of the Department of Labor] . . . or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.".

(b) In defending any action or proceeding based on any act or omission arising out of section 203 of the CAA, an employing office may satisfy the standards set forth in subsection (a) by pleading and proving good faith reliance upon any written administrative regulation, order, ruling, approval or interpretation, of the Administrator of the Wage and Hour Division of the Department of Labor: *Provided*, That such regulation, order, ruling, approval or interpretation had not been superseded at the time of reliance by any regulation, order, decision, or ruling of the Board or the courts.

§ C501.107 [Reserved]

PART C531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

SUBPART A—PRELIMINARY MATTERS

Sec.
C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C531.1 Definitions.
C531.2 Purpose and scope.
SUBPART B—DETERMINATIONS OF "REASONABLE COST" AND "FAIR VALUE"; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS
C531.3 General determinations of "reasonable cost".
C531.6 Effects of collective bargaining agreements.

SUBPART A—PRELIMINARY MATTERS

§ C531.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
531.1 Definitions	C531.1
531.2 Purpose and scope	C531.2
531.3 General determinations of "reasonable cost"	C531.3
531.6 Effects of collective bargaining agreements	C531.6

§ C531.1 Definitions

(a) "Administrator" means the Administrator of the Wage and Hour Division or his authorized representative. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 3(m) of the Act.

(b) "Act" means the Fair Labor Standards Act of 1938, as amended.

§ C531.2 Purpose and scope

(a) Section 3(m) of the Act defines the term "wage" to include the "reasonable cost", as determined by the Secretary of Labor, to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. In addition, section 3(m) gives the Secretary authority to determine the "fair value" of such facilities on the basis of average cost to the employer or to groups of employers similarly situated, on average value to groups of employees, or other appropriate measures of "fair value". Whenever so determined and when applicable and pertinent, the "fair value" of the facilities involved shall be includable as part of "wages" instead of the actual measure of the costs of those facilities. The section provides, however, that the cost of board, lodging, or other facilities shall not be included as part of "wages" if excluded therefrom by a bona fide collective bargaining agreement. Section 3(m) also provides a method for determining the wage of a tipped employee.

(b) This part 531 contains any determinations made as to the "reasonable cost" and

"fair value" of board, lodging, or other facilities having general application.

SUBPART B—DETERMINATIONS OF "REASONABLE COST" AND "FAIR VALUE"; EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS

§ C531.3 General determinations of "reasonable cost"

(a) The term "reasonable cost" as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) Reasonable cost does not include a profit to the employer or to any affiliated person.

(c) The reasonable cost to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term "good accounting practices" does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.

(d)(1) The cost of furnishing "facilities" found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i) Tools of the trade and other materials and services incidental to carrying on the employer's business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ C531.6 Effects of collective bargaining agreements

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be "bona fide" when pursuant to the provisions of section 7(b)(1) or 7(b)(2) of the FLSA it is made with the certified representative of the employees under the provisions of the CAA.

PART C541—DEFINING AND DELIMITING THE TERMS "BONA FIDE EXECUTIVE", "ADMINISTRATIVE", OR "PROFESSIONAL" CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN SECONDARY SCHOOL)

SUBPART A—GENERAL REGULATIONS

Sec.

C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.

C541.01 Application of the exemptions of section 13(a)(1) of the FLSA.

C541.1 Executive.

C541.2 Administrative.

C541.3 Professional.

C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees.

C541.5d Special provisions applicable to employees of public agencies.

SUBPART A—GENERAL REGULATIONS

§ C541.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations at Title 29 of the Code of Federal Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor Regulations	*OC Regulations*
541.1 Executive	C541.1
541.2 Administrative	C541.2
541.3 Professional	C541.3
541.5b Equal pay provisions of section 6(d) of the FLSA apply to executive, administrative, and professional employees.	C541.5b
541.5d Special provisions applicable to employees of public agencies	C541.5d

§ C541.01 Application of the exemptions of section 13(a)(1) of the FLSA

(a) Section 13(a)(1) of the FLSA, which provides certain exemptions for employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in a secondary school), applies to covered employees by virtue of section 225(f)(1) of the CAA.

(b) The substantive regulations set forth in this part are promulgated under the authority of sections 203(c)and 304 of the CAA, which require that such regulations be the same as the substantive regulations promulgated by the Secretary of Labor except where the Board determines for good cause shown that modifications would be more effective for the implementation of the rights and protections under § 203.

§ C541.1 Executive

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the management of an employing office in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the employing office in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

§ C541.2 Administrative

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists the head of an employing office, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $155 per week, exclusive of board, lodging or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment or institution by which employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment,

shall be deemed to meet all the requirements of this section.

§ C541.3 Professional

The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the FLSA as applied by the CAA shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in a school system, educational establishment or institution by which employed, or

(4) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for services on a salary or fee basis at a rate of not less than $170 per week, exclusive of board, lodging or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section: *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1), (3), or (4) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Provided further*, That the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(4) of this section and who is compensated on an hourly basis at a rate in excess of 6½ times the minimum wage provided by section 6 of the FLSA as applied by the CAA.

§ C541.5b Equal pay provisions of section 6(d) of the FLSA as applied by the CAA extend to executive, administrative, and professional employees

The FLSA, as amended and as applied by the CAA, includes within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) under section 13(a)(1) of the FLSA. Thus, for example, where an exempt administrative employee and another employee of the employing office are performing substantially "equal work", the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

§ C541.5d Special provisions applicable to employees of public agencies

(a) An employee of a public agency who otherwise meets the requirement of being paid on a salary basis shall not be disqualified from exemption under section C541.1, C541.2, or C541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee because—(1) permission for its use has not been sought or has been sought and denied; (2) accrued leave has been exhausted; or (3) the employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

PART C547—REQUIREMENTS OF A "BONA FIDE THRIFT OR SAVINGS PLAN"

Sec.
C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance.
C547.0 Scope and effect of part.
C547.1 Essential requirements of qualifications.
C547.2 Disqualifying provisions.

§ C547.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

Secretary of Labor regulations	*OC regulations*
547.0 Scope and effect of part	C547.0
547.1 Essential requirements of qualifications	C547.1
547.2 Disqualifying provisions	C547.2

§ C547.0 Scope and effect of part

(a) The regulations in this part set forth the requirements of a "bona fide thrift or savings plan" under section 7(e)(3)(b) of the Fair Labor Standards Act of 1938, as amended (FLSA), as applied by the CAA. In determining the total remuneration for employment which section 7(e) of the FLSA requires to be included in the regular rate at which an employee is employed, it is not necessary to include any sums paid to or on behalf of such employee, in recognition of services performed by him during a given period, which are paid pursuant to a bona fide thrift or savings plan meeting the requirements set forth herein. In the formulation of these regulations due regard has been given to the factors and standards set forth in section 7(e)(3)(b) of the Act.

(b) Where a thrift or savings plan is combined in a single program (whether in one or more documents) with a plan or trust for providing old age, retirement, life, accident or health insurance or similar benefits for employees, contributions made by the employer pursuant to such thrift or savings plan may be excluded from the regular rate if the plan meets the requirements of the regulation in this part and the contributions made for the other purposes may be excluded from the regular rate if they meet the tests set forth in regulations.

§ C547.1 Essential requirements for qualifications

(a) A "bona fide thrift or savings plan" for the purpose of section 7(e)(3)(b) of the FLSA as applied by the CAA is required to meet all the standards set forth in paragraphs (b) through (f) of this section and must not contain the disqualifying provisions set forth in § 547.2.

(b) The thrift or savings plan constitutes a definite program or arrangement in writing, adopted by the employer or by contract as a result of collective bargaining and communicated or made available to the employees, which is established and maintained, in good faith, for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings for a reasonable period of time or to save through the regular purchase of public or private securities.

(c) The plan specifically shall set forth the category or categories of employees participating and the basis of their eligibility. Eligibility may not be based on such factors as hours of work, production, or efficiency of the employees: *Provided, however*, That hours of work may be used to determine eligibility of part-time or casual employees.

(d) The amount any employee may save under the plan shall be specified in the plan or determined in accordance with a definite formula specified in the plan, which formula may be based on one or more factors such as the straight-time earnings or total earnings, base rate of pay, or length of service of the employee.

(e) The employer's total contribution in any year may not exceed 15 percent of the participating employees' total earnings during that year. In addition, the employer's total contribution in any year may not exceed the total amount saved or invested by

the participating employees during that year.

(f) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation specified in the plan, which formula or method of calculation is based on the amount saved or the length of time the individual employee retains his savings or investment in the plan: *Provided*, That no employee's share determined in accordance with the plan may be diminished because of any other remuneration received by him.

§ C547.2 Disqualifying provisions

(a) No employee's participation in the plan shall be on other than a voluntary basis.

(b) No employee's wages or salary shall be dependent upon or influenced by the existence of such thrift or savings plan or the employer's contributions thereto.

(c) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan may not be based upon the employee's hours of work, production or efficiency.

PART C553—OVERTIME COMPENSATION: PARTIAL EXEMPTION FOR EMPLOYEES ENGAGED IN LAW ENFORCEMENT AND FIRE PROTECTION; OVERTIME AND COMPENSATORY TIME-OFF FOR EMPLOYEES WHOSE WORK SCHEDULE DIRECTLY DEPENDS UPON THE SCHEDULE OF THE HOUSE

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INTRODUCTION

§ C553.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance (OC) Regulations under section 203 of the CAA:

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INTRODUCTION

§ C553.1 Definitions

(a) "Act" or "FLSA" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219), as applied by the CAA.

(b) "1985 Amendments" means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

(c) "Public agency" means an employing office as the term is defined in § 501.102 of this chapter, including the Capitol Police.

(d) Section 7(k) means the provisions of § 7(k) of the FLSA as applied to covered employees and employing offices by § 203 of the CAA.

§ C553.2 Purpose and scope

The purpose of part C553 is to adopt with appropriate modifications the regulations of the Secretary of Labor to carry out those provisions of the FLSA relating to public agency employees as they are applied to covered employees and employing offices of the CAA. In particular, these regulations apply section 7(k) as it relates to fire protection and law enforcement employees of public agencies.

SUBPART C—PARTIAL EXEMPTION FOR EMPLOYEES ENGAGED IN LAW ENFORCEMENT AND FIRE PROTECTION

§ C553.201 Statutory provisions: section 7(k).

Section 7(k) of the Act provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. This section of the Act formerly permitted public agencies to pay overtime compensation to such employees in work periods of 28 consecutive days only after 216 hours of work. As further set forth in § C553.230 of this part, the 216-hour standard has been replaced, pursuant to the study mandated by the statute, by 212 hours for fire protection employees and 171 hours for law enforcement employees. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 (or 171) hours to 28 days.

§ C553.202 Limitations

The application of § 7(k), by its terms, is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcement services. This is so even if the services are provided under contract with a public agency.

EXEMPTION REQUIREMENTS

§ C553.211 Law enforcement activities

(a) As used in § 7(k) of the Act, the term "any employee . . . in law enforcement activities" refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by law to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as "trainee", "probationary", or "permanent", and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See section C553.215.

(c) Typically, employees engaged in law enforcement activities include police who are regularly employed and paid as such. Other agency employees with duties not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, any law enforcement employee within the legislative branch concerned with keeping public peace and order and protecting life and property.

(d) Employees who do not meet each of the three tests described above are not engaged in (law enforcement activities' as that term is used in section 7(k). Employees who normally would not meet each of these tests include:

(1) Building inspectors (other than those defined in section C553.213(a)),

(2) Health inspectors,

(3) Sanitarians,

(4) Civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points,

(5) Civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices,

(6) Wage and hour compliance officers,

(7) Equal employment opportunity compliance officers, and

(8) Building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

(e) The term "any employee in law enforcement activities" also includes, by express reference, "security personnel in correctional institutions". Typically, such facilities may include precinct house lockups. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution. These employees are considered to be engaged in law enforcement activities regardless of their rank or of their status as "trainee", "probationary", or "permanent", and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in paragraph (f) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(f) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ C553.212 Twenty percent limitation on nonexempt work

(a) Employees engaged in fire protection or law enforcement activities as described in sections C553.210 and C553.211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat the §7(k) exemption unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of this part.

(b) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The performance of such work does not affect the application of the §7(k) exemption with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work discussed in paragraph (a) of this section.

§ C553.213 Public agency employees engaged in both fire protection and law enforcement activities

(a) Some public agencies have employees (often called "public safety officers") who engage in both fire protection and law enforcement activities, depending on the agency needs at the time. This dual assignment would not defeat the section 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in sections C553.210 and C553.211. This is so regardless of how the employee's time is divided between the two activities. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in section C553.212.

(b) As specified in section C553.230, the maximum hours standards under section 7(k) are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.214 Trainees

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in section C553.210 or section C553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

§ C553.215 Ambulance and rescue service employees

Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by §7(k) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents. As provided in section C553.213(b), where employees perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ C553.216 Other exemptions

Although the 1974 Amendments to the FLSA as applied by the CAA provide special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of §7(k). For example, section 13(a)(1) as applied by the CAA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in part C541. The section 13(a)(1) exemption can be claimed for any fire protection or law enforcement employee who meets all of the tests specified in part C541 relating to duties, responsibilities, and salary. Thus, high ranking police officials who are engaged in law enforcement activities, may also, depending on the facts, qualify for the section 13(a)(1) exemption as "executive" employees. Similarly, certain criminal investigative agents may qualify as "administrative" employees under section 13(a)(1).

TOUR OF DUTY AND COMPENSABLE HOURS OF WORK RULES

§ C553.220 "Tour of duty" defined

(a) The term "tour of duty" is a unique concept applicable only to employees for whom the section 7(k) exemption is claimed. This term, as used in section 7(k), means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns. For example, a police officer may be assigned to crowd control during a parade or other special event outside of his or her shift.

(b) Unscheduled periods include time spent in court by police officers, time spent handling emergency situations, and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance.

(c) The tour of duty does not include time spent working for a separate and independent employer in certain types of special details as provided in section C553.227.

§ C553.221 Compensable hours of work

(a) The rules under the FLSA as applied by the CAA on compensable hours of work are applicable to employees for whom the section 7(k) exemption is claimed. Special rules for sleep time (section C553.222) apply to both law enforcement and firefighting employees for whom the section 7(k) exemption is claimed. Also, special rules for meal time apply in the case of firefighters (section C553.223).

(b) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of

the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

(c) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work. For example, where a police station must be evacuated because of an electrical failure and the employees are expected to remain in the vicinity and return to work after the emergency has passed, the entire time spent away from the premises is compensable. The employees in this example cannot use the time for their personal pursuits.

(d) An employee who is not required to remain on the employer's premises but is merely required to leave word at home or with company officials where he or she may be reached is not working while on call. Time spent at home on call may or may not be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where, for example, a firefighter has returned home after the shift, with the understanding that he or she is expected to return to work in the event of an emergency in the night, such time spent at home is normally not compensable. On the other hand, where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on call is compensable.

(e) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls is compensable.

§ C553.222 Sleep time

(a) Where a public agency elects to pay overtime compensation to firefighters and/or law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions for the exclusion of such time are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where—

(1) the employee is on a tour of duty of less than 24 hours, and

(2) the employee is on a tour of duty of exactly 24 hours.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an expressed or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

§ C553.223 Meal time

(a) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the statutory tests for the exclusion of such time are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less: *Provided*, That the employee is completely relieved from duty during the meal period, and all the other statutory tests for the exclusion of such time are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., stakeouts), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

(c) With respect to firefighters employed under section 7(k), who are confined to a duty station, the legislative history of the Act indicates congressional intent to mandate a departure from the usual FLSA "hours of work" rules and adoption of an overtime standard keyed to the unique concept of "tour of duty" under which firefighters are employed. Where the public agency elects to use the section 7(k) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, and (2) where the firefighter is on a tour of duty of exactly 24 hours.

(d) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the statutory tests for exclusion of such hours are met.

§ C553.224 "Work period" defined

(a) As used in section 7(k), the term "work period" refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the duty cycle or pay period or with a particular day of the week or hour of the day. Once the beginning and ending time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within the period. The beginning and ending of the work period may be changed: *Provided*, That the change is intended to be permanent and is not designed to evade the overtime compensation requirements of the Act.

(b) An employer may have one work period applicable to all employees, or different work periods for different employees or groups of employees.

§ C553.225 Early relief

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

§ C553.226 Training time

(a) The general rules for determining the compensability of training time under the FLSA apply to employees engaged in law enforcement or fire protection activities.

(b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees in required training is considered to be noncompensable:

(1) Attendance outside of regular working hours at specialized or follow-up training, which is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.

(2) Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government, does not constitute compensable hours of work.

(3) Time spent in the training described in paragraphs (b) (1) or (2) of this section is not compensable, even if all or part of the costs of the training is borne by the employer.

(c) Police officers or firefighters, who are in attendance at a police or fire academy or other training facility, are not considered to be on duty during those times when they are not in class or at a training session, if they are free to use such time for personal pursuits. Such free time is not compensable.

§ C553.227 Outside employment

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours worked for the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) the special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employers are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in part 791 of this title.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to perform crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or restricting outside employment by its employees.

OVERTIME COMPENSATION RULES

§ C553.230 Maximum hours standards for work periods of 7 to 28 days—section 7(k)

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

MAXIMUM HOURS STANDARDS

Work period (days)	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86

MAXIMUM HOURS STANDARDS—Continued

Work period (days)	Fire protection	Law enforcement
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

§ C553.231 Compensatory time off

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in section C553.230.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ C553.232 Overtime pay requirements

If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay.

§ C553.233 "Regular rate" defined

The statutory rules for computing an employee's "regular rate", for purposes of the Act's overtime pay requirements are applicable to employees or whom the section 7(k) exemption is claimed when overtime compensation is provided in cash wages.

SUBPART D—COMPENSATORY TIME-OFF FOR OVERTIME EARNED BY EMPLOYEES WHOSE WORK SCHEDULE DIRECTLY DEPENDS UPON THE SCHEDULE OF THE HOUSE AND THE SENATE

§ C553.301 Definition of "directly depends"

For the purposes of this Part, a covered employee's work schedule "directly depends" on the schedule of the House of Representatives and the Senate only if the eligible employee performs work that directly supports the conduct of legislative or other business in the chamber and works hours that regularly change in response to the schedule of the House and the Senate.

§ C553.302 Overtime compensation and compensatory time off for an employee whose work schedule directly depends upon the schedule of the House and Senate

No employing office shall be deemed to have violated section 203(a)(1) of the CAA, which applies the protections of section 7(a) of the Fair Labor Standards Act ("FLSA") to covered employees and employing office, by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under section 7(a) of the FLSA where the employee's work schedule directly depends on the schedule of the House of Representatives or the Senate within the meaning of § C553.301, and: (a) the employee is compensated at the rate of time-and-a-half in pay for all hours in excess of 40 and up to 60 hours in a workweek, and (b) the employee is compensated at the rate of time-and-a-half in either pay or in time off for all hours in excess of 60 hours in a workweek.

§ C553.303 Using compensatory time off

An employee who has accrued compensatory time off under § C553.302 upon his or her request, shall be permitted by the employing office to use such time within a reasonable period after making the request, unless the employing office makes a bona fide determination that the needs of the operations of the office do not allow the taking of compensatory time off at the time of the request. An employee may renew the request at a subsequent time. An employing office may also, upon reasonable notice, require an employee to use accrued compensatory time-off.

§ C553.304 Payment of overtime compensation for accrued compensatory time off as of termination of service

An employee who has accrued compensatory time authorized by this regulation shall, upon termination of employment, be paid for the unused compensatory time at the rate earned by the employee at the time the employee receives such payment.

