839, a bill to amend title XVIII of the Social Security Act to increase the amount of payment for inpatient hospital services under the medicare program and to freeze the reduction in payments to hospitals for indirect costs of medical education.

S. 940

At the request of Mr. DODD, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 940, a bill to leave no child behind.

S. 946

At the request of Ms. SNOWE, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 946, a bill to establish an Office on Women's Health within the Department of Health and Human Services.

S. 952

At the request of Mr. GREGG, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from New Mexico (Mr. BINGAMAN), and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 952, a bill to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

S. 960

At the request of Mr. CLELAND, his name was added as a cosponsor of S. 960, a bill to amend title XVIII of the Social Security Act to expand coverage of medical nutrition therapy services under the medicare program for beneficiaries with cardiovascular diseases.

S. 1210

At the request of Mr. CAMPBELL, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1210, a bill to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.

S. 1475

At the request of Mr. BREAUX, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1475, a bill to amend the Internal Revenue Code of 1986 to provide an appropriate and permanent tax structure for investments in the Commonwealth of Puerto Rico and the possessions of the United States, and for other purposes.

S. 1606

At the request of Mr. NELSON of Florida, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1606, a bill to amend title XI of the Social Security Act to prohibit Federal funds from being used to provide payments under a Federal health care program to any health care provider who charges a membership of any other extraneous or incidental fee to a patient as a prerequisite for the provision of an item or service to the patient.

S. 1749

At the request of Mr. KENNEDY, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 1749, a bill to enhance the border security of the United States, and for other purposes.

S. 1760

At the request of Mr. THOMAS, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of S. 1760, a bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the medicare program. and for other purposes.

S. 1786

At the request of Mr. DURBIN, the names of the Senator from North Dakota (Mr. CONRAD) and the Senator from Hawaii (Mr. AKAKA) were added as cosponsors of S. 1786, a bill to expand aviation capacity in the Chicago area.

S. 1860

At the request of Mr. DORGAN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1860, a bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes.

S. 1918

At the request of Ms. COLLINS, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of S. 1918, a bill to expand the teacher loan forgiveness programs under the guaranteed and direct student loan programs for highly qualified teachers of mathematics, science, and special education, and for other purposes.

S. 1924

At the request of Mr. LIEBERMAN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1924, a bill to promote charitable giving, and for other purposes.

S. 1931

At the request of Mr. LIEBERMAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1931, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the Medicare Program.

S. RES. 207

At the request of Mr. BINGAMAN, the names of the Senator from Montana (Mr. BURNS), the Senator from Delaware (Mr. CARPER), the Senator from New Jersey (Mr. CORZINE), the Senator from South Dakota (Mr. DASCHLE), the Senator from Wisconsin (Mr. KOHL), the Senator from Arkansas (Mrs. LINCOLN), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. Res. 207, a resolution designating March 31, 2002, and March 31, 2003, as "National Civilian Conservation Corps Day."

S. CON. RES. 84

At the request of Mr. SCHUMER, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. Con. Res. 84, a concurrent resolution providing for a joint session of Congress to be held in New York City, New York.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mr. HATCH, Mr. JEFFORDS, Mr. KERRY, and Mr. TORRICELLI):

S. 2006. A bill to amend the Internal Revenue Code of 1986 to clarify the eligibility of certain expenses for the low-income housing credit; to the Committee on Finance.

Mr. GRAHAM. Madam President, today I am introducing legislation that will improve the effectiveness of one of the most effective programs we have to help Americans get affordable housing, the Low Income Housing Tax Credit. I am proud to be joined in this effort by my esteemed colleagues Senator HATCH, Senator JEFFORDS, Senator KERRY and Senator TORRICELLI.

The Low Income Housing Tax Credit was created in 1986 to attract private sector capital to the affordable housing market. It has been the major engine for financing the production of low income multi-family housing. The program offers developers and investors in affordable housing credit against their Federal income tax in return for their investment. Since its inception, the Low Income Housing Tax Credit has assisted in the development and availability of roughly 850,000 new and rehabilitated units of affordable housing.

Last fall, the Internal Revenue Service issued its first guidance in the program's 16 year history. That guidance was issued in the form of several technical advice memoranda, or TAMs, and specified which development costs will be eligible and ineligible for the credit, known as eligible basis.

TAMs are not official guidance, reviewed by the Treasury Department, but instead, IRS legal opinion providing direction to IRS agents conducting audits. They are not citable in court proceedings because they are not official guidance. In the absence of official guidance, TAMs could be taken as the official government position. In fact, that is exactly what is happening. The IRS's position is contrary to common industry practice, and eliminates many reasonable, legitimate and necessary costs from the tax credit. This has caused uncertainty among investors as to whether the credits for which they have been paid, will be realized. Moreover, these guidelines could adversely affect the ability of States to target affordable housing to those who need it the most.

It is important to understand, this legislation will not increase the number of low-income housing tax credits available. The maximum amount of credits that states may allocate to developers of affordable housing properties is set by the Internal Revenue Code. Thanks to legislation that we enacted in 2000, the amount available to each state has increased from $1.50 to $1.75 times the State's population.

That 40 percent increase is expected to produce about 30,000 more units a year. Since the unmet demand for affordable housing is many times greater than what can be built with the help of the credit, our legislation should not affect revenues. In fact, the only way for this legislation to have a revenue impact is if the legislation makes it easier for the States to use the credits we intend for them to have under present law.

What this legislation does do, however, is very important. To understand its importance, it may be useful to have a little background on how the low-income housing tax credit works.

In economic terms, the credit is equity financing which replaces a portion of debt that would otherwise be necessary to finance a property. By replacing debt, credits work to reduce interest costs. This allows a property owner to offer lower rents than otherwise would be the case.

The most unique feature of the program is that State Housing Finance Agencies award Federal tax credits to developers of rental housing. Since these agencies have considerable flexibility in how they distribute the credits, developers compete for the limited number of tax credits by submitting project proposals. The Housing Finance Agencies rate the proposals, and allocate credits to individual properties based on criteria provided in the Internal Revenue Code, and on the State's particular housing needs and priorities.

The amount of credits a State may allocate to a particular property is also limited by the Internal Revenue Code. The limit is determined as percentage of the basis of a property. The basis is, generally speaking, the costs of constructing a building that is part of an affordable housing project. Non-federally subsidized new construction may receive a 9-percent credit. Existing buildings and new buildings receiving other Federal subsidies may get a 4-percent credit.

The problem at hand is this. The IRS takes the position that certain construction costs should not be included in basis. This position makes a large number of affordable housing properties financially infeasible, and weakens the economics of those that still pass minimum underwriting requirements. The loss of equity would surely affect the properties that serve the lowest income tenants, provide higher levels of service, or operate in high cost areas. The reason that this is problematic is simple. Reducing the amount of credits does not reduce the development costs. It merely removes a source of financing, forcing either higher rents or lower quality construction.

Apparently, the Treasury Department and Internal Revenue Service agree that this is an issue worthy of review, as both agencies have included it in their business plan. As recently as this month, the IRS issued new guidance on one of the items addressed by the TAMs, but there does not appear to be a full review of the effect of the positions set forth in the TAMs anytime soon.

This legislation would amend Section 42(d) of the Internal Revenue Code to specify that various associated development costs are to be included in eligible basis. In many cases, the largest item excluded from eligible basis under the TAMs is "impact fees." Impact fees are fees required by the Government "as a condition to the development" and considered ineligible because they are one-time costs, unlike building permits which need to be renewed each time a building is built. These fees cover a wide range of infrastructure improvements including sewer lines, schools, and roads. Certainly, whether or not they are includible in basis for the purpose of calculating the amount of tax credit, these costs will be incurred and will impact the economics of the property. As I mentioned previously, the IRS has recently addressed the inclusion of impact fees in eligible basis, but not other costs directly related to building construction.

Other items that would be severely restricted or excluded from eligible basis under the interpretations expressed in the TAMs are site preparation costs, development fees, professional fees related to developing the property, and construction financing costs. The legislation we are introducing today will clarify that any cost incurred in preparing a site which is reasonably related to the development of a qualified low income housing property, any reasonable fee paid to the developer, any professional fee relating to an item includible in basis, and any cost of financing attributable to construction of the building is includible in basis for the purpose of calculating the maximum amount of credit a state may allocate to a low-income housing property.

The intent of these clarifications is simply to codify common industry practice before the issuance of the TAMs. Not only will the legislation allow the low-income tax credit program to provide better quality housing at lower rental rates than would be possible if the positions taken in the TAMs are followed, but clarification will help simplify administration of the credit by giving both taxpayers and the Internal Revenue Service a clearer statement of the standards that apply in calculating credit amounts.

Our economy is not doing as well as we would like, and there is a significant likelihood that we are going to need even more affordable housing in the not too distant future. We should be proud that we increased the amount of low-income housing tax credits that will be available to help finance this housing. What we need to do now is to make sure that these credits are used as efficiently as possible to provide housing for those who need it the most. The legislation we are introducing today will help achieve that goal.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2006

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ELIGIBILITY OF CERTAIN EXPENSES FOR LOW-INCOME HOUSING CREDIT.

(a) IN GENERAL.—Subsection (d) of section 42 of the Internal Revenue Code of 1986 (relating to low-income housing credit) is amended by adding at the end the following new paragraph:

"(8) ASSOCIATED DEVELOPMENT COSTS INCLUDED IN BASIS.—

"(A) IN GENERAL.—Solely for purposes of this section, associated development costs shall be taken into account in determining the basis of any building which is part of a low-income housing project to the extent not otherwise so taken into account.

"(B) ASSOCIATED DEVELOPMENT COSTS.—For purposes of subparagraph (A), the term 'associated development costs' means, with respect to any building, such building's allocable share of—

"(i) any cost incurred in preparing the site which is reasonably related to the development of the qualified low-income housing project of which the building is a part,

"(ii) any fee imposed by a State or local government as a condition to development of such project,

"(iii) any reasonable fee paid to any developer of such project,

"(iv) any professional fee relating to any item includible in the basis of the building pursuant to this paragraph, and

"(v) any cost of financing attributable to construction of the building (without regard to the source of such financing) which is required to be capitalized."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) housing credit dollar amounts allocated after December 31, 2001, and

(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

Mr. JEFFORDS. Mr. President, today I join with my colleagues on the Finance Committee, Senators GRAHAM and HATCH, to introduce legislation to clarify the rules governing the low-income housing tax credit. This tax credit has played a critical role in the construction and renovation of housing for low-income Americans.

The Internal Revenue Service has issued five technical advice memoranda, TAMs, affecting the definition of eligible basis as defined in section 42(d) of the Internal Revenue Code. These TAMs had the effect of reducing the amount of tax credits available with respect to projects financed with low-income housing tax credits. The bill we introduce today recognizes that certain expenses are legitimate development costs that are properly includible in the basis eligible for the tax credits. Among these development costs are: state and local impact fees, site preparation costs, reasonable development fees, professional fees, and construction financing costs, excluding land acquisition costs.

The TAMs drew unworkable distinctions among various costs developers incur when they build low-income housing. For example, under the law as interpreted by the IRS, a low-income housing developer would have to distinguish between those trees and shrubs planted near a housing unit and those planted elsewhere on the property. The costs of trees and shrub near the housing unit could be included in basis; the costs of other landscaping could not. Rules like this are not only illogical; they also impose unnecessary burdens both on developers of affordable housing projects, but also on the IRS itself, whose employees must draw these highly technical distinctions when they audit the project. Our bill includes fair and rational rules, introducing the concept of ''development cost basis'' in lieu of ''adjusted basis'' to determine which costs may qualify for tax credits. It assures that reasonable and legitimate expenses which incurred only for the purpose of building low-income housing will be eligible for tax credit.

By Mr. INHOFE:

S. 2007. A bill to provide economic relief to general aviation entities that have suffered substantial economic injury as a result of the terrorist attacks perpetuated against the United States on September 11, 2001; to the Committee on Banking, Housing, and Urban Affairs.

Mr. INHOFE. Madam President, I rise today to introduce the Senate companion to HR 3347, the General Aviation Industry Reparations Act of 2002. This bill directs to the President to provide compensation to General Aviation for losses incurred as a result of the terrorist attacks on September 11, 2001.

Many have the misperception that the entire aviation industry was eligible for compensation under the Air Transportation Safety and Systems Stabilization Act, PL 107–42. However, that act dealt only with scheduled airline service. As a consequence General Aviation, a very important segment of the aviation industry, has yet to be made whole for actions taken by the federal government following the terrorist attacks of September 11th.

The national airspace system reopened to commercial aviation on September 13, 2001. General Aviation was allowed limited Instrument Flight Rules, IFR, flights, operating under guidance and direction from air traffic controllers, with restrictions on September 14th. The more common, Visual Flight Rules, VFR, flights (which cannot be done in inclement weather since pilots are not under the guidance of air traffic controllers) were grounded until September 19 and then only limited flights could operate outside of ''enhanced'' Class B airspace, the airspace surrounding the nation's 30 busiest airports. In fact, enhanced Class B airspace did not return to the pre-September 11th design until December 19th.

Contrary to what some think, General Aviation is much more than weekend recreational pilots. It is made of a hundreds of small business people who make their living either servicing general aviation aircraft, instructing student pilots, using general aviation aircraft to transport people, products and materials or perform various services such as report on traffic conditions in congested metropolitan areas, check the condition of energy pipelines, crop dusting, banner towing and many other uses. The fact is that general aviation performs a very important function in our economy beyond recreational flying.

Working closely with General Aviation groups such as the Aircraft Owners and Pilots Association, AOPA, which has worked hard to explain the scope of general aviation to members of Congress and how critical it is to the nation, I think we have a very balanced package.

The General Aviation Industry Reparations Act of 2002 would compensate General Aviation and their employees for economic injuries caused by September 11. As defined by the bill ''general aviation'' includes ancillary businesses as well. Thus, parking garages, car rental companies or other aviation related business that were not covered by PL 107–42 would be eligible for compensation under this bill. In addition, the bill extends compensation to employees who were laid off due to the slow down of business following September 11 in the form of reimbursement for health care costs and it requires businesses who accept compensation to provide health care coverage for existing employees.

The bill provides three forms of compensation. Loan Guarantees of $3 billion from the amount made available for the commercial airlines. Grants totaling $2.5 billion and like the commercial aviation industry the opportunity to purchase War Risk Insurance with the assistance of the Department of Transportation.