PART C570—CHILD LABOR REGULATIONS

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SUBPART A—GENERAL

§ C570.00 Corresponding section table of the FLSA regulations of the Labor Department and the CAA regulations of the Office of Compliance

The following table lists the sections of the Secretary of Labor Regulations under the FLSA with the corresponding sections of the Office of Compliance Regulations under section 202 of the CAA:

Secretary of Labor regulations	*OC regulations*
570.1 Definitions	C570.1
570.2 Minimum age standards	C570.2
570.31 Determinations	C570.31
570.32 Effect of this subpart	C570.32
570.33 Occupations	C570.33
570.35 Periods and conditions of employment	C570.35
570.50 General	C570.50
570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)	C570.51
570.52 Occupations of motor-vehicle driver and outside helper (Order 2)	C570.52
570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)	C570.55
570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)	C570.58
570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)	C570.59
570.62 Occupations involved in the operation of bakery machines (Order 11)	C570.62
570.63 Occupations involved in the operation of paper-products machines (Order 12)	C570.63
570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)	C570.65
570.66 Occupations involved in wrecking and demolition operations (Order 15)	C570.66
570.67 Occupations in roofing operations (Order 16)	C570.67
570.68 Occupations in excavation operations (Order 17)	C570.68

§ C570.1 Definitions

As used in this part:

(a) "Act" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) "Oppressive child labor" means employment of a minor in an occupation for which he does not meet the minimum age standards of the Act, as set forth in section 570.2 of this subpart.

(c) "Oppressive child labor age" means an age below the minimum age established under the Act for the occupation in which a minor is employed or in which his employment is contemplated.

(d) [Reserved].

(e) [Reserved].

(f) "Secretary" or "Secretary of Labor" means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(g) "Wage and Hour Division" means the Wage and Hour Division, Employment Standards Administration, United States Department of Labor.

(h) "Administrator" means the Administrator of the Wage and Hour Division or his authorized representative.

§ C570.2 Minimum age standards

(a) ALL OCCUPATIONS EXCEPT IN AGRICULTURE.—(1) The Act, in section 3(1), sets a general 16-year minimum age which applies to all employment subject to its child labor provisions in any occupation other than in agriculture, with the following exceptions:

(i) The Act authorizes the Secretary of Labor to provide by regulation or by order that the employment of employees between the ages of 14 and 16 years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor, if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being (see subpart C of this part); and

(ii) The Act sets an 18-year minimum age with respect to employment in any occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of minors of such age or detrimental to their health or well-being.

(2) The Act exempts from its minimum age requirements the employment by a parent of his own child, or by a person standing in place of a parent of a child in his custody, except in occupations to which the 18-year age minimum applies and in manufacturing and mining occupations.

SUBPART B [RESERVED]

SUBPART C—EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE (CHILD LABOR REG. 3)

§ C570.31 Determination

The employment of minors between 14 and 16 years of age in the occupations, for the periods, and under the conditions hereafter specified does not interfere with their schooling or with their health and well-being and shall not be deemed to be oppressive child labor.

§ C570.32 Effect of this subpart

In all occupations covered by this subpart the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions specified in § 570.35 shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

§ C570.33 Occupations

This subpart shall apply to all occupations other than the following:

(a) Manufacturing, mining, or processing occupations, including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;

(b) Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;

(c) The operation of motor vehicles or service as helpers on such vehicles;

(d) Public messenger service;

(e) Occupations which the Secretary of Labor may, pursuant to section 3(1) of the Fair Labor Standards Act and Reorganization Plan No. 2, issued pursuant to the Reorganization Act of 1945, find and declare to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair); except such office (including ticket office) work, or sales work, in connection with paragraphs (f) (1), (2), (3), and (4) of this section, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

§ C570.35 Periods and conditions of employment

(a) Except as provided in paragraph (b) of this section, employment in any of the occupations to which this subpart is applicable shall be confined to the following periods:

(1) Outside school hours;

(2) Not more than 40 hours in any 1 week when school is not in session;

(3) Not more than 18 hours in any 1 week when school is in session;

(4) Not more than 8 hours in any 1 day when school is not in session;

(5) Not more than 3 hours in any 1 day when school is in session;

6) Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

SUBPART D [RESERVED]

SUBPART E—OCCUPATIONS PARTICULARLY HAZARDOUS FOR THE EMPLOYMENT OF MINORS BETWEEN 16 AND 18 YEARS OF AGE OR DETRIMENTAL TO THEIR HEALTH OR WELL-BEING

§ C570.50 General

(a) HIGHER STANDARDS.—Nothing in this subpart shall authorize non-compliance with any Federal law or regulation establishing a higher standard. If more than one standard within this subpart applies to a single activity the higher standard shall be applicable.

(b) APPRENTICES.—Some sections in this subpart contain an exemption for the employment of apprentices. Such an exemption shall apply only when: (1) The apprentice is employed in a craft recognized as an apprenticeable trade; (2) the work of the apprentice in the occupations declared particularly hazardous is incidental to his training; (3) such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and (4) the apprentice is registered by the Executive Director of the Office of Compliance as employed in accordance with the standards established by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(c) STUDENT-LEARNERS.—Some sections in this subpart contain an exemption for the employment of student-learners. Such an exemption shall apply when:

(1) The student-learner is enrolled in a course of study and training in a cooperative

vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school; and

(2) Such student-learner is employed under a written agreement which provides:

(i) That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;

(ii) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(iv) That a schedule of organized and progressive work processes to be performed on the job shall have been prepared. Each such written agreement shall contain the name of student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

§ C570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components (Order 1)

(a) FINDING AND DECLARATION OF FACT.—The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being:

(1) All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in paragraph (a)(2) of this section) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a "nonexplosives area" as defined in paragraph (b)(3) of this section.

(2) The following occupations in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(i) All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(ii) All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.

(iii) All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(iv) All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.

(v) All occupations involved in the loading, inspecting, packing, shipping and storage of blasting caps.

(b) DEFINITIONS.—For the purpose of this section:

(1) The term "plant or establishment manufacturing or storing explosives or articles containing explosive component" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.

(2) The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR parts 71 to 78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835).

(3) An area meeting all of the criteria in paragraphs (b)(3) (i) through (iv) of this section shall be deemed a "nonexplosives area":

(i) None of the work performed in the area involves the handling or use of explosives;

(ii) The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;

(iii) The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and

(iv) Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria of paragraphs (b)(3) (i) through (iii) of this section.

§ C570.52 Occupations of motor-vehicle driver and outside helper (Order 2)

(a) FINDINGS AND DECLARATION OF FACT.—Except as provided in paragraph (b) of this section, the occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in § C570.68(a) are particularly hazardous for the employment of minors between 16 and 18 years of age.

(b) EXEMPTION.—The findings and declaration in paragraph (a) of this section shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours: *Provided*, That such operation is only occasional and incidental to the minor's employment; that the minor holds a State license valid for the type of driving involved in the job performed and has completed a State approved driver education course: *Provided further*, That the vehicle is equipped with a seat belt or similar restraining device for the driver and for each helper, and the employer has instructed each minor that such belts or other devices must be used. This paragraph shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

(c) DEFINITIONS.—For the purpose of this section:

(1) The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.

(2) The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.

(3) The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.

(4) The term "gross vehicle weight" includes the truck chassis with lubricants, water and a full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body and special chassis and body equipment, and payload.

§ C570.55 Occupations involved in the operation of power-driven woodworking machines (Order 5)

(a) FINDING AND DECLARATION OF FACT.—The following occupations involved in the operation of power-driven wood-working machines are particularly hazardous for minors between 16 and 18 years of age:

(1) The occupation of operating power-driven woodworking machines, including supervising or controlling the operation of such machines, feeding material into such machines, and helping the operator to feed material into such machines but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning power-driven woodworking machines.

(3) The occupations of off-bearing from circular saws and from guillotine-action veneer clippers.

(b) DEFINITIONS.—As used in this section:

(1) The term "power-driven woodworking machines" shall mean all fixed or portable machines or tools driven by power and used or designed for cutting, shaping, forming, surfacing, nailing, stapling, wire stitching, fastening, or otherwise assembling, pressing, or printing wood or veneer.

(2) The term "off-bearing" shall mean the removal of material or refuse directly from a saw table or from the point of operation. Operations not considered as off-bearing within the intent of this section include: (i) The removal of material or refuse from a circular saw or guillotine-action veneer clipper where the material or refuse has been conveyed away from the saw table or point of operation by a gravity chute or by some mechanical means such as a moving belt or expulsion roller, and (ii) the following operations when they do not involve the removal of material or refuse directly from a saw table or from the point of operation: The carrying, moving, or transporting of materials from one machine to another or from one part of a plant to another; the piling, stacking, or arranging of materials for feeding into a machine by another person; and the sorting, tying, bundling, or loading of materials.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.58 Occupations involved in the operation of power-driven hoisting apparatus (Order 7)

(a) FINDING AND DECLARATION OF FACT.—The following occupations involved in the operation of power-driven hoisting apparatus are particularly hazardous for minors between 16 and 18 years of age:

(1) Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one ton capacity.

(2) Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

(3) Work of assisting in the operation of a crane, derrick, or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like occupations.

(b) DEFINITIONS.—As used in this section:

(1) The term "elevator" shall mean any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators (including portable elevators or tiering machines), but shall not include dumbwaiters.

(2) The term "crane" shall mean a power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot-pouring, jib, locomotive, motor-truck, overhead traveling, pillar jib, pintle, portal, semi-gantry, semi-portal, storage bridge, tower, walking jib, and wall cranes.

(3) The term "derrick" shall mean a power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

(4) The term "hoist" shall mean a power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term shall include all types of hoists, such as base mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

(5) The term "high-lift" truck shall mean a power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include highlift trucks known under such names as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of but not the tiering of material.

(6) The term "manlift" shall mean a device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; such belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

(c) EXCEPTION.—(1) This section shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator: *Provided*, That the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door, and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all such doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over travel by the car.

(2) For the purpose of this exception the term "automatic elevator" shall mean a passenger elevator, a freight elevator, or a combination passenger-freight elevator, the operation of which is controlled by pushbuttons in such a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

(3) For the purpose of this exception, the term "automatic signal operation elevator" shall mean an elevator which is started in response to the operation of a switch (such as a lever or pushbutton) in the car which when operated by the operator actuates a starting device that automatically closes the car and hoistway doors from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

§ C570.59 Occupations involved in the operations of power-driven metal forming, punching, and shearing machines (Order 8)

(a) FINDING AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven metal forming, punching, and shearing machines:

(i) All rolling machines, such as beading, straightening, corrugating, flanging, or bending rolls; and hot or cold rolling mills.

(ii) All pressing or punching machines, such as punch presses except those provided with full automatic feed and ejection and with a fixed barrier guard to prevent the hands or fingers of the operator from entering the area between the dies; power presses; and plate punches.

(iii) All bending machines, such as apron brakes and press brakes.

(iv) All hammering machines, such as drop hammers and power hammers.

(v) All shearing machines, such as guillotine or squaring shears; alligator shears; and rotary shears.

(2) The occupations of setting up, adjusting, repairing, oiling, or cleaning these machines including those with automatic feed and ejection.

(b) DEFINITIONS.—(1) The term "operator" shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term "helper" shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term "forming, punching, and shearing machines" shall mean power-driven metal-working machines, other than machine tools, which change the shape of or cut metal by means of tools, such as dies, rolls, or knives which are mounted on rams, plungers, or other moving parts. Types of forming, punching, and shearing machines enumerated in this section are the machines to which the designation is by custom applied.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.62 Occupations involved in the operation of bakery machines (Order 11)

The following occupations involved in the operation of power-driven bakery machines are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machine; or cake cutting band saw.

(2) The occupation of setting up or adjusting a cookie or cracker machine.

§ C570.63 Occupations involved in the operation of paper-products machines (Order 12)

(a) FINDINGS AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operation or assisting to operate any of the following power-driven paper products machines:

(i) Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single-or-double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.

(ii) Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning these machines including those which do not involve hand feeding.

(b) DEFINITIONS.—(1) The term "operating or assisting to operate" shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

(2) The term "paper products" machine shall mean all power-driven machines used in:

(i) The remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for recycling; or

(ii) The preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishment.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.65 Occupations involved in the operations of circular saws, band saws, and guillotine shears (Order 14)

(a) FINDINGS AND DECLARATION OF FACT.—The following occupations are particularly hazardous for the employment of minors between 16 and 18 years of age:

(1) The occupations of operator of or helper on the following power-driven fixed or portable machines except machines equipped with full automatic feed and ejection:

(i) Circular saws.

(ii) Band saws.

(iii) Guillotine shears.

(2) The occupations of setting-up, adjusting, repairing, oiling, or cleaning circular saws, band saws, and guillotine shears.

(b) DEFINITIONS.—(1) The term "operator" shall mean a person who operates a machine covered by this section by performing such functions as starting or stopping the machine, placing materials into or removing them from the machine, or any other functions directly involved in operation of the machine.

(2) The term "helper" shall mean a person who assists in the operation of a machine covered by this section by helping place materials into or remove them from the machine.

(3) The term "machines equipped with full automatic feed and ejection" shall mean machines covered by this Order which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any part of his body in the point-of-operation area.

(4) The term "circular saw" shall mean a machine equipped with a thin steel disc having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

(5) The term "band saw" shall mean a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

(6) The term "guillotine shear" shall mean a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.66 Occupations involved in wrecking and demolition operations (Order 15)

(a) FINDING AND DECLARATION OF FACT.—All occupations in wrecking and demolition operations are particularly hazardous for the employment of minors between 16 and 18 years of age and detrimental to their health and well-being.

(b) DEFINITION.—The term "wrecking and demolition operations" shall mean all work, including clean-up and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure.

§ C570.67 Occupations in roofing operations (Order 16)

(a) FINDING AND DECLARATION OF FACT.—All occupations in roofing operations are particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health.

(b) DEFINITION OF ROOFING OPERATIONS.—The term "roofing operations" shall mean all work performed in connection with the application of weatherproofing materials and substances (such as tar or pitch, asphalt prepared paper, tile, slate, metal, translucent materials, and shingles of asbestos, asphalt or wood) to roofs of buildings or other structures. The term shall also include all work performed in connection with: (1) The installation of roofs, including related metal work such as flashing and (2) alterations, additions, maintenance, and repair, including painting and coating, of existing roofs. The term shall not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

(c) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section 570.50 (b) and (c).

§ C570.68 Occupations in excavation operations (Order 17)

(a) FINDING AND DECLARATION OF FACT.—The following occupations in excavation operations are particularly hazardous for the employment of persons between 16 and 18 years of age: (1) Excavating, working in, or backfilling (refilling) trenches, except (i) manually excavating or manually backfilling trenches that do not exceed four feet in depth at any point, or (ii) working in trenches that do not exceed four feet in depth at any point. (2) Excavating for buildings or other structures or working in such excavations, except: (i) Manually excavating to a depth not exceeding four feet below any ground surface adjoining the excavation, or (ii) working in an excavation not exceeding such depth, or (iii) working in an excavation where the side walls are shored or sloped to the angle of repose. (3) Working within tunnels prior to the completion of all driving and shoring operations. (4) Working within shafts prior to the completion of all sinking and shoring operations.

(b) EXEMPTIONS.—This section shall not apply to the employment of apprentices or student-learners under the conditions prescribed in section C570.50 (b) and (c).

EXCLUSION FOR EMPLOYEES OF THE CAPITOL POLICE

None of the limitations on the use of lie detector tests by employing offices set forth in section 204 of the CAA apply to the Capitol Police. This exclusion from the limitations of section 204 of the CAA applies only with respect to Capitol Police employees. Except as otherwise provided by law or these regulations, this exclusion does not extend to contractors or nongovernmental agents of the Capitol Police; nor does it extend to the Capitol Police with respect to employees of a private employer or an otherwise covered employing office with which the Capitol Police has a contractual or other business relationship.

APPLICATION OF RIGHTS AND PROTECTIONS OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

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Authority: Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. 1314(c).

SUBPART A—GENERAL

SEC. 1.1 PURPOSE AND SCOPE.

Enacted into law on January 23, 1995, the Congressional Accountability Act ("CAA") directly applies the rights and protections of eleven Federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204(a) of the CAA, 2 U.S.C. §1314(a) provides that no employing office may require any covered employee (including a covered employee who does not work in that employing office) to take a lie detector test where such test would be prohibited if required by an employer under paragraphs (1), (2) or (3) of section 3 of the Employee Polygraph Protection Act of 1988 (EPPA), 29 U.S.C. §2002 (1), (2) or (3). The purpose of this Part is to set forth the regulations to carry out the provisions of section 204 of the CAA.

Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use. Subpart B sets forth rules regarding the statutory exemptions from application of section 204 of the CAA. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the rules on recordkeeping and the disclosure of polygraph test information.

SEC. 1.2 DEFINITIONS.

For purposes of this part:

(a) Act or CAA means the Congressional Accountability Act of 1995 (P.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) EPPA means the Employee Polygraph Protection Act of 1988 (Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. §§2001–2009) as applied to covered employees and employing offices by section 204 of the CAA.

(c) The term covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Congressional Budget Office; (5) the Office of the Architect of the Capitol; (6) the Office of the Attending Physician; (7) the Office of Compliance; or (8) the Office of Technology Assessment.

(d) The term employee includes an applicant for employment and a former employee.

(e) The term employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term employee of the Capitol Police includes any member or officer of the Capitol Police.

(g) The term employee of the House of Representatives includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) 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 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. The term employing office includes any person acting directly or indirectly in the interest of an employing office in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an employing office with respect to the examinees. Any reference to "employer" in these regulations includes employing offices.

(j)(1) The term lie detector means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term lie detector does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of lie detector are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(k) The term polygraph means an instrument that—

(1) records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(l) Board means the Board of Directors of the Office of Compliance.

(m) Office means the Office of Compliance.

SEC. 1.3 COVERAGE.

The coverage of section 204 of the Act extends to any "covered employee" or "covered employing office" without regard to the number of employees or the employing office's effect on interstate commerce.

SEC. 1.4 PROHIBITIONS ON LIE DETECTOR USE.

(a) Section 204 of the CAA provides that, subject to the exemptions of the EPPA incorporated into the CAA under section 225(f) of the CAA, as set forth in section 1.10 through 1.12 of this Part, employing offices are prohibited from:

(1) Requiring, requesting, suggesting or causing, directly or indirectly, any covered employee or prospective employee to take or submit to a lie detector test;

(2) Using, accepting, or inquiring about the results of a lie detector test of any covered employee or prospective employee; and

(3) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any covered employee or prospective employee to take such action for refusal or failure to take or submit to such test, or on the basis of the results of a test.

The above prohibitions apply irrespective of whether the covered employee referred to in paragraphs (1), (2) or (3), above, works in that employing office.

(b) An employing office that reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to a covered employee(s) suspected of involvement in the reported incident. Employing offices that cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct: *Provided*, That such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employing office's premises, releasing a covered employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as "requiring, requesting, suggesting, or causing, directly or indirectly, any covered employee * * * to take or submit to a lie detector test". Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employing office at the request or direction of police authorities, or through reimbursement by the employing office of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request testing by employing offices of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to covered employing offices, on a cost reimbursement basis, to conduct tests on employees suspected by an employing office of wrongdoing. All such conduct on the part of employing offices is deemed within the prohibitions of section 204 of the CAA.

(c) The receipt by an employing office of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the EPPA. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to elicit confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of a covered employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the covered employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

(e) The Capitol Police may not require a covered employee not employed by the Capitol Police to take a lie detector test (on its own initiative or at the request of another employing office) except where the Capitol Police administers such lie detector test as part of an "ongoing investigation" by the Capitol Police. For the purpose of this subsection, the definition of "ongoing investigation" contained in section 1.12(b) shall apply.

SEC. 1.5 EFFECT ON OTHER LAWS OR AGREEMENTS.

(a) Section 204 of the CAA does not preempt any otherwise applicable provision of Federal law or any rule or regulation of the House or Senate or any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employing offices.

(2) For example, a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in section 204 of the CAA.

SEC. 1.6 NOTICE OF PROTECTION.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 204 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

SEC. 1.7 AUTHORITY OF THE BOARD.

Pursuant to sections 204 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of the EPPA. Section 204(c) directs the Board to promulgate regulations implementing section 204 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 204 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b) [of section 204 of the CAA]".

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes

are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

SEC. 1.8 EMPLOYMENT RELATIONSHIP.

Subject to the exemptions incorporated into the CAA by section 225(f), section 204 applies the prohibitions on the use of lie detectors by employing offices with respect to covered employees irrespective of whether a covered employee works in that employing office. Sections 101 (3), (4) and 204 of the CAA also apply EPPA prohibitions against discrimination to applicants for employment and former employees of a covered employing office. For example, an employee may quit rather than take a lie detector test. The employing office cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested. Similarly, an employing office cannot discriminate or threaten to discriminate in any manner against that person because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under section 204 of the CAA. (See section 207 of the CAA.)

SUBPART B—EXEMPTIONS

SEC. 1.10 EXCLUSION FOR EMPLOYEES OF THE CAPITOL POLICE [RESERVED].

SEC. 1.11 EXEMPTION FOR NATIONAL DEFENSE AND SECURITY.

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow covered employing offices to administer such tests. For the purposes of this section, the term "Federal Government" means any agency or entity within the Federal Government authorized to administer polygraph examinations which is otherwise exempt from coverage under section 7(a) of the EPPA, 29 U.S.C. §2006(a).

(b) Section 7(b)(1) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor under contract with the Department of Defense; or with the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any employee of a contractor to such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides that nothing in the EPPA shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any covered employee whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive order).

(e) Counterintelligence for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(f) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

SEC. 1.12 EXEMPTION FOR EMPLOYING OFFICES CONDUCTING INVESTIGATIONS OF ECONOMIC LOSS OR INJURY.

(a) Section 7(d) of the EPPA, incorporated into the CAA under section 225(f) of the CAA, provides a limited exemption from the general prohibition on lie detector use for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employing office may request an employee, subject to the conditions set forth in sections 8 and 10 of the EPPA and sections 1.20, 1.22, 1.23, 1.24, 1.25, 1.26 and 1.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employing office's operations, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employing office has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employing office provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the operations of the employing office;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employing office; and

(5) The employing office retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years.

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the EPPA, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employing office may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employing office is precluded by the EPPA. Further, because the exemption is limited to a specific incident or activity, an employing office is precluded from using the exemption in situations where the so-called "ongoing investigation" is continuous. For example, the fact that items are frequently missing would not be a sufficient basis, standing alone, for administering a polygraph test. Even if the employing office can establish that unusually high amounts of property are missing in a given month, this, in and of itself, would not be a sufficient basis to meet the specific incident requirement. On the other hand, polygraph testing in response to missing property would be permitted where additional evidence is obtained through subsequent investigation of specific items missing through intentional wrongdoing, and a reasonable suspicion that the employee to be polygraphed was involved in the incident under investigation. Administering a polygraph test in circumstances where the missing property is merely unspecified, statistical shortages, without identification of a specific incident or activity that produced the missing property and a "reasonable suspicion that the employee was involved", would amount to little more than a fishing expedition and is prohibited by the EPPA as applied to covered employees and employing offices by the CAA.

(c)(1)(i) The terms economic loss or injury to the employing office's operations include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, espionage or sabotage. These examples, cited in the EPPA, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employing office's operations to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employing office's operations (and not simply the use of the premises) for such activity. For example, the use of an employing office's vehicles, warehouses, computers or equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employing office's business operations. Conversely, the mere fact that an illegal act occurs on the employing office's premises (such as a drug transaction that takes place in the employing office's parking lot or rest room) does not constitute an indirect economic loss or injury to the employing office.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employing office exercises fiduciary, managerial or security responsibility, or where the office has custody of the property (but not property of other offices to which the employees have access by virtue of the employment relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery

of confidential business reports for a client firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employing office unless that employing office has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement.

(3) It is the operations of the employing office which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employing office would not satisfy the requirement.

(d) While nothing in the EPPA as applied by the CAA prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption of the EPPA does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employing office (e.g., an accident involving an employing office's vehicle).

(e) Section 7(d)(2) of the EPPA provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word access, as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term "access", thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a property storage area have "access" to unsecured property in the area. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employing office's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), property refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employing office.

(f)(1) As used in section 7(d)(3), the term reasonable suspicion refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion". Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employee is asked to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, a basis for reasonable suspicion may be formulated based on sole access by one employee.

(3) The employing office has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) of the EPPA to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the EPPA sets forth what information, at a minimum, must be provided to an employee if the employing office wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) of the EPPA requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employing office's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employing office's requesting an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employing office, or an employee or other representative of the employing office with authority to legally bind the employing office. The person signing the statement must not be a polygraph examiner unless the examiner is acting solely in the capacity of an employing office with respect to his or her own employees and does not conduct the examination. The standard would not be met, and the exemption would not apply if the person signing the statement is not authorized to legally bind the employing office.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in sections 1.20, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to remedial actions, as provided for in section 6(c) of the EPPA.

SEC. 1.13 EXEMPTION OF EMPLOYING OFFICES AUTHORIZED TO MANUFACTURE, DISTRIBUTE, OR DISPENSE CONTROLLED SUBSTANCES.

(a) Section 7(f) of the EPPA, incorporated into the CAA by section 225(f) of the CAA, provides an exemption from the EPPA's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. §812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the EPPA and sections 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employing office; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms manufacture, distribute, distribution, dispense, storage, and sale, for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. §812 et seq.), as administered by the Drug Enforcement Administration (DEA), United States Department of Justice.

(2) The exemption in section 7(f) of the EPPA applies only to employing offices that

are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. §812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employing office. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in section 1.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between "direct access" and "access". Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access". Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access". However, any current employee, regardless of described job duties, may be polygraphed if the employing office's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain "access" to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term prospective employee, for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a "prospective employee" for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the EPPA, as applied by the CAA, makes no specific reference to a requirement that employing offices provide current employees with a written statement prior to polygraph testing. Thus, employing offices to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the EPPA and section 1.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employing office.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employing office is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the EPPA for employing offices conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for "reasonable suspicion" contained in the section 7(d) exemption. Thus, a drug store operator is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The non-controlled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such non-controlled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the EPPA and section 1.12 of this part. However, the exemption in section 7(f) of the EPPA and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the EPPA, as discussed in sections 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, and 1.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employing office to the remedies authorized in section 204 of the CAA. The administration of such tests is also subject to collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

SUBPART C—RESTRICTIONS ON POLYGRAPH USAGE UNDER EXEMPTIONS

SEC. 1.20 ADVERSE EMPLOYMENT ACTION UNDER ONGOING INVESTIGATION EXEMPTION.

(a) Section 8(a)(1) of the EPPA provides that the limited exemption in section 7(d) of the EPPA and section 1.12 of this part for ongoing investigations shall not apply if an employing office discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the EPPA, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employing office's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employing office observes all the requirements of sections 7(d) and 8(b) of the EPPA, as applied by the CAA and described in sections 1.12, 1.22, 1.23, 1.24 and 1.25 of this part.

SEC. 1.21 ADVERSE EMPLOYMENT ACTION UNDER CONTROLLED SUBSTANCE EXEMPTION.

(a) Section 8(a)(2) of the EPPA provides that the controlled substance exemption in section 7(f) of the EPPA and section 1.13 of this part shall not apply if an employing office discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section: *Provided*, That the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employing office observes all the requirements of section 7(f) of the EPPA, as appropriate, and section 8(b) of the EPPA, as described in sections 1.13, 1.22, 1.23, 1.24 and 1.25 of this part.

SEC. 1.22 RIGHTS OF EXAMINEE—GENERAL.

(a) Pursuant to section 8(b) of the EPPA, the limited exemption in section 7(d) of the EPPA for ongoing investigations (described in sections 1.12 and 1.13 of this part) shall not apply unless all of the requirements set forth in this section and sections 1.23 through 1.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;

(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;

(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment that might cause abnormal responses during the actual testing phase. "Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in sections 1.20 and 1.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in sections 1.23 through 1.25 of this part.

SEC. 1.23 RIGHTS OF EXAMINEE—PRETEST PHASE.

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of Appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in Appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employing office have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employing office to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employing office's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate Government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employing office that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) By the employing office, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to take action against the employing office under sections 401–404 of the CAA. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages

and benefits, and reasonable costs, including attorney's fees;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test is administered during the actual testing phase.

(xv) That the employee's rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

SEC. 1.24 RIGHTS OF EXAMINEE—ACTUAL TESTING PHASE.

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the EPPA and section 1.23(a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in section 1.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

SEC. 1.25 RIGHTS OF EXAMINEE—POST-TEST PHASE.

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employing office must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term "corresponding charted responses" refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as "charted" by the instrument.

SEC. 1.26 QUALIFICATIONS OF AND REQUIREMENTS FOR EXAMINERS.

(a) Section 8 (b) and (c) of the EPPA provides that the limited exemption in section 7(d) of the EPPA for ongoing investigations shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employing office pursuant to section 1.30(c) of this part:

(1) Observe all rights of examinees, as set out in sections 1.22, 1.23, 1.24, and 1.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the EPPA which is less than ninety minutes in duration, as described in section 1.24(b) of this part; and

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee.

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including, statements signed by examinees advising them of rights under the CAA (as described in section 1.23(a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See section 1.30 of this part for recordkeeping requirements.)

SUBPART D—RECORDKEEPING AND DISCLOSURE REQUIREMENTS

SEC. 1.30 RECORDS TO BE PRESERVED FOR 3 YEARS.

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employing office that requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular covered employee, as required by section 7(d)(4) of the EPPA and described in 1.12(a)(4) of this part.

(2) Each examiner retained to administer examinations pursuant to any of the exemptions under section 7 (d), (e) or (f) of the EPPA (described in sections 1.12 and 1.13 of this part) shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons.

SEC. 1.35 DISCLOSURE OF TEST INFORMATION.

This section prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employing office (other than an employing office exempt under section 7 (a) or (b) of the EPPA (described in sections 1.10 and 1.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employing office that requested the polygraph test pursuant to the provisions of the EPPA (including management personnel of the employing office where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(b) An employing office may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this part provided that the other examiner has no direct or indirect interest in the matter.

SUBPART E—[RESERVED]

SEC. 1.40 [RESERVED].

APPENDIX A TO PART 801—NOTICE TO EXAMINEE

Section 204 of the Congressional Accountability Act, which applies the rights and protections of section 8(b) of the Employee Polygraph Protection Act to covered employees and employing offices, and the regulations of the Board of Directors of the Office of Compliance (sections 1.22, 1.23, 1.24, and 1.25), require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording [will] [will not] be used during the examination.

(c) Both you and the employing office have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician

that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employing office may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employing office to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employing office's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate Government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employing office only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employing office that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order.

(b) Information acquired from a polygraph test may be disclosed by the employing office to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to take action against the employing office by filing a request for counseling with the Office of Compliance under section 402 of the Congressional Accountability Act. Employing offices that violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees.

6. Your rights under the CAA may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the CAA, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

_____

(Date)

_____

(Signature)

APPLICATION OF RIGHTS AND PROTECTIONS OF THE WORKER ADJUSTMENT RETRAINING AND NOTIFICATION ACT OF 1988 (IMPLEMENTING SECTION 204 OF THE CAA)

Sec.
639.1 Purpose and scope.
639.2 What does WARN require?
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639.4 Who must give notice?
639.5 When must notice be given?
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639.9 When may notice be given less than 60 days in advance?
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639.11 [Reserved].

§ 639.1 Purpose and scope

(a) PURPOSE OF WARN AS APPLIED BY THE CAA.—Section 205 of the Congressional Accountability Act, Public Law 104–1 ("CAA"), provides protection to covered employees and their families by requiring employing offices to provide notification 60 calendar days in advance of office closings and mass layoffs within the meaning of section 3 of the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. §2102. Advance notice provides workers and their families some transition time to adjust to the prospective loss of employment, to seek and obtain alternative jobs and, if necessary, to enter skill training or retraining that will allow these workers to successfully compete in the job market. As used in these regulations, WARN shall refer to the provisions of WARN applied to covered employing offices by section 205 of the CAA.

(b) SCOPE OF THESE REGULATIONS.—These regulations are issued by the Board of Directors, Office of Compliance, pursuant to sections 205(c) and 304 of the CAA, which directs the Board to promulgate regulations implementing section 205 that are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section". The regulations issued by the Board herein are on all matters for which section 205 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other "substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 205 of the CAA]".

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these sections and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

These regulations establish basic definitions and rules for giving notice, implementing the provisions of WARN. The objective of these regulations is to establish clear principles and broad guidelines which can be applied in specific circumstances. However, it is recognized that rulemaking cannot address the multitude of employing office-specific situations in which advance notice will be given.

(c) NOTICE IN AMBIGUOUS SITUATIONS.—It is civically desirable and it would appear to be good business practice for an employing office to provide advance notice, where reasonably possible, to its workers or unions when terminating a significant number of employees. The Office encourages employing offices to give notice in such circumstances.

(d) WARN NOT TO SUPERSEDE OTHER LAWS AND CONTRACTS.—The provisions of WARN do not supersede any otherwise applicable laws or collective bargaining agreements that provide for additional notice or additional rights and remedies. If such law or agreement provides for a longer notice period, WARN notice shall run concurrently with that additional notice period. Collective bargaining agreements may be used to clarify or amplify the terms and conditions of WARN, but may not reduce WARN rights.

§ 639.2 What does WARN require?

WARN requires employing offices that are planning an office closing or a mass layoff to give affected employees at least 60 days' notice of such an employment action. While the 60-day period is the minimum for advance notice, this provision is not intended to discourage employing offices from voluntarily providing longer periods of advance notice. Not all office closings and layoffs are subject to WARN, and certain employment thresholds must be reached before WARN applies. WARN sets out specific exemptions, and provides for a reduction in the notification period in particular circumstances. Remedies authorized under section 205 of the CAA may be assessed against employing offices that violate WARN requirements.

§ 639.3 Definitions

(a) EMPLOYING OFFICE.—(1) The term "employing office" means any of the entities listed in section 101(9) of the CAA, 2 U.S.C. §1301(9) that employs—

(i) 100 or more employees, excluding part-time employees; or

(ii) employs 100 or more employees, including part-time employees, who in the aggregate work at least 4,000 hours per week, exclusive of overtime.

Workers on temporary layoff or on leave who have a reasonable expectation of recall are counted as employees. An employee has a "reasonable expectation of recall" when he/she understands, through notification or through common practice, that his/her employment with the employing office has been temporarily interrupted and that he/she will be recalled to the same or to a similar job.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN, are nonetheless counted as employees for purposes of determining coverage as an employing office.

(3) An employing office may have one or more sites of employment under common control.

(b) OFFICE CLOSING.—The term "office closing" means the permanent or temporary shutdown of a "single site of employment", or one or more "facilities or operating units" within a single site of employment, if the shutdown results in an "employment loss" during any 30-day period at the single site of employment for 50 or more employees, excluding any part-time employees. An

employment action that results in the effective cessation of the work performed by a unit, even if a few employees remain, is a shutdown. A "temporary shutdown" triggers the notice requirement only if there are a sufficient number of terminations, layoffs exceeding 6 months, or reductions in hours of work as specified under the definition of "employment loss".

(c) MASS LAYOFF.—(1) The term "mass layoff" means a reduction in force which first, is not the result of an office closing, and second, results in an employment loss at the single site of employment during any 30-day period for:

(i) At least 33 percent of the active employees, excluding part-time employees, and

(ii) At least 50 employees, excluding part-time employees.

Where 500 or more employees (excluding part-time employees) are affected, the 33 percent requirement does not apply, and notice is required if the other criteria are met. Office closings involve employment loss which results from the shutdown of one or more distinct units within a single site or the entire site. A mass layoff involves employment loss, regardless of whether one or more units are shut down at the site.

(2) Workers, other than part-time workers, who are exempt from notice under section 4 of WARN are nonetheless counted as employees for purposes of determining coverage as an office closing or mass layoff. For example, if an employing office closes a temporary project on which 10 permanent and 40 temporary workers are employed, a covered office closing has occurred although only 10 workers are entitled to notice.

(d) REPRESENTATIVE.—The term "representative" means an exclusive representative of employees within the meaning of 5 U.S.C. §§7101 et seq., as applied to covered employees and employing offices by section 220 of the CAA, 2 U.S.C. §1351.

(e) AFFECTED EMPLOYEES.—The term "affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed office closing or mass layoff by their employing office. This includes individually identifiable employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such individual workers reasonably can be identified at the time notice is required to be given. The term affected employees includes managerial and supervisory employees. Consultant or contract employees who have a separate employment relationship with another employing office or employer and are paid by that other employing office or employer, or who are self-employed, are not "affected employees" of the operations to which they are assigned. In addition, for purposes of determining whether coverage thresholds are met, either incumbent workers in jobs being eliminated or, if known 60 days in advance, the actual employees who suffer an employment loss may be counted.

(f) EMPLOYMENT LOSS.—(1) The term employment loss means (i) an employment termination, other than a discharge for cause, voluntary departure, or retirement, (ii) a layoff exceeding 6 months, or (iii) a reduction in hours of work of individual employees of more than 50 percent during each month of any 6-month period.

(2) Where a termination or a layoff (see paragraphs (f)(1) (i) and (ii) of this section) is involved, an employment loss does not occur when an employee is reassigned or transferred to employing office-sponsored programs, such as retraining or job search activities, as long as the reassignment does not constitute a constructive discharge or other involuntary termination.

(3) An employee is not considered to have experienced an employment loss if the closing or layoff is the result of the relocation or consolidation of part or all of the employing office's operations and, prior to the closing or layoff—

(i) The employing office offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or

(ii) The employing office offers to transfer the employee to any other site of employment regardless of distance with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer or of the closing or layoff, whichever is later.

(4) A "relocation or consolidation" of part or all of an employing office's operations, for purposes of paragraph §639.3(f)(3), means that some definable operations are transferred to a different site of employment and that transfer results in an office closing or mass layoff.

(g) PART-TIME EMPLOYEE.—The term "part-time" employee means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, including workers who work full-time. This term may include workers who would traditionally be understood as "seasonal" employees. The period to be used for calculating whether a worker has worked "an average of fewer than 20 hours per week" is the shorter of the actual time the worker has been employed or the most recent 90 days.

(h) SINGLE SITE OF EMPLOYMENT.—(1) A single site of employment can refer to either a single location or a group of contiguous locations. Separate facilities across the street from one another may be considered a single site of employment.

(2) There may be several single sites of employment within a single building, such as an office building, if separate employing offices conduct activities within such a building. For example, an office building housing 50 different employing offices will contain 50 single sites of employment. The offices of each employing office will be its single site of employment.

(3) Separate buildings or areas which are not directly connected or in immediate proximity may be considered a single site of employment if they are in reasonable geographic proximity, used for the same purpose, and share the same staff and equipment.

(4) Non-contiguous sites in the same geographic area which do not share the same staff or operational purpose should not be considered a single site.

(5) Contiguous buildings operated by the same employing office which have separate management and have separate workforces are considered separate single sites of employment.

(6) For workers whose primary duties require travel from point to point, who are outstationed, or whose primary duties involve work outside any of the employing office's regular employment sites (e.g., railroad workers, bus drivers, salespersons), the single site of employment to which they are assigned as their home base, from which their work is assigned, or to which they report will be the single site in which they are covered for WARN purposes.

(7) Foreign sites of employment are not covered under WARN. United States workers at such sites are counted to determine whether an employing office is covered as an employing office under §639.3(a).

(8) The term "single site of employment" may also apply to truly unusual organizational situations where the above criteria do not reasonably apply. The application of this definition with the intent to evade the purpose of WARN to provide notice is not acceptable.

(i) FACILITY OR OPERATING UNIT.—The term "facility" refers to a building or buildings. The term "operating unit" refers to an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site.

§639.4 Who must give notice?

Section 205(a)(1) of the CAA states that "[n]o employing office shall be closed or a mass layoff ordered within the meaning of section 3 of [WARN] until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff . . . ". Therefore, an employing office that is anticipating carrying out an office closing or mass layoff is required to give notice to affected employees or their representative(s). (See definitions in §639.3 of this part.)

(a) It is the responsibility of the employing office to decide the most appropriate person within the employing office's organization to prepare and deliver the notice to affected employees or their representative(s). In most instances, this may be the local site office manager, the local personnel director or a labor relations officer.

(b) An employing office that has previously announced and carried out a short-term layoff (6 months or less) which is being extended beyond 6 months due to circumstances not reasonably foreseeable at the time of the initial layoff is required to give notice when it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months from the date the layoff commenced for any other reason shall be treated as an employment loss from the date of its commencement.

(c) In the case of the privatization or sale of part or all of an employing office's operations, the employing office is responsible for providing notice of any office closing or mass layoff which takes place up to and including the effective date (time) of the privatization or sale, and the contractor or buyer is responsible for providing any required notice of any office closing or mass layoff that takes place thereafter.

(1) If the employing office is made aware of any definite plans on the part of the buyer or contractor to carry out an office closing or mass layoff within 60 days of purchase, the employing office may give notice to affected employees as an agent of the buyer or contractor, if so empowered. If the employing office does not give notice, the buyer or contractor is, nevertheless, responsible to give notice. If the employing office gives notice as the agent of the buyer or contractor, the responsibility for notice still remains with the buyer or contractor.