Finally, spending in the bill would be designated as emergency spending for scoring purposes. Normally I would oppose such a designation but I believe in this instance we have successfully met the criteria for an emergency. These benefits are not open ended, compensation is only available for losses incurred between September 11 and December 31, 2001. Not all losses are eligible under the bill, only those that can be shown to be a direct result of the government actions following September 11. Businesses who choose to take advantage of the loan guarantees must demonstrate an ability to pay back the loans and the government has the right to benefit from profits made as a result of a government backed loan.

In short, I believe this is a responsible bill and I hope that we will be able to fully debate the merits of the package on the floor and eventually have a vote on the bill.

By Mr. GREGG:

S. 2008. A bill to prohibit certain abortion-related discrimination in governmental activities; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2008

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ABORTION NON-DISCRIMINATION.

Section 245 of the Public Health Service Act (42 U.S.C. 238n) is amended—

(1) in the section heading, by striking ''REGARDING TRAINING AND LICENSING OF PHYSICIANS'' and inserting ''REGARDING TRAINING, LICENSING, AND PRACTICE OF PHYSICIANS AND OTHER HEALTH CARE ENTITIES'';

(2) in subsection (a)(1), by striking ''to perform such abortions'' and inserting ''to perform, provide coverage of, or pay for induced abortions'';

(3) in subsection (c)(2)—

(A) by inserting ''or other health professional,'' after ''an individual physician'';

(B) by striking ''and a participant'' and inserting ''a participant''; and

(C) by inserting before the period the following: '', a hospital, a provider sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization or plan''; and

(4) in subsection (b)(1), by striking ''standards'' and inserting ''standard''.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. DURBIN, and Mr. HARKIN):

S. 2010. a bill to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal Investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to introduce the ''Corporate and Criminal Fraud Accountability Act of 2002.'' I want to thank the majority leader, and Senators DURBIN and HARKIN for joining me as original cosponsors in this effort to prevent corporate and criminal fraud, protect shareholders and employees, and hold wrongdoers accountable for their actions.

This bill is a crucial part of ensuring that the corporate fraud and greed that have been on display in the Enron debacle can be better detected, prevented and prosecuted. We cannot legislate against greed, but we can do our best to make sure that greed does not succeed.

The fraud at Enron was not the work of novices. It was the work of highly educated professionals, spinning an intricate spider's web of deceit. They created sham partnerships with names like Jedi, Chewco, Rawhide, Ponderosa and Sundance to cook the books and trick both the public and federal regulators. The actions of Enron's executives, accountants, and lawyers exhibits a ''Wild West'' attitude which valued profit over honesty.

Nor is this web of corporate deceit the end of the Enron story. When they thought that investigators might be coming, what did these ''professional'' men and women apparently do? First, they warmed up the shredders and began destroying evidence. Then, after they successfully shredded thousands of documents, they began the finger pointing. Now, the Enron executives are blaming their accountants at Arthur Andersen; the accountants are blaming the executives right back; and they are both blaming their lawyers.

The truth is that just as there was enough greed to go around, there is now enough blame to go around. But the blame does not end with the people involved in this case. It extends to our courts, our regulators, and to Congress, whose actions in the past decade helped create the permissive atmosphere which allowed Enron to happen. No one in Congress intended for such outrageous conduct to happen, but now it is our job to stop it.

We must restore accountability. Accountability is important because Enron is not alone. At a Judiciary Committee hearing which I recently chaired, experts gave the public markets grave warnings, it is likely that there are more ''Enrons'' lurking out there waiting to be discovered. Waiting to be discovered not only by investigators or the media but by the more than one in two Americans who depend on the transparency and integrity of our markets.

The majority of Americans depend on our capital markets to invest in the future needs of themselves and their families, from their children's college fund to their retirement nest eggs. American investors are watching what we do here and want action. We must act now to restore confidence in the integrity of our markets and deter fraud artists who think that their crimes will go unpunished. Restoring such accountability is what this bill is all about.

This bill has three major components that will enhance accountability. First, this bill provides prosecutors with new and better tools to effectively prosecute and punish those who defraud our Nation's investors, which means ensuring our criminal laws are flexible enough to keep pace with the most sophisticated and clever con artists. It also means providing criminal penalties which are tough enough to make them think twice about defrauding the public.

Second, this bill provides tools that will improve the ability of investigators and regulators to collect and preserve evidence which proves fraud. That means ensuring that corporate whistleblowers are protected and that those who destroy evidence of fraud are punished. Third, the bill protects victims' rights to recover from those who have cheated them. In short, this bill is going to both save documents from the shredder and send wrongdoers to jail once they are caught.

This bill is only one part of the response needed to solve the problems exposed by Enron's fall. Securities law experts, consumer protection groups, and others Members of Congress, both in the Senate and the House of Representatives, have made other proposals and introduced legislation that deserves careful consideration. Working with the majority leader, we have developed a comprehensive plan to attack this problem. Certainly, in light of recent events, we must carefully reexamine both the decisions of the Supreme Court and our current laws. Despite the best of intentions, our laws may have helped create an environment in which greed was inflated and integrity devalued. This bill is an important starting point in that process. Let me explain its provisions.

Section 2 of the bill would create two new 5 year felonies to clarify and plug holes in the existing criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records. Currently, those provisions are a patchwork which have been interpreted, often very narrowly, by Federal courts. For instance, certain of the current provisions in Title 18, such as Section 1512(b), make it a crime to persuade another person to destroy documents, but not a crime for a person to personally destroy the same documents. Other provisions, such as Section 1503, have been narrowly interpreted by courts, including the Supreme Court in *United States* v. *Aguillar*, 115 S. Ct. 593 (1995), and the First Circuit in *United States* v. *Frankhauser*, 80 F.3d 641 (1st Cir. 1996), to apply only to situations where the obstruction of justice may be closely tied to a judicial proceeding that is already pending. Still other provisions, such as sections 152(8), 1517 and 1518 apply to obstruction in certain limited types of cases, such as bankruptcy fraud, examinations of financial institutions, and healthcare fraud. In short, the current laws regarding destruction of evidence are full of ambiguities and limitations that should be corrected.

Section 2 would create a new felony, 18 U.S.C. section 1519, for use in a wide array of cases in which a person destroys evidence with the specific intent to obstruct a Federal agency or a criminal investigation. There would be no technical requirement that a judicial proceeding was already underway or that the documents were formally under subpoena. The law would also be used to prosecute a person who actually destroys the records themself in addition to one who persuades another to do so. The law would apply to the intentional shredding of evidence in any matter within Federal regulatory or civil jurisdiction, such as an SEC or civil fraud matter, as well as criminal jurisdiction, eliminating another series of technical distinctions imposed by some courts under current law.

Second, Section 2 creates a 5-year felony, 18 U.S.C. section 1520, to punish the willful failure to preserve financial audit papers of companies that issue securities as defined in the Securities Exchange Act. The new statute, in subsection (a), would require that accountants preserve audit records for 5 years from the conclusion of the audit. Subsection (b) would make it a felony to knowingly and willfully violate the 5-year audit retention period. This section both penalizes the willful failure to maintain specified audit records and sets a bright line rule that would require accountants to put strong safeguards in place to ensure that such records are, in fact, retained. Had such clear requirements been in place at the time that Arthur Andersen was considering what to do with its audit documents, countless documents might have been saved from the shredder.