(2) It may be prudent for the buyer or contractor and employing office to determine the impacts of the privatization or sale on workers, and to arrange between them for advance notice to be given to affected employees or their representative(s), if a mass layoff or office closing is planned.

§639.5 When must notice be given?

(a) GENERAL RULE.—(1) With certain exceptions discussed in paragraphs (b) and (c) of

this section and in §639.9 of this part, notice must be given at least 60 calendar days prior to any planned office closing or mass layoff, as defined in these regulations. When all employees are not terminated on the same date, the date of the first individual termination within the statutory 30-day or 90-day period triggers the 60-day notice requirement. A worker's last day of employment is considered the date of that worker's layoff. The first and each subsequent group of terminees are entitled to a full 60 days' notice. In order for an employing office to decide whether issuing notice is required, the employing office should—

(i) look ahead 30 days and behind 30 days to determine whether employment actions both taken and planned will, in the aggregate for any 30-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement; and

(ii) look ahead 90 days and behind 90 days to determine whether employment actions both taken and planned each of which separately is not of sufficient size to trigger WARN coverage will, in the aggregate for any 90-day period, reach the minimum numbers for an office closing or a mass layoff and thus trigger the notice requirement. An employing office is not, however, required under section 3(d) to give notice if the employing office demonstrates that the separate employment losses are the result of separate and distinct actions and causes, and are not an attempt to evade the requirements of WARN.

(2) The point in time at which the number of employees is to be measured for the purpose of determining coverage is the date the first notice is required to be given. If this "snapshot" of the number of employees employed on that date is clearly unrepresentative of the ordinary or average employment level, then a more representative number can be used to determine coverage. Examples of unrepresentative employment levels include cases when the level is near the peak or trough of an employment cycle or when large upward or downward shifts in the number of employees occur around the time notice is to be given. A more representative number may be an average number of employees over a recent period of time or the number of employees on an alternative date which is more representative of normal employment levels. Alternative methods cannot be used to evade the purpose of WARN, and should only be used in unusual circumstances.

(b) TRANSFERS.—(1) Notice is not required in certain cases involving transfers, as described under the definition of "employment loss" at §639.3(f) of this part.

(2) An offer of reassignment to a different site of employment should not be deemed to be a "transfer" if the new job constitutes a constructive discharge.

(3) The meaning of the term "reasonable commuting distance" will vary with local conditions. In determining what is a "reasonable commuting distance", consideration should be given to the following factors: geographic accessibility of the place of work, the quality of the roads, customarily available transportation, and the usual travel time.

(4) In cases where the transfer is beyond reasonable commuting distance, the employing office may become liable for failure to give notice if an offer to transfer is not accepted within 30 days of the offer or of the closing or layoff (whichever is later). Depending upon when the offer of transfer was made by the employing office, the normal 60-day notice period may have expired and the office closing or mass layoff may have occurred. An employing office is, therefore, well advised to provide 60-day advance notice as part of the transfer offer.

(c) TEMPORARY EMPLOYMENT.—(1) No notice is required if the closing is of a temporary facility, or if the closing or layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or the project or undertaking.

(2) Employees must clearly understand at the time of hire that their employment is temporary. When such understandings exist will be determined by reference to employment contracts, collective bargaining agreements, or employment practices of other employing offices or a locality, but the burden of proof will lie with the employing office to show that the temporary nature of the project or facility was clearly communicated should questions arise regarding the temporary employment understandings.

§639.6 Who must receive notice?

Section 3(a) of WARN provides for notice to each representative of the affected employees as of the time notice is required to be given or, if there is no such representative at that time, to each affected employee.

(a) REPRESENTATIVE(S) OF AFFECTED EMPLOYEES.—Written notice is to be served upon the chief elected officer of the exclusive representative(s) or bargaining agent(s) of affected employees at the time of the notice. If this person is not the same as the officer of the local union(s) representing affected employees, it is recommended that a copy also be given to the local union official(s).

(b) AFFECTED EMPLOYEES.—Notice is required to be given to employees who may reasonably be expected to experience an employment loss. This includes employees who will likely lose their jobs because of bumping rights or other factors, to the extent that such workers can be identified at the time notice is required to be given. If, at the time notice is required to be given, the employing office cannot identify the employee who may reasonably be expected to experience an employment loss due to the elimination of a particular position, the employing office must provide notice to the incumbent in that position. While part-time employees are not counted in determining whether office closing or mass layoff thresholds are reached, such workers are due notice.

§639.7 What must the notice contain?

(a) NOTICE MUST BE SPECIFIC.—(1) All notice must be specific.

(2) Where voluntary notice has been given more than 60 days in advance, but does not contain all of the required elements set out in this section, the employing office must ensure that all of the information required by this section is provided in writing to the parties listed in §639.6 at least 60 days in advance of a covered employment action.

(3) Notice may be given conditional upon the occurrence or nonoccurrence of an event only when the event is definite and the consequences of its occurrence or nonoccurrence will necessarily, in the normal course of operations, lead to a covered office closing or mass layoff less than 60 days after the event. The notice must contain each of the elements set out in this section.

(4) The information provided in the notice shall be based on the best information available to the employing office at the time the notice is served. It is not the intent of the regulations that errors in the information provided in a notice that occur because events subsequently change or that are minor, inadvertent errors are to be the basis for finding a violation of WARN.

(b) DEFINITION.—As used in this section, the term "date" refers to a specific date or to a 14-day period during which a separation or separations are expected to occur. If separations are planned according to a schedule, the schedule should indicate the specific dates on which or the beginning date of each 14-day period during which any separations are expected to occur. Where a 14-day period is used, notice must be given at least 60 days in advance of the first day of the period.

(c) NOTICE.—Notice to each representative of affected employees is to contain:

(1) The name and address of the employment site where the office closing or mass layoff will occur, and the name and telephone number of an employing office official to contact for further information;

(2) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(3) The expected date of the first separation and the anticipated schedule for making separations;

(4) The job titles of positions to be affected and the names of the workers currently holding affected jobs.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

(d) EMPLOYEES NOT REPRESENTED.—Notice to each affected employee who does not have a representative is to be written in language understandable to the employees and is to contain:

(1) A statement as to whether the planned action is expected to be permanent or temporary and, if the entire office is to be closed, a statement to that effect;

(2) The expected date when the office closing or mass layoff will commence and the expected date when the individual employee will be separated;

(3) An indication whether or not bumping rights exist;

(4) The name and telephone number of an employing office official to contact for further information.

The notice may include additional information useful to the employees such as information on available dislocated worker assistance, and, if the planned action is expected to be temporary, the estimated duration, if known.

§639.8 How is the notice served?

Any reasonable method of delivery to the parties listed under §639.6 of this part which is designed to ensure receipt of notice of at least 60 days before separation is acceptable (e.g., first class mail, personal delivery with optional signed receipt). In the case of notification directly to affected employees, insertion of notice into pay envelopes is another viable option. A ticketed notice, i.e., preprinted notice regularly included in each employee's pay check or pay envelope, does not meet the requirements of WARN.

§639.9 When may notice be given less than 60 days in advance?

Section 3(b) of WARN, as applied by section 205 of the CAA, sets forth two conditions under which the notification period may be reduced to less than 60 days. The employing office bears the burden of proof that conditions for the exceptions have been met. If

one of the exceptions is applicable, the employing office must give as much notice as is practicable to the union and non-represented employees and this may, in some circumstances, be notice after the fact. The employing office must, at the time notice actually is given, provide a brief statement of the reason for reducing the notice period, in addition to the other elements set out in §639.7.

(a) The "unforeseeable business circumstances" exception under section 3(b)(2)(A) of WARN, as applied under the CAA, applies to office closings and mass layoffs caused by circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.

(1) An important indicator of a circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employing office's control.

(2) The test for determining when circumstances are not reasonably foreseeable focuses on an employing office's business judgment. The employing office must exercise such reasonable business judgment as would a similarly situated employing office in predicting the demands of its operations. The employing office is not required, however, to accurately predict general economic conditions that also may affect its operations.

(b) The "natural disaster" exception in section 3(b)(2)(B) of WARN applies to office closings and mass layoffs due to any form of a natural disaster.

(1) Floods, earthquakes, droughts, storms, tidal waves or tsunamis and similar effects of nature are natural disasters under this provision.

(2) To qualify for this exception, an employing office must be able to demonstrate that its office closing or mass layoff is a direct result of a natural disaster.

(3) While a disaster may preclude full or any advance notice, such notice as is practicable, containing as much of the information required in §639.7 as is available in the circumstances of the disaster still must be given, whether in advance or after the fact of an employment loss caused by a natural disaster.

(4) Where an office closing or mass layoff occurs as an indirect result of a natural disaster, the exception does not apply but the "unforeseeable business circumstance" exception described in paragraph (a) of this section may be applicable.

§639.10 When may notice be extended?

Additional notice is required when the date or schedule of dates of a planned office closing or mass layoff is extended beyond the date or the ending date of any 14-day period announced in the original notice as follows:

(a) If the postponement is for less than 60 days, the additional notice should be given as soon as possible to the parties identified in §639.6 and should include reference to the earlier notice, the date (or 14-day period) to which the planned action is postponed, and the reasons for the postponement. The notice should be given in a manner which will provide the information to all affected employees.

(b) If the postponement is for 60 days or more, the additional notice should be treated as new notice subject to the provisions of §§639.5, 639.6 and 639.7 of this part. Rolling notice, in the sense of routine periodic notice, given whether or not an office closing or mass layoff is impending, and with the intent to evade the purpose of the Act rather than give specific notice as required by WARN, is not acceptable.

§639.11 [Reserved]

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:56 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House having proceeded to reconsider the bill (H.R. 1561) to consolidate the foreign affairs agencies of the United States; to authorize appropriations for the Department of State and related agencies for fiscal years 1996 and 1997, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, the said bill did not pass, two-thirds of the House of Representatives not agreeing to pass the same.

The message also announced that the Houses has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1527. An act to further clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and minerals leasing laws.

H.R. 1823. An act to amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes.

H.R. 3008. An act to amend the Helium Act to authorize the Secretary to enter into agreements with private parties for the recovery and disposal of helium on Federal lands, and for other purposes.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

H.R. 2024. An act to phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and certain other batteries, and for other purposes.

At 4:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 53. Joint resolution making corrections to Public Law 104–134.

The enrolled bill and joint resolution were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 1823. An act to amend the Central Utah Project Completion Act to direct the Secretary of the Interior to allow for prepayment of repayment contracts between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and November 26, 1985, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3008. An act to amend the Helium Act to authorize the Secretary to enter into agreements with private parties for the recovery and disposal of helium on Federal lands, and for other purposes; to the Committee on Energy and Natural 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. 1527. An act to further clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and minerals leasing laws.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on May 1, 1996 he had presented to the President of the United States, the following enrolled joint resolution:

S.J. Res. 53. Joint resolution making corrections to Public Law 104–134.

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–2381. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a package of final rules; to the Committee on Energy and Natural Resources.

EC–2382. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report of a final regulation (RIN3206–AE80); to the Committee on Governmental Affairs.

EC–2383. A communication from the Deputy Associate Administrator for Acquisition Policy, General Services Administration, Office of Policy, Planning and Evaluation, transmitting, pursuant to law, the report of the Federal Acquisition Circular (Number 90–38); to the Committee on Governmental Affairs.

EC–2384. A communication from the Executive Director of the Committee for Purchase

From People Who Are Blind Or Severely Disabled, transmitting, pursuant to law, the report of additions of the Procurement List; to the Committee on Governmental Affairs.

EC-2385. A communication from the Regulatory Policy Officer of the National Archives at College Park, transmitting, pursuant to law, the report of a final and interim final rule (RIN3095-AA59); to the Committee on Governmental Affairs.

EC-2386. A communication from the Human Resources Manager of the National Bank for Cooperatives Retirement Plan, transmitting, pursuant to law, the report of the Plan for calendar year 1994; to the Committee on Governmental Affairs.

EC-2387. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1995; to the Committee on Governmental Affairs.

EC-2388. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on Federal agency drug-free workplace plans; to the Committee on Appropriations.

EC-2389. A communication from the Acting Administrator of the General Services Administration, transmitting, pursuant to law, the report of an informational copy relative to the Capital Investment and Leasing Program for fiscal year 1997; to the Committee on Environment and Public Works.

EC-2390. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the report of a final rule (RIN3206-AH36); to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-568. A resolution adopted by the Southern Governors' Association relative to the strength of the National Guard; to the Committee on Appropriations.

POM-569. A resolution adopted by the Southern Governors' Association relative to an electronic benefits transfer system; to the Committee on Banking, Housing, and Urban Affairs.

POM-570. A resolution adopted by the Missouri Chapter of the American Fisheries Society relative to the Neosho National Fish Hatchery; to the Committee on Environment and Public Works.

POM-571. A resolution adopted by the Southern Governors' Association relative to Federal highway funds; to the Committee on Environment and Public Works.

POM-572. A resolution adopted by the Abilene Metropolitan Planning Organization relative to transportation trust funds; referred jointly, pursuant to the order of August 4, 1997, to the Committee on the Budget and to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources, without amendment:

S. 295. A bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes (Rept. No. 104-259).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mrs. KASSEBAUM, from the Committee on Labor and Human Resources:

To be senior assistant engineer officer

Arthur M. Anderson
Shib S. Bajpayee
Robin A. Dalton
Thomas J. Heintzman
Michael S. Jensen
David I. McDonnel
Kenneth E. Olson II
Philip E. Rapp
John P. Riegel
Paula A. Simenauer
Mark A. Stafford
Mark R. Thomas
Michael B. Wich
Dominic J. Wolf

To be assistant engineer officer

James H. Ludington

To be scientist

Victor Krauthamer

To be senior assistant scientist

Lemyra M. Debruyn
Jeffrey S. Gift
Darcy E. Hanes
James E. Hoadley
Rosa J. Key-Schwartz

To be senior assistant sanitarian

Artis M. Davis
Mark A. Hamilton
Michael E. Herring
Steven G. Inserra
Theresa I. Kilgus
Cynthia C. Kunkel
Gailen R. Luce
Abraham M. Maekele
Mark D. Miller
Kelly M. Taylor
Michael D. Warren
Ronald D. Zabrocki

To be senior assistant veterinary officer

Victoria A. Hampshire
Ronald B. Landy

To be pharmacist

Dennis M. Alder
John T. Babb
Daryl A. Dewoskin
Cynthia P. Smith

To be senior assistant pharmacist

Lisa D. Becker
Kristi A. Cabler
Wesley G. Cox
Kathleen E. Downs
Richard C. Fisher
Jeffrey J. Gallagher
Syrena T. Gatewood
Lillie D. Golson
Douglas P. Herold
Rita L. Herring
Mary Ann Holovac
Carl W. Huntley
Michael D. Jones
Dennis L. Livingston
Robert H. McClelland
Connie J. McGowen-Cox
Steven K. Rietz
Margaret A. Simoneau
John F. Snow
Daniel R. Struckman
Earl D. Ward, Jr

To be assistant pharmacist

David A. Konigstein

To be senior assistant health services officer

Traci L. Galinsky
William D. Henriques
Richard R. Kauffman
Dorothy E. Stephens
Gene W. Walters

To be assistant health services officer

Carol E. Auten
Cherly A. Wiseman

The following candidates for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

1. FOR APPOINTMENT

To be medical director

Richard J Hodes
William E Paul
Douglas G Peter

To be senior surgeon

Melinda Moore
Thomas R Hales
Scott F Wetterhall

To be senior assistant surgeon

Mary M Agocs
James P Alexander, Jr
Arturo H Castro
George A Conway
Theresa Diaz Vargas
Nina J Gilberg
Lana L Jeng
Philip R Krause
David E Nelson
Patrick J Oconnor
Carol A Pertowski
Rossanne M Philen
Steven G Scott
Jessie S Wing

To be senior assistant dental surgeon

Leonard R Aste
George G Bird
April C Butts
Lisa W Cayous
Sherwood G Crow
Bret A Downing
Scott K Dubois
Edward D Gonzales
Joseph G Hosek
Michael D Jones
Steven J Lien
Aaron R Means, Sr
Samuel J Petrie
Roy F Schoppert, III
Darlene A Sorrell
James N Sutherland
Charles S Walkley
Evan L Wheeler

To be nurse officer

Norma J Hatot

To be senior assistant nurse officer

Gary W Bangs
Robyn G Brown-Douglas
Priscilla A Coutu
Robin L Fiske
Colleen A Hayes
India L Hunter
Bradley J Husberg
Christopher L Lambdin
Wanda F Lambert
Michael D Lyman
Mary Y Martin
Sharon D Murrain-Ellerbe
Paul J Murter III
Steven R Oversby
Teresa L Payne
Ricky D Pearce
Candice S Skinner
Ernestine T Smartt
Yukiko Tani
Mary E Tolbert
Vien H Vanderhoof
Siona W Willie
Arnette M Wright

To be assistant nurse officer

Sandra A Chatfield
James M Simmerman

(The above nominations were reported with the recommendation that they be confirmed.)

Mrs. KASSEBAUM. Mr. President, for the Committee on Labor and Human Resources, I report favorably a nomination list in the Public Health Service which was printed in full in the CONGRESSIONAL RECORD of November 9, 1995, and ask unanimous consent, to save the cost of reprinting on the Executive Calendar, that this nomination lie at the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of November 9, 1995, at the end of the Senate proceedings.)

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 Mrs. HUTCHISON:

S. 1719. A bill to require the Secretary of the Interior to offer to sell to certain public agencies the indebtedness representing the remaining repayment balance of certain Bureau of Reclamation projects in Texas, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DOLE (for himself, Mr. KENNEDY, and Mr. KERRY):

S. 1720. A bill to establish the Nicodemus National Historic Site and the New Bedford National Historic Landmark; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 1719. A bill to require the Secretary of the Interior to offer to sell to certain public agencies the indebtedness representing the remaining repayment balance of certain Bureau of Reclamation projects in Texas, and for other purposes; to the Committee on Energy and Natural Resources.

THE TEXAS RECLAMATION PROJECTS INDEBTED PURCHASE ACT

• Mrs. HUTCHISON. Mr. President, I introduce today a bill on behalf of the State of Texas and several major water supply authorities in Texas. It would transfer title for Bureau of Reclamation projects to local control.

The purpose of this bill is to give local public agencies the right to make decisions regarding their own local water supplies. In doing so we will reduce the size of the Federal Government and save taxpayers significant amounts of money.

Mr. President, I mentioned that I am introducing this legislation on behalf of the State of Texas. Our goal is to create a process to allow the State of Texas or its public agencies to purchase and accept title to the Bureau of Reclamation projects in the State.

I submit this measure with the full support of the State of Texas. The State legislature recently passed a resolution, endorsed and signed by the Governor, accepting the responsibility for this process of title transfer.

My interest in this effort goes back to the last Congress, when in June 1994, I introduced S. 2236 in an effort to correct a longstanding problem involving the U.S. Bureau of Reclamation and the city of Corpus Christi.

That legislation directed the Secretary of the Interior to enter into and complete negotiations with the city of Corpus Christi concerning the Nueces River project, also known as Choke Canyon Reservoir. A hearing was held on the legislation, but the Congress ended before the Senate could act.

This year, with title transfers being encouraged by both the administration and Congress, it makes sense for the Choke Canyon legislation to be included with the broader Bureau of Reclamation legislation as developed by the State of Texas.

In 1976 the city of Corpus Christi and the Nueces River authority contracted with the Bureau for construction of Choke Canyon Reservoir on the Frio River near Three Rivers, TX. The primary purpose of the project was to provide additional water to the city of Corpus Christi through the year 2040. Since project completion in 1982, however, subsequent studies have determined that the current supply to the city from the project is less than contracted for, and that additional water supplies likely will be required by the year 2003.

The local sponsors are proposing that the repayment agreements be renegotiated to reflect the diminished water supply derived from the project, as well as the unanticipated expenses that the local sponsors have incurred to obtain additional water to compensate for the projected shortfall in the Choke Canyon-Lake Corpus Christi system.

I have incorporated the Choke Canyon project into this legislation for two reasons:

First, to pursue the intent of the original contract—because the city still is not getting the water it was promised;

Second and most important, I have introduced this legislation because the area is facing a very real water shortage. Due to the lower than anticipated yield from the Choke Canyon Reservoir, projections show the 12-county region it serves will be short of water within 10 years. This will affect nearly 400,000 people and numerous major industries.

The discount and prepayment conditions which the Corpus Christi is asking be negotiated are extremely important to the city's ability to ensure adequate future water supplies at affordable prices. Congressman SOLOMON ORTIZ has introduced similar legislation on the House side.

Also included in this legislation is a project near Amarillo in the congressional district of Congressman MAC THORNBERRY: the Canadian River project. Construction of the Canadian River project by the BOR was authorized by Public Law 898 on December 29, 1950, to provide a source of municipal and industrial water to member cities of the Canadian River Municipal Water Authority in the Texas Panhandle and South Plains. The cities served include Amarillo, Borger, Brownfield, Lamesa, Levelland, Lubbock, O'Donnell, Pampa, Plainview, Slaton, and Tahoka. These currently comprise a combined population of nearly 500,000 persons.

The major project facilities include Sanford Dam on the Canadian River 35 miles northeast of Amarillo, Lake Meredith which is formed by the dam, and a 322-mile aqueduct system that transports water from the lake to the member cities. The project was built in the 1960's and has supplied water to the cities continuously since 1968. Responsibility for operation and maintenance of the entire complex of municipal water supply facilities, including Sanford Dam, was transferred to the authority on July 1, 1968.

The project authorization—section 2. (c)(3)—provides that title to the aqueduct shall pass to the project sponsor upon payment of all obligations arising from the legislation and contract.

Total project cost was about $83.8 million, of which about $76.9 million is reimbursable to the United States by the Authority. Non-reimbursable components paid for flood control and fish and wildlife benefits. Including interest during construction, the original reimbursable obligation was $83.7 million, repayable with interest at the rate of 2.632 percent over a term of 50 years. Twenty-six annual payments have been made.

Under this bill the outstanding balance would be purchased by the project sponsor, the Canadian River Municipal Water Authority. Title to the aqueduct would be transferred to the Authority. Title to the dam will not be transferred because of its flood-control functions, which need to remain under the supervision of the U.S. Corps of Engineers, and title to the land around the reservoir to remain with the National Park Service because it is designated a National Recreation Area.

Purchase of the debt would be accomplished by payment of the net present value of the cash stream which would be required to repay the current indebtedness, discounted at U.S. Treasury rates on the date of purchase contract execution, after adjustment to reflect unrealized project benefits and outstanding credits.

ADVANTAGES FOR FEDERAL INTERESTS

Recent changes in the mission of the Bureau of Reclamation have reduced emphasis on water resource development projects. Now, the BOR's activities are regulatory in nature, for the most part, as they relate to existing projects. Transfer of Federal ownership would eliminate the need for BOR participation in the oversight of operation and maintenance, and relieve the Federal Government of liability related to operation of transferred facilities.

The cash payment to the Government would make funds available to support new projects that create, jobs or which cannot be funded from present budget sources. Currently, BOR is considering the prospect of title transfer for selected projects, including the aqueduct system of the Canadian River Project. The debt purchase proposal in this legislation is similar to the process which would result from those activities, without extended negotiations and added administrative costs.

ADVANTAGES FOR LOCAL SPONSORS

Because of the water supply shortfall the Canadian River Project the Authority and its member cities are forced to seek replacement water. The savings that would accrue from purchasing the outstanding debt would allow the Authority and its member cities to finance needed replacement water without undue economic hardship.

Replacement supplies capable of providing the lost annual supply of 30,000

acre-feet or more are being sought at a probable cost of $76.5 million. That additional expenditure will be necessary even if the discounted debt purchase is accomplished.

Also included in the legislation is the Palmetto Bend project authorized by Congress in 1968.

The primary purpose of Palmetto Bend is to provide municipal and industrial water to a broad area along the Texas gulf coast. The project was completed by the BOR in 1985 and includes, as its main feature, Lake Texana.

Lake Texana is located near the gulf coast midway between Houston and Corpus Christi. It is operated by the Lavaca-Navidad River Authority. In essence, the reservoir's entire yield has been committed, including more than 42,000 acre-feet/year for municipal use in the cities of Corpus Christi and Point Comfort, and more than 32,000 acre-feet/year for industrial use largely in the regional petro-chemical-plastics industry. The city of Corpus Christi provides water service to a 10-county area. Two of the industries to which Lake Texana supplies water provide more than 3,000 jobs to the local region.

Currently, the authority and the Texas Water Development Board are obligated for repayment to the Federal Government of about $70.7 million, at an interest rate of 3.502 percent over a term of 50 years. The board has made 10 annual payments; the authority is scheduled to begin payment in 1996.

Under this bill, the outstanding balance of debt would be prepaid, and the project purchased by the authority and board as State project sponsors. Purchase would be accomplished by payment of the net present value of the cash stream required to repay the current contractual debt, discounted at U.S. Treasury rates on the date of purchase, after adjustment to reflect unrealized project benefits and outstanding credits.

Title to the Federal portion of the project would be transferred to the State sponsors, the authority, and the board.

Two clear benefits of the transfer of title to the State sponsors are avoidance of the cost of Federal oversight of the project and the release from liability of the Federal Government. Transfer of this obligation should result in a reduction in the size of the Federal bureaucracy required to support the projects.

Quantified advantages include an immediate infusion of approximately $34 million to the Federal Treasury, annual savings of $250,000 for project operation and upkeep expenses and an annual savings of about $12,000 by avoiding payments-in-lieu-of-taxes to Jackson County.

Annual debt service payments for Lake Texana will be reduced by approximately $1 million per year. Currently this cost is borne by the water users, so municipal and industrial water costs would be reduced.

It is estimated also that up to $50,000 in costs due to BOR reporting mandates and management assistance would be avoided.

More importantly, however, state sponsors will be able to manage their projects to achieve the maximum benefits without the delay, expense and uncertainty which is incurred currently by BOR management oversight.

This proposal is a mutually advantageous proposition that will provide economic benefits to both Federal and State interests, while reducing duplicative and unnecessary Government programs.

Mr. President, I urge my colleagues' strong support for this legislation. It is responsible. It addresses serious local interests. It fulfills the expressed goals of both the 104th Congress and the administration, and it makes sense.

Mr. President, I ask unanimous consent that recent testimony by a representative of the Texas Water Development Board before the House Subcommittee on Water and Power Resources Subcommittee supporting this legislation be entered into the RECORD.

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

TESTIMONY BY TOM BROWN, DEPUTY EXECUTIVE ADMINISTRATOR WATER RESOURCES DEVELOPMENT, TEXAS WATER DEVELOPMENT BOARD

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of the Texas Water Development Board on the issue of transfer of Federal Reclamation facilities to local project beneficiaries. The Legislature of the State of Texas has passed Senate Concurrent Resolution 80 and the Governor has signed this resolution, supporting the transfer of Bureau of Reclamation projects in Texas to either the local sponsors or the State. Included in SCR 80 was the direction of the legislature to the Texas Water Development Board to work with local interests to purchase Bureau projects in Texas and to encourage Congress to adopt legislation to facilitate this acquisition. Under this legislation there are three projects being proposed to be purchased, the Canadian River Project, Palmetto Bend Project and the Nueces River Reclamation Project.

There are strong incentives for the Federal Government to sell these projects to local sponsors. These include: First, receiving lump sum cash payments totaling in excess of $100 million. Since the bill provides for the purchase of the facilities using a net present value of the outstanding debt, these payments will provide a direct cash infusion into the federal treasury while defeasing outstanding obligations of the Federal Government.

Second, the Federal Government would be able to transfer the liabilities associated with the projects to the purchaser.

Third, the Federal Government would not have to continually appropriate funds to pay for a portion of operations and maintenance of the transferred facilities.

Fourth, it would eliminate Federal overhead on these projects since oversight would not be required.

There are also significant local incentives for the purchase of these facilities. These incentives include:

1. Reducing annual debt service payments for local ratepayers.

2. Since local sponsors are currently operating and maintaining the facilities the purchase would eliminate duplication of management by both the Bureau and the local sponsor.

3. Allow for consistency in operating plans for the facilities. Since the State of Texas regulates the operation of these facilities, local or State ownership would streamline operations of the facilities through elimination of duplicative or contradictory operating plans'.

4. Eliminating the time and oversight required by the Bureau of Reclamation.

5. Eliminating additional cost associated with federal involvement. For example, The Texas Water Development Board has been working with local governments in developing water conservation plans to address local issues since 1985. In fact, under state law any applicant that borrows over $500,000 from the Board must have an approved water conservation plan. Given the recent push by the Bureau of Reclamation for the development of water conservation plans it will approve there are additional costs that should not have to be borne by local governments.

In addition, the State of Texas owns the surface water within its boundaries with rights to these surface waters being conveyed by the State to individuals and entities for beneficial uses. While the Federal Government has assisted local and State sponsors in constructing these projects to store and divert surface waters, the water rights for the projects have remained with local sponsors, not the Federal Government.

What is being proposed in this legislation, and what the Texas Water Development Board supports, is the ability of local sponsors to purchase the Federal interests in these facilities at a present value of the outstanding debt associated with the municipal and industrial uses in the projects, a transfer of all operations and maintenance and the transfer of title to the state or local sponsor. Furthermore, this legislation meets the Bureau of Reclamation's criteria for projects that could be transferred as single purpose projects: (1) A fair return to the taxpayers for Federal assets. (2) Compliance with all applicable Federal Laws. (3) That interstate compacts and interests are protected. (4) Native American assets are not affected. (5) No international treaties are affected. (6) The recipients shall maintain the public safety aspects of the project.

It is recognized that the non-reimbursable aspects of the projects such as recreational opportunities and fish and wildlife benefits are a significant public benefit. However, in the case of the projects referenced in this legislation both the Palmetto Bend and Nueces River projects, local sponsors and or the State of Texas operate all recreation and wildlife areas and the Bureau of Reclamation is not directly involved in the provision of these benefits, nor do they provide any specific or regular management function relative to these activities. The Canadian River Project transfer will not involve transfer of any facilities associated with the non-reimbursable aspects of the projects.

Through this legislation the Congress would affirm its support to the principle that the State have the primary responsibility for management and use of its water. This legislation also recognizes that it is the States responsibility to ensure that these transfers

will relieve the Federal Government of the financial liabilities associated with these projects and help Texas control its water destiny and meet the needs of its citizens.

Thank you for allowing me to issue this statement and support what we believe is needed legislation.●

ADDITIONAL COSPONSORS

S. 949

At the request of Mr. GRAHAM, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 949, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the death of George Washington.

S. 1035

At the request of Mr. DASCHLE, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1035, a bill to permit an individual to be treated by a health care practitioner with any method of medical treatment such individual requests, and for other purposes.

S. 1129

At the request of Mr. ASHCROFT, the names of the Senator from Alabama [Mr. SHELBY] and the Senator from Texas [Mrs. HUTCHINSON] were added as cosponsors 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. 1197

At the request of Mr. MACK, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from New Hampshire [Mr. GREGG] were added as cosponsors of S. 1197, a bill to amend the Federal Food, Drug, and Cosmetic Act to facilitate the dissemination to physicians of scientific information about prescription drug therapies and devices, and for other purposes.

S. 1563

At the request of Mr. SIMPSON, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1563, a bill to amend title 38, United States Code, to revise and improve eligibility for medical care and services under that title, and for other purposes.

S. 1624

At the request of Mr. HATCH, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Maine [Ms. SNOWE] were added as cosponsors of S. 1624, a bill to reauthorize the Hate Crime Statistics Act, and for other purposes.

SENATE JOINT RESOLUTION 42

At the request of Mr. BREAUX, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Pennsylvania [Mr. SANTORUM] were added as cosponsors of Senate Joint Resolution 42, a joint resolution designating the Civil War Center at Louisiana State University as the United States Civil War Center, making the center the flagship institution for planning the sesquicentennial commemoration of the Civil War, and for other purposes.

SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

SENATE RESOLUTION 226

At the request of Mr. DOMENICI, the names of the Senator from Delaware [Mr. BIDEN], the Senator from Colorado [Mr. BROWN], and the Senator from Louisiana [Mr. BREAUX] were added as cosponsors of Senate Resolution 226, a resolution to proclaim the week of October 13 through October 19, 1996, as "National Character Counts Week."

SENATE RESOLUTION 243

At the request of Mr. ROBB, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Dakota [Mr. DORGAN], the Senator from California [Mrs. FEINSTEIN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Wisconsin [Mr. KOHL], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Nevada [Mr. REID], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Resolution 243, a resolution to designate the week of May 5, 1996, as "National Correctional Officers and Employees Week."

AMENDMENT NO. 3752

At the request of Mr. ABRAHAM the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Amendment No. 3752 proposed to S. 1664, an original bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

AMENDMENT NO. 3780

At the request of Mr. LEAHY the names of the Senator from Oregon [Mr. HATFIELD] and the Senator from Massachusetts [Mr. KERRY] were added as cosponsors of Amendment No. 3780 proposed to S. 1664, an original bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigation personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes.

At the request of Mr. WELLSTONE his name was added as a cosponsor of amendment no. 3780 proposed to S. 1664, supra.

AMENDMENTS SUBMITTED

THE IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1966

GRAMM (AND OTHERS) AMENDMENT NO. 3948

Mr. SIMPSON (for Mr. GRAMM for himself, Mrs. HUTCHISON, and Mr. DOMENICI) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill (S. 1664) to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel and detention facilities, improving the system used by employers to verify citizenship or work-authorized alien status, increasing penalties for alien smuggling and document fraud, and reforming asylum, exclusion, and deportation law and procedures; to reduce the use of welfare by aliens; and for other purposes; as follows:

At the end, insert the following:

"SEC. . FINDINGS RELATED TO THE ROLE OF INTERIOR BORDER PATROL STATIONS.

The Congress makes the following findings:

(1) The Immigration and Naturalization Service has drafted a preliminary plan for the removal of 200 Border Patrol agents from interior stations and the transfer of these agents to the Southwest border.

(2) The INS has stated that it intends to carry out this transfer without disrupting service and support to the communities in which interior stations are located.

(3) Briefings conducted by INS personnel in communities with interior Border Patrol stations have revealed that Border Patrol agents at interior stations, particularly those located in Southwest border States, perform valuable law enforcement functions that cannot be performed by other INS personnel.

(4) The transfer of 200 Border Patrol agents from interior stations to the Southwest border, which would not increase the total number of law enforcement personnel at INS, would cost the federal government approximately $12,000,000.

(5) The cost to the federal government of hiring new criminal investigators and other

personnel for interior stations is likely to be greater than the cost of retaining Border Patrol agents at interior stations.

(6) The first recommendations of the report by the National Task Force on Immigration was to increase the number of Border Patrol agents at the interior stations.

(7) Therefore, it is the sense of the Congress that—

(A) the U.S. Border Patrol plays a key role in apprehending and deporting undocumented aliens throughout the United States;

(B) interior Border Patrol stations play a unique and critical role in the agency's enforcement mission and serve as an invaluable second line of defense in controlling illegal immigration and its penetration to the interior of our country;

(C) a permanent redeployment of Border Patrol agents from interior stations is not the most cost-effective way to meet enforcement needs along the Southwest border, and should only be done where new Border Patrol agents cannot practicably be assigned to meet enforcement needs along the Southwest border; and

(D) the INS should hire, train and assign new staff based on a strong Border Patrol presence both on the Southwest border and in interior stations that support border enforcement.

BRYAN AMENDMENT NO. 3949

Mr. KENNEDY (for Mr. BRYAN) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill S. 1664, supra; as follows:

At the appropriate place in the matter proposed to be inserted by the amendment, insert the following:

SEC. . EXCLUSION OF CERTAIN ALIENS FROM FAMILY UNITY PROGRAM.

Section 301(e) of the Immigration Act of 1990 (8 U.S.C. 1255a note) is amended to read as follows:

"(e) EXCEPTION FOR CERTAIN ALIENS.—An alien is not eligible for a new grant or extension of benefits of this section if the Attorney General finds that the alien—

"(1) has been convicted of a felony or 3 or more misdemeanors in the United States,

"(2) is described in section 243(h)(2) of the Immigration and Nationality Act, or

"(3) has committed an act of juvenile delinquency which if committed by an adult would be classified as—

"(A) a felony crime of violence that has an element the use or attempted use of physical force against the person of another; or

"(B) a felony offense that by its nature involves a substantial risk that physical force against the person of another may be used in the course of committing the offense.".

HUTCHISON AMENDMENT NO. 3950

Mr. KENNEDY (for Mrs. HUTCHISON) proposed an amendment to amendment No. 3743 proposed by Mr. SIMPSON to the bill S. 1664, supra; as follows:

At the appropriate place, insert the following new section:

SEC. .—The Immigration and Naturalization Service shall, when redeploying Border Patrol personnel from interior stations, coordinate with and act in conjunction with State and local law enforcement agencies to ensure that such deployment does not degrade or compromise the law enforcement capabilities and functions currently performed at interior Border Patrol stations.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on "Small Business Investment Company Reform Legislation" on Tuesday, May 7, 1996, at 10:00 a.m., in room 428A of the Russell Senate Office Building.

For further information, please contact Paul Cooksey 224-5175.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Wednesday, May 8, 1996, at 9:30 a.m., to hold a hearing on Campaign Finance Reform.

For further information concerning this hearing, please contact Bruce Kasold of the Committee staff on 224-3448.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources. The purpose of this hearing is to receive testimony on the recent increases in gasoline prices.

The hearing will take place Thursday, May 9, 1996 at 9:30 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing 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 Howard Useem at (202) 224-7556.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Armed Services and the associated subcommittees be authorized to meet at the following time Wednesday May 1, 1996 for markup of the fiscal year 1997 Defense Authorization bill.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet during the Wednesday, May 1, 1996 session of the Senate for the purpose of conducting a hearing on Airport Revenue Diversion.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 1, 1996, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON THE JUDICIARY

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 1, 1996, at 10:00 a.m. to hold a hearing on "Review of the National Drug Control Strategy."

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Wednesday, May 1, 1996, at 9:30 a.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for two hearings on Wednesday, May 1, 1996, in room 428A of the Russell Senate Office Building. The first is a hearing regarding "President Clinton's Nomination of Ginger Ehn Lew to be Deputy Administrator of the United States Small Business Administration" which will begin at 9:30 a.m., with the second hearing focusing on "The United States Small Business Administration's Fiscal Year 1997 Budget" to immediately follow.

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

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT AND RELATED MATTERS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the special committee to investigate Whitewater development and related matters be authorized to meet during the session of the Senate on Wednesday, May 1, 1996 to conduct hearings pursuant to Senate Resolution 120.

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

SUBCOMMITTEE ON AFRICAN AFFAIRS

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Subcommittee on African Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 1, at 2:00 p.m. to hold hearing.

ADDITIONAL STATEMENTS

WE THE PEOPLE, THE CITIZENS, AND THE CONSTITUTION

• Mr. WELLSTONE. Mr. President, today I would like to honor a group of high school students who have embarked on a project that not only enhances their educations but fosters their sense of civic responsibility. Between April 27 and April 29, more than 1,300 students from all over the country were in Washington, DC, to compete in the national finals of competition sponsored by a program called We the People, The Citizens, and the Constitution. I'm proud to announce that the class from Hutchinson High School in Hutchinson represented Minnesota in the competition. These young people have undergone a rigorous course of study and worked diligently to reach the national finals by winning local competitions in their home State.

The accomplished young people representing Minnesota are the following: Adam Brodd, Megan Carls, Eddy Cox, Chris Dahlman, Aaron Douglas, Ben Froemming, Aaron Hall, Eric Holtz, Rana Kasich, Kristen Mann, Aaron May, Mike Peek, Patrick Perrine, Terri Rennick, Chelle Robinson, John Sandberg, Dave Schaefer, Sara Sharstrom, Jill Shun, Kelly Watson, and Michelle Wulkan.

I would also like to recognize their teacher, Mike Carls, who deserves some of the credit for the success of the team. The district coordinator, Jerry Benson, and the State coordinator, Robert Wangen, also contributed a significant amount of time and effort to help the team reach the national finals.

The We the People program is specifically designed to educate young people about the Bill of Rights and the Constitution. An evaluation of this program has shown that students in the program display more political tolerance and feel more politically effective than most adults in America. Students become more interested in politics and they learn how to get politically involved.