Section 3 of this bill proposes an amendment to the civil Racketeer Influenced and Corrupt Organizations, RICO, statute, enhance the abilities of Federal and State regulators to enforce existing law. It would give State Attorneys General and the Securities and Exchange Commission, ''SEC'', explicit authority to bring a suit under the civil RICO provisions. Currently, only the U.S. Attorney General has such authority under RICO. At a Judiciary Committee hearing on Enron's fall, Washington State Attorney General Christine Gregoire strongly supported this change, testifying that State and local law enforcers are on the front lines in protecting consumer's rights. Providing such authority to State Attorneys General and to the SEC would provide them a potent weapon in that battle and would allow us to take advantage of their significant expertise in protecting consumers.

Others have suggested that we also consider repealing the one-of-a-kind securities fraud exception to civil RICO, created in 1995 over the veto of President Clinton. Congressman CONYERS, the distinguished ranking minority member of the House Judiciary Committee, has already introduced a bill to repeal this unique exemption. As someone who voted against the 1995 Private Securities Litigation Reform Act and voted to sustain President Clinton's veto, I did not support this one-of-a-kind exemption when it became law. Now, given what has happened in our markets, I think that we all need to consider whether or not the exemption for securities fraud makes sense. No one who voted for the 1995 Private Securities Litigation Reform Act or voted to override President Clinton's veto meant for Enron to occur, but now that it has occurred, none of us can ignore it.

In addition to giving the SEC the authority to sue under civil RICO, we have to ensure that the SEC has all the powers and resources that it needs to protect our Nation's shareholders. The

SEC needs to have sufficient attorneys, training, and investigative resources, and enough power to pursue the most complex of cases against the best funded defendants in our legal system. In particular, one idea that is worth serious consideration is amending the statutes related to the Federal Rules of Criminal Procedure to allow SEC attorneys in fraud investigations to seek search warrants from a Federal judge, the same way that Department of Justice attorneys currently may, when they can demonstrate probable cause to believe that a crime has been committed. Taking such a step might allow the SEC to act more quickly and to prevent the destruction of documents and evidence in the future, as they were not able to do in the Enron case. The SEC has to have the tools it needs to protect what has truly become a nation of shareholders.

Section 4 of this bill would amend the Bankruptcy Code to make judgments and settlements based upon securities law violations non-dischargeable, protecting victims' ability to recover their losses. Current bankruptcy law may permit such wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and other securities violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who perpetrate securities fraud after a government unit or private suit results in a judgment or settlement against the wrongdoer.

State securities regulators have indicated their strong support for this change in the bankruptcy law, and I have received letters supporting the passage of this bill from the North American Securities Administrators Association, whose membership includes the securities administrators in all 50 States and Vermont's chief banking and securities regulator. Under current laws, State regulators are often forced to ''reprove'' their fraud cases in bankruptcy court to prevent discharge because remedial statutes often have different technical elements than the analogous common law causes of action. Moreover, settlements may not have the same collateral estoppel effect as judgments obtained through fully litigated legal proceedings. In short, with their resources already stretched to the breaking point, these State regulators have to plow the same ground twice in securities fraud cases. By ensuring securities fraud judgments and settlements in State cases are nondischargeable, precious state enforcement resources will be preserved and directed at preventing fraud in the first place.

Section 5 would protect victims by extending the statute of limitations in private securities fraud cases. This section would set the statute of limitations in private securities fraud cases to the earlier of 5 years after the date of the fraud or 3 years after the fraud was discovered. The current statute of limitations for such fraud cases is 3 years from the date of the fraud. This can unfairly limit recovery for defrauded investors in some cases. As Attorney General Gregoire testified at our recent hearing, in the Enron State pension fund litigation the current short statute of limitations has forced some States to forgo claims against Enron based on securities fraud in 1997 and 1998. In Washington State alone, the short statute of limitations may cost hard working State employees, firefighters and police officers nearly $50 million, lost Enron investments which they can never recover under current law.

Especially in complex securities fraud cases, the current short statute of limitations may insulate the worst offenders from accountability. As Justices O'Connor and Kennedy said in their dissent in *Lampf, Pleva, Lipkind, Prupis, & Petigrow* v. *Gilbertson*, 111 S. Ct. 2773 (1991), the 5–4 decision upholding this short statute of limitations in most securities fraud cases, the current ''one and three'' limitations period makes securities fraud actions ''all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within 3 years after the violation occurred.'' The Consumers Union also strongly supports the bill, and views this section in particular as a needed measure to protect investors.

The experts agree with that view. In fact, the last two SEC Chairmen supported extending the statute of limitations in securities fraud cases. Then Chairman Arthur Levitt testified before a Senate Subcommittee in 1995 that ''extending the statute of limitations is warranted because many securities frauds are inherently complex, and the law should not reward the perpetrator of a fraud, who successfully conceals its existence for more than 3 years.'' Before Chairman Levitt, in the last Bush administration, then SEC Chairman Richard Breeden also testified before Congress in favor of extending the statute of limitations in securities fraud cases. Reacting to the Lampf opinion, Breeden stated in 1991 that ''[e]vents only come to light years after the original distribution of securities, and the Lampf cases could well mean that by the time investors discover they have a case, they are already barred from the courthouse.'' Both the FDIC and the State securities regulators joined the SEC in calling for a legislative reversal of the Lampf decisions at that time.

In fraud cases the short limitations period under current law is an invitation to take sophisticated steps to conceal the deceit. The experts have long agreed on that point, but unfortunately they have been proven right again. As we know from recent experience, it only takes a few seconds to warm up the shredder, but unfortunately it will take years for victims to put this complex case back together again. It is time that the law be changed to give victims the time they need to prove their fraud cases.

Section 6 of this bill ensures that those who destroy evidence or perpetrate fraud are appropriately punished. It would require the United States Sentencing Commission, ''Commission'', to consider enhancing criminal penalties in cases involving the actual destruction or fabrication of evidence or in serious fraud cases where a large number of victims are injured or when the victims face financial ruin.

Currently, the United States Sentencing Guidelines recognize that a wide variety of conduct falls under the offense of ''obstruction of justice.'' For obstruction cases involving the murder of a witness or another crime, the guidelines allow, by cross reference, significant enhancements based on the underlying crimes, such as murder or attempted murder. For cases where obstruction is the only offense, however, they provide little guidance on differentiating between different types of obstruction. This provision requests that the Sentencing Commission consider a specific enhancement in cases where evidence and records are actually destroyed or fabricated in order to thwart investigators, a serious form of obstruction.

This provision, in subsections 3 and 4, also requires the Commission to consider enhancing the penalties in fraud cases which are particularly extensive or serious. The current fraud guidelines require the sentencing judge to take the number of victims into account, but only to a very limited degree in small and medium-sized cases. Specifically, once there are more than 50 victims, the guidelines do not require any further enhancement of the sentence, so that a case with 51 victims may be treated the same as a case with 5,000 victims. As the Enron matter demonstrates, serious frauds, especially in cases where publicly traded securities are involved, can effect thousands of victims. The Commission may well have not foreseen such extensive cases, and subsection 3 requires it to reconsider whether they merit an additional enhancement.

In addition, current guidelines allow only very limited consideration of the extent of devastation that a fraud offense causes its victims. Judges may only consider whether a fraud endangers the ''solvency or financial security'' of a victim to impose an upward departure from the recommended sentencing range. It is not a factor in establishing the range itself unless a bank is the victim. Subsection 4 requires the Commission to consider requiring judges to consider the extent of the fraud in setting the actual recommended sentencing range in cases such as the Enron matter, where many private victims have lost their life savings.

Section 7 of the bill would provide whistleblower protection to employees of publicly traded companies who report acts of fraud to Federal officials with the authority to remedy the wrongdoing or to supervisors or appropriate individuals within their company. Although current law protects many government employees who act in the public interest by reporting wrongdoing, there is no similar protection for employees of publicly traded companies who blow the whistle on fraud and protect investors. With an unprecedented portion of the American public investing in these companies and depending upon their honesty, this distinction does not serve the public good.

In addition, corporate employees who report fraud are subject to the patchwork and vagaries of current State laws, even though most publicly traded companies do business nationwide. Thus, a whistleblowing employee in one State may be far more vulnerable to retaliation than a fellow employee in another State who takes the same actions. Unfortunately, one thing that often transcends State lines, as we all know from the State tobacco litigation, are certain companies with a corporate culture that punishes whistleblowers for being ''disloyal'' and ''litigation risks.''

Most corporate employers, with help from their lawyers, know exactly what they can do to a whistleblowing employee under the law. Unfortunately, Enron has supplied us with another grievous example of corporate conduct as shown by a recently released email from one of Enron's lawyers. The email responds to a request for legal advice after an Enron employee tried to report accounting irregularities at the highest levels of the company in late August, 2001:

> You asked that I include in this communication a summary of the possible risks associated with discharging (or constructively discharging) employees who report allegations of improper accounting practices: 1. Texas law does not currently protect corporate whistleblowers. The supreme court has twice declined to create a cause of action for whistleblowers who are discharged . . .

This legal advice lays bare the fact that employees who do the ''right thing'' are vulnerable to retaliation. After this high level employee at Enron reported improper accounting practices, Enron is not thinking about firing Arthur Andersen, they are considering discharging the whistle blower. No wonder that so many employees are scared to come forward. Our laws need to encourage and protect those who report fraudulent activity that damages investors in publicly traded companies. That is why this bill is supported by groups such as the National Whistleblower Center, the Government Accountability Project, and Taxpayers Against Fraud, who have written a letter calling this bill ''the single most effective measure possible to prevent recurrences of the Enron debacle and similar threats to the nation's financial markets.''

This bill would create a new provision protecting employees when they take lawful acts to disclose information or otherwise assist criminal investigators, Federal regulators, Congress, their supervisors, or other proper people within a corporation, or parties in a judicial proceeding in detecting and stopping actions which they reasonably believe to be fraudulent. Since the only acts protected are ''lawful'' ones, the bill would not protect illegal actions, such as the improper public disclosure of trade secret information. In addition, a reasonableness test is also provided under the subsection (a)(1), which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts. See generally Passaic Valley Sewerage Commissioners v. Department of Labor, 992 F. 2d 474, 478. Certainly, although not exclusively, any type of corporate or agency action taken based on the information or the information constituting admissible evidence would be strong indicia that it could support of such a reasonable belief. Under this bill's new protections, if the employer does take illegal action in retaliation for such lawful and protected conduct, subsection b allows the employee to elect to file an administrative complaint at the Department of Labor, as is the case for employees who provide assistance in airplane safety, or to bring a case in Federal court, with a jury trial available for an action at law. See United States Constitution, Amendment VII; Title 42 United States Code, Section 1983.

Subsection (c) of this section would require both reinstatement of the whistleblower, double backpay, and compensatory damages to make a victim whole. In severe cases, where the finder of fact determines that underlying fraud posed a substantial risk to the shareholders' or the general public's health, safety or welfare, punitive damages would be allowed in the discretion of the finder of fact based on a number of enumerated factors. The bill does not supplant or replace State law, but sets a national floor for employee protections in the context of publicly traded companies.

Section 8 of the bill would create a new ten year felony under Title 18 for defrauding shareholders of publicly traded companies. Currently, unlike bank fraud or health care fraud, there is no generally accessible statute dealing with the specific problem of securities fraud. In these cases, Federal investigators and prosecutors are forced either to resort to a patchwork of technical Title 15 offenses, which may criminalize particular violations of securities law, or to treat the cases as generic mail or wire fraud cases and to meet the technical elements of those statutes, with their 5 year maximum penalties.

This bill, then, would create a new ten year felony for securities fraud, a more general and less technical provision comparable to the bank fraud and health care fraud statutes in Title 18. Specifically, it would add a provision to Chapter 63 of Title 18 which would criminalize the execution or attempted execution of a scheme or artifice to defraud persons in connection with securities of publicly traded companies or obtain their money or property. The provision would provide needed enforcement flexibility in the context of publicly traded companies to protect shareholders and prospective shareholders against all the types of schemes and frauds which inventive criminals may devise in the future.

This bill can only be part of the needed response to the problems exposed by the Enron debacle. It is clear that changes are needed to restore accountability in our markets. As a lawyer and a former prosecutor I am appalled at the role that lawyers and accountants played in the Enron case. Instead of acting as gatekeepers who detect and deter fraud, it appears that Enron's accountants and lawyers brought all their skills and knowledge to bear in assisting the fraud to succeed and then in covering it up. We need to reconsider the incentive system that has been set up that encourages accountants and lawyers who come across fraud in their work to remain silent.

Others have suggested that we restore aider and abettor liability to the law as it existed for almost five decades before the Supreme Court, in another 5–4 decision, took away the ability of private parties to sue aiders and abettors for securities fraud. I hope that Senators on the Banking Committee will seriously consider this change, which restores the ability to hold liable accountants and lawyers who knowingly or recklessly provide substantial assistance in perpetrating a fraud. Others have also proposed to restore joint and several liability in securities fraud cases so that fraud victims are not left empty handed watching the accountants, lawyers, and executives point fingers at each other, until they can blame everything on the one company that files for bankruptcy protection, like Enron, another change worth careful consideration. In short, we have to ask ourselves whether, as a nation, we have unintentionally stacked the deck against fraud victims. I think that we have, and we need to have the courage to admit it and reshuffle the cards to restore basic fairness.

For all of these reasons, I am pleased to introduce the ''Corporate and Criminal Fraud Accountability Act of 2002.'' I look forward to working with members on both sides of the aisle to enact its provisions into law.

I ask unanimous consent for this bill to be printed in the RECORD along with the sectional analysis and a copy of the entire e-mail document to which I referred as well as the letters of support which I have referenced.

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

S. 2010

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 2. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 5 years, or both.

''§ 1520. Destruction of corporate audit records

''(a) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all documents (including electronic documents) sent, received, or created in connection with any audit, review, or other engagement for such issuer for a period of 5 years from the end of the fiscal period in which the audit, review, or other engagement was concluded.