The 3-day national competition simulates a congressional hearing in which the students' oral presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues. In short, these students are debating some of the very issues we've been debating on the Senate floor in recent months: the division of power between State and Federal Government, the balance of power among the branches of government, the right to privacy, the role of religion in public life.

Through the We the People program, students learn the constitutional values of freedom, equality and justice, the principles that bind our Nation together. These students have taken something that is an historical document and made it a part of their lives. In an era when so much of our public discourse is polarized, when there is so much discussion of "us" and "them," these young people learn to value the "we" of "we the people." I wish these students the best of luck in the future and look forward to their continued success in the years ahead.•

JEFFERSON COUNTY MEDICAL SOCIETY

• Mr. MCCONNELL. Mr. President, twice a year, the Jefferson County Medical Society conducts a mini-internship program to inform and educate those outside the medical professional about the practice of medicine. For 2 days, about 12 to 18 business professionals and government officials are matched up with several Louisville physicians to watch them perform their jobs. Recently, Melissa Patack, a member of my staff, had this unique and worthwhile opportunity. I ask that a summary of her experience be printed in the RECORD.

The material follows:

JEFFERSON COUNTY MEDICAL SOCIETY MINI-INTERNSHIP—APRIL 16–17, 1996

On April 16 and 17, 1996, I participated in the Jefferson County Medical Society's Mini-internship program. During the course of the two days, participants accompanied physicians in their usual activities and had the opportunity to observe first-hand the practice of medicine.

On Tuesday morning, I met Dr. Kathryn Cashner, an ob-gyn with a speciality in high risk pregnancies, at her office to watch her morning appointments with more than a dozen women. Dr. Cashner is a sole practitioner, with patients from all socio-economic backgrounds. About one-quarter to one-third of her patients receive Medicare benefits. This was a morning of unusual normalcy, Dr. Cashner remarked. Virtually all of the women were experiencing normal pregnancies, although several of the patients were 4 to 6 months into their pregnancies and seeing Dr. Cashner for the first prenatal visit. Dr. Cashner counseled one woman who had a negative test result, but who was immediately sent for a follow-up sonogram which turned out to be normal. When I left Dr. Cashner at Audubon Hospital, she was about to perform surgery on one of her high-risk patients which would enable the patient to carry her baby to full term. Dr. Cashner's practice brings her into close contact with the lives of her patients; on one wall of her office she displays pictures of all the babies she has brought into the world.

The afternoon brought me to Jewish Hospital to observe Dr. Thomas O'Daniel, a plastic surgeon, performing a face lift. Watching directly over his shoulder, I saw Dr. O'Daniel perform the delicate task of reconstructing a 57 year-old woman's face. The operation was a grueling, pain-staking procedure of more than 6 hours. Dr. O'Daniel concentrates on facial injuries and gets a great deal of satisfaction from the work he does on children. The next morning, he was operating to correct a child's clef palate. Last fall, he traveled to Guatemala, where he and his staff operated on 75 children who suffered from clef palates and other facial deformities.

In the evening, I went to University Hospital where I watched Dr. Robert Couch run the night shift of the emergency room. The evening brought everything from walk-ins seeking routine medical care to the airlift of two victims from a head-on automobile crash, probably caused by a driver who had too much to drink. The residents under Dr. Couch's supervision were poised for action when the helicopter landed and two women with broken bones, head injuries and internal bleeding were wheeled in to Room 9. Within moments, life-saving actions were taken to get one patient breathing. X-rays were immediately taken and the young doctors made snap decisions on the treatment for these endangered patients. These emergency room doctors don't have on-going relationships with their patients. They treat and move on to the next crisis with enormous dedication.

After an exhausting and exhilarating day, I returned the next morning at 7:15 a.m. to Jewish Hospital to observe Dr. Laman Gray perform a quadruple coronary bypass on a 67 year-old man. One stands in sheer amazement at the sight of the human heart beating in an open chest cavity. When it came time for Dr. Gray to stitch the new bypass vessels to the aorta, the heart was stopped and then brought back to its rhythmic beating when Dr. Gray completed his delicate work. Dr. Gray had another operation scheduled for the afternoon and in-between, he was dealing with 2 other emergencies, including arranging for the airlifting of a heart attack victim from another state to Jewish Hospital for care and treatment.

Wednesday afternoon, I accompanied Dr. Cindy Zinner on her appointments at the Portland Family Clinic, a federally-sponsored community health center. Dr. Zinner specializes in internal medicine and pediatrics, and that afternoon, was working as a pediatrician. The Portland facility fills a unique role by being accessible not only to those covered by health insurance (including Medicaid) but also to the working poor who lack employer-sponsored health insurance, and who do not qualify for Medicaid. In observing Dr. Zinner treat several seemingly routine ear infections and perform a number of well-child examinations, the highly important role for preventive medicine becomes readily apparent. Dr. Zinner becomes a positive force in the lives of these struggling families.

These doctors, the residents, nurses and other assistants with whom they work are dedicated to the care and treatment of individuals from every part of our society. Each of the doctors has chosen a very different career in medicine, but all are devoted to the good health and life of the people they treat. My experience was a significant educational opportunity and I was privileged to watch these men and women perform their work.•

PRISON LITERACY

• Mr. SIMON. Mr President, you may remember that a few weeks ago, I had an amendment on the floor to restore funding to the prison literacy program. I hope that will stay in the final appropriations that we agree to.

The need to do something on the question of illiteracy was emphasized in an editorial in the Chicago Tribune and by an excellent letter to the editor from George Ryan, the Secretary of State in Illinois who, I'm pleased to

say, has been a leader in literacy efforts.

I ask that the George Ryan letter be printed in the CONGRESSIONAL RECORD.

The letter follows:

LEARNING IN PRISON

SPRINGFIELD.—The March 25 editorial titled "The crime of prison illiteracy" correctly laid out the devastating problem of low literarcy levels among prisoners in Illinois and across the nation. Education is an important factor in keeping people out of jail and in reducing the number of repeat offenders swelling our prisons.

Boosting overall adult literacy levels has long been a goal of mine. To this end, the secretary of state's office has made a concerted effort to assist the Illinois Department of Corrections and local law-enforcement officials in offering literacy programs to as many inmates as possible.

Over the last three years, my office has funded volunteer literacy tutoring for 6,107 inmates. There are currently volunteer programs in 22 state correctional facilities and 30 county and municipal jails.

In 1995, 785 community volunteers and inmate/peer tutors helped Illinois prisoners raise their reading levels. More inmates can be helped to overcome their literacy difficulties, however, if more volunteer tutors were available. I urge the citizens of Illinois to donate a few hours of their time to a local literacy program.

In addition to these volunteer efforts, I have awarded a $64,400 literacy grant to the Illinois Department of Corrections School District 428 to fund reading programs at the Dwight, Kankakee, Pontiac and Sheridan facilities and to supplement literacy efforts at 13 other state correctional centers. More than 430 inmates were served by these programs. Test scores indicated that the reading levels of these prisoners improved at a faster rate than the levels of other adult literacy students.

As the Tribune pointed out, education is not a panacea for reducing recidivism. But it is a proven fact that raising the reading skills of inmates helps make them productive members of society after they serve their terms and reduces the chances that they will commit another crime.

GEORGE H. RYAN,
Secretary of State.•

THE 350TH ANNIVERSARY OF THE CITY OF NEW LONDON, CONNECTICUT

• Mr. DODD. Mr. President, I rise today in honor of a very special event in the State of Connecticut this year. On Monday, May 6, 1996, the town of New London will celebrate its 350th anniversary, marking a milestone of historic significance to both the State and our Nation.

And what a history New London has. The one-room schoolhouse in which patriot Nathan Hale taught prior to his hanging by the British as a Revolutionary War spy stands in Union Plaza as a testament to the New England grit with which the city has prospered for centuries.

Founded in 1646 by John Winthrop Jr., New London is situated in the area the Pequot Indians called "Nameaug," or "good fishing place." Indeed, after Winthrop negotiated with the Pequots, the new colony's locale, New London, grew rapidly into a prosperous fishing and seafaring city on the west side of the Thames River.

Throughout the 17th and 18th centuries, the port of New London bustled with trading vessels carrying merchants and their goods between the other colonies, Europe, and the Caribbean. With the barter of lumber and horses for sugar, molasses, and rum, as well active trade of other goods and plentiful fishing reserves, the local economy flourished. The whaling industry soon took hold, and by the mid 1800's whaling was the local economy's mainstay. While that industry died quickly after whales became scarce, New London's whaling heritage is still visible throughout town. New London later grew into a manufacturing center, with silk mills and machine shops, and became a major banking, industry, and transportation hub with easy railroad and ferry access up and down the East Coast.

New London's coastline location has not only been economically important, but also strategically key. In 1776 during the Revolutionary War, the first colonial naval expedition sailed from New London, and local privateers beat the British at sea during the war. Although the town was burned in retaliation, New London was rebuilt and the area became a vital test and training ground for America's maritime forces. The U.S. Coast Guard Academy has been based in New London since 1910, and the city contributes much to nuclear submarine and Naval technology research and development via the many defense contractors based in the area.

Today, Mr. President, New London remains a busy eastern seaport city that is home to a vibrant business community, several colleges, an arts center, and vacation resorts. And the same New England grit that brought New London through the darkest days of the Revolutionary War survives.

For 350 years, the city of New London has contributed to the economic, military, and cultural progress of the United States of America. Its history precedes the founding of our Nation. Few American cities can lay claim to such a rich heritage, and as the motto for the celebration indicates, this is a time for New London to rejoice in "Pride in the Past—Progress in the Future." I am proud to join the citizens of New London and all Connecticut's citizens in celebrating this special birthday.•

CONGRESSIONAL FIRE SERVICE INSTITUTE

• Mr. SARBANES. Mr. President, I rise today to recognize the significant efforts of the Congressional Fire Services Institute, including those of Executive Director Bill Webb and others, in organizing the Eighth Annual National Fire and Emergency Services Dinner last night. Due to the tireless commitment of CFSI, this terrific event provided a highly appropriate opportunity to honor and thank the men and women of the fire service who risk their own lives every day to protect the lives and property of others.

In the 8 years since its inception, the annual dinner has grown beyond expectations, attracting an increasingly large number of friends and members of the fire service from across the country. It has attracted scores of dignitaries over the past 8 years including President Clinton who spoke at last year's dinner. Last night's program featured Vice-President AL GORE and majority leader DOLE and a number of Congressional Caucus members from both sides of the aisle demonstrating a continued bipartisan commitment and expression of gratitude to the fire service.

Mr. President, I am pleased to have this opportunity to commend the Congressional Fire Institute for its efforts in promoting fire related issues and in honoring the men and women of the fire service in a way that reflects the grace and valor with which they protect us all.•

DONALD MINTZ

• Mr. BREAUX. Mr. President, America lost a real civic leader, Louisiana and New Orleans lost a political leader who believed in cooperation, not confrontation, and I lost a good friend far too early in his life.

Don Mintz lived a beautiful life, raised a beautiful family and had a wonderful wife Susan, who together contributed so much to so many.

I ask that an editorial on Donald Mintz that ran in the New Orleans Times Picayune on April 30, 1996, which expresses the feelings of so many, be printed in the RECORD.

The editorial follows:

DONALD MINTZ

Donald Mintz, who died unexpectedly Sunday of a heart attack, was a New Orleanian first and foremost. Though he never held public office, Mr. Mintz set a highly public example of how to be a citizen in our complex, multiracial community. He was as much at home in a corporate boardroom as in the humblest neighborhood.

He tried to connect our disparate worlds. He was a builder of bridges between his black and white friends, a man of faith nationally recognized for his work as a Jewish lay leader and, most importantly, a dreamer of dreams, which he worked with ferocious energy to realize. One of his fondest, of becoming mayor of New Orleans, was unfulfilled after unsuccessful campaigns in 1990 and 1994.

But even without the portfolio of office, Mr. Mintz was a doer, a relentless actor and producer on the city's stage. There was nothing lukewarm about him. Whatever caught his interest had him thoroughly absorbed.

And then he was relentless, driven, sometimes brazen, always dedicated, especially to New Orleans.

As Marc Morial, the man who defeated him most recently for mayor, said: "Above all, he was a committed New Orleanian."

By his death at age 53, Mr. Mintz had well beyond a lifetime's worth of accomplishments. He had been chairman of the Anti-Defamation League's advisory board and achieved national stature in this country's Jewish community; he had been a founder of a law firm; chairman of the Dock Board, the Downtown Development District, the United Way and the Criminal Justice Task Force on Violent Street Crime, and president of the Metropolitan Area Committee, Kingsley House, Touro Synagogue and the Jewish Federation of Greater New Orleans.

He was the managing partner of several Warehouse District renovations, a member of the Archbishop's Community Appeal campaign committee and a board member of The Chamber/New Orleans and the River Region and the New Orleans Symphony.

Between mayoral elections, he was passionate in his leadership of the statewide committee that set up the Louisiana Health Care Authority to run the Charity hospital system and became chairman of the authority's board.

The activities bespeak involvement and dynamism, but they don't describe Donald Mintz's spirit. With his wife, Susan, he exuded a love of people, a love of life, a love of community, a devotion to New Orleans. Coupled with this tireless drive, the result is that he made a difference in his hometown.•

GAMBLING IN THE SUNLIGHT

• Mr. SIMON. Mr. President, the New York Times has again hit the mark in a recent editorial supporting a national study of the economic and social impacts of gambling. The Gambling Impact Study Commission Act has received considerable attention as it makes its way through the committee process. Although the road has at times been bumpy, we are well on the way to creating a commission with the powers it needs to produce a balanced and fair analysis of legalized gambling.

In response to constructive criticism of the original bill, we have been hard at work crafting a substitute. Developed with bipartisan support, the substitute will take into account the legitimate interests of those whose livelihoods are invested in the industry as well as the concerns of those who would prefer to limit the expansion of gambling.

However, we are quickly running out of time. The American public deserves to know the advantages and disadvantages of legalized gambling. The Commission's report will be an important national resource for policymakers at all levels of government. In order to make this happen, we need to move quickly to make room on the Senate calendar and to insure the passage of the Gambling Impact Study Commission Act.

I urge my colleagues to read the editorial and to work with me to pass this act before it is too late.

I ask that the New York Times editorial be printed in the RECORD.

The editorial follows:

[From the New York Times, Apr. 27, 1996]

GAMBLING IN THE SUNLIGHT

Just a few weeks ago, Representative Frank Wolf's proposal to create a commission on the social and economic impact of the nation's gambling explosion seemed just the sort of virtuous idea that everyone in this partisan Congress could support. In early March the House approved the nine-member study panel without dissent. But the Virginia Republican's proposal is in trouble in the Senate and may die there unless the majority leader, Bob Dole, exerts leadership to rescue it.

A special interest group known for its generous campaign contributions—the Nevada-based gaming industry—has teamed up with prominent and well-compensated Republican lobbyists to try to stop the bill. With help from Nevada's Democratic Senator, Richard Bryan, and Alaska's Ted Stevens, the Republican chairman of the Governmental Affairs Committee, the effort seems to be succeeding.

Mr. Bryan blocked Senate action. Mr. Stevens, meanwhile, has produced a weak revision that would deny the commission the powers it needs to subpoena documents, convene investigative hearings and make recommendations that go beyond such obvious issues as native-American casinos and gambling on the Internet. Angered by criticism, Mr. Stevens last week decided, for now, against reporting any bill out of his committee. The delay increases the chance that the commission will die in the usual close-of-session legislative logjam.

The social and economic consequences of the rapid proliferation of casinos and state-run lotteries have received too little attention. There is room for a comprehensive look at the true costs and benefits for local economies and at the relationship between gambling and crime. There is also a need to look at the industry's role in creating gambling addicts and the extent to which earnings derive from problem gamblers. Even staunch supporters of legalized gambling cannot object to a fair effort to give localities the information they need to make informed decisions before turning to gambling as a source of new or increased revenue.

Although Mr. Dole has received hefty campaign contributions from the gambling industry, he has indicated his support for a national gambling study. To make it happen, though, he needs to move quickly to make room for the bill on the Senate calendar and to insure its passage with the commission's full investigative powers intact. Among other things the commission would study the gambling industry's ability to influence public policy. The Senate's timidity is a case in point.•

A RECIPE FOR GROWTH

• Mr. DODD. Mr. President, I rise today to bring to my colleagues' attention a recent article by Felix Rohatyn titled "Recipe for Growth," which appeared in the April 11, 1996, Wall Street Journal.

Although he is a traditional Democrat, Flex Rohatyn has long advocated economic solutions and ideas that transcend political affiliation. And in a time when economic change and rising job insecurity are causing more and more American families to find that the promise of the American dream is increasingly unattainable his views deserve particular recognition.

Throughout my State of Connecticut, and the Nation as a whole, thousands of families are sitting around the kitchen table wondering how are they going to pay their monthly bills. How are they going to make their mortgage payments?

But the issue runs even deeper—to people's vision of the future. Will they have the money to send their kids to college? What happens if they lose their health care? How can they prepare for retirement when they barely have enough right now? These painful choices are leaving workers anxious and scared for the future.

Let me be clear on one point: There are millions of Americans who are succeeding in this economy. Since this administration took Office, the American economy has seen the creation of 8.5 million new jobs, many of which are both full time and at an increased wage.

However, while a significant number of Americans are succeeding, this rising tide is not lifting all boats. Many Americans are still suffering, and we must do more to deal with their plight.

Surely, there are no easy solutions to America's problems. We need to have a debate on these issues. But, most important, we need to start finding ways to increase economic growth be it through balancing our budget, reforming our tax laws to create new jobs, relieving business of the burdens of wasteful regulation or lowering interest rates.

I share the view of many responsible members of the business community who believe that our current growth rate of 2.5 per cent is far below the Nation's true capacity for growth. Our economy is capable of enhanced growth, and we must do more to realize this goal.

The benefits of economic growth are clear: An increase of as little as one-half of 1 percent in the growth rate, would wipe out the deficit, provide millions of dollars for tax cuts and create enormous employment opportunities for millions of American workers. Additionally, increasing economic growth would allow us to balance the budget without the draconian cuts in education, the environment, Medicare, Medicaid, and other social programs that my colleagues across the aisle have advocated.

Expanding economic growth may be the most important issue that faces our country and it is a challenge we all must undertake. Americans understand that when we all work together, from the public and private sectors to employers and employees we can face any challenge.

Felix Rohatyn's "Recipe For Growth" serves as an excellent blueprint for bringing genuine and real growth to the American economy. If we are serious about expanding growth and bringing the promise of the American dream to all our people, then I believe every Member of this body should take the time to read this article and heed the advice of Felix Rohatyn.

I ask that Mr. Rohatyn's article be printed in the RECORD.

The article follows:

[From the Wall Street Journal, Apr. 11, 1996]

RECIPE FOR GROWTH

(By Felix G. Rohatyn)

The American economy is now constrained by a financial iron triangle, in part created by the Republican majority together with the Clinton administration, from which it is difficult to break out and which is beginning to generate serious social tensions.

The first leg of this triangle is the commitment to balance the budget in seven years. Even though there has never been a rational explanation for this time frame, it has now become part of the political theology. It would be as dangerous for either party to depart from it, say by suggesting that eight or nine years would be equally logical, as it was for George Bush to abandon his "No new taxes" pledge.

The second leg is an extension of the first and is more restrictive in its effect: It is the acceptance, by both parties and blessed by the Congressional Budget Office, that our economic growth rate will be 2.2% for the seven-year period. Even though projections are notoriously inaccurate even over much shorter periods, this particular projection is becoming both a prediction and a self-limitation. It implies that this rate of growth is the limit of what our economy is capable of without inflation. Since this view has the support of the Federal Reserve, the Treasury and the financial markets, it has become a de facto limit on economic growth. The markets and the Fed react to any appearance of acceleration with higher interest rates and the economy then falls back to 2.2% or below.

The third leg of this triangle is the impact of technology and global competition on incomes and employment. THe lethal political combination of corporation downsizing together with ever-increasing differentials in wealth and income among Americans of differing levels of education and skills, and the huge rewards to capital as the result of the boom in the securities markets, are creating serious social tensions and political pressures.