''(b) Whoever knowingly and willfully violates subsection (a) shall be fined under this title, imprisoned not more than 5 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation, imposed by Federal or State law or regulation, to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 3. ENHANCED ENFORCEMENT OF LAWS AFFECTING RACKETEER-INFLUENCED AND CORRUPT ORGANIZATIONS.

Section 1964 of title 18, United States Code, is amended—

(1) in subsection (b), by inserting after ''The Attorney General'' the following: '', the Attorney General of any State, or the Securities and Exchange Commission''; and

(2) in subsection (d), by inserting before the period the following: ''or any State''.

SEC. 4. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) arises under a claim relating to—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any State securities laws, or any regulations or orders issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results, in relation to any claim described in subparagraph (A), from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 5. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) 5 years after the date on which the alleged violation occurred; or

''(2) 3 years after the date on which the alleged violation was discovered.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

SEC. 6. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(2) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this Act, are sufficient to deter and punish that activity;

(3) the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50; and

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of 1 or more victims.

SEC. 7. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with securities registered under section 6 of the Securities Act of 1933 (15 U.S.C. 77f) or section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ELECTION OF ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) bringing an action at law or equity in the appropriate district court of the United States.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 180 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) (A) or (B) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) 2 times the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(3) PUNITIVE DAMAGES.—

''(A) IN GENERAL.—In a case in which the finder of fact determines that the protected conduct of the employee under subsection (a) involved a substantial risk to the health, safety, or welfare of shareholders of the employer or the public, the finder of fact may award punitive damages to the employee.

''(B) FACTORS.—In determining the amount, if any, to be awarded under this paragraph, the finder of fact shall take into account—

''(i) the significance of the information or assistance provided by the employee under subsection (a) and the role of the employee in advancing any investigation, proceeding, congressional inquiry or action, or internal remedial process, or in protecting the health, safety, or welfare of shareholders of the employer or of the public;

''(ii) the nature and extent of both the actual and potential discrimination to which the employee was subjected as a result of the protected conduct of the employee under subsection (a); and

''(iii) the nature and extent of the risk to the health, safety, or welfare of shareholders or the public under subparagraph (A).

''(d) RIGHTS RETAINED BY EMPLOYEE.—

''(1) OTHER REMEDIES UNAFFECTED.—Nothing in this section shall be deemed to diminish the rights, privilege, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

''(2) VOLUNTARY ADJUDICATION.—No employee may be compelled to adjudicate his or her rights under this section pursuant to an arbitration agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 8. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78o(d)) or section 6 of the Securities Act of 1933 (15 U.S.C. 77f); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78o(d)) or section 6 of the Securities Act of 1933 (15 U.S.C. 77f),

shall be fined under this title, or imprisoned not more than 10 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

SECTIONAL ANALYSIS: CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002

Section 1. Title.

''Corporate and Criminal Fraud Accountability Act.''

Section 2. Criminal Penalties for Altering, Destroying, or Failing to Maintain Documents

This section provides two new criminal statutes which would clarify and plug holes in the current criminal laws relating to the destruction or fabrication of evidence, including the shredding of financial and audit records. Currently, those provisions are a patchwork which have been interpreted in often limited ways in federal court. For instance, certain of the current provisions make it a crime to persuade another person to destroy documents, but not a crime to actually destroy the same documents yourself. Other provisions have been narrowly interpreted by courts, including the Supreme Court in *United States* v. *Aguillar*, 115 S. Ct. 593 (1995), to apply only to situations where the obstruction of justice can be closely tied to a pending judicial proceeding.

First, this section would create a new 5 year felony which could be effectively used in a wide array of cases where a person destroys or creates evidence with the specific intent to obstruct a federal agency or a criminal investigation. Second, the section creates another 5 year felony which applies specifically to the willful failure to preserve audit papers of companies that issue securities.

Section 3. Amendment to Improve Enforcement of Civil RICO

This section proposes an amendment to the civil RICO provision found at 18 U.S.C. Section 1964 which would enhance the abilities of federal and state regulators to enforce existing law by giving State Attorneys General and the Securities and Exchange Commission, SEC, explicit authority to bring a suit under the civil RICO provisions. Currently, only the Attorney General has such authority under RICO.

Section 4. Bankruptcy

This provision would amend the Federal bankruptcy code to make judgments and settlements arising from state and federal securities law violations brought by state or federal regulators and private individuals non-dischargeable. Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. This loophole in the law should be closed to help defrauded investors recoup their losses and to hold accountable those who perpetrate securities fraud.

Section 5. Statute of Limitations

This section would set the statute of limitations in private securities fraud cases to the earlier of 5 years after the date of the fraud or three years after the fraud was discovered. The current statute of limitations for private securities fraud cases is the earlier of three years from the date of the fraud or one year from the date of discovery. In the Enron state pension fund litigation, the current short statute of limitations has forced some states to forgo claims against Enron based on securities fraud in 1997 and 1998. Victims of securities fraud should have a reasonable time to discover the facts underlying the fraud.

The Supreme Court, in *Lampf* v. *Gilbertson*, 501 U.S. 350 (1991), endorsed the current short statute of limitations for securities fraud in a 5–4 decision. Justices O'Connor and Kennedy wrote in their dissent in the *Lampf* decison: ''By adopting a 3-year period of repose, the Court makes a §10(b) action all but a dead letter for injured investors who by no conceivable standard of fairness or practicality can be expected to file suit within three years after the violation occurred. In so doing, the Court also turns its back on the almost uniform rule rejecting short periods of repose for fraud-based actions.''

Section 6. Review and Enhancement of Criminal Sentences in Cases of Fraud and Evidence Destruction

This section would require the United States Sentencing Commission, ''Commission'', to consider enhancing criminal penalties in cases involving the actual destruction or fabrication of evidence or in fraud cases in which a large number of victims are injured or when the injury to the victims is particularly grave, i.e. they face financial ruin.

This provision first requires the Commission to consider sentencing enhancements in obstruction of justice cases where physical evidence was actually destroyed. The provision, in subsections 3 and 4, also requires the Commission to consider sentencing enhancements for fraud cases which are particularly extensive or serious. Specifically, once there are more than 50 victims, the current guidelines do not require any further enhancement of the sentence, so that a case with 51 victims may be treated the same as a case with 5,000 victims. In addition, current guidelines allow only very limited consideration of the extent of financial devastation that a fraud offense causes to private victims. This section corrects both these problems.

Section 7. Whistleblower Protection for Employees of Publicly Traded Companies

This section would provide whistleblower protection to employees of publicly traded companies, similar to those currently available to many government employees. It specifically protects them when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping fraud. Since the bill's provisions only apply to ''lawful'' actions by an employee, it does not protect employees from improper and unlawful disclosure of trade secrets. In addition, a reasonableness test is also set forth under the information providing subsection of this section, which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts. See generally *Passaic Valley Sewerage Commissioners* v. *Department of Labor*, 992 F. 2d 474, 478. Certainly, although not exclusively, any type of corporate or agency action taken based on the information, or the information constituting or leading to admissible evidence would be strong indicia that it could support of such a reasonable belief. If the employer does take illegal action in retaliation for lawful and protected conduct, subsection (b) allows the employee to elect to file an administrative complaint or to bring a case in federal court, with a jury trial available in cases where the case is an action at law. See United States Constitution, Amendment VII; Title 42 United States Code, Section 1983. Subsection (c) would require both reinstatement of the whistleblower, double backpay, compensatory damages to make a victim whole, and would allow punitive damages in extreme cases where the public's health, safety or welfare was at risk.