Unless we can somehow break out of this iron triangle, we could face serious difficulties, and the best hope for a breakout is to make a determined effort for a higher rate of economic growth. Only higher growth, as a result of higher investment and greater productivity, can make these processes socially tolerable. In order to deal constructively with the realities of technology and the global economy. Democrats and Republicans may have to abandon cherished traditional positions and turn their thinking upside down: Democrats may have to redefine their concept of fairness, while Republicans may have to rethink the role of Government.

ECONOMIC INSECURITY

The American economy is growing very slowly despite occasional upward blips. Growth and inflation are both around 2%. Our main trading partners, Europe and Japan, are undergoing serious economic strains of their own, with German unemployment nearing 10% and French unemployment near 12%. Fiscal contraction is taking place on both sides of the ocean as the Maastricht criteria are maintained in Europe and deficit reduction continues as a priority here, feeding a general sense of economic insecurity. The winds of deflation could be stronger than the winds of inflation.

At the same time, the Dow Jones Industrial Average is near its all-time high of 5700, mergers and restructurings are still taking place at a record pace, and layoffs and downsizing are continuing as the inevitable result of global competition and technological change. And Pat Buchanan has created a political groundswell, on the left as well as on the right, by identifying real problems but proposing solutions based on fear, xenophobia, isolationism and protectionism. It is frightening to think of the political impact of a Buchanan if unemployment were now 7.5 percent instead of 5.5 percent. All that it requires is the next recession.

The social and economic problems we face today are varied. They include job insecurity, enormous income differentials significant pressures on average incomes, urban quality-of-life and many others. Even though all of these require different approaches, the single most important requirement to deal with all of them is the wealth and revenues generated by a higher rate of economic growth. John Kennedy was right: A rising tide lifts all boats. Although it may not lift all of them at the same time and at the same rate, without more growth we are simply redistributing the same pie. That is a zero sum game and it is simply not good enough.

The fact that our 2 percent-2.5 percent present growth rate is inadequate is proven by the very problems we face. The question of when, and especially how, to balance the federal budget deserves a great deal more intelligent discussion than the political sloganeering we have heard so far. The budget is a document that reflects neither economic reality nor valid accounting practices. If the budget is to be balanced in order to satisfy the financial markets, only real justification of this goal, then it must be done with growth rather than with retrenchment. That higher growth, together with controlling costs of entitlement like Medicare, Medicaid and Social Security, will generate the capital needed to provide both private and public investment adequate to the country's needs.

Bringing the rate of growth from its present 2 percent-2.5 percent to a level of 3 percent-3.5 percent would generate as much as an additional $1 trillion over the next decade. It could provide both for significant tax cuts for the private sector as well as for the higher level of public investment in infrastructure and education required as we move into the 21st Century. It would obviously generate millions of new jobs. The present bipartisan commitment to balance the budget in seven years, based on the present anemic growth, is economically unrealistic and probably socially unsustainable. In all likelihood, higher growth is in fact the only way to achieve budget balance. The question is how to achieve it.

The conventional wisdom among most academic economists as well as the Treasury, the Federal Reserve Board and Wall Street is that our economy cannot generate higher growth without running the risk of triggering inflation. Now everyone shares that view. In particular, the leaders of many of this country leading industrial corporations believe that we could sustain significantly higher growth rates based on the very significant productivity improvements they are generating in their own businesses, year-after-year.

Economics is not an exact science as we have painfully learned over and over again. It is the product of the psychology of millions of consumers, of business leaders making long term investment decisions, of capital flows instantaneously triggered by events and ideas. We must do away with the false notion that we must choose between growth or inflation. Our experience, even in the more recent past, shows that technology and competition can produce growth without serious inflationary pressures. In the face of today's totally new environment of almost daily revolutions in technology combined with globalization, we should be willing to be bolder, both in fiscal and monetary policy.

As a traditional Democrat, I have always believed that freedom, fairness and wealth, basic to a modern democracy, required an essentially redistributionist philosophy of wealth, that a fairly steeply graduated income tax was required as a matter of fairness and that lower deficits would guarantee adequate growth and a fair distribution of wealth. The experience of the last two decades, with the advent of the global economy, has very much shaken that view.

Fairness does not require the redistribution of wealth; it requires the creation of wealth, geared to an economy that can provide employment for everyone willing and able to work, and the opportunity for a consistently higher standard-of-living for those employed. Only strong private sector growth, driven by higher levels of investment and superior public services, can hope to providing the job opportunities required to deal with technological change and globalization. Only higher growth will allow that process to take place within the farmework of a market economy and a functioning democracy.

We should have no illusions about the likelihood of reducing the level of present income and wealth differentials; they are likely to increase in the near future as the requirements for skills and education increase. The world is not fair; we must, however, make it better for those in the middle as well as at the lower end of the economic scale. The key is enough growth that, even if initially the lower end does not gain as rapidly as the upper, it can improve its absolute standard of living, and being a process of closing the gap.

Higher growth requires a tax system that promotes growth as its main objective. It must encourage higher investment and savings. That is not the case today. Today's tax system aims at a concept of fairness dictated by distribution tables. That may not be the best test. A tax system with growth as its main objective may be a variation of the flat tax; or it may be a national sales tax; or it may be another system aimed at taxing consumption instead of investment such as proposed by Sens. Sam Nunn and Pete Domenici.

The power and dominance of global capital markets in today's world would seem to aim in the latter direction. Lowering taxes on capital would at first blush seem to help the already wealthy, current holders of capital. But whatever its effect on the distribution tables, it could unleash powerful capital flows, both domestic and foreign, that would lower interest rates significantly and make investment in the U.S. even more competitive than it is today. At the same time, they

would maintain the strength of the dollar and maintain low rates of inflation.

Achieving the objective of higher growth could also include the gradual privatization of Social Security in order to create a massive investment pool with higher returns for the beneficiaries and greater investment capabilities for the private and the public sector. The key to economic success in the 21st Century will be cheap and ample capital, high levels of private investment to increase productivity, high levels of education and advanced technology. It also includes higher levels of public investment in building a national infrastructure supportive of the 21st century economy.

If the Democrats can redefine their concept of fairness, Republicans, on the other hand, may have to abandon their view of passive government. If growth and opportunity are to be the prime objectives of our society, the government must play an active role in some areas. The first is education; the second is higher levels of infrastructure investment; the third is in the maintenance of a corporate safety net.

Public school reform, driven by higher standards, is an absolute priority. Even though that is a state responsibility, it is a national problem. These standards, regardless of today's political conventional wisdom, will ultimately be national in scope. Access to higher education should be made available to any graduating high school senior meeting stringent national test levels and demonstrably in need of financial assistance. The equivalent of the GI Bill, providing national college scholarships to needy students, should be created and federally funded. It should be the primary affirmative action program funded by the federal government.

As part of a higher economic growth rate, state and local governments should provide higher levels of infrastructure investment. In addition to the creation of private employment, this could also provide public sector jobs to help meet the work requirements of welfare reform, as well as to provide the support to a high capacity modern economy. Financial assistance from the federal government would encourage the states in that endeavor. Higher growth would enable federal as well as state and local budgets to take on this responsibility.

A corporate safety net should be provided in order to deal with the inevitable dislocations which corporate downsizings and restructurings will continue to create. Business, labor and government should cooperate to create a system of portable pensions and portable health care to cushion the transition from one job to another. Incentives should be provided for business to make use of stock grants for employees laid off as a result of mergers and restructuring. If losing one's job creates wealth for the shareholders, the person losing his or her job should share in some of that wealth creation. Corporate pension funds, to the extent they are overfunded as a result of the stock market boom, could be part of a process to provide larger severance and retraining payments for laid-off employees.

Other than in areas such as pensions and health care, it is counterproductive to try to legislate the social side of "corporate responsibility"; it is almost impossible to define. To begin with, most large U.S. corporations are majority-owned by financial institutions including the pension funds of the very employees who are in danger of displacements. These institutions, driven by their own competitive requirements, were the source of the pressures on management which resulted in the dramatic restructuring of American industry over the last decade. Those restructurings have made American industry highly competitive in world markets; they must continue and we must continue the opening of world trade.

Boards of directors are not blind to the risks of political backlash. The issue of executive compensation, made starkly visible by its tie-in with the rise in stock market values, will be dealt with responsibly or boards will find themselves under great shareholder pressure. The use of profit-sharing, stock options and stock grants to practically all levels of the corporation will be significantly expanded and should create greater common interests between executives, shareholders and employees. However, the main role of the corporation must remain to be competitive, to grow, to invest, to hire and to generate profits for its shareholders; a significant portion of employee compensation should be related to the growing productivity of its employees.

The benefits to business in such an approach are obvious, but labor also has a large stake in such a re-examination. Some of the proposals put forth at present would have very negative results for working Americans. It is too late to return to a protected American economy; the only result would be to trigger a financial crisis that would harm America and our trading partners. It is impossible to stop the effect of global information, technology, capital and labor. What is important for working people, union or nonunion, is the creation of more well-paying jobs as a result of high levels of investment and high levels of education; to share in the profits of their employers through profit-sharing and stock ownership; to share in the benefit potential of pension funds vastly increased by the boom in the financial markets; to have access to permanent health care security and to high levels of education and training to deal with the 21st century requirements.

Business and labor, together, should hammer out such an agenda. If we are serious about balancing the budget in a responsible manner, the president and the congressional leadership could set a national objective that the economy's rate of growth reach a minimum sustainable level of 3% annually by the year 2000. They could ask the best minds in the country, from government, from business, from labor and from academia to provide a set of options which could lead to such a result. Many of these options would be politically difficult, both for Democrats and for Republicans, and some would probably be impossible. But the only way to abandon long-held notions that may no longer apply to today's world is to discuss them within the framework of a very simple and definite objective: higher growth.

A DIFFERENT PERSPECTIVE

Setting the U.S. on a path to higher growth will require coordination with our partners in the G-7. The Europeans should welcome such an initiative since they are in greater need for growth than we are. Nevertheless, the process will be slow and it must be put into motion.

The President's setting an objective of higher growth would have an important psychological impact; the economy is, after all, heavily influenced by psychological factors. If the president were to set an ambitious growth objective, then all elements affecting the economy would be subject to review from a different perspective. They would include fiscal and monetary policy; investments and savings; education and training; and international trade. Most importantly, these activities should take place within a framework in which the Democratic Party redefines its concept of fairness and the Republican Party redefines its concept of the role of government. At present, neither is appropriate for the revolution that technology, globalization and the inclusion of an additional one billion people to the global work force will bring about tomorrow.

Ultimately, a rising tide will float all ships, and both political parties can help bring this about. If they fail to do so, at a minimum the present malaise will turn uglier, and it is even conceivable that another tide will sweep away existing parties. If that were to happen, arguments about growth or fairness will be totally irrelevant.•

STEVEN P. AUSTIN—1996 FIRE SERVICE PERSON OF THE YEAR

• Mr. BIDEN. Mr. President, 30 years ago, President Lyndon Johnson stated,

The American firefighter today must meet the challenge of fires caused by numerous new chemicals, explosives, and combustible fibers, and other dangerous materials. He must be prepared to fight fires in crowded cities and giant buildings, as well as in remote rural communities.

Today, we know that these challenges to the fire services have grown considerably. The greatest example, of course, being the tragedy in Oklahoma City.

That is why today, Mr. President, I am honored to pay tribute to Steven P. Austin, who last night at the National Fire and Emergency Services Dinner, was named Fire Service Person of the Year.

Steve Austin serves as chairman of the National Advisory Committee for the Congressional Fire Services Institute, working countless hours to meet the challenges faced by the fire and emergency services. He works diligently helping those who help us in times of crisis.

Steve Austin may remember President Johnson's words back in 1966, because 3 years prior, Steve Austin began his service as a volunteer firefighter. Today, he continues to respond to emergency calls as a member of the Aetna Hose, Hook and Ladder Company of Newark, DE.

Along with his work as chairman and firefighter, Steve Austin, continues to serve as a fire claims superintendent for the State Farm Fire and Casualty Company, external affairs representative for the International Association of Arson Investigators, chairman of the NFPA Technical Committee on Fire Investigator Professional Qualifications, and as a member of the Delaware State Fire Police. In the past, he has been president of the New Castle County Volunteer Firemen's Association and also president of the Delaware Chapter International Association of Arson Investigators.

During his distinguished career, Steve Austin has received the George

H. Parker Distinguished Service Award, the Life Membership Award, and the Presidential Award from the International Association of Arson Investigators.

Steve Austin is committed to meeting the new challenges faced by the fire services. I am confident that as long as there are dedicated people like him, the fire service will continue to serve us with the heroism, bravery and professionalism that we have all come to expect. It is an honor to pay tribute to him today as a great leader, a great Delawarean, and a great friend.●

TRIBUTE TO PAUL D. BARNES

● Mr. SIMON. Mr. President, we are quick to criticize those who work for our Government but rarely recognize the people who have dedicated long careers to making Government work better and more cost effectively for all of us. For that reason, I want to pay tribute today to Paul D. Barnes.

Mr. Barnes is currently the Regional Commissioner for the Social Security Administration's Chicago region. His fine service in Chicago will end in late May, when he assumes his new position as Assistant Deputy Commissioner for Operations in Baltimore, MD. I am confident that Chicago's loss will be Baltimore's gain as Mr. Barnes brings his strong work ethic and demonstrated leadership to his new job.

Paul Barnes has served as Regional Commissioner for the Social Security Administration's Chicago region, which includes all six Midwestern States, since November 1990. As regional commissioner, he has been responsible for providing executive direction and leadership to the region's 7,500 Federal employees and the 2,200 State employees with whom they contract for disability determinations. These employees provide Social Security services as well as administer the Supplemental Security Income Program for the 45 million people who reside in the region.

Mr. Barnes began his career with the Social Security Administration in Columbia, TN in 1968. He has held a number of management positions since joining the agency, including serving as director of the southeastern Program Service Center in Birmingham, AL from July 1987 through May 1989. Before taking the top post in the Chicago region, he was serving as the deputy regional commissioner for the Atlanta region in Georgia.

He was a magna cum laude graduate of Lane College in 1968, and earned a master's degree in public administration from the University of Southern California. He currently serves as a member of the Executive Committee of Chicago's Federal Executive Board. He has served as the federal executive board's executive vice-president and in 1993, he led the metro-Chicago Combined Federal Campaign to the city's first ever $3 million charity drive.

In 1995, Mr. Barnes received a Presidential Distinguished Executive Award from President Clinton in recognition of his efforts to meet the national performance review objectives of producing a Government that works better and costs less. In 1992, he received a Meritorious Executive Award from President Bush and the Social Security Administration's National Leadership Award.

Mr. Barnes has touched many lives in Illinois and he will be missed. I wish him the best of luck in the future and thank him for his support and dedication to the people of Illinois and our entire region.●

CONGRATULATING THE POLISH PEOPLE

Mr. DOLE. Mr. President, I ask unanimous consent the Committee on the Judiciary be discharged from further consideration of Senate Joint Resolution 51, and further that the Senate proceed to its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

A joint resolution (S. J. Res. 51) saluting and congratulating Polish people around the world as, on May 3, 1996, they commemorate the 205th anniversary of the adoption of Poland's first constitution.

The Senate proceeded to consider the joint resolution.

Mr. DOLE. Mr. President, May 3 is a very important day for the Polish people for it is on this day that they will celebrate the 205th anniversary of Poland's first constitution.

Last week, along with a number of my Senate colleagues on both sides of the aisles, I introduced a resolution commemorating this historic occasion. I am pleased that the Senate is acting today to unanimously pass this resolution.

The Polish Constitution was the first is Eastern Europe to secure individual and religious freedoms for all persons living under it. While it was short lived, its principles endured and it became the symbol around which a national consciousness was born. When the courageous people of Poland forced out their Communist oppressors, they returned to the basic freedoms and principles contained in this constitution.

Mr. President, this resolution is a manifestation of this Congress' strong support for a free independent Poland. It is also a reflection of the deep and abiding friendship between Poland and the United States.

I know that all of my colleagues join with me in congratulating Americans of Polish descent and Poles all around the globe on this important occasion.

Ms. MIKULSKI. Mr. President, I am proud to rise as a cosponsor of this resolution to commemorate the 205th anniversary of the adoption of the first Polish Constitution.

Democracy is not a new idea in Poland. The heart and soul of Poland have always been democratic. In 1791, the Polish people enacted the first liberal constitution in Europe since antiquity. It was the second constitution in the world, after the American Constitution. The Polish Constitution was similar to ours. It included the principles of individual liberty and a separation of powers. It stated that all power would be derived from the will of the people—a truly revolutionary idea in 18th century Europe.

The friendship between the United States and Poland goes back to the Revolutionary War, when the great Polish patriot Tadeusz Kosciuszko fought in our war of independence. In fact, he helped to defend Philadelphia as our constitution was being drafted. When he returned to Poland, Kosciuszko helped to defend his country from the invading Russians who feared their neighbor's growing commitment to democracy.

The Polish Constitution was in effect for less than 2 years. But its principles endured. Even while Poland was held captive behind the iron curtain, the Polish people remembered and longed for liberty. Theirs was the first country in Eastern Europe to free itself from communism and Russian domination.

Today, Poland is a free and independent nation—ready to take its rightful place as a member of NATO and the European Union.

Mr. President, I am so proud to be the first Polish American woman to be a Member of the U.S. Senate. I am proud of my heritage, and what it taught me about patriotism, loyalty and duty. And I am proud to join my colleagues in paying tribute to the Polish people for their contribution to democracy.

Mr. LEVIN. Mr. President, I rise today to commemorate the 205th anniversary of the adoption of Poland's first constitution, which will be celebrated on May 3, 1996. I am pleased to be a cosponsor of Senate Joint Resolution 51 which salutes and congratulates the Polish people on this historic milestone.

The Polish constitution of 1791 established that "all power in civil society should be derived from the will of the people." It marked the first attempt of a Central-Eastern European country to break free of the feudal system of government. It was also the first constitution in the region to uphold individual and religious rights for all people. Even though the constitution was in effect less than 2 years, the guiding principles that it put forth lived on in the hearts

of the people of Poland. These principles gave them strength in the dark years that followed for Poland.

It is heartening to see the strides Poland has made in the past few years as it reemerges into the community of free nations. I salute the people of Polish descent in America who have contributed so much to our democracy and those around the world for the principles their forebears established in Central-Eastern Europe 205 years ago.

Mr. DOLE. I ask unanimous consent the joint resolution be considered read a third time and passed, the preamble be agreed to, the motion to reconsider laid upon the table, and any statements appear at the appropriate place in the RECORD. I ask my statement be included.

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

The joint resolution (S.J. Res. 51) was considered read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 51

Whereas, on May 3, 1996, Polish people around the world, including Americans of Polish descent, will celebrate the 205th anniversary of the adoption of the first Polish constitution;

Whereas American Revolutionary War hero Thaddeus Kosciuszko introduced the concept of constitutional democracy to his native country of Poland;

Whereas the Polish constitution of 1791 was the first liberal constitution in Europe and represented Central-Eastern Europe's first attempt to end the feudal system of government;

Whereas this Polish constitution was designed to protect Poland's sovereignty and national unity and to create a progressive constitutional monarchy;

Whereas this Polish constitution was the first constitution in Central-Eastern Europe to secure individual and religious freedom for all persons in Poland;

Whereas this Polish constitution formed a government composed of distinct legislative, executive, and judicial powers;

Whereas this Polish constitution declared that "all power in civil society should be derived from the will of the people";

Whereas this Polish constitution revitalized the parliamentary system by placing preeminent lawmaking power in the House of Deputies, by subjecting the Sejm to majority rule, and by granting the Sejm the power to remove ministers, appoint commissars, and choose magistrates;

Whereas this Polish constitution provided for significant economic, social, and political reforms by removing inequalities between the nobility and the bourgeoisie, by recognizing town residents as "freemen" who had judicial autonomy and expanded rights, and by extending the protection of the law to the peasantry who previously had no recourse against the arbitrary actions of feudal lords;

Whereas, although this Polish constitution was in effect for less than 2 years, its principles endured and it became the symbol around which a powerful new national consciousness was born, helping Poland to survive long periods of misfortune over the following 2 centuries; and

Whereas, in only the last 5 years, Poland has realized the promise held in the Polish constitution of 1791, has emerged as an independent nation after its people led the movement that resulted in historic changes in Central-Eastern Europe, and is moving toward full integration with the Euro-Atlantic community of nations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the people of the United States salute and congratulate Polish people around the world, including Americans of Polish descent, as on May 3, 1996, they commemorate the 205th anniversary of the adoption of the first Polish constitution;

(2) the people of the United States recognize Poland's rebirth as a free and independent nation in the spirit of the legacy of the Polish constitution of 1791; and

(3) the Congress authorizes and urges the President of the United States to call upon the Governors of the States, the leaders of local governments, and the people of the United States to observe this anniversary with appropriate ceremonies and activities.

ORDERS FOR THURSDAY, MAY 2, 1996

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Thursday, May 2; further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired; and there then be a period for morning business until the hour of 10 a.m., with Senators permitted to speak for up to 5 minutes each with the following Senators to speak for the designated times: Senator BURNS, 5 minutes; Senator GRASSLEY, 5 minutes; Senator GRAMS, 10 minutes; Senator DORGAN, 30 minutes; Senator BINGAMAN, 5 minutes. I further ask at the hour of 10 a.m. the Senate resume consideration of the immigration bill.

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

PROGRAM

Mr. DOLE. Mr. President, the Senate will resume consideration of S. 1664, the immigration bill, tomorrow morning, and Senators should be reminded there are still several amendments to be debated. Hopefully, some of those can be disposed of on voice votes. It is our expectation to complete action on the immigration bill by early tomorrow afternoon. Then we will determine what we will turn to. Hopefully, it can be something that might mean we might have debate on Friday but no votes on Friday, but I will make that announcement or Senator LOTT can make that announcement sometime tomorrow afternoon.

We would like to accommodate Members who are engaged in hearings tomorrow. So, for those who are offering amendments, if they will accommodate us, accommodate the managers, Senator KENNEDY and Senator SIMPSON, maybe we can postpone votes until 12 noon tomorrow.

Mr. FORD. Mr. President, will the distinguished majority leader yield for a question? Did I understand that we might be able to get out of here to see the greatest 2 minutes in sports?

Mr. DOLE. That would be the Kentucky Derby?

Mr. FORD. I think it is set on Friday.

Mr. DOLE. We will try to work it out.

WISCONSIN WORKS WELFARE LAW

Mr. DOLE. Mr. President, our current welfare system does not work because it is not based on the proven American formula for escaping poverty: A job. A strong family. A good education. Saving some money to buy a home.

Instead, it undermines almost every value that leads to self-reliance and success. Poverty persists and 3 out of every 10 births are out of wedlock. Unbelievably, the out-of-wedlock birth rate is 80 percent in some communities.

Within the past year, the U.S. Congress has twice passed Federal welfare reform. President Clinton has vetoed it both times. Face it, President Clinton has preserved the current system which is trapping another generation of Americans in despair and locking them out of the American dream.

Wisconsin Gov. Tommy Thompson refuses to allow this to happen. Last Thursday, he signed into law a program replacing in Wisconsin the failed national welfare system. It is called Wisconsin Works. The new program provides work opportunities and work programs. In order to help beneficiaries get a job, it makes available child care and health care to all low-income families who need it.

As Governor Thompson stated:

After almost a decade of welfare reform experiments, Wisconsin Works represents the end of welfare in Wisconsin. The current aid to families with dependent children [AFDC] program has become, for many families, a way of life. Because the program does not require work or provide incentives to become self-sufficient, it has trapped many families in dependency. Wisconsin Works aims to rebuild the connection between work and income and help families achieve self-sufficiency.

Due to his experience, Governor Thompson knows what he is talking about. He has made welfare reform a top priority by introducing more than 10 reform initiatives and by working hard to fix the current Welfare-to-Work Program called JOBS. During his administration Wisconsin's AFDC caseload has been reduced by more than 27 percent.

Wisconsin Works is the good news. Now let me give you the bad. The Governor and the Wisconsin Legislature

cannot deliver to the people of Wisconsin this replacement for the failed system until President Clinton and his administration give them permission. By twice vetoing Federal welfare reform passed by our Congress, the President has denied Wisconsin and many other States the opportunity to put into place needed reforms.

The status quo, which the President has preserved, requires Wisconsin to come to the Clinton administration on bended knee to ask Washington bureaucrats for permission to make adjustments to the current one-size-fits-all national welfare system.

No doubt about it, while welfare recipients remain trapped in the current system, President Clinton will claim he has helped reform welfare by granting States permission to experiment through controlled demonstration programs known as "waivers."

The reality is these waivers are not the solution. We all know waivers have brought us in the right direction. However, the waiver process perpetuates a flawed system. Real change will only occur when States are released from the burden of excessive Federal rules and regulations. The waiver process is too costly, time consuming, and burdensome, often requiring months and months of negotiating between a State and the relevant Federal Cabinet agency

Earlier this year, all 50 of the Nation's Governors rejected the waiver process in favor of comprehensive welfare reform. Their unanimously adopted policy would provide greater State flexibility to enhance States as "laboratories of democracy" while ensuring the necessary State accountability to promote work, family, and individual self-sufficiency among welfare beneficiaries.

The national bipartisan Governor's welfare policy reflects the principles contained in both welfare reform bills passed by the Congress and vetoed by the President. I remain committed to working with our Nation's Governors to accomplish real Federal welfare reform.

President Clinton has said that he is reluctant to return power to the States because it will lead to a "race to the bottom." As Governor Thompson and the Wisconsin Legislature have proved, however, compassion and innovation can go hand in hand. I congratulate them for their achievement, and I invite President Clinton to join with this Congress in moving power out of Washington and returning it to where it belongs—our States, our communities, and our people.

UNITED STATES LOSES FIRST WORLD TRADE ORGANIZATION CASE

Mr. DOLE. Mr. President, the World Trade Organization has just issued its first decision in a trade case brought under the new dispute settlement system.

The case was brought against the United States by Venezuela and Brazil. The allegation was that a U.S. environmental regulation, issued under the Clean Air Act, discriminated against imported gasoline.

On Monday, the United States lost the case. President Clinton must now decide whether to comply with the WTO decision. If he decides the United States should comply, he must announce a plan for doing so.

I believe the American people deserve an explanation from President Clinton about this case. They deserve an explanation about what this case might mean in the future for other U.S. laws and regulations.

Clearly there will be future WTO cases where the United States will be the losing party. We cannot expect to win every case. Perhaps Monday's case was properly decided.

But it seems to me that our laws should continue to be a matter for Americans, not international judges, to determine. We should decide what our environmental laws will be. We should decide what kinds of regulations are necessary to protect our environment. We should decide that our children deserve cleaner air and purer water, not some bureaucrat in Geneva.

We do not always agree, and that is part of our democratic process. But at least we work out for ourselves what laws and regulations are best for America.

Mr. President, I believe President Clinton has simply failed to tell the American people what his strategy is for defending other American laws in the future from potential wrongful attack in the WTO. As far as I know, President Clinton has been silent on this question, one that is deeply troubling to many Americans.

I have a strategy for defending American laws. I proposed a plan in January 1995 that would ensure that the United States could withdraw from the WTO if our laws, and our rights, were being trampled in Geneva.

Many, many Americans shared my concern—that the WTO might begin to operate out of control, might begin to issue rulings that were outside its mandate, in short, that the WTO might abuse its authority. I was concerned that if this were to happen, the United States would not have any adequate mechanism to deal with it. My proposal creates such a mechanism. It allows us to get all the benefits of the WTO, but protects us against the potential harm should the WTO fail to honor our rights.

Unfortunately, my proposal has not yet become law because of some opposition—not much. There is strong bipartisan support for this proposal, but one of my colleagues on the other side has had a hold on this bill several months, and we hope to move on it early this month or next month.

President Clinton supports my proposal. In fact, he endorsed my proposal when I endorsed the GATT at the White House nearly 2 years ago. I certainly would appreciate the President's help in getting this measure passed. I think it would be helpful to the President and to the country. It would answer a lot of concerns American workers have who are frustrated about the loss of American jobs.

So I hope we can have action on my proposal in the very near future with the President's support.

AFSA 35TH ANNIVERSARY

Mr. DOLE. Mr. President, the Air Force Sergeants Association [AFSA] marks the 35th anniversary of its founding today. I commend this association for all of its efforts on behalf of the entire military community but, in particular, the enlisted component.

In 1961, AFSA was founded as a nonprofit association to represent the interests of Air Force enlisted members, who, at that time, had no voice to speak for them. Over the years, AFSA's membership has grown to 160,000 with nearly 300 chapters around the world. Today, AFSA represents active and retire enlisted Air Force, Air Force Reserve, and Air National Guard members and their families.

In my view, AFSA's reputation on Capitol Hill is better than ever, a broker of honest information—whether through testimony, visits, or correspondence—working hand-in-hand with elected officials. AFSA has worked hard over the years to keep Members of Congress focused on the quality of the lives of the active and retired enlisted men and women AFSA represents.

AFSA was directly involved in championing improved pay and allowances for active duty members, dental and income insurance programs for reservists, the restoration of military cola equity, the end of source taxation, and the increase in the Social Security earnings limit.

Last fall, AFSA generated massive grassroots support to clearly show where military personnel stood on the "high-one" retirement recalculation proposal.

AFSA also provides awards, grants and scholarships through the Airmen Memorial Foundation, AMF, established in 1983. In addition, the AMF has a post-military employment program that aids Air Force members who are about to retire or separate.

AFSA also believes in preserving the heritage and accomplishments of Air Force enlisted personnel. In 1986, AFSA founded the Airmen Memorial Museum in Suitland, MD, which is a comprehensive reference center for Air Force enlisted history.

On the occasion of their 35th anniversary, I congratulate the Air Force Sergeants Association. I know that AFSA will continue to be an effective, strong, and dedicated voice for Air Force enlisted personnel, active, reserve, guard, retired members, and their families. I thank the association for its successful efforts and look forward to continuing to work with AFSA on matters of mutual concern.

ORDER FOR ADJOURNMENT

Mr. DOLE. Mr. President, I understand that the Senator from Massachusetts wishes to speak. I ask unanimous consent, after the Senator from Massachusetts completes his remarks, that the Senate stand in adjournment under the previous order.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

MINIMUM WAGE

Mr. KENNEDY. Mr. President, on tomorrow, I expect the Senate to conclude its action on the illegal immigration bill. During the earlier discussion on the immigration bill, I tried to take advantage of the opportunity to offer an amendment that would have raised the minimum wage 90 cents—45 cents this year, 45 cents the next year—90 cents for working families. We were unable to get sufficient recognition to put that proposal before the U.S. Senate, and the cloture motion was put before us, which effectively restricted our opportunity to take any action on the minimum wage.

A further cloture motion was offered, which further prohibits us from having considered the minimum wage, even if we had extended the time, which under the rules would have permitted debate and discussion for some 30 hours.

So for this phase of the minimum wage debate, we will conclude tomorrow, through the decision of the Senate, action on the illegal immigration bill and any opportunity to have the minimum wage amendment before the Senate.

Then we will move on to other business and, as I have stated at other times, as the minority leader, Senator DASCHLE, has stated, and as others have stated—my colleagues Senator KERRY and Senator WELLSTONE—we will look for the first opportunity to offer that amendment.

It is a rather poignant time, Mr. President, as we are having this debate on the minimum wage, because in 1960, during the campaign of President Kennedy, one of the important issues was the issue of the increase in the minimum wage.

In the 1960 campaign against Richard Nixon, John Kennedy ran an ad in which he called for an increase in the minimum wage. And in the ad, he sat in front of the camera and said:

Mr. Nixon has said that a $1.25 minimum wage is extreme. That's $50 a week. What is extreme about that? I believe the next Congress and the President should pass a minimum wage for $1.25 an hour. Americans must be paid enough to live.

I am reminded of the same issue before us today. This Friday, May 3, is the 35th anniversary of BOB DOLE's vote against President Kennedy's legislation raising the minimum wage from $1 to $1.25.

BOB DOLE and Richard Nixon were wrong to oppose President Kennedy's minimum wage hike 35 years ago, and I believe BOB DOLE and RICHARD ARMEY are wrong to oppose President Clinton's minimum wage hike today.

Mr. President, this issue has been debated and discussed. It is as old as some 60 years of our history. We know what the issues are: Are we going to respect work? Are we going to honor work? Are we going to say to men and women who are working 40 hours a week, 52 weeks of the year that they ought to have a livable wage to be able to provide for their family, their children, to pay a mortgage, put food on the table, are we going to meet our responsibilities to those working families, which at other times we have done?

This issue will be before us again and again and again until we are able to meet our responsibilities to the working families in this country. That we pledge, that we commit ourselves to. And just as we found that we were successful in raising the minimum wage in the early 1960's from $1 to $1.25, all the way up to where it is at the present time, we are going to be successful in raising it to $5.15 an hour as well.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow morning.

Thereupon, the Senate, at 8:38 p.m., adjourned until Thursday, May 2, 1996, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate May 1, 1996:

FEDERAL MINE SAFETY AND HEALTH REVIEW

MARY LUCILLE JORDAN, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF 6 YEARS EXPIRING AUGUST 30, 2002. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 8373, 8374, 12201, AND 12212:

To be major general

BRIG. GEN. KEITH D. BJERKE [redacted]
BRIG. GEN. EDMOND W. BOENISCH, JR. [redacted]
BRIG. GEN. STEWART R. BYRNE [redacted]
BRIG. GEN. JOHN H. FENIMORE [redacted]
BRIG. GEN. JOHNNY J. HOBBS [redacted]
BRIG. GEN. STEPHEN G. KEARNEY [redacted]
BRIG. GEN. WILLIAM B. LYNCH [redacted]

To be brigadier general

COL. BRIAN E. BARENTS [redacted]
COL. GEORGE P. CHRISTAKOS [redacted]
COL. WALTER C. CORISH, JR. [redacted]
COL. JAMES V. DUGAR [redacted]
COL. FRED E. ELLIS [redacted]
COL. FREDERICK D. FEINSTEIN [redacted]
COL. WILLIAM P. GRALOW [redacted]
COL. DOUGLAS E. HENNEMAN [redacted]
COL. EDWARD R. JAYNE II [redacted]
COL. GEORGE W. KEEFE [redacted]
COL. RAYMOND T. KLOSOWSKI [redacted]
COL. FRED N. LARSON [redacted]
COL. BRUCE W. MACLANE [redacted]
COL. RONALD W. MIELKE [redacted]
COL. FRANK A. MITOLO [redacted]
COL. FRANK D. REZAC [redacted]
COL. JOHN P. SILLIMAN, JR. [redacted]
COL. GEORGE E. WILSON III [redacted]

IN THE NAVY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE NAVAL RESERVE OF THE UNITED STATES TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 5912:

UNRESTRICTED LINE

To be rear admiral (lower half)

CAPT. JOHN NICHOLAS COSTAS [redacted]
CAPT. JOSEPH COLEMAN HARE [redacted]
CAPT. DANIEL LAWRENCE KLOEPPEL [redacted]
CAPT. HENRY FRANCIS WHITE, JR. [redacted]

UNRESTRICTED LINE (TAR)

To be rear admiral (lower half)

CAPT. JOHN FRANCIS BRUNELLI [redacted]

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT

To be medical director

MICHAEL M. GOTTESMAN
HAROLD W. JAFFE

To be senior surgeon

JAMES F. BATTEY, JR.

To be surgeon

HELENE D. GAYLE
JEFFREY R. HARRIS
DOUGLAS B. KAMEROW
THURMA G. MCCANN
MICHAEL E. ST LOUIS

To be senior assistant surgeon

ROBERT T. CHEN
SUSAN L. CRANDALL
AHMED M. ELKASHEF
MICHAEL M. ENGELGAU
RICHARD L. HAYS
BROCKTON J. HEFFLIN
CLARE HELMINIAK
KATHLEEN L. IRWIN
CONNIE A. KREISS
BORIS D. LUSHNIAK
DOUGLAS L. MCPHERSON
MANETTE T. NIU
ROBERT J. SIMONDS
JONATHAN T. WEBER

To be senior assistant dental surgeon

THOMAS T. BARNES, JR.
MITCHEL J. BERNSTEIN
BRENDA S. BURGES
DEBORAH P. COSTELLO
DAVID A. CRAIN
RICHARD L. DECKER
JAMES V. DEWHURST III
DEBRA L. EDGERTON
PAUL J. FARKAS
JANIE G. FULLER
KENT K. KENYON
RUTH M. KLEVENS
EDWARD E. NEUBAUER
THOMAS A. REESE
JOSE C. RODRIGUEZ
ADELE M. UPCHURCH

To be dental surgeon

MICHAEL E. KORALE

To be nurse officer

CATHY J. WASEM

To be senior assistant nurse officer

DONNA N. BROWN
GRACIE L. BUMPASS
MARTHA E. BURTON
ANNETTE C. CURRIER
THOMAS E. DALY
TERENCE E. DEEDS
JOSEPH P. FINK
ROBERT C. FRICKEY
JUDY A. GERRY
ANNIE L. GILCHRIST
BYRON C. GLENN
MARGARET A. HOEFT
LORRAINE D. KELWOOD
MARY M. LEEMHUIS
SUSAN R. LUMSDEN
BRENDA J. MURRAY
MICHAEL J. PAPANIA
MONIQUE V. PETROFSKY
PATRICIA K. RASCH
LETITIA L. RHODES-BARD
THOMAS M. SCHEIDEL
RUTH A. SHULTS
JERILYN A. THORNBURG
SCOTT A. VANOMEN
ELLEN D. WOLFE

To be assistant nurse officer

SUSAN Z. MATHEW
TERRY L. PORTER
RICHARD M. YOUNG

To be senior assistant engineer officer

TERRY L. AAKER
CHERYL FAIRFIELD ESTILL
DEBRA J. HASSINAN
DONALD J. HUTSON
ALLEN K. JARRELL
JEFFREY J. NOLTE
MUTAHAR S. SHAMSI
GEORGE F. SMITH

To be assistant engineer officer

NATHAN D. GJOVIK

To be scientist

DELORIS L. HUNTER

To be Senior assistant scientist

ANNE T. FIDLER
PATRICK J. MCNEILLY
HELENA O. MISHOE
PAUL D. SIEGEL
WILLIAM H. TAYLOR III

To be sanitarian

THOMAS C. FAHRES
DANIEL M. HARPER
CHARLES L. HIGGINS
MICHAEL M. WELCH

To be senior assistant sanitarian

GAIL G. BUONVIRI
LARRY F. CSEH
ALAN J. DELLAPENNA, JR.
ALAN S. ECHT
THOMAS A. HILL
FLORENCE A. KALTOVICH
DAVID H. MCMAHON
NATHAN M. QUIRING
DAVID H. SHISHIDO
LINDA A. TIOKASIN
RICHARD E. TURNER
BERRY F. WILLIAMS

To be veterinary officer

STEPHANIE I. HARRIS

To be senior assistant veterinary officer

HUGH M. MAINZER
SHANNA L. NESBY
META H. TIMMONS

To be senior assistant pharmacist

SARAH E. ARROYO
EDWARD D. BASHAW
CHARLES C. BRUNER
VICKY S. CHAVEZ
SCOTT M. DALLAS
MICHELE F. GEMELAS
TERRY A. HOOK
ALICE D. KNOBEN
NANCY E. LAWRENCE
ANDREW J. LITAVECZ IV
JOSEPHINE A. LYGHT
WILLIAM B. MCLIVERTY
M. PATRICIA MURPHY
ANNA M. NITOPI
ROBERT G. PRATT
KURT M. RILEY

To be assistant pharmacist

GARY L. ELAM
JAMES A. GOOD
VALERIE E. JENSEN
KIMBERLY D. KNUTSON
SANDRA C. MURPHY
JILL A. SANDERS
PAMELA STEWART-KUHN

To be assistant pharmacist pharmacist

L. JANE DUNCAN

To be senior assistant dietitian

CELIA R. HAYES
DAVID M. NELSON

To be therapist

MICHAEL P. FLYZIK

To be assistant therapist

MARK T. MELANSON

To be health services director

JAMES H. SAYERS

To be health services officer

MAUREEN E. GORMLEY

To be senior assistant health services officer

CORINNE J. AXELROD
DEBORAH DOZIER-HALL
WILLIAM M. GOSMAN
JANET S. HARRISON
REBECCA D. HICKS
BRIAN T. HUDSON
RICHARD D. KENNEDY
EDWARD M. MCENERNEY
MICHAEL R. MILNER
ANNE M. PERRY
ELIZABETH A. RASBURY
RAY J. WEEKLY
CRAIG S. WILKINS

To be assistant health services officer

WILLARD E. DAUSE