Section 8. Criminal Penalties for Securities Fraud

This provision would create a new 10 year felony for defrauding shareholders of publicly traded companies. The provision would supplement the patchwork of existing technical securities law violations with a more general and less technical provision, comparable to the bank fraud and health care fraud statutes. The provision would be more accessible to investigators and prosecutors and would provide needed enforcement flexibility and, in the context of publicly traded companies, protection against all the types schemes and frauds which inventive criminals may devise in the future.

VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND HEALTH CARE ADMINISTRATION,
Montpelier, VT, March 8, 2002.

Senator PATRICK LEAHY,
Russell Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Your staff recently forwarded a copy of a bill you intend to introduce entitled, ''Corporate and Criminal Fraud Accountability Act of 2002''. I read your proposed legislation with special interest, as I am a trustee of the Vermont State Teachers' Retirement Board. That system recently experienced some losses due to its investment in Enron, as did the other state retirement systems.

I believe that your bill will have a significant and positive effect on how we investigate and punish those involved in cases of corporate and criminal fraud. The provision of your bill making judgments arising from state and federal securities law violations non-dischargeable under the federal bankruptcy code is particularly welcome. This improvement in the law would materially improve the ability of defrauded investors to recoup their losses. I also support your proposed expansion of the statute of limitations in private securities fraud cases. This longer statute of limitations will result in investors, including state retirement funds, enjoying a more level playing field when they are defrauded by complex schemes that they could not reasonably be expected to discover within the current three year period.

I also support the provisions in the bill to clarify the criminal laws concerning the destruction or fabrication of evidence and the enhancement of criminal sentences in cases of fraud and destruction of evidence. As the agency charged with examining financial institutions, the integrity of records is essential to our ability to do our jobs. Clear federal laws and increased criminal penalties will provide powerful deterrents to evidence destruction and securities fraud. I also support the expansion of civil RICO to allow state attorney generals and the SEC to bring civil RICO suits.

Please let me know if I can be of any further assistance on this legislation.

Sincerely,

ELIZABETH COSTLE,
Commissioner.

NATIONAL WHISTLEBLOWER CENTER,
Washington, DC, March 11, 2002.

Senator PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: Since 1988 the National Whistleblower Center has aided or defended hundreds of employees who have disclosed fraud and criminal activities within the public and private sectors. During this time we have become painfully aware of the major loopholes which often leave courageous employees without any legal protection. One of the most notorious loopholes exists under the securities laws, in which employees who report fraud upon stockholders have no protection under federal law. It is truly tragic that employees who are wrongfully discharged merely for reporting violations of law, which may threaten the integrity of pension funds or education-based savings accounts, have no federal protection. This point was made perfectly clear by the recently released internal memorandum from attorneys for Enron. According to Enron's own counsel, employees who raised concerns over that company's accounting practices had no protection under federal law and could be fired.

With this background in mind, the National Whistleblower Center strongly commends you for introducing the Corporate and Criminal Fraud Accountability Act of 2002. This law would protect employees who disclose Enron-related fraud to the appropriate authorities. It is modeled on the airline safety whistleblower law, which overwhelmingly passed Congress with strong bi-partisan support. The next time a company like Enron seeks advice from counsel as to whether they can fire an employee, like Sharon Watkins, who merely discloses potential fraud on shareholders, the answer must be a resounding ''no.'' That can only happen if the Corporate and Criminal Fraud Accountability Act is enacted into law.

Respectfully submitted,

STEPHEN M. KOHN,
Chairman of the Board of Directors.
KRIS KOLESNIK,
Executive Director.

GOVERNMENT ACCOUNTABILITY PROJECT AND TAXPAYERS AGAINST FRAUD,
Washington, DC, March 11, 2002.

Hon. PATRICK LEAHY,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: Thank you for your leadership in introducing the Corporate Fraud and Criminal Accountability Act of 2002. This is a landmark proposal, for which we offer our complete support. The bill promises to make whistleblower protection the rule rather than the exception for those challenging betrayals of corporate fiduciry duty enforced by the Securities and Exchange Commission. It would be the single most effective measure possible to prevent recurrences of the Enron debacle and similar threats to the nation's financial markets, shareholders and pension holders. It also would be a breakthrough in implementing recommendations pending since 1985 by the Administrative Conference of the United States for a consistent, coherent system of corporate whistleblower protection.

The Government Accountability Project (GAP) is a nonprofit, nonpartisan public interest law firm dedicated since 1976 to helping whistleblowers, those employees who exercise freedom of speech to bear witness against betrayals of public trust that they discover on the job. GAP has led the campaign for passage of nearly all federal whistleblower laws over the last two decades, as well as a model law approved by the Organization of American States to implement its Inter-American Convention Against Corruption. Two decades of lessons learned are summarized in GAP's book The Whistleblower's Survival Guide: Courage Without Martyrdom. Taxpayers Against Fraud, The False Claims Act Legal Center (TAF) is a nonprofit, nonpartisan public interest organization dedicated to combating fraud against the Federal Government through the promotion and use of the federal False Claims Act and its *qui tam* whistleblower provisions. TAF supports effective anti-fraud legislation at the federal and state level and, as part of its educational outreach, publishes the False Claims Act and Qui Tam Quarterly Review.

This bill is outstanding goverenment legislation. It uses the best combination of provisions that have proven effective in other contexts. It has the modern burdens of proof in the Whistleblower Protection Act of 1989, and offers choices of forum that virtually guarantee whistleblowers will have a fair day in court. Most significant, it closes the loopholes that have meant whistleblowers proceed at their own risk when warning Congress, shareholders or even their own management or Board Audit Committees of financial misconduct threatening the health both of their own company and, in some cases, the nation's economy. You have our unqualified pledge of helping to finish the public service you started by introducing this legislation.

Sincerely,

JIM MOORMAN,
Executive Director, TAF.
TOM DEVINE,
Legal Director, GAP.

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, March 5, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.

DEAR MR. CHAIRMAN: The North American Securities Administrators Association, Inc., (NASAA), organized in 1919, is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

NASAA members collectively bring thousands of enforcement actions against violators of securities laws in an effort to protect investors from fraud and abuse in connection with the offer and sale of securities.

We have reviewed a draft of the Corporate and Criminal Fraud and Accountability Act of 2002, and we support it. Our focus is on the section that would prevent the discharge of certain debts in bankruptcy proceedings. At the present time, the bankruptcy code enables defendants who are guilty of fraud and other securities violations to thwart enforcement of the judgments and other awards that are issued in these cases.

We support Section 4, as drafted, because it strengthens the ability of regulators and individual investors to prevent the discharge of certain debts and hold defendants financially responsible for violations of securities laws. This issue is of great interest to state securities regulators, and we commend you for addressing it in the proposed legislation.

NASAA and its members are prepared to work with you as the legislative process continues. We support your effort to enhance the ability of state and federal regulators to help defrauded investors recoup their losses and to hold accountable those who perpetuate securities fraud.

Sincerely,

JOSEPH P. BORG,
NASAA President, Director of Alabama Securities Commission.

From: Jordan, Carl.
Sent: Friday, August 24, 2001 7:02 PM.
To: Butcher, Sharon (Enron).
Subject: Confidential Employee Matter.

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

Sharon: Per your request, the following are some bullet thoughts on how to manage the situation with the employee who made the sensitive report.

1. I agree that it is a positive that she has requested reassignment to another department. Assuming a suitable position can be found, I recommend documenting in memo form that the transfer is being effected per her request. This would be worded to convey that the company has considered and decided to accommodate her request for reassignment. See comments below re additional items to be addressed in the memo.

2. I suggest that the memo also name a designated company officer for her to contact in the unlikely future event that she believes she is being retaliated against for having made the report. Case law suggests that she then will have the burden of reporting

any perceived retaliation and allowing the company a reasonable opportunity to correct it before quitting and asserting a constructive discharge. (Note: If there is any chance that the decision might be made in the future to discharge the employee for making the report—e.g., if the company concludes that the allegations were not made in good faith—then this assurance probably should not be given, at least until later when (if) the company is satisfied that the employee was not acting in bad faith or otherwise improperly.)

3. The memo should contain language that conveys that the other terms of her employment—specifically, its at-will status—remains unchanged. This is to avoid any future claim that the understandings surrounding the transfer constitute a contractual obligation of some sort.

4. The new position, as we discussed, should have responsibilities and compensation comparable to her current one, to avoid any claim of constructive discharge.

5. As we discussed, to the extent practicable, the fact that she made the report should be treated as confidential.

6. The individual or individuals who are implicated by her allegations should be advised to treat the matter confidentially and to use discretion regarding any comments to or about the complaining employee. They should be advised that she is not to be treated adversely in any way for having expressed her concerns.

7. You indicated that the officer in charge of the area to which the employee may be reassigned would probably need to be advised of the circumstances. I suggest he be advised at the same time that it is important that she not be treated adversely or differently because she made the report. And that the circumstances of the transfer are confidential and should not be shared with others.

You also asked that I include in this communication a summary of the possible risks associated with discharging (or constructively discharging) employees who report allegations of improper accounting practices:

1. Texas law does not currently protect corporate whistleblowers. The supreme court has twice declined to create a cause of action for whistleblowers who are discharged; however, there were special factors present in both cases that weighed against the plaintiffs and the court implied that it might reach a different conclusion under other circumstances.

2. Regardless of the whistleblower issue, there is often a risk of a Sabine Pilot claim (i.e., allegation of discharge for refusing to participate in an illegal act). Whistleblower cases in Texas commonly are pled or repled as Sabine Pilot claims—it is often an easy leap for the plaintiff to make if she had any involvement in or duties relating to the alleged improper conduct. For example, some cases say that if an employee's duties involve recording accounting data that she knows to be misleading onto records that are eventually relied on by others in preparing reports to be submitted to a federal agency (e.g., SEC, IRS, etc.), then the employee can be subject to criminal prosecution even tho she did not originated the misleading data and does not prepare the actual document submitted to the government. Under such circumstances, if the employee alleges that she was discharged for refusing to record (or continuing the practice of recording) the allegedly misleading data, then she has stated a claim under the Sabine Pilot doctrine.

3. As we discussed, there are a myriad of problems associated with Sabine Pilot claims, regardless of their merits, that involve allegations of illegal accounting or related practices. One is that the company's accounting practices and books and records are fair game during discovery—the opposition typically will request production of volumes of sensitive material. Another problem is that because accounting practices often involve judgments in gray areas, rather than non-judgmental applications of black-letter rules, there are often genuine disputes over whether a company's practice or a specific report was materially misleading or complied with some statutory or regulatory requirements. Third, these are typically jury cases—that means they are decided by lay persons when the legal compliance issues are often confusing even to the lawyers and experts. Fourth, because of the above factors, they are very expensive and time consuming to litigate.

4. In addition to the risk of a wrongful discharge claim, there is the risk that the discharged employee will seek to convince some government oversight agency (e.g., IRS, SEC, etc.) that the corporation has engaged in materially misleading reporting or is otherwise non-compliant. As with wrongful discharge claims, this can create problems even tho the allegations have no merit whatsoever.

These are, of course, very general comments. I will be happy to discuss them in greater detail at your convenience.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 2997. Mr. LEVIN (for himself, Mr. BOND, Ms. STABENOW, and Ms. MIKULSKI) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

TEXT OF AMENDMENTS

SA 2995. Mr. CRAIG (for himself, Ms. LANDRIEU, Mr. MURKOWSKI, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

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

SEC. . NUCLEAR POWER 2010.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) OFFICE.—The term ''Office'' means the Office of Nuclear Energy Science and Technology of the Department of Energy.

(3) DIRECTOR.—The term ''Director'' means the Director of the Office of Nuclear Energy Science and Technology of the Department of Energy.

(4) PROGRAM.—The term ''Program'' means the Nuclear Power 2010 Program.

(b) ESTABLISHMENT.—The Secretary shall carry out a program, to be managed by the Director.

(c) PURPOSE.—The program shall aggressively pursue those activities that will result in regulatory approvals and design completion in a phased approach, with joint government/industry cost sharing, which would allow for the construction and startup of new nuclear plants in the United States by 2010.

(d) ACTIVITIES.—In carrying out the program, the Director shall—

(1) issue a solicitation to industry seeking proposals from joint venture project teams comprised of reactor vendors and power generation companies to participate in the Nuclear Power 2010 program;

(2) seek innovative business arrangements, such as consortia among designers, constructors, nuclear steam supply systems and major equipment suppliers, and plant owner/operators, with strong and common incentives to build and operate new plants in the United States;

(3) conduct the Nuclear Power 2010 program consistent with the findings of A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010 issued by the Near-Term Deployment Working Group of the Nuclear Energy Research Advisory Committee of the Department of Energy;

(4) rely upon the expertise and capabilities of the Department of Energy national laboratories and sites in the areas of advanced nuclear fuel cycles and fuels testing, giving consideration to existing lead laboratory designations and the unique capabilities and facilities available at each national laboratory and site;

(5) pursue deployment of both water-cooled and gas-cooled reactor designs on a dual track basis that will provide maximum potential for the success of both;

(6) include participation of international collaborators in research and design efforts where beneficial; and

(7) seek to accomplish the essential regulatory and technical work, both generic and design-specific, to make possible new nuclear plants within this decade.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out the purposes of this section such sums as are necessary for fiscal year 2003 and for each fiscal year thereafter.

SA 2996. Mr. MURKOWSKI (for himself and Mr. DASCHLE) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 417) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place insert the following:

TITLE —RURAL AND REMOTE COMMUNITY FAIRNESS ACT

SEC. 01.—This Title may be cited as the ''The Rural and Remote Community Fairness Act.''.

Subtitle A—Rural and Remote Community Development Block Grants

SEC. 02.—The Housing and Community Development Act of 1974 (Public Law 93–383) is amended by inserting at the end the following new title:

''TITLE IX—RURAL AND REMOTE COMMUNITY DEVELOPMENT BLOCK GRANTS

''SEC. 901.(a) FINDINGS.—The Congress finds and declares that—

''(1) a modern infrastructure, including energy-efficient housing, electricity, telecommunications, bulk fuel, waste water